

## **ERA Annual General Meeting 2016**

**Company number: 02423219**

THE COMPANIES ACT 2006

**Private company limited by guarantee and not having a share capital**

### **ARTICLES OF ASSOCIATION**

#### **THE EDUCATIONAL RECORDING AGENCY LIMITED**

(as adopted by written Special Resolution passed on 15 September 2016 and effective from 15 September 2016)

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## 1. DEFINITIONS

In these Articles: -

**"the Act"** means the Companies Acts (as defined in Section 2 Companies Act 2006) to the extent in force from time to time, insofar as they apply to the Agency and references to the Companies Act 2006 shall be construed accordingly.

**"Agency"** means the company registered in England under company number 02423219.

**"Annual Transparency Report"** means the annual report on the operations and financial performance of the Agency in such form and containing such information as is required by law.

**"Authorised Users"** means individuals who are enrolled or otherwise authorised to study at an Educational Establishment or who are members of the academic, research or teaching staff of an Educational Establishment (whether on a permanent, temporary or contract basis) and who are entitled to access and use ERA Recordings under the terms of licences granted by the Agency.

**"Board of Directors"** means the board of Directors for the time being of the Agency.

**"Chair"** and **"Chairperson"** and **"Vice-Chair"** have the meanings set out in Article 19.3.

**"Chairperson of the meeting"** has the meaning set out in Article 19.3.

**"Collective Management Organisation"** means any organisation which (a) is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one Right Holder, for the collective benefit of those Right Holders, as its sole or main purpose, and (b) is either owned or controlled by its members or is organised on a not-for-profit basis, or both.

**“Conflicted Director”** has the meaning set out in Article 18.2 (Authorisation of conflicts of interest).

**“Conflict Situation”** has the meaning set out in Article 18.2 (Authorisation of conflicts of interest).

**“the Constitution”** means these Articles of Association together with any rules and bye-laws approved and applied as provided by these Articles of Association from time to time.

**“the Copyright Act”** means the Copyright, Designs and Patents Act 1988 or any relevant law amending or re-enacting that Act for the time being in force and all the expressions defined in the Copyright Act shall have the same meaning herein.

**“Copyright Owner”** includes: -

(a) any persons upon whom rights are conferred in respect of works under Part 1 of the Copyright Act;

(b) any persons upon whom rights are conferred in respect of performances and recordings under Part II of the Copyright Act;

(c) any persons or bodies having collective bargaining rights in respect of the exploitation of performances;

(d) any other person or body which is entitled to an interest in copyright works or rights of performance or which represents copyright owners or the owners of rights of performance;

within the classes specified in Article 12.3.

**“clear days”** in relation to the period of a notice means the period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect.

**“Director”** means a director of the Agency, and includes any person occupying the position of director, by whatever name called.

**“Dispute Resolution Procedures”** means the dispute resolution procedures which the Agency shall publish from time to time to ensure that:

(a) its Members;

(b) Right Holders who are not Members but who have a direct legal relationship with the Agency by law or by way of assignment, licence or other contractual arrangement;

(c) Collective Management Organisations on whose behalf the Agency manages rights under representation agreements; and

(d) licensees of the Agency and users or other persons who require or may require a licence from the Agency in respect of the ERA Repertoire;

have access to dispute resolution procedures as regards disputes concerning compliance with the Regulations, including independent and impartial dispute resolution procedures.

**“Distribution Share”** means the share of net revenue that is agreed as allocated to a Member in accordance with the Membership Agreement of the Member and the Distribution Policy.

**“Distribution”** means any payment of monies which may, pursuant to the terms of the Distribution Policy, be made by the Agency to Members out of its funds and “distributed” and “available for distribution” shall have corresponding meanings.

**“Distribution Category”** means the categories of ERA Membership referred to in the Distribution Policy.

**“Distribution Policy”** means the document setting out the general policy of the Agency with respect to the distribution of amounts due to Members and the general policy on deductions from rights revenue and on any income arising from investment of rights revenue, as this may be varied by the Members of the Agency in accordance with the Constitution, or varied following application of, and in accordance with, the Dispute Resolution Procedures, and which is published on the Agency’s website.

