**19 06 2014 SN SH**

**©Music Publishers Association Limited MMXIV**

**MPA GUIDELINE FOR ILLUSTRATION PURPOSES ONLY**

**FOREIGN SUBPUBLISHING AGREEEMENT**

**1 Date:**

**2 Parties:**

2.1 “Owner” of [ ] CAE/IPI NO [ ]

2.2 “Subpublisher” of [ ] CAE/IPI NO [ ]

**3. Definitions**

3.1 The following terms: “**Territory”,** “**Term**”, “**Work(s**)”, “**Royalties**” shall be as set out and defined in the Schedule hereto.

3.2 “**Anglo American Repertoire**” shall mean all Work{s} created by authors and composers who are members of the Originating Societies

**3.3 “Originating Societies**” means the collective rights organisations (sometimes called copyright societies) having their legal domicile in or doing business in the United Kingdom, the Republic of Ireland, the United States of America, Canada, Australasia and the Republic of South Africa

3.4 “**PRO**” shall mean any and all performing rights society, mechanical rights society or other collection agency engaged in the collection of royalties for the use of music in the Territory and of which the Subpublisher shall be a member.

**4 License of rights and reservation of rights:**

4.1 Conditional upon the full and timely performance by the Subpublisher of its obligations hereunder, and subject to clause 4.2 below, the Owner hereby licenses to the Subpublisher for the Term, and with respect to the Work(s) the following rights only:

4.1.1 The exclusive right to print [including electronic print] *or* [excluding electronic print] publish and sell copies of the Work(s) in the Territory and to collect any and all royalties and fees payable by reason thereof.

4.1.2 The exclusive right to perform show or play the Work[s] in public in the Territory for profit (but excluding the rights set out in clause 4.4.2 below) and to collect any and all royalties and fees derived therefrom in and for the Territory subject to the various agreements between the Subpublisher and the Subpublisher’s PRO.

4.1.3 The right to communicate the Work(s) to the public by electronic transmission which shall include:

1. the exclusive right to broadcast the Work in and for the Territory
2. the exclusive right (with the Owner’s prior written consent) to make the Work(s) available to the public in the Territory by electronic transmission in such a way that members of the public may access the Work(s) from a place and at a time individually chosen by them

and to collect all royalties and fees payable by reason thereof in the Territory.

4.1.4 The exclusive right, but only with respect to sales within the Territory during the Term of this Agreement, to grant non-exclusive licenses for the manufacture and sale in the Territory of mechanical and electrical reproduction of the Work(s) including any known or in the future known or devised audio format, and to collect all royalties and fees payable by reason thereof in the Territory.

* + 1. The [non-] exclusive right (with the Owner’s prior written consent) to grant non-exclusive licenses for the recording and synchronization {in the Territory] of the Work(s) in and with respect to audio visual productions [produced in the Territory for the entire world or any portion of the world

4.1.6 The Subpublisher shall have the right within the Territory to use the name, approved likeness and approved biographical material with respect to the writers and/or composers of the Work(s), to the extent that such right has been granted to the Owner by such writers and /or composers.

4.2 Notwithstanding any provision of this Agreement which may be construed to the contrary, with effect from [the date hereof] *or* [the date of written notice from the Owner to the Subpublisher referring to this clause 4.2] all performing/public communication, making available, reproduction and distribution rights for the exploitation of all of the Anglo American Repertoire [and any other Work(s) which the Owner selects] on the internet or by other means of online and /or mobile delivery (“the **Online Rights**”) shall be deemed excluded from the rights licensed to the Subpublisher pursuant to the Agreement

4.3 The Owner does not warrant or represent that in the case of each and every Work it will have the right to license to the Subpublisher all the rights hereinabove set forth, but the Owner shall license to the Subpublisher all of the aforesaid rights which it has the right to license, subject to any restrictions which are or may be imposed upon the Owner’s use or exploitation of any Work.

