

## Copyright Licensing for Visually Impaired People

### Application for Licence

We, *[Approved Body]*.....

of *[address]*.....

.....  
.....

hereby apply to the Music Publishers Association Ltd for a licence upon and subject to the terms and conditions of the attached Licensing Scheme for the exclusive benefit of visually impaired people and we agree to comply with those terms and conditions.

Dated:.....

.....  
Signed for and on behalf of the Approved Body

Name *[in print]*.....

The Music Publishers Association Ltd hereby confirms the grant of a licence to the above named Approved Body under the attached Licensing Scheme for the exclusive benefit of visually impaired people in consideration of the Approved Body's agreement to comply with the terms and conditions of the Licensing Scheme.

Date of receipt of Application and Administration Fee:.....

.....  
Signed for and on behalf of the Music Publishers Association Ltd.

#### Music Publishers Association

A: 6<sup>th</sup> Floor British Music House, 26 Berners Street, London W1T 3LR  
T: 020 7637 4025 F: 020 7637 3929  
E: [info@mpaonline.org.uk](mailto:info@mpaonline.org.uk) W: [www.mpaonline.org.uk](http://www.mpaonline.org.uk)



Date : 31 October 2003

## **LICENSING SCHEME FOR THE EXCLUSIVE BENEFIT OF VISUALLY IMPAIRED PEOPLE**

The following are the terms and conditions which apply in relation to the Music Publishers Association licensing on behalf of its members to approved bodies the right to make and supply multiple copies of printed music which are accessible by visually impaired people:

### **1. Definitions**

In this Scheme the following words and expressions shall have the following meanings, unless the context otherwise requires:

- (a) "**Accessible Copy**" means a version of a Musical Work in print or electronic graphic form which provides for a Visually Impaired Person improved access to the Musical Work (including but not limited to Braille Copies and Moon Copies), which may include facilities for navigating around the version of the Musical Work but may not include:
  - (i) changes that are not necessary to overcome problems caused by Visual Impairment; or
  - (ii) changes which infringe the right provided by section 80 of the Act not to have the Musical Work subjected to derogatory treatment;
- (b) "**Act**" means the Copyright Designs and Patents Act 1988;
- (c) "**Administration Fee**" means the fee charged by the MPA towards the cost of administration of the Scheme in the amount of £5 or as otherwise notified to the public by the MPA, it being understood that no part of the fee shall be attributable to the Licence (for which there will be no charge);
- (d) "**Application**" means the fully completed application form entitled "Copyright Licensing for Visually Impaired People" published by the MPA from time to time;
- (e) "**Approved Body**" means an educational establishment (having the meaning set out in section 174 of the Act) or a body that is not conducted for profit;

- (f) "**Braille Copy**" means a copy reproduced in any version of the tactile code known as Braille recognised by the Braille Authority;
- (g) "**EEA**" means the European Economic Area, being those states which are contracting parties to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993;
- (h) "**Intermediate Copy**" means a copy of a Master Copy which is necessarily created during the production of an Accessible Copy;
- (i) "**Lending**", in relation to a copy, means making it available for use, otherwise than for direct or indirect economic or commercial advantage, on terms that it will or may be returned (and for the purposes of this definition, a loan is not to be treated as being for direct or indirect economic or commercial advantage if a charge is made for the loan which does not exceed the cost of making and supplying the copy);
- (j) "**Licence**" means the licence referred to in clause 2.1;
- (k) "**Licensee**" means an Approved Body which is granted a Licence under this Scheme;
- (l) "**Master Copy**" means a copy of the whole or a part of a commercially published Musical Work in printed or electronic graphic form;
- (m) "**Member**" means each person who or which is listed in the list of members made available by the MPA from time to time on the website [www.mpaonline.org.uk](http://www.mpaonline.org.uk) before or during the Term provided that a member who is listed in the list of members after the commencement of the Term shall only be regarded as a Member for the purposes of this Scheme with effect from the date of joining the list of members;
- (n) "**Moon Copy**" means a copy reproduced in any recognised version of the tactile code known as Moon;
- (o) "**MPA**" means Music Publishers Association Limited, a company registered in England and Wales with company

number 140248 having its offices at 6<sup>th</sup> Floor British Music House, 26 Berners Street, London W1T 3LR;