**“EC Directive 2014/26/EU”** means Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market.

**“Educational Establishment”** has the meaning provided by the Copyright Act.

**“Electronic Form”** has the same meaning as in Section 1168 of the Companies Act 2006.

**“ERA Recording”** means a recording of a broadcast or a copy of such a recording made by or on behalf of an Educational Establishment for subsequent use for the educational purposes of an Educational Establishment.

**“ERA Repertoire”** means the entirety of the categories of works and performances for which Members of the Agency represent Copyright Owners and in which Members have authorised the Agency to exercise Mandated Rights.

**“General Meeting” and “Annual General Meeting”** shall have the meaning ascribed by the Act.

**“Mandated Rights”**

(a) when used in respect of a particular Member, means the rights set out and specified in that Member’s Membership Agreement in relation to the Member’s Rights in the Member’s Repertoire for the Mandated Uses.

(b) when in respect of the Agency as a whole, means the aggregate of all Mandated Rights granted by all Members.

**“Mandated Uses”** means the uses of ERA Repertoire which the Agency is mandated to license pursuant to the Mandated Rights granted under Membership Agreements with Members.

**“Member”** means a person who meets the Membership Criteria and has been admitted to membership of the Agency following application of the procedure for addressing

applications for Membership of the Agency and execution of a Membership Agreement lodged with the Agency.

**“Members’ Resolution”** means:

(a) the approval of the Members by Special Resolution or Ordinary Resolution in general meeting or by written resolution pursuant to the Constitution;

(b) the approval by unanimous consent in writing of the Members pursuant to the Constitution.

**“Members’ Repertoire”** means, in respect of each Member, those works or other subject matter in which rights may vest with Copyright Owners and in respect of which the Member controls or is authorised in respect of Members’ Rights.

**“Members’ Rights”** means, in respect of each Member, those legal rights which the Member either owns or controls or which are owned or controlled by Right Holders whom the Member is appointed to represent.

**“Membership Agreement”** means such form of agreement and other documentation as may from time to time be prescribed by the Directors, relating to the Member mandating the Agency to exercise Mandated Rights defined by its terms.

**“Membership Criteria”** has the meaning given to it in Article 5.

**“participate”** in relation to a meeting of Directors, shall have the meaning set out in Article 30.

**“proxy notice”** has the meaning set out in Article 35.10.

**“Regulations”** means the Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014 and The Collective Management of Copyright (EU Directive) Regulations 2016.

**“Right Holder”** means any person or entity, other than a Collective Management Organisation, which (a) holds a copyright or related right or (b) under an agreement for the exploitation of rights or by law, is entitled to a share of rights revenue.

**“the Seal”** means any common or official seal that the Agency may be permitted to have under the Statutes.

**“Secretary”** means any person appointed to perform the duties of the Secretary of the Agency from time to time.

**“Special Resolution”** and **“Ordinary Resolution”** have the meaning provided by the Act.

**“Statutes”** means the Act and every other act, statute, statutory instrument, regulation or order for the time being in force concerning companies and affecting the Agency or its purposes.

**“the United Kingdom”** means Great Britain and Northern Ireland, the Isle of Man and the Channel Islands, together with the territorial waters of the United Kingdom and the United Kingdom sector of the continental shelf referred to in Section 161 of the Copyright Act and British ships, aircraft and hovercraft as provided by Section 162 (2) of the Copyright Act.

**“working day”** has the meaning set out in Section 1173 Companies Act 2006.

In these Articles (if not inconsistent with the subject or context) any reference to:

a “document” includes reference to both an electronic communication and a document in electronic form;

an “electronic communication” means an electronic communication (as defined in the Act and/or Section 15(1) Electronic Communications Act 2000) comprising writing;

a document being “executed” includes references to it being executed under hand or seal or, in the case of an electronic communication, by electronic signature or such other means of verifying the authenticity of the communication that the Directors may from time to time approve;

“an instrument” means a written document having tangible form (by way of example on paper) which is not contained in an electronic communication;

“in writing” and “written” mean the representation of words, numbers or symbols in a legible and non-transitory form by any method or combination of methods, including electronic communication (as defined in the Act), facsimile, e-mail, printing and photography.

Unless the context otherwise requires words or expressions contained in these Articles shall bear the same meaning as in the Act.

Reference to any statute or statutory provision includes a reference to statutory instruments and orders made further to it and includes consolidations or amendments or modifications or re-enactments.

