

MCPS MULTIMEDIA LICENCE



The following terms and the Schedule attached form an important part of this Licence.

The validity of this Licence is CONDITIONAL upon the Licensee paying the **Amount Due** within 28 days of the invoice date and at all times complying with each of the following terms and conditions.

In this Licence certain words are defined terms with special meanings. These meanings are given in Clause 1 below or when first used in the text.

CONDITIONAL LICENCE

In consideration of the payment of the **Amount Due** and subject to the terms and conditions set out below the Mechanical-Copyright Protection Society Limited (“the **Society**”) as agent for and on behalf of the Licensor(s) named in the Schedule hereby grants to the Licensee a non-exclusive conditional Licence in respect of the **Musical Works** and/or **Sound Recordings** or parts thereof specified in the Schedule (“the **Works**”) to make in the United Kingdom, the Channel Islands and the Isle of Man (“the UK”) the **Multimedia Product** in which those **Works** are included together with the right to make during the **Period Copies** of that **Multimedia Product** in the UK not exceeding the **Maximum Permitted Copies** (if any) and to distribute such **Copies** during the **Period** in the **Territories** all for the sole purpose of the **Authorised Exploitation**.

A. DEFINITIONS

1. In this document and the Schedule the following words and expressions shall have the following meanings, unless the context otherwise requires: -
 - 1.1 “**Amount Due**” means the Amount Due set out in the Schedule.
 - 1.2 “**Authorised Exploitation**” has the meaning set out in the Schedule.
 - 1.3 “**Co-exploitant**” means: -
 - (a) any person firm or company which carries out or arranges the manufacture of the **Multimedia Product** for the Licensee; and

- (b) any person firm or company which acts as distributor of the **Multimedia Product** for the Licensee.
- 1.4 “**Copies**” means complete copies of the **Multimedia Product** made and distributed solely for the purpose of the **Authorised Exploitation** and conforming to the definition referred to in Clause 1.8.
- 1.5 “**Flash Screen**” means a full screen display called up and presented to the **User** on screen for a period of at least 3 seconds during the introduction to the **Multimedia Product** at least once each time it is used on the **System** in the course of normal operation by the **User**.
- 1.6 “**Format(s)**” means the **Optical Disc** format(s) specified in the Schedule.
- 1.7 “**Maximum Permitted Copies**” means the number of **Copies** of the **Multimedia Product** covered by this Licence if set out in the Schedule.
- 1.8 “**Multimedia Product**” means the single product (excluding variations) referred to in the Schedule (including **Copies** thereof) which conform to all the following descriptions and information: -
- a processor based interactive audio visual product published in and designed for the **Format** and the **System** and manufactured and designed for the purposes of the **Authorised Exploitation**; and
 - a product which contains a recording of sounds and not a symbolic description of the steps which can be used to generate sounds. By way of example only, this definition therefore does not include MIDI data; and
 - any information relating to the content function and characteristics of the **Multimedia Product** and the use, nature and context of inclusion and use of the **Works** as has been given to any Licensor and/or the Society in applying for this Licence; and
 - if submitted for approval to any Licensor the version as approved by the Licensor.
- 1.9 “**Musical Work(s)**” means the part(s) or extract(s) of or interest(s) in the musical work(s) (including the lyrics thereof) identified in the Schedule.

- 1.10 "**Optical Disc**" means any disc on which is capable of being stored digital data and which is accessed by laser optical scanning.
- 1.11 "**Period**" means 3 years commencing on the date of the invoice.
- 1.12 "**Published Dealer Price**" or "**PPD**" means the highest price as published by the Licensee (or where appropriate the Licensee's distributor) payable by a dealer for the supply of the minimum quantity of **Copies** which any dealer can purchase from the Licensee (or as appropriate the Licensee's distributor) without the benefit of any applicable discounts, incentives, bonuses and other reductions or deductions of whatsoever nature.
- 1.13 "**Retail Price**" means the highest fixed or suggested or recommended price as published by the Licensee (or where appropriate the Licensee's distributor) at which **Copies** will be available to the general public without the benefit of any applicable discounts, incentives, bonuses and other reductions or deductions of whatsoever nature.
- 1.14 "**Sound Recording(s)**" means the part(s) or extract(s) of or interest(s) in the sound recording(s) identified in the Schedule.
- 1.15 "**System(s)**" means the equipment or hardware specified in the Schedule on which the **Multimedia Product** is intended to operate which shall be a single stand-alone unit being either an on-site personal computer with a single screen or a device intended to be used on site with a single screen.
- 1.16 "**Territories**" means those countries specified in the Schedule.
- 1.17 "**User**" means the users, customers and operators of the **Multimedia Product** who use it on the **System** for the purpose of the Authorised Exploitation.
- 1.18 "**Work(s)**" means the **Musical Work(s)** and the **Sound Recording(s)**.
2. Expressions and definitions referred to in this Licence and the Schedule shall be construed on the basis of the technology commonly being used commercially and exploitation commonly being carried out as at the date of this Licence.