- (p) "**Musical Work**" means any musical work including any lyrics or other words associated with the musical work and including the typographical arrangement of the published edition of such musical work and lyrics or other words;
- (q) "**Repertoire Work**" means any Musical Work the UK copyright in which or the right to grant the Licence in which is owned or controlled or administered by any Member other than those members listed in the attached schedule or as otherwise notified to the public by the MPA from time to time;
- (r) "**Scheme**" means this licensing scheme;
- (s) "**Term**" means the period set out in clause 7.1 subject to the rights of termination in accordance with clause 7;
- (t) "**Territory**" means the EEA;
- (u) "**Visually Impaired Person**" means a person:
  - (i) who is blind;
  - (ii) who has an impairment of visual function which cannot be improved, by the use of corrective lenses, to a level that would normally be acceptable for reading without a special level or kind of light;
  - (iii) who is unable, through physical disability, to hold or manipulate a book; or
  - (iv) who is unable, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for reading;

and "**Visual Impairment**" shall be interpreted accordingly;

- (v) a copy of a Musical Work (other than an Accessible Copy made under this Scheme) is to be taken to be accessible to a Visually Impaired Person only if it is as accessible to him as it would be if he were not a Visually Impaired Person.

1.2 In this Scheme unless the context requires otherwise:

- (a) reference to any statute or statutory provision includes a reference to that statute or statutory provision as amended, extended or re-enacted and to any regulation, order, instrument or subordinate legislation under the relevant statute or statutory provision;
  - (b) reference to any clause is to a clause of this Scheme as the same may be amended, notated or supplemented from time to time;
  - (c) reference to the singular includes a reference to the plural and vice versa;
  - (d) reference to "including" in this agreement shall be treated as being by way of example and shall not limit the general applicability of any preceding words;
  - (e) references to persons include legal as well as natural persons and also include unincorporated associations, partnerships, governments and government departments; and
  - (f) reference to any gender includes a reference to all other genders.
- 1.3 The headings to the clauses in this Scheme are for ease of reference only and shall not form any part of this Scheme for the purposes of construction.

## **2. Licence**

- 2.1 Upon receipt of the Application and the Administration Fee from an Approved Body, the MPA shall grant as agent on behalf of the Members a non-exclusive licence to the Approved Body to do the acts referred to in clause 2.2 during the Term in the Territory in relation to the Repertoire Works. Such licence is subject to all the terms and conditions in this Scheme and conditional upon the Approved Body complying in full with each such term and condition.
- 2.2 The acts referred to are as follows:
- (a) to make multiple Braille Copies and Moon Copies from a Master Copy;

- (b) to make multiple Accessible Copies from a Master Copy only for the personal use of Visually Impaired Persons to whom the Master Copy is not accessible because of their impairment;
- (c) to hold an Intermediate Copy of a Master Copy:
  - (i) if and so long as the Licensee continues to be entitled to make Accessible Copies of that Master Copy; and
  - (ii) for the purposes of the production of further Accessible Copies; and
- (d) to Lend or transfer an Intermediate Copy held in accordance with clause 2.2(c) to another person which, or which the lender or transferor has reasonable grounds for believing:
  - (i) is another Approved Body which is entitled under this Scheme to make Accessible Copies of the Musical Work of which the Intermediate Copy is a copy; and
  - (ii) will use the Intermediate Copy only for the purposes of the production of further Accessible Copies.

2.3 The MPA reserves the right (without prejudice to any other right or remedy it may have), in the event that the Licensee acts in breach of the terms and conditions of the Scheme, to refer the Licensee to the Secretary of State for the purposes of securing an order that the Licensee shall cease to be an Approved Body or entitled to benefit under the Scheme.