Save as expressly provided:

(a) reference to the singular includes a reference to the plural and vice versa;

(b) reference to any gender includes a reference to all other genders;

(c) words importing persons shall include firms, corporations and unincorporated associations.

The headings are inserted for convenience only and shall not affect the construction of these Articles.

In the event of conflict between these Articles and the terms of the Membership Agreement, the Membership Agreement shall prevail.

## **2. OBJECTS**

The objects of the Agency are, subject always to Article 13 (setting out powers of Members):-

- 2.1 To exercise and enforce Mandated Rights with respect to the rights of Copyright Owners subsisting under and by virtue of the law relating to copyright and rights in performances in any country, including the United Kingdom, relating to Mandated Uses which can most effectively be exercised by collective management

under the Copyright Act (including but not limited to rights under Chapter VII of Part I) and in particular:

(a) to establish, administer and provide for the operation of licensing schemes ("the Schemes") for the purposes of granting licences for:

(i) the exercise, application and use of the rights of Copyright Owners for the purposes of granting licences for the use of rights relevant to Section 35 or paragraph 6 of Schedule 2 of the Copyright Act;

and

(ii) the exercise, application and use of other rights which may be efficiently and effectively managed and administered in conjunction with, or in a similar way to, the rights set out in (i) above and which from time to time may form Mandated Rights pursuant to Membership Agreements.

(b) to apply to the Secretary of State to certify any licensing scheme developed by the Agency, which may require certification under the Copyright Act;

(c) to act as a licensing body for the purpose of Section 116 and Schedule 2A of the Copyright Act including (without limitation) carrying out the functions of negotiating licence terms, issuing licences, collecting and distributing fees, royalties and other monies in respect of the works or performances of more than one author or performer;

(d) to act as agents for Copyright Owners and to carry out such other functions on behalf of Copyright Owners with respect to the exercise, registration, enforcement and protection of such rights, as may form part of the Mandated Rights of the Agency from time to time; and

(e) to carry out any other purpose which, in the opinion of the Agency, may be incidental or conducive to the Mandated Rights of the Agency and the above objects or any of them.

2.2 To make (and from time to time alter or vary) any rules for regulating:

(a) the manner in which the period or periods for which and conditions under which Members shall authorise the Agency to exercise and enforce the Mandated Rights and remedies in accordance with the objects of the Agency;

(b) the method and proportions by which and the times at which the monies received by the Agency in respect of licences, agreements or arrangements shall be divided, apportioned or paid among and to Members in accordance with the Distribution Policy or otherwise; and

(c) the administration of the property or business of the Agency and any matters incidental thereto.

2.3 To act in the interests of Members to enhance education through licensing educational establishments to use ERA Repertoire in the form of Mandated Uses of Mandated Rights.

### 3. POWERS AND FUNCTIONS

3.1 In exercising or enforcing its objects from time to time the Agency shall have the power:

(a) to make, and from time to time rescind, alter or vary any arrangements and agreements with regard to the mode, periods and extent in, for or to which, and the terms on which any exploitation or enforcement may be made or employed; and to collect and receive and give effectual discharge for all such royalties, fees and other monies payable under any such arrangements or agreements or otherwise in respect of any such exploitation by all necessary actions and other proceedings, and to recover such royalties, fees and other monies, and to restrain and recover damages for the infringement by means of any such exploitation as aforesaid of the copyrights or any other rights of the Members or of the Agency on their behalf; and to release, compromise or refer to arbitration any such proceedings or actions or any other disputes or differences in relation to the said copyrights or other rights of Members of the Agency;

(b) to obtain from Members and prospective members, Copyright Owners or other persons such assignments, consents, revocations, assurances, powers of attorney or other authorities or instruments as may be deemed necessary or expedient to enable the Agency to acquire full or sufficient legal rights and authority in respect of the Mandated Rights and Mandated Uses and to exercise and enforce in its own name or otherwise all such rights and remedies as aforesaid, and to execute and do all such assurances, agreements and other instruments and acts as may be deemed necessary or expedient for the purpose of the exercise or enforcement by the Agency of such rights and remedies;

(c) to distribute and make reserves and allocations from the monies received by the Agency in the exercise of the foregoing powers, after making provision out of sums received by the Agency for the expenses and liabilities of the Agency incurred in such exercise or in otherwise carrying out the purposes and operations of the Agency and for any contributions or payments for any of the purposes specified in Article 3.2, to the Members entitled thereto in accordance with the rules to be for the time under the Distribution Policy.

