

## SPECIMEN MERCHANDISING AGREEMENT

**THIS AGREEMENT** is made the                      day of                      Two thousand and

**BETWEEN:**

- (1)  
(hereinafter jointly and severally called “the Licensor”)
- (2)  
(hereinafter called “the Licensee”)

**WHEREAS:**

The Licensor is the proprietor of the marketing and merchandising rights in the name and image of the Band

**NOW IT IS HEREBY AGREED** as follows:-

**1. Definitions:**

In this Agreement the following expressions shall have the following meanings:-

- 1.1. “The Band” - shall mean all or any of [NAMES OF MEMBERS OF BAND]
- 1.2. “Licensed Property” - shall mean [NAME OF BAND] or such other name as may be used and the names of the individual members of the Band characters symbols logos designs artwork likenesses and visual representations copy photographs literary and artistic works relating to the Band and the products of their activities and all or any intellectual property rights and/or other like property rights of every type and nature including copyrights and trade marks incorporated therein or relating thereto insofar as not otherwise previously assigned.
- 1.3. “Products” - shall mean all or any goods articles items merchandise and/or products which incorporate or otherwise utilise the Licensed Property including without limitation T-shirts, sweat shirts, sports shirts, ski hats, baseball caps, scarves, programmes, photographs, postcards, calendars, transfers, greeting cards, posters, badges, buttons, stickers and patches.
- 1.4. “Merchandising Rights” - shall mean the sole and exclusive right to manufacture distribute promote advertise market offer for sale and sell the Products by any or all of the following means:-
  - 1.4.1. “Live Performance Sales” - shall mean sales of the Products at or in connection with all and any Live Performance which shall mean a live concert musical performance by the Band or any of them.

- 1.4.2. "Mail Order Sales" - shall mean sales of the Products by way of mail order which shall include sales via the internet or other similar network.
- 1.4.3. "Wholesale/Retail Sales" - shall mean sales of Products to wholesalers distributors and/or retailers and to all or any wholesale or retail outlets whatsoever.
- 1.4.4. "Sub-Licences" - shall mean the right (subject to the Licensor's prior written consent (not to be unreasonably withheld or delayed)) and power to grant to third parties the right and licence to manufacture distribute promote advertise market offer for sale and sell the Products to wholesalers distributors and/or retailers.
- 1.5. The "Other Merchandising Rights" shall mean the Merchandising Rights apart from Live Performance Sales.
- 1.6. The "Term" shall mean the period commencing on [ ] and expiring on EITHER:-
- 1.6.1. the date of the final Live Performance by the Band as set out in Schedule 1 to this agreement; or
- 1.6.2. the date of recoupment by the Licensee in full of the Advance (as herein defined) Whichever date shall be the later PROVIDED ALWAYS THAT either the Licensor or the Licensee may terminate the Term at any time after the date referred to in sub-clause 1.6.1 of this Agreement by notice in writing to the other party; or
- 1.7. The "Licensed Territory" shall mean [the World]
- 1.7.1. "The First Advance" - shall mean the sum of [ ]
- 1.7.2. "The Second Advance" - shall mean the sum of [ ]
- 1.7.3. "The Advance" - shall mean the aggregate total of the First Advance and the Second Advance (if and when paid).
- 1.8. "Permitted Royalty Deductions" - shall mean the deduction from the gross income received by the Licensee from the sale of the Products of:
- 1.8.1. Value Added Tax sales tax or any like sales or turnover taxes chargeable in respect of the sale price of the Products; and
- 1.8.2. In respect of Sub-Licences the commissions and fees of any third party appointed by the Licensee to procure such Sub-Licences PROVIDED THAT such sums shall not exceed fifteen percent (15%) of gross income without the Licensor's approval.