### **3. Exclusions**

3.1 The Licence does not permit:

- (a) the making of copies of any Master Copy which is published or made available without the consent of the owner of the copyright in the Master Copy or otherwise unlawfully;

- (b) the adaptation, arrangement, edition, change or distortion of any Musical Work other than as may be strictly necessary to make an Accessible Copy of that Musical Work provided that the Licensee can include facilities for navigating around the version of the Musical Work;
- (c) the making of copies of any Musical Work which is not a Repertoire Work;
- (d) the making of any copies of a Musical Work which would involve recording a performance of the Musical Work or any part of it; or
- (e) any other act not expressly permitted by this Scheme.

3.2 Except in relation to Braille Copies and Moon Copies, in respect of which the following acts are permitted under this Scheme, the Licence does not permit:

- (a) the holding, Lending or transferring of any Intermediate Copies of any Musical Work other than as set out in clause 2.2;
- (b) the making of an Accessible Copy of a particular Musical Work if, or to the extent that, copies of that Musical Work are commercially available, by or with the authority of the copyright owner, in a form that is accessible to the same or substantially the same degree;
- (c) the supply of an Accessible Copy of a particular Musical Work to a particular Visually Impaired Person if, or to the extent that, copies of that Musical Work are commercially available, by or with the authority of the copyright owner, in a form that is accessible to that person (with or without the application or use of equipment that does not require the making of copies); or
- (d) the dealing with any Accessible Copy made under this Scheme. For the purposes of this clause 3.3, "dealing" means to sell or let for hire or to offer or expose for sale or hire or to communicate to the public.

## **4. Conditions**

4.1 An Accessible Copy made under this Scheme must include the following statement:

"This copy is authorised by [*name of copyright owner as it appears on the Master Copy*] under the terms of the MPA Visually Impaired Persons Licensing Scheme."

4.2 Except in relation to Braille Copies and Moon Copies:

- (a) if the Licensee charges for making or supplying (which includes Lending) an Accessible Copy or an Intermediate Copy made under this Scheme of a Musical Work, the sum charged must not exceed the cost of making and supplying the copy;
- (b) a Licensee making Accessible Copies under this Scheme must, if it is an educational establishment, ensure that those Accessible Copies will be used only:
  - (i) for the personal use of Visually Impaired Persons to whom the Master Copy is not accessible because of their impairment; and
  - (ii) for its educational purposes;
- (c) if a Master Copy is in copy-protected electronic form, any Accessible Copy made of it under this Scheme must, so far as it is reasonably practicable to do so, incorporate the same, or equally effective, copy protection.
- (d) all Accessible Copies made under this Scheme shall incorporate such rights management information as appears in the Master Copy.

4.3 All Accessible Copies and Intermediate Copies made under this Scheme shall comply with all applicable laws in the EEA including with regard to moral rights.

## **5. Records**

5.1 The Licensee must keep the following records in a legible form during the Term and for one year after the end of the Term:

- (a) in relation to Accessible Copies made by the Licensee, records identifying:
  - (i) each Repertoire Work in respect of which an Accessible Copy is made;
  - (ii) the number of Accessible Copies made of each Repertoire Work; and
  - (iii) any Approved Bodies to whom the Accessible Copies are supplied;
- (b) in relation to Intermediate Copies Lent or transferred by the Licensee, records identifying:
  - (i) each Repertoire Work in respect of which an Intermediate Copy is made;
  - (ii) the number of Intermediate Copies of each Repertoire Work Lent or transferred; and
  - (iii) the Approved Bodies to whom such Intermediate Copies are Lent or transferred.

5.2 The Licensee must make the records referred to in clause 5.1 above and all Accessible Copies and Intermediate Copies in its possession available for inspection by the MPA or its agents upon no less than 28 days' notice.

5.3 The Licensee must send to the MPA within 30 days of the end of each calendar year during the Term a list of all Repertoire Works copied under this Scheme during that calendar year together with details of:

- (a) the number of Accessible Copies made; and
- (b) the number of Intermediate Copies Lent or transferred;

by the Licensee of each such Repertoire Work.