3.2. The functions which the Agency may carry out as provided in these Articles of Association of the Agency shall include: -

(a) the granting of permission on behalf of Copyright Owners for the Mandated Rights of Copyright Owners to be exercised by third parties;

(b) the negotiation of the terms and conditions to which such grants or permission shall be subject;

(c) the collection of fees, royalties or other monies arising from the exercise of the Mandated Rights of Copyright Owners either on their behalf or on behalf of organisations representing Copyright Owners which are established outside the United Kingdom, and the allocation of all such sums;

(d) the institution, prosecution and defence of such legal proceedings as may be necessary for the enforcement or protection of Mandated Rights entrusted to the Agency including (without limitation) proceedings before the Copyright Tribunal.

3.3 The Agency shall have the power to: -

(a) employ and engage persons in furtherance of the objects of the Agency;

(b) grant gratuities, donations, pensions, allowances, bonuses and emoluments to any person at any time in the employment of the Agency or engaged in any business acquired by the Agency and the spouses, wives, widows, widowers, families and dependants of any such persons;

(c) establish, support, subscribe to and aid in the establishment and support of funds, trusts, associations or institutions calculated to benefit the Copyright Owners or persons employed by or having dealings with the Agency; and

(d) receive contributions, subscriptions or donations for any of the aforesaid purposes from Copyright Owners, Members and employees of the Agency, or other persons.

3.4 The Agency shall have the power to provide indemnity insurance to cover any liability of the Directors, managers or similar officers of the Agency which, by virtue of any rule of law, would otherwise attach to them in respect of any negligence, default, breach of trust, or breach of duty of which they may be guilty in relation to the Agency, provided that any such insurance shall not extend to: -

(a) any claim arising from any act or omission which:

(i) the Directors, managers or similar officers of the Agency knew to be a breach of duty; or

(ii) was committed by the Directors, managers or similar officers of the Agency in reckless disregard of whether or not it was a breach of duty; and

(b) the costs of an unsuccessful defence to a criminal prosecution brought against the Directors in their capacity as Directors of the Agency or against any managers or similar officers of the Agency.

3.5 The Agency has, subject to Article 13 (setting out powers of Members) the power to: -

(a) do anything within the law which may help to promote the objects of the Agency or any of them and to do all things which in the opinion of the Agency may be incidental or conducive to the above objects or any of them in any part of the world whether as principals, agents, contractors, trustees or otherwise, and by or through trustees, agents or otherwise, and either alone or in conjunction with others;

(b) carry on any trade or other business which can, in the opinion of the Directors, be advantageously carried on by the Agency in connection with or ancillary to any of the above business or the general business of the Agency.

#### **4. MEMBERS**

- 4.1 For the purposes of registration of the Agency the number of Members is declared to be unlimited.
- 4.2 The Members of the Agency are:
- (a) persons who are Members of the Agency at the time these Articles are adopted; and
  - (b) any person which is a legal entity representing Copyright Owners (including other Collective Management Organisations) which meets the Membership Criteria and which is admitted to membership pursuant to Articles 6 and 7;
- whilst such person shall remain in membership of the Agency.
- 4.3 The liability of the Members is limited.
- 4.4 Every Member undertakes to contribute to the assets of the Agency in the event that the Agency is wound up during the time that it is a Member or within one year afterwards, for the payment of debts and liabilities of the Agency contracted before the time at which it ceases to be a Member, and the costs, charges and expenses or winding up of the same, and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding £1.00.
- 4.5 On the winding up or dissolution of the Agency:
- (a) the rights and authorities granted to the Agency by the Members shall cease and revert to the Members who mandated the rights and authorities to the Agency;
  - (b) sums available for Distribution at the date of such winding up shall be distributed in accordance with the Distribution Policy; and
  - (c) the surplus assets of the Agency (if any) shall be divided among the Members at the time of such winding up in accordance with Article 42.
- 4.6 The membership rights of a Member are personal to that Member. No Member shall be entitled to transfer its rights of membership of the Agency to any other person.