4.4 Save as otherwise specifically granted hereunder the Owner hereby reserves unto itself all rights in and to the copyrights in the Work(s) throughout the world and all rights existing under such copyrights Such reserved rights shall in any event include without limitation the following :-

* + 1. All so-called “grand rights” and the exclusive right to dramatise the Work(s) and to license the use and performance of such dramatic versions throughout the world
    2. The exclusive right to license world-wide uses of the titles of the Work(s);
    3. The exclusive right to make literary versions of the Work(s) or literary Works based on the Work(s) throughout the world, and to print, publish and vend such literary versions (as well as the dramatic versions aforementioned) throughout the world;
    4. [The exclusive right to grant licenses for the entire world or for any portion of the world (whether or not including the Territory) for the synchronisation of the Work(s) with audio-visual productions produced outside the Territory and the right publicly to perform for profit the Work(s) contained in such audio-visual productions]. *Or*  [The non exclusive right to grant licenses for the Territory (whether as part of a worldwide licence or otherwise) for the synchronisation of the Work(s) with audio-visual productions and the right publicly to perform for profit the Work(s) contained in such audio-visual productions].
    5. The exclusive right to grant licenses for any form of use (whether now known or hereafter devised) of the Work(s) or any part thereof (and to collect the income derived therefrom) for or in connection with advertising, commercials or merchandising relating to products or services of any kind not granted pursuant to clause 4.1.5 of this Agreement
    6. With effect from the date set out in clause 4.2 all Online Rights]

**5 Advances and Royalties**

5.1 The Subpublisher shall account and pay to the Owner royalties from the exploitation of the Work(s) in the Territory (“**Royalties**”) and such Royalties shall be calculated on the basis set out in the Schedule.

[5.2 The Subpublisher shall pay to the Owner [an] advance[s] as set out in the Schedule which shall be recoupable from all royalties otherwise payable to the Owner provided that such royalties are payable in respect of accounting periods ending after the date that the advance in question is properly due]

**6 Accounting**

* 1. The Subpublisher will account for and deliver to the Owner semi annually within sixty (60) days after each six month period ending on the 30 June and 31 December (“**Accounting Period”)** all royalties due to the Owner for that Accounting Period together with an accounting statement which shall show all receipts and collections of every kind by the Subpublisher and the calculation of all Royalties due with respect to the Work(s) for that Accounting Period. The statements will be delivered in physical and electronic form (the latter via email) and in a format reasonably acceptable to the Owner. Physical statements shall be addressed and sent to: [ ] and electronic versions of the same to [ ] or otherwise as the Owner may request. Payments shall be made by transfer to :

Account name:

Account number:

Sort code:

Bank:

or otherwise as the Owner may request.

6.2 The Owners entitlement to royalties under this Agreement shall be calculated and paid in sterling with the rate of exchange that applicable on the date of receipt of payment (or credit) of royalties to the Subpublisher.

6.3 All royalty payments shall be sent to the Owner on or before the date payment is due. Prompt and accurate accountings and payments shall be of the essence to this Agreement, and failure to make accurate and timely payments shall entitle the Owner to cancel this Agreement and cause an immediate reversion to Owner of all copyrights and rights licensed hereunder, specifically including the right to collect royalties and fees earned prior to the date of cancellation. In addition, without prejudice to any other remedies which the Owner may be entitled to , the Sub publisher shall pay interest upon any late payments from the due date to the date of actual payment , of [ %] per annum above the base lending rate of [ *Insert name of bank* ]

6.4 The Subpublisher undertakes and agrees to provide the Owner with such information in connection with the exploitation of the Work(s) as the Owner may in writing from time to time require including expressly and without limitation in relation to each Work the nature and source of all receipts and any computation of all payments made.