- 1.9. "Unrecouped Advance" - shall mean a sum equal to that part of the Advance as shall not have been recouped by the Licensee at the relevant time
- 1.10. "Sell-Off Period" - shall mean the period of six (6) months after the expiration or earlier termination of the Term.
- 1.11. "Copyright Notice" - shall mean such copyright notices as shall be notified by the Licensor to the Licensee
- 1.12. "Interest Rate" - shall mean the rate of four percent (4%) per annum above the base rate from time to time of The Cooperative Bank.
- 1.13. "Net Profit" – shall mean the gross income (if any) received by the Licensee from the sale of the Products after deduction from any such gross income of the following costs and expenses reasonably and properly paid or incurred by or on behalf of the Licensee:
  - 1.13.1. the Permitted Royalty Deductions
  - 1.13.2. the costs of manufacturing and printing the Products
  - 1.13.3. the costs of distribution delivery and sale of the Products including without limitation
  - 1.13.4. transport (including van hire and petrol) insurance taxes and duties expenses (including travel and hotel costs and per diems) of the Licensee's personnel commissions and fees of venues and sales concessionaires at venues
  - 1.13.5. the costs of any security personnel and any "anti-bootleg" action incurred with the prior written approval of the Licensor
  - 1.13.6. any other costs or expenses reasonably and properly paid or incurred by the Licensee or on its behalf directly in connection with the manufacture distribution or sale of the Products.
  - 1.13.7. Any costs or expenses whatsoever paid or incurred by or on behalf of the Licensee which relate to the Products which are sold at Live Performances as well as any other products or merchandise (in such a manner that the costs or expenses relating solely to the Products are not capable of being separately identified) shall be apportioned by the Licensee on a fair and reasonable pro-rata basis after discussing with the Licensor the basis of such apportionment. For the avoidance of doubt there shall be no double deduction of any cost or expense.
- 1.14. "Trademark Notice" – shall mean such trademark notices as shall be notified by the Licensor to the Licensee

## 2. **Grant of Rights**

The Licensor hereby grants the Merchandising Rights to the Licensee in the Licensed Territory for the Term. Notwithstanding the foregoing the Licensor shall be entitled to sell Products by way of mail order through the Band's Fan Club and via the Band's website at www. [ **insert web address** ] PROVIDED THAT Licensor shall purchase any such Products from the Licensee. The Licensee shall make the Products available to the Licensor at [COST PRICE OR INSERT SUCH OTHER PRICE AS MAY BE AGREED] for such purpose and the monies received by the Licensee from the Licensor shall not be treated as income hereunder for the purposes of royalties payable to the Licensor.

## 3. **The Products**

3.1. The type of the Products which the Licensee wishes to manufacture and sell shall be subject to the prior approval of the Licensor (which approval shall not be unreasonably withheld or delayed). The type of Products listed in sub-clause 1.3 are hereby deemed approved by the Licensor.

The Licensee shall prior to the sale of any of the Products the type of which has been approved by the Licensor in accordance with the provisions hereof deliver to the Licensor free of charge for its approval (not to be unreasonably withheld) three (3) samples of each type of the Products. The Licensor shall have a period of ten (10) days (or such shorter period as may be mutually agreed) from the date of receipt of each sample to approve or reject the same. In the event that the Licensor fails to reject any sample within such period of ten (10) days the same shall be deemed approved.

All artwork and other visual materials (including without limitation photographs illustrations and copy) which may be necessary for the creation and production of the Products shall be provided by the Licensor free of charge to the Licensee and in a timely manner PROVIDED ALWAYS THAT in the event such artwork is not provided at least twenty eight (28) days prior to the date set for manufacture and production the Licensee shall not be obliged to have any such Products available for sale until three (3) weeks following the date of delivery of such artwork. In the event that the Licensee prepares artwork such artwork shall belong to the Licensee.

3.2. The Licensee shall use its best endeavours to procure that the manufacturers of the Products sub-contracted by the Licensee print stamp or mould the Copyright Notice and the Trademark Notice wherever practicable on all the Products and on each package used in connection therewith and shall print the Copyright Notice on

each label advertisement and promotional release concerning the products in accordance with the written instructions given in due time by the Licensor including but not limited to reasonable and practicable instructions with respect to position and letter size.

- 3.3. The Licensee represents and warrants that the Products produced hereunder will be of high quality throughout the Term and will be in all material aspects identical to samples approved by the Licensee.
- 3.4. The Licensee shall produce sufficient Products to meet reasonably anticipated public demand throughout the Term through retail/mail order outlets and at all live performances notified by the Licensor to the Licensee.

#### 4. **The Advance**

4.1. The Licensee shall pay to the Licensor during the Term:-

The First Advance forthwith upon full execution of this Agreement

The Second Advance on the date of recoupment by the Licensee in full of the First Advance.

- 4.2. The Advance shall be and constitute a single advance against and recoupable only from the sums (if any) payable to the Licensor pursuant to Clause 5 .
- 4.3. Any other sums paid by the Licensee to or on behalf of the Licensor at Licensor's request or pursuant to the terms hereof (save for royalties hereunder) shall constitute further advances incorporated for all purposes in the respective definitions of the Advance and the Unrecouped Advance.