## **5. MEMBERSHIP CRITERIA**

- 5.1 Any society, guild, association or other body (including other Collective Management Organisations): -
- (a) which is a legal entity and which is either:
    - (i) a substantial Copyright Owner or represents Copyright Owners in respect of a substantial number of works in which copyright or rights in performances subsist; or
    - (ii) represents a substantial number of Copyright Owners; and

(b) where the rights so owned or represented (i) relate to and are relevant to the Mandated Uses and (ii) are not otherwise owned or represented by one of the Members of the Agency;

and

(c) where the entity is authorised to mandate the Agency to license the Mandated Rights in copyright works or related rights owned or represented by them as set out in the Membership Agreement;

shall, subject to Article 7, meet the Membership Criteria of the Agency ("Membership Criteria") and be eligible to be admitted to membership of the Agency, irrespective of the EU Member State of nationality, residence or establishment of either the body itself or the right holders it represents.

5.2 Members of the Agency who meet the Membership Criteria set out in Article 5.1 may be either Collective Management Organisations or duly authorised representatives of Right Holders.

5.3 No applicant will be admitted to membership of the Agency unless the Directors have passed a resolution supported by at least 75% of the Directors of the Agency confirming that the applicant meets the Membership Criteria set out at Article 5.1.

5.4 In considering whether an applicant meets the Membership Criteria the Directors will consider the extent of the Member's Rights and Member's Repertoire and be entitled to take into account:

(a) the need to ensure the operational efficiency and effectiveness of the Agency given the range and types of Copyright Owners represented by Members of the Agency and having regard to the proportionality of such representation in terms of allocation and application of the Agency's distributable revenues;

(b) whether and how the rights controlled by the applicant or the Copyright Owners represented by the applicant relate to the licensing scheme(s) operated by the Agency at the time of the application; and

(c) the fact that the Agency is not constituted in such a way as to deal with numerous individual members and recognising the need to avoid unnecessary duplication of administrative burdens which are the responsibility of existing members of the Agency.

5.5 Individual Copyright Owners who are considering an application for membership of the Agency will be advised of the representative nature of the bodies who are already in membership of the Agency and invited to enquire whether the individual's rights have already been mandated to the Agency by one of the existing Members.

## **6. MEMBERSHIP APPLICATION**

6.1 Any society, guild, association or other body being a legal entity which considers itself eligible for membership may apply to the Agency for admission.

- 6.2 An application for Membership of the Agency must be made in writing and address the Membership Criteria. The Directors may require an applicant to supply such evidence of eligibility as the Directors consider reasonably necessary.
- 6.3 All applicants are supplied with copies of the Articles of Association and the terms of the Membership Agreement in the form applicable to all current members of the Agency at the time a new application is made.
- 6.4 The Directors shall also ensure that all applicants are aware of the terms upon which the Agency operates and applies its Dispute Resolution Procedures to address disputes between the Agency and one or more of its Members, Copyright Owners represented by Members, users or another Collective Management Organisation. These procedures provide for the Agency to withhold monies that would otherwise be distributed to one or more Members pending resolution of a dispute which may relate to the monies withheld.

## **7. MEMBERSHIP AGREEMENTS**

- 7.1 All Members are required to observe the Articles of Association and the terms of the Membership Agreement (as the same may be amended from time to time).
- 7.2 Applicants who meet the Membership Criteria of the Agency will be required to execute a Membership Agreement including authorising the Agency to exercise the Mandated Rights before membership of the Agency can take effect.
- 7.3 Any Membership Agreement for an applicant shall contain such information as to enable the applicant to ascertain the Distribution Share payable to him ("the relevant share") by specifying:
- (a) the Distribution Category of works to which the relevant share relates;
  - (b) the amount of, or mode of calculating, the relevant share under the Distribution Policy for the time being; or if and to the extent that the Distribution Policy makes no such provision to enable the applicant to ascertain the relevant share:
    - (i) such share as the Members shall have agreed with the applicant and applied pursuant to the Members having approved relevant changes to the Distribution Policy pursuant to Special Resolution of the Members as provided under Article 13; or
    - (ii) in the absence of an agreement under Article 7.3.(b) (i), such share as shall be determined in accordance with the relevant Dispute Resolution Procedure established by the Board for the purpose of determining the relevant share.
- 7.4 An applicant who otherwise satisfies the Membership Criteria shall not be refused admission to Membership of the Agency by virtue solely of the fact that at the time the question of his admission is considered by the Board, the amount of the relevant share has not been determined.