6.5 The Owner or its representatives shall be entitled to inspect at the place(s) of business of the Subpublisher, during usual business hours, and upon no less than one (1) months notice, all books, records and other documents of the Subpublisher (including without limitation electronic books records and documentation), and to make copies or excerpts therefrom, to the extent that they relate to the Work(s), for the purpose of verifying royalty statements delivered hereunder by the Subpublisher. Such inspection shall be at the Owners expense, unless the inspection reveals an underaccounting for the period of examination of at least 5% of the sum properly accountable in which case the costs thereof shall be reimbursed by the Subpublisher

6.6 It is expressly agreed that the Subpublisher shall not be entitled to deduct or withhold income or other similar tax from sums payable to the Owner hereunder pursuant to the laws of the Territory unless the Subpublisher shall furnish to the Owner, with each payment, a certificate in the form of an affidavit setting forth the amount of tax which shall have been withheld, the rate of tax, and any other necessary information which shall enable the Owner, upon presentation of such certificate, to obtain income tax credit from the United Kingdom Inland Revenue for the tax so withheld.

6.7 In the event that the Subpublisher is permitted by the Owner pursuant to clause 9 of this Agreement to enter into an agreement with a third party subpublisher to sub publish/administer the rights granted under this Agreement in respect of the Work(s) for one or more countries of the Territory such agreement shall be on arm’s length bona fide commercial terms and not operated in any way so as to artificially reduce or delay the sums accountable to the Owner under this Agreement. The Subpublishers subpublisher(s)/administrator(s) shall account directly to the Subpublisher at least twice per year in each case within 60 days of the end of each Accounting Period ]

**7 Subpublisher’s obligations**

The Subpublisher will :

7.1 Promote and publish the Work(s).

7.2 Ensure that all label copy for releases of Work(s) within the Territory credits the Owner as the publisher.

7.3 Ensure the prompt and accurate accounting to it of all income arising from the exploitation of the Work(s).

7.4 Ensure that Works are registered with all appropriate PROs.

7.5 Make all necessary copyright registrations to protect the legal status of the Work(s).

7.6 Protect the copyright in the Work(s) and to identify (in consultation with the Owner) and to pursue any infringers of such copyright where that is practical and economical in the reasonable opinion of the Subpublisher provided that any actions shall be at the Subpublishers expense and subject to the Owners prior written consent. In the event of any recovery, after deducting the reasonable expenses of litigation incurred directly by the Subpublisher with third parties, that percentage of the resulting net recovery conforming to the percentages set forth in clause 4.5 of the Schedule shall be paid by the Subpublisher to the Owner.

7.7 Cause the name of the Owner to be printed on the title page of each copy of the Work(s) published in the Territory together with a copyright notice in the name of the Owner or such other names as the Owner may designate in accordance with all local domestic laws in the Territory and with the Universal Copyright Convention, the Berne Convention, the Rome Convention and any other relevant convention and the Subpublisher further undertakes to accord any credit contractually owed to every composer, arranger, lyricist or other contributor to any Work(s).

**8 Local versions**

All translations, arrangements, or adaptations of the Work(s) (hereinafter referred to as the “**Local Version**”) shall be made at the sole cost and expenses of the Subpublisher, and all royalties, fees, shares of mechanical or performing rights income, or other composition payable to any translator, arranger and/or adaptor (hereinafter referred to as the “**Local Writer**”) shall be paid out of the Subpublisher’s share of income hereunder, and the Owner shall receive the same share of income hereunder as it would have otherwise received had no such Local Version been made. The Subpublisher shall use its best efforts to ensure that the Local Version is faithful to the fundamental character of the original lyrics to the extent permitted by the local language. To the extent permitted by the rules of PRO in the Territory, all Local Versions shall be subject to the approval of the Owner and the Subpublisher shall provide that the Local Writer’s share of performing rights and mechanical rights income be limited to the Local Version of the Work(s) only. In the event that such share may not be so limited, the Subpublisher, prior to authorizing the making of such local version, shall so advise the Owner in writing and no translations shall be permitted hereunder except upon the express prior approval of the Owner.

**9 Right of assignment**

The Subpublisher may not assign or sublicense any of its rights hereunder without the prior written consent of the Owner Notwithstanding any such licence and/or assignment the Owner shall nevertheless be entitled to receive the royalties payable hereunder without diminution by reason thereof . The Subpublisher shall remain liable for all such royalties, and the Owner shall receive its royalties computed at the source and at the times specified herein, notwithstanding such licence and/or assignment .