#### 5. **Royalties:**

5.1. In respect of Live Performance Sales the Licensee shall pay to the Licensor the following royalty:

[Eighty percent (80%)] of the Licensee's Net Profits (if any) received by the Licensee or on its behalf from the sale of the Products at Live Performances within the United Kingdom

[Seventy percent (70%)] of the Licensee's Net Profits (if any) received by the Licensee or on its behalf from the sale of the Products at Live Performances outside the United Kingdom

5.2. In respect of Mail Order Sales the Licensee shall pay to the Licensor a royalty equal to [eighteen percent (18%)] of the gross income (if any) received by the Licensee or on its behalf from such Mail Order Sales after deduction from such gross income (if any) of the Permitted Royalty Deductions. For the avoidance of

doubt any charges made by the Licensee in respect of postage and packing shall not be included in the gross income.

- 5.3. In respect of Wholesale /Retail Sales the Licensee shall pay to the Licensor a royalty equal to [eighteen percent (18%)] of the gross income (if any) received by the Licensee or on its behalf from such Wholesale/Retail Sales after deduction from such gross income (if any) of the Permitted Royalty Deductions.
- 5.4. In respect of Sub-Licenses the Licensee shall pay to the Licensor as a royalty sums equal to [seventy percent (70%)] of the gross income (if any) received by the Licensee or on its behalf from Sub-Licences after deduction from such gross income (if any) of the Permitted Royalty Deductions.
- 5.5. For the avoidance of doubt no payment shall be made to the Licensor pursuant to Sub-clauses 5.1 to 5.4 inclusive until the Advance has been recouped in full by the Licensee.

## 6. **Accounting**

- 6.1. the Licensee shall keep full accurate and complete books and records covering all its transactions relating to the subject matter of this Agreement and shall in relation to any sales of the Products hereunder deliver to the Licensor quarterly accounts within forty-five (45) days after the end of each quarter ending 31<sup>st</sup> March, 30<sup>th</sup> June, 30<sup>th</sup> September and 31<sup>st</sup> December setting out in reasonable detail the number of sales made in respect of the Products within such quarterly period and the total gross value of such sales. Simultaneously with the delivery of such account the Licensee shall (subject to recoupment in full of the Advance) pay to the Licensor such sums as are shown to be due.
- 6.2. All royalty statements delivered by the Licensee to the Licensor shall be binding upon the Licensor and not subject to any objection by the Licensor for any reason unless specific objection in writing stating the basis thereof is served on the Licensee within four (4) years from the end of the Term of this Agreement. Failure to make specific objection within the said time period shall be deemed approval of such statement.
- 6.3. The Licensor may appoint a representative to examine the books and records of the Licensee but only once in any calendar year. The Licensor shall give notice in writing of intent to examine and the Licensee shall arrange for such examination to take place within 30 days of said notice and the Licensee will co-operate with any representative conducting such examination and make available copy documentation (including for the avoidance of doubt manufacturing records)

relating to Gross Income and Expenses as may be required. In the event of any such examination revealing an under payment in excess of 10% or £2,000 (whichever is greater) of the monies shown due to the Licensor on statements (or any of them) rendered and the subject of the examination the Licensee will forthwith pay the Licensor's reasonable costs of examination together with the outstanding sum and interest thereon at 3% above the Licensee's banker's published base rate from time to time.

- 6.4. That Licensee shall use its reasonable endeavours to ensure that all sums are remitted forthwith to the United Kingdom and are accounted for to the Licensor on the dates provided for herein but where currency restrictions in any country do not permit the remittance from such country of any sums of money or any part thereof in respect of any sales of the Products in that country any sums which cannot be remitted shall not be included in gross income for the purposes of calculating the royalties payable to the Licensor hereunder. In such event and SUBJECT ALWAYS to the recoupment by the Licensee in full of the Advance and to the laws of the country concerned the Licensee shall notify the Licensor and the Licensee if permitted by the laws of such country shall at the request and expense of the Licensor procure that the royalties to which the Licensor would be entitled hereunder in respect of such sales and which are not remitted from such country shall (wherever possible) be deposited in an interest bearing account to be in the name of and under the control of the Licensor (or such other name as the Licensor may in writing direct and authorise). Any such deposit shall fulfil the Licensee's obligations hereunder to the Licensor in respect of the payment of such sums.