B. WHAT IS PERMITTED UNDER THE LICENCE?

3. For the avoidance of doubt the Conditional Licence referred to authorises the Licensee to do only the following in relation to the **Works** in the context of and

for the purposes of the **Authorised Exploitation** subject to and conditional upon compliance with all the other terms and conditions of this Licence: -

- 3.1 to make the **Multimedia Product** and **Copies** thereof not exceeding the **Maximum Permitted Copies** (if any);
- 3.2 to distribute and sell the **Copies** not exceeding the **Maximum Permitted Copies** (if any);
- 3.3 to authorise such transient copying through operation of the **System** as is necessary and incidental to the normal operation of the **Multimedia Product** when installed on the **System**;
- 3.4 solely as specified in the Schedule, to authorise the display of the musical notation and/or lyrics of the **Works** on the screen of the **System**.

C. WHAT IS PROHIBITED OR OUTSIDE THE LICENCE?

4. All rights or licences not specifically granted in this Licence are hereby reserved. Clauses 5, 6, 7 and 8 are without prejudice to the generality of the foregoing.
5. This Licence does not authorise the performance in public, broadcasting or inclusion in a cable programme service of the **Works**. For the avoidance of doubt, this applies whether or not the **Authorised Exploitation** envisages such exploitation or whether or not any consents are granted under Clauses 7 or 8 below. Licences to carry out such acts must be obtained from the Performing Rights Society Ltd or other party owning or controlling such rights.
6. The Licensee agrees not to authorise, procure, encourage, permit or facilitate any of the following all of which are expressly excluded from the licence and are prohibited: -
 - 6.1 the inclusion of the **Works** or **Multimedia Product** on any bulletin board or transmission through any superhighway, network or interactive service;
 - 6.2 the rental, lending, or making available of or access to or use of the **Multimedia Product** for money or money's worth;
 - 6.3 the direct or indirect use of the **Multimedia Product** to print all or any part of the **Works**;

- 6.4 the inclusion of any **Work** or in any **Multimedia Product** which is or contains material which is obscene or defamatory in any way;
 - 6.5 any use of the **Multimedia Product** which is not strictly within the **Authorised Exploitation**;
 - 6.6 any display of the musical notation and/or lyrics of the **Works** on the screen of the **System** except to the extent specified in the Schedule.
7. Clause 6 also applies to the following unless all the relevant Licensor(s) (or the Society on their behalf) have expressly consented to the same in writing prior to the grant of this Licence: -
- 7.1 any arrangement, adaptation, editing, sampling, parody, burlesque or alteration to the lyrics of the **Works** or the inclusion of any such version of the **Works** in the **Multimedia Product**;
 - 7.2 the inclusion of any **Work** in any **Multimedia Product** which is or contains or is capable of producing any impersonation or caricature of either the writer of or any performer associated with any of the **Works**, or which is or which contains material which would in the reasonable opinion of the Licensor of the relevant **Work** be insulting or prejudicial to any such person, or which is or is intended to be marketed in such a way as to imply approval or endorsement by such person;
 - 7.3 the reproduction of the musical notation and/or lyrics of the **Works** on any insert, packaging or promotional or other material accompanying the **Multimedia Product**.
8. The following additional reservations and limitations apply: -
- 8.1 Nothing in this Licence shall prejudice or act as any waiver or consent in relation to any moral rights in the **Works** subsisting or arising under the Copyright Designs and Patents Act 1988 or any other similar legislation now or at any time in force anywhere in the world.
 - 8.2 Any export of the **Multimedia Product** shall be subject to the exercise of any rights subsisting or lawfully exercisable in any country to control importation into and/or distribution within that country.
 - 8.3 This Licence does not apply unless the **Multimedia Product** is strictly within the definition set out in Clause 1.8. By way of example only, this

means that the Licence only applies in relation to the one version of the **Multimedia Product** and not to any different versions or updates or enhancements thereof or to any sequel or associated product. Separate and new licences are required in such cases. However, no separate and new licence is needed where the only change is that any words included in the **Multimedia Product** which are not **Works** have been translated for the purposes of selling it to any non-English speaking parts of the **Territories**.

8.4 The grant of this Licence does not convey any implication that a licence will be granted for further **Copies** of the same **Multimedia Product** (where applicable), or that any future licence will be the same or similar terms.