**10 Termination**

10.1This Agreement shall terminate forthwith if the Subpublisher is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or shall enter into a winding up or liquidation (other than a voluntary winding up or liquidation for the purposes of a solvent reconstruction or solvent re-organisation) or if it makes any composition with its creditors or if a Trustee or a Receiver is appointed to take over all or a substantial part of the Subpublisher’s assets and undertakings and is in control thereof for fifteen (15) days or more

10.2If the Subpublisher shall materially default in the performance of any of the provisions of this Agreement on its part to be performed (including the prompt accounting and payment of royalties and other sums as required by this Agreement) and (if capable of remedy) such default shall continue for a period of thirty (30) days after the receipt by the Subpublisher of notice in writing from the Owner alleging such default, then the Owner shall have the right forthwith to terminate this Agreement by written notice sent to the Subpublisher. Upon the receipt by the Subpublisher of such notice this Agreement shall immediately cease and determine

10.3In the event of the termination of this Agreement as aforesaid all rights in the Work(s) hereby granted to the Subpublisher shall forthwith revert to the Owner without further formality. Such termination shall be without prejudice to any other rights and/or remedies of the Owner against the Subpublisher pursuant to the Agreement or otherwise

1. Notices
   1. Any notice to be given under this Agreement shall be in writing and in English and shall be served upon the other party by hand or pre-paid first-class post (or, if posted internationally, an internationally recognised courier service) at [*Insert Owners address]* in respect of notices to the Owner and [ *insert Subpublishers address* ] in respect of notices to the Subpublisheror such other postal address, as the recipient may designate by notice given in accordance with this clause [or may be served by email to the email address of the recipient then most recently notified to the other party in accordance with this clause]
   2. A notice sent in accordance with clause 11.1 of this Agreement shall be deemed to have been received (a) if delivered by hand, on delivery, (b) if so sent by post, 2 Business Days after posting (or, if so sent by courier, when such notice is delivered and signed for) [or (c) if so sent by email, when successfully transmitted (except where giving rise to a system notification of failure of delivery)]. Where, however, receipt occurs outside normal business hours in the recipient's location, the notice shall be deemed to have been received at the start of the next such business hours .
2. Confidentiality

Except to the extent required by law or by a court or other competent authority, neither party shall: (a) disclose to any other person any of the content of this Agreement, except to the extent reasonably required in order to perform this Agreement; or (b) make, or permit any person to make, any public announcement or statement (by any means) about this Agreement without the other party’s prior written approval (not to be unreasonably withheld or delayed).

**13 Complete agreement**

This Agreement (and Schedule) contains the complete agreement and understanding between the parties relating to the Work(s) and supersedes all prior oral and written arrangement or agreements relating thereto. Any amendments shall be in writing and signed by both parties. In the event that any individual provision or clause of this Agreement is void voidable or otherwise unenforceable ,the remainder of the document shall not be affected and shall remain in full force and effect. Nothing in this Agreement constitutes a partnership, joint venture, relationship of agency or contract of employment between the parties. No provision of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 or otherwise by any third party.

**14 Headings**

All headings in this Agreement are included for convenience only and shall not affect its interpretation.

**15 Law and Jurisdiction**

This Agreement shall be governed by and construed exclusively in accordance with the Laws of England and Wales and each party shall submit to the exclusive jurisdiction of the English courts.

**AS WITNESS** the hands of the parties the day and year first above written

**SIGNED BY** ……………………………………….

For and on behalf of (Owner)

In the presence of

*Witness*

*Name*

*Address*

SIGNED BY

For and on behalf of (Subpublisher)

In the presence of

*Witness*

*Name*

*Address*

**THE SCHEDULE**

**1 Territory:**

**2 Work (s):**

*Either*  **[** *Please list***]**

*Or*  [Each and every musical composition owned or controlled by the Owner at the date hereof [or hereafter acquired by Owner during the Term hereof] in the ordinary course of business, provided the rights in such musical compositions are or do become available to the Owner for the Territory during the Term of this Agreement