## 7. **Withholding Tax**

In the event that the Licensee shall be obliged by the laws of the Territory or any part of the Territory to deduct and withhold income or other similar tax from royalties or advances payable to the Licensor under this Agreement the Licensee shall provide the Licensor with a certificate of such deduction/withholding. In respect of any deduction/withholding required to be deducted in respect of payments by third parties to the Licensee, the Licensee undertakes to complete, execute and deliver all double taxation exemption documentation or other clearances as are available to prevent such deduction/withholding SAVE THAT where such exemption is not available but the Licensee receives a tax credit in respect of such deduction or withholding the Licensee shall account to the Licensor for the Licensor's share of all sums earned gross of any deduction/withholding.

## 8. **Suspension of Payment**

- 8.1. Notwithstanding anything to the contrary herein contained in the event that the Licensor shall commit a material breach of its obligations hereunder and a third party shall make a claim against the Licensee in respect of such material breach the Licensee shall (without prejudice to its rights in respect of such breach) be entitled upon written notice to the Licensor to withhold payment of any sums due to the Licensor hereunder in an amount as may be reasonably necessary to indemnify the Licensee against its reasonable legal costs until the liability of the Licensee has been determined by a court of law or settlement judgement of the Court or otherwise. Any sums withheld pursuant to this Clause shall be released within six (6) months of withholding if no proceedings have been served in respect thereof.
- 8.2. In the event that a third party makes any claim against the Licensee in respect of the subject matter of this Agreement the Licensee shall forthwith give notice thereof to the Licensor and the Licensor shall at its own expense be entitled to participate in the defence of any such claim.
- 8.3. In the event that such third party institutes legal proceedings which if successful would constitute a material breach of this Agreement by the Licensor the Licensor shall have the right but not the obligation to take over the defence of such action at its own expense and the Licensee shall have the right upon written notice to the Licensor to suspend payment of any sum due to the Licensor hereunder in an amount as may be reasonably necessary to indemnify the Licensee against its reasonable legal costs until the liability of the Licensee has been determined by settlement judgement of the Court or otherwise. Such settlement shall be subject to the Licensor's approval (such approval not to be unreasonably withheld).

## 9. **Sell-Off Period**

- 9.1. The Licensee shall after the expiration of the Term have the non-exclusive right during the Sell-Off Period to sell off all unsold stocks of the products by means of Mail Order Sales and/or Wholesale/Retail Sales. For the avoidance of doubt the Licensee shall not have the right during the Sell-Off Period to sell the Products at live concert performances of Licensor. The Licensee shall pay to the Licensor sums from time to time equal to such percentages as may be applicable in accordance with the provisions of clause 5 of the gross income (if any) received by the Licensee or on its behalf from the sale of the Products during such Sell-Off Period after deduction from such gross income (if any) of the Permitted Royalty



Deductions and shall (subject to recoupment in full by the Licensee of the Advance) account for and pay such sums as may be due to the Licensor pursuant to this Clause within forty five (45) days from the end of the Sell-Off Period. The Licensee shall not in the last three (3) months prior to the expiration of the Term manufacture stocks of the Products in excess of those reasonably anticipated as being required until such expiration of the Term. During the Sell-Off Period the Licensee may not manufacture any quantities of the Products whatsoever. Upon expiration of the Term the Licensor shall be entitled to purchase (at cost price) all unsold stock whereupon the Licensee's sell-off rights shall not apply.

- 9.2. Upon expiration of the Sell-Off Period the Licensor shall provide a further inventory detailing unsold stock and the Licensor shall be entitled to purchase (at cost price) the unsold stock. In the event that the Licensor elects not to purchase such stock the Licensee will forthwith destroy the same and will within seven (7) days thereafter provide the Licensor with a sworn statement by an officer of the Licensee attesting to such destruction.

## 10. Warranties

- 10.1. The Licensor warrants and undertakes that:
  - 10.1.1. it is authorised empowered and able to enter into and to perform its obligations under this Agreement.
  - 10.1.2. Licensor has not and shall not grant or permit or authorise the grant to any person firm or company whatsoever of any rights in the Licensed Property and/or the Products which would or might conflict with or prejudice the grant to the Licensee of the sole and exclusive Merchandising Rights or would or might be in derogation of the grant to the Licensee of the sole and exclusive Merchandising Rights.
- 10.2. The Licensee warrants and undertakes that:
  - 10.2.1. it will use its best endeavours to promote and sell the Products within the Territory throughout the Term
  - 10.2.2. Products produced under this Agreement will not be defective in workmanship or materials nor will they be constructed of dangerous materials or those which are not suitable for the Product in relation to its intended or reasonably anticipated use
  - 10.2.3. it will carry reasonably adequate product liability insurance and will indemnify the Licensor and hold the Licensor harmless from any claim loss

damage or expense arising from any claim by any third party in respect of such liability