5.4 Nothing in this clause 5 shall apply to Braille Copies or Moon Copies.

## **6. Security**

- 6.1 The Licensee must employ adequate safeguards to prevent misuse by third parties of all copies made under the Scheme whether by means of watermarking, encryption or password protected access.
- 6.2 The Licensee must take all reasonable steps to comply with the Licence and to ensure that the Licence is not exceeded or abused by users of Accessible Copies or Intermediate Copies made under this Scheme.
- 6.3 Nothing in this clause 6 shall apply to Braille Copies or Moon Copies.

## **7. Term and termination**

- 7.1 Subject to the provisions of this clause 7, the Licence shall expire at the end of the two year period commencing upon receipt of the Application and the Administration Fee from the Licensee unless the MPA previously notifies the Licensee that the term of the Licence has been extended.
- 7.2 The Licence shall terminate upon the Licensee ceasing to be an Approved Body.
- 7.3 The Licence may be terminated by either the MPA or the Licensee upon six months' written notice served on the other party.
- 7.4 The Licence may be terminated by the MPA by giving written notice to the Licensee in the event that the Licensee:
  - (a) is in material breach of the Scheme where the breach is incapable of remedy; or
  - (b) is in material breach of the Scheme where the breach is capable of remedy but the Licensee has failed to remedy the breach within 28 days of being given notice asking for it to be remedied;
  - (c) becomes or is deemed insolvent;
  - (d) has any distress or execution levied on any of its property or assets;

- (e) makes or offers to make any arrangement or composition with creditors;
- (f) has any resolution or petition to wind up its business (other than for the purpose of amalgamation or reconstruction) passed or presented by any party or if a receiver or administrative receiver of the Licensee's undertaking, property or assets is appointed or a petition presented for the appointment of an administrator; or
- (g) is subject to any proceedings which are equivalent or substantially similar to any of the proceedings mentioned in (c) to (f) above.

## **8. Consequences of termination**

- 8.1 Upon termination of the Licence, the Licensee shall deliver up to the MPA a list of all Repertoire Works copied under this Scheme during that calendar year up to the date of termination of the Licence together with details of:
  - (a) the number of Accessible Copies made; and
  - (b) the number of Intermediate Copies Lent or transferred;by the Licensee of each such Repertoire Work.
- 8.2 Upon termination of the Licence, the Licensee shall, at the option of the MPA, either:
  - (a) destroy all Accessible Copies and Intermediate Copies in its possession in the presence of an independent witness who shall sign a statement confirming such destruction, such statement to be delivered up to the MPA; or
  - (b) transfer all Accessible Copies and Intermediate Copies in its possession to another Approved Body.
- 8.3 Nothing in this clause 8 shall apply to Braille Copies or Moon Copies.

## **9. Miscellaneous**

- 9.1 Any licence granted hereunder to the Licensee is personal to the same and the Licensee shall not assign or dispose of the whole

or any part thereof or sub-licence such licence except as expressly permitted by these terms and conditions.

- 9.2 No person who is not a party to this Scheme shall be entitled to enforce any of its terms or any rights in relation to its terms except as expressly provided herein.
- 9.3 No delay or omission in exercising any right or remedy hereunder shall operate as a waiver thereof or of any right or remedy and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other rights or remedies. No waiver shall be binding or effectual for any purpose unless expressed in writing and signed by the party giving it and any such waiver shall be effective only in the specific instance and for the purpose given.
- 9.4 All of the terms that have been agreed between the parties in relation to the Scheme are contained in these terms and conditions (except where expressly stated). The parties do not intend any other terms to apply unless they specifically agree otherwise in writing. Each party acknowledges that, in entering into this agreement, it has not relied on any representation made by the other party that has not been set out in this agreement provided always that nothing in this clause shall limit either party's liability for fraud.
- 9.5 Notices and all other documents referred to hereunder shall be sent or delivered in the case of the MPA to Chief Executive at the address set out herein or as notified to you from time to time and in the case of the Licensee to the address set out in the Application or to such other address as it may specify in writing to the MPA from time to time. Any such notice or other document shall be deemed to have been delivered the next working day after posting if sent by pre-paid post and on the day of transmission if sent by fax.
- 9.6 This Scheme shall be construed according to the laws of England and Wales and the parties agree to submit to the non-exclusive jurisdiction of the English courts.
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