**3 Term :**

* 1. The term of this agreement shall be a period of [ ] years commencing on [the date hereof] *or* [ *provide date* ] ( “**Term**”) [provided however that the Subpublisher is hereby authorised to collect and remit in accordance with the provisions hereof all amounts heretofore earned in the Territory and derived from the Work(s), which amounts have not heretofore been collected on behalf of the Owner by an authorised agent of Owner]
  2. At the expiration or sooner termination of the Term, all rights of any kind or nature assigned to Subpublisher hereunder shall revert to Owner and be Owner’s sole and exclusive property.
  3. At the expiration of the Term, the Subpublisher will turn over to the Owner or its designee copies of all catalogue listings, society registrations, computer royalty information, all magnetic media, computer diskettes, computer and software purchased by the Owner, lists of demos, top lines and all other materials or documentation requested by the Owner which may be desirable to re-register the Work(s) or to collect income relating to the Work(s) after the Subpublisher’s rights expire hereunder.

3.4 Notwithstanding anything to the contrary contained herein, in the event that any of the amounts payable pursuant to paragraph 4 below are delayed or disapproved of or disallowed by any governmental authority of the Territory, the Owner shall have the right to terminate this agreement by giving the Subpublisher written notice thereof, in which event all rights of any kind or nature herein granted to the Subpublisher shall immediately revert to and be the sole and exclusive property of the Owner and the Subpublisher shall retain no interest whatsoever in and to any of the Works.

1. **Royalties**

**4.1 Sheet music and print income**

4.1.1 XX% (XXXX per cent) of the retail selling price of all print copies of the Work(s) and folios containing wholly the Work (s) (reduced pro rata by title where a print copy also contains third party copyrights) sold by the Subpublisher.

4.1.2 XX% (XXXX per cent) of all income arising “at source” from the exploitation of printed copies [including electronic print copies] of the Work(s) by a third party.

4.1.3 No royalties will be paid on reasonable numbers of copies of sheet music distributed free of charge for promotional purposes ,copies lost through theft or damaged or destroyed in transit

4.2 **Mechanical royalties**

\_\_\_ Percent (\_\_%) of all gross monies arising “at source” from the mechanical electronic or other reproduction of the Work(s) embodied in records or other devices sold in the Territory;

4.3 **Synchronisation royalties**

\_\_ Percent (\_\_%) of the gross fees arising “at source” with respect to the synchronization of the Work(s) procured solely and directly by the Subpublisher.

* 1. **Performing right royalties**

\_\_ Percent (\_\_%) of the gross performing rights income, public performance fees and communication to the public fees arising “at source” in the Territory (after deduction therefrom if applicable of any so called writers share) with respect to the Work(s)

4.5 **Other Income**

\_ Percent (\_\_%) of all gross monies arising “at source” from any other permitted sources whatsoever in connection with the Work(s) .

4.6 The Subpublisher shall only license the mechanical or other reproduction rights in the Works for records or other devices to the authorized manufacturers of such recordings and all such licenses shall be issued at the highest prevailing rates in the Territory but subject to local PRO rules;

4.7 The Owner and the Subpublisher acknowledge that the Subpublisher shall collect royalties under paragraph 4.2 above only with respect to records and devices sold in the Territory, irrespective of whether such records or devices are manufactured within the Territory or outside of the Territory. Accordingly the Subpublisher shall not collect royalties hereunder with respect to records and devices manufactured within the Territory but sold outside the Territory;

4.8 For the avoidance of doubt if there is more than one country in the Territory, the royalties payable to the Owner shall be calculated and paid based on earnings of the Work(s) at the source giving rise to such earnings in each such country of the Territory. Any fees which the Subpublisher shall pay in order to secure the collection of royalties earned by the Work(s) (other than fees paid to any PRO in any portion of the Territory) shall be borne by Subpublisher out of its retained share of earnings hereunder;

**5 Advance**

[ The Sub Publisher shall pay to the Owner the following advance(s);

1) forthwith the sum of:£XXXXXX

2) [  *Specify any further advances* ]