8.5 This Licence only applies to the inclusion of the **Works** or parts of the **Works** or interests therein identified in the Schedule. The Licensee must obtain separate permissions in relation to other works or rights (by way of example only, sound recordings not specified in the Schedule, films and performers' rights) of whatsoever nature.

9. The conditional licence granted in this document is null and void in relation to any **Copy** which is (or is intended or proposed to be) used or exploited in breach of or outside the scope of this Licence, whether such use or exploitation is by the Licensee or any third party. All rights are reserved in relation to any such copy.

D. NOTICES AND CREDITS

10. The **Multimedia Product** shall bear the initials MCPS on the **Multimedia Product**. This must be on the **Optical Disc** itself wherever possible and in all cases on the packaging and on all inserts and labels.

11. The title of each **Work** together with the name of the composer, lyricist and (where the **Work** is the form of an adaptation) arranger and publisher shall appear on a **Flash Screen** in all cases and on an accompanying booklet wherever reasonably practical.

E. BRINGING THE LICENCE CONDITIONS TO USERS' ATTENTION

12. The Licensee agrees to ensure that **Users** are aware of and abide by the limitations on use of the **Multimedia Product** and the scope of **Authorised Exploitation**. This shall be achieved by compliance with clauses 13 and 14 and

the printing of the following statement on the **Optical Disc**: "Use is subject to Important Restrictions. See packaging".

13. A notice summarising the restrictions and limitations under this Licence is set out in the Schedule. The Licensee must procure that this notice appears prominently on the outside packaging of the **Multimedia Product** so as to be obvious to any purchaser or **User** of that product and on any accompanying material and promotional literature and also on a **Flash Screen**. In addition, a **Flash Screen** shall set out clearly the restrictions and limitations set out in Clauses 5, 6 and 7.1 above and shall notify the **User** that the licence required to use the **Works** or **Multimedia Product** is conditional on compliance with those conditions.
14. The Licensee shall wherever practical introduce technical measures and restraints to prevent or restrict the printing of **Works** by **Users**.

F. SUPPLY OF INFORMATION

15. At the request of the Society the Licensee must deliver to the Society free of charge two **Copies** including every label, inlay card, insert, leaflet and/or packaging accompanying **Copies** of the **Multimedia Product**.

G. ASSIGNMENT AND SUB-LICENSING

16. This Licence is personal to the Licensee, and may not be assigned or sub-licensed except as follows: -
 - 16.1 the licence to make the **Copies** referred to in Clause 3.1 may be delegated to a manufacturer provided that the name and address of the manufacturer has been notified in writing to the Society and the Society has consented thereto, such consent not to be unreasonably withheld;
 - 16.2 the licence to distribute and sell such **Copies** may be delegated to one or more distributors;
 - 16.3 consent to assign this licence shall not be unreasonably withheld by the Society where the relevant assignee has delivered to the Society an irrevocable undertaking to abide by the terms of this Licence at all times.
17. Where the Licensee instructs any manufacturer to make **Copies** or a distributor to distribute **Copies** the Licensee is responsible for ensuring that such party and any sub-contractor of any nature is aware of and bound by the terms and conditions of this Licence and must use its best endeavours to ensure that such parties comply with them. The Licensee is in any event responsible for anything

done or not done by such party which causes or permits or facilitates a breach of or which is contrary to this Licence, and shall accordingly be liable to the Licensor(s) for any loss or damage of whatsoever nature in that respect.

H. WARRANTY

18. Each Licensor warrants that it is entitled to grant the licence in respect of the relevant **Works** provided it is expressly agreed by the Licensee that the aggregate liability of such Licensor for breach of this warranty in relation to the reproduction of any one **Work** on all **Copies** of any particular **Multimedia Product** shall not under any circumstances exceed a sum equal to the total amount paid by the Licensee for such Licence in relation to such **Work**.

I. AUDIT

19. The Licensee shall keep proper accounting records dealing with its activities the subject matter of this Licence to a standard sufficient to enable an audit trail to be established and followed through. Without prejudice to the generality of the foregoing, such records shall show in particular, but not limited to:-

- 19.1 The manufacture, shipment, return, and stock holding of the **Multimedia Product**.

- 19.2 The export of the **Multimedia Product**.

- 19.3 The manner and terms and conditions of such supply, including but not limited to the prices charged to dealers and fixed or suggested or recommended retail prices or other basis of purchase of the **Multimedia Product**.

- 19.4 The calculation of royalties due on the **Multimedia Product**.

- 19.5 The dates and amounts paid in respect of all royalties payable in relation to all **Musical Works** and (where the Schedule includes **Sound Recordings**) **Sound Recordings** incorporated into the **Multimedia Product** whether or not such works or recordings are the subject of this Licence together with the identity of the party to whom such payments were made.