- 10.3. Without prejudice to the rights of either party hereunder or otherwise arising each party shall indemnify the other and keep the other fully indemnified from and against any and all claims actions proceedings losses judgements liabilities expenses costs (including fair and reasonable legal costs) and damages arising out of or in connection with any breach by the indemnifying party of its obligations hereunder pursuant to either a judgement of a Court of competent jurisdiction or a settlement reached with the prior written approval of the other party not to be unreasonably withheld.

## 11. Termination

- 11.1. Licensee shall be entitled to terminate the Term by written notice served on the Licensor at any time in the event that:-

11.1.1. the Band at any time disband or cease to carry on business as performing artists in the entertainment industry under the name [                      ]; and/or

11.1.2. any one of [                      ] or [                      ] shall at any time leave the Band or the service of any of them shall not be available to the Band for a period of sixty (60) days.

In the event that the Licensee terminates the Term pursuant to any of the provisions of Sub-clause 11.1 the Licensor shall pay the Unrecouped Advance to the Licensee within twenty eight (28) days of receipt from the Licensee of an accounting whereby such unrecouped balance may be ascertained.

- 11.2. The Licensor shall without prejudice to its other rights and remedies have the right to terminate the Term forthwith by notice in writing to the Licensee in the event that:

11.2.1. the Licensee becomes insolvent or enters into liquidation or a winding up petition is presented and not discharged within ninety (90) days after such presentation; or

11.2.2. a receiver or administrator is appointed in respect of all or a substantial part of the Licensee's assets or if they make or seek to make any voluntary arrangement with their creditors; or

11.2.3. the Licensee commits a material breach of its obligations hereunder and does not remedy such a breach within thirty (30) days after receipt by the Licensee of a written notice from the Licensor specifying such breach; or

- 11.2.4. the Licensee has not commenced sale of the Products within [                    ] days of the date of this Agreement
- 11.3. Any termination of the Term howsoever caused shall not:
- 11.3.1. affect or prejudice any rights remedies or liabilities of either party which have accrued prior to the date of such termination; or
- 11.3.2. affect or prejudice the coming into force or the continuance in force of any term hereof which is expressly or by implication intended to come into or continue in force on or after the date of termination.
- 11.4. Upon any termination pursuant to this Clause 11 the Merchandising Rights shall automatically revert to the Licensor.

## 12. **Force Majeure**

Neither party shall be deemed to be in default if the performance of its obligations hereunder is delayed or becomes impractical by reason of any act of God incapacity sickness accident flood fire strike industrial disturbance shortages of raw material or energy act of Government its agencies or officers civil commotion or any other legitimate cause beyond its control.

## 13. **Miscellaneous**

- 13.1. All sums payable hereunder are exclusive of Value Added Tax which shall (if applicable) be paid forthwith on receipt by the paying party of a valid Value Added Tax invoice therefor.
- 13.2. Without prejudice to the Licensee's right to sub-licence set out above neither party shall have the right to assign the benefit of this Agreement without the prior written consent of the other party.
- 13.3. No waiver of any breach of any term hereof shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other term.
- 13.4. All notices or payments which either party shall deliver to the other shall be sent by pre-paid letter post addressed to the other at the address set forth herein or at such other address as may be communicated in writing from time to time. All such notices shall be deemed served at the date three (3) days after the date of posting or upon actual receipt by the addressee whichever is earlier.
- 13.5. Nothing in this Agreement shall be construed so as to imply a partnership between the parties
- 13.6. A person who is not a party to this Agreement shall have no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any of its terms.

- 13.7. This Agreement contains all of the terms agreed between the parties and replaces all previous agreements written or oral and may not be varied except in writing signed by the parties hereto.
- 13.8. This Agreement shall be governed and construed in accordance with English Law and the English Courts shall be the Courts of sole jurisdiction.
- 13.9. The Clause headings do not form part of and shall not be read into the construction of the Agreement.

SIGNED on behalf of  
**the Licensor**  
by  
in the presence of:-

}  
}  
}  
}

SIGNED on behalf of  
**the Licensee**  
by  
in the presence of:-

}  
}  
}  
}

**SCHEDULE 1**

**TOUR DATES**

SPECIMEN