20. Such accounting records and detail records (together with any underlying relevant or supporting documentation), any stock of **Copies** held by or for the Licensee, or any **Co-Exploitant**, shall be open to inspection and audit by the duly authorised representatives of the Society upon reasonable notice but no more

than once a calendar year except where the Licensee is in breach of this Licence. For these purposes, the Licensee shall allow or procure access to the relevant premises and the Society's duly authorised representatives shall be entitled to inspect, make extracts and take copies of the information and the documentation available or to be made available, and to carry out such work as is in their reasonable opinion considered necessary to verify that the **Copies** made and the royalties due to the Society are in compliance with the terms and conditions hereof, including but not limited to the examination of stock movements and stock movement records.

21. The reasonable fees incurred by the Society in auditing the Licensee hereunder shall be borne by the Society except in circumstances where the audit report discloses a material breach which would entitle the Society to terminate this Licence under Clause 23.1. In that event provided that either:-

21.1 the Licensee agrees and accepts such material breach or;

21.2 a Court as a result of legal action has adjudged that there has been such a material breach;

the said reasonable fees shall be paid by the Licensee.

22. Any royalties accepted by the Licensee as being unpaid, or so determined by the Court, shall be paid in full by the Licensee to the Society within 30 days of acceptance or judgment, and shall carry interest calculated as referred to in Clause 28.

J. REMEDIES FOR BREACH AND NON-PAYMENT

23. The Society shall have the right to terminate this Licence in the following circumstances:-

23.1 where the Licensee has committed a material breach of this Licence, and (in the case only of a breach capable of remedy) has failed to remedy the breach within 14 clear days of the receipt of a written notice by registered post specifying in reasonable detail the breach relied on, or;

23.2 if the Licensee shall cease to trade, or have a winding-up Petition presented against it which is not dismissed or withdrawn within 21 days, or goes into voluntary liquidation (other than for the purposes of reconstruction or amalgamation), or makes any composition with its creditors, or if a Trustee or Administrator or Receiver or Administrative

Receiver is appointed to take over all or a substantial part of its assets and undertaking, and such an appointment is not discharged within 21 days, or, being a subsidiary company, its parent suffers any such an event.

24. In the event of termination under Clause 23: -

24.1 all **Copies** of the **Multimedia Product** remaining in the possession, power, custody or control of the Licensee, or the Licensee's **Co-Exploitant**, or subsequently returned thereto, shall be deemed unlicensed;

24.2 the Licensee and its **Co-exploitants** shall cease forthwith to make or supply the **Multimedia Product**;

24.3 any royalties accrued which have not yet become payable or have not yet been paid shall become payable forthwith.

K. SUPPLEMENTARY INVOICES AND INTEREST

25. Where the **Authorised Exploitation** is or includes sale to the general public the **Amount Due** will have been calculated by the Society on the basis of the dealer or retail price notified by the Licensee to the Society. If this does not conform with the definitions of **PPD** or **Retail Price** set out in Clauses 1.12 and 1.13 the Society reserves the right to issue supplementary invoices based on such definitions. Such invoices shall be paid within 7 days of receipt.

26. Where the **Authorised Exploitation** is or includes sale to the general public and there is no **PPD** or **Retail Price** within the definitions set out in Clauses 1.12 and 1.13, these will be assessed by the Society in good faith on the basis of the **PPD** or **Retail Price** (as the case may be) most generally used by other multimedia producers in the United Kingdom for a comparable type of product.

27. Without prejudice to any other right or remedy of any Licensor or the Society, the Society also reserves the right to issue supplementary invoices in respect of any material deviation from other information or description relating to the **Works** or **Multimedia Products** and notified to the Society by the Licensee which in the Society's reasonable opinion is relevant to the assessment by the Society of the **Amount Due**. Such invoices shall be paid within 7 days of receipt.

28. Without prejudice to any other right or remedy of any Licensor or the Society and without imposing an obligation to accept late payment where the fees payable under this Licence are not paid by the due date, the Licensee shall (if required by

the Society) pay interest on such late payment calculated at an annual rate of 3% over either the base rate then current of National Westminster Bank Plc or (if none) such other equivalent rate as the Society shall determine. For the purpose only of calculating interest under this agreement where a payment is sent by first class post, the post mark shall be sufficient proof of the date the payment or statement was sent, and such payment or statement shall be deemed to have been received before close of business on the second working day after posting. The supplementary invoices referred to in Clauses 25 and 27 may include an interest element calculated at the same rate.

L. MISCELLANEOUS

29. This Licence shall be construed according to the Laws of England and the parties agree to submit to the jurisdiction of the English Courts.