## **8. OBJECTIVE, TRANSPARENT AND NON-DISCRIMINATORY APPROACH FOR MEMBERSHIP CRITERIA**

The Membership Criteria and the membership application process set out in Article 9 will be applied so as to ensure the timely, transparent, objective and non-discriminatory processing of applications for membership.

## **9. MEMBERSHIP APPLICATION PROCESS**

- 9.1 The Agency shall provide reasonable assistance (without an obligation to incur costs) to applicants including by providing guidance on the information which will be required by the Directors for the purposes of considering the application for membership and the Distribution Category that will be applicable under the Distribution Policy.
- 9.2 Applicants will be required to confirm in writing:
- (a) their status as a Collective Management Organisation or authorised representative of identified Right Holders meeting the Membership Criteria;
  - (b) the nature of the copyright works or related rights for which the applicant is authorised to mandate the Agency to license the Mandated Rights on their behalf; and
  - (c) whether the rights represented by the applicant link with an existing Distribution Category recognised by the Agency or whether they relate to a possible new Category.
- 9.3 Applications for membership received by the Agency will be referred to the Board of Directors. The Directors may request such further details from the applicant as they may reasonably require for the purposes of determining whether the applicant meets the Membership Criteria.
- 9.4 The Board of Directors shall oversee applications for membership.
- 9.5 The Board of Directors will consider applications for membership referred to it at the first meeting of the Board of Directors following receipt by the Agency of a completed application (or the subsequent Board meeting if all information forming part of the application is received less than 7 days before a scheduled meeting of the Board of Directors).
- 9.6 If the Directors resolve, by resolution pursuant to Article 5.3, that an applicant meets the Membership Criteria, the Agency shall confirm the Distribution Category which will apply to the applicant.
- 9.7 If a new Distribution Category needs to be created to accommodate the application, then subject to Article 13.3, the Board of Directors shall instruct the Agency to propose to the applicant such share of Distributable Revenues to be allocated to the applicant as the Board may reasonably determine, taking into account the views of Members in the other Distribution Categories and the need for changes to the Distribution Policy to be referred to the Members for approval by Special Resolution in General Meeting. Such instructions shall be given in good faith taking into account the extent to which Mandated Rights to be represented by the applicant relate to the Mandated Rights within ERA Repertoire as a whole.

- 9.8 If the Directors so resolve by resolution pursuant to Article 5.3, approval for the applicant to become a Member will be confirmed to the applicant on the condition that the applicant executes a Membership Agreement. Such Membership Agreement will include provision for the applicant to confirm the agreed description of the Member's Rights and Member's Repertoire relevant for the Member.
- 9.9 Admission of any new member will be confirmed for holders of licences issued by the Agency by means of notices approved by the Directors from time to time.
- 9.10 Mandated Rights of new Members will be treated as forming part of ERA Repertoire under relevant licences issued by the Agency from the date agreed as a commencement date within a Membership Agreement.

## **10. APPLICATIONS FOR MEMBERSHIP WHICH DO NOT MEET MEMBERSHIP CRITERIA**

- 10.1 Any applicant who does not meet the Membership Criteria will be informed in writing and an explanation provided setting out why the Membership Criteria have not been met.
- 10.2 If an applicant is informed that the application fails to meet the Membership Criteria or if the applicant is refused membership for refusing to enter into the Membership Agreement, the applicant may:
- (a) accept the refusal; or
  - (b) in compliance with the Regulations propose that the application is referred for review in an arbitration or mediation in accordance with the Dispute Resolution Procedures.
- 10.3 Nothing in these Articles shall interfere with any legal right which applicants may have to submit a complaint to the Secretary of State pursuant to the Regulations.

## **11. TERMINATION OF MEMBERSHIP**

The membership of a Member shall terminate: -

- 11.1 if the Member gives not less than six months written notice to the Agency to take effect at the end of a financial year of the Agency;
- 11.2 if, in the reasonable opinion of the Directors, following a resolution of Board of Directors supported by not less than 75% of the Directors, the Member ceases to meet the Membership Criteria. The Directors may give written notice explaining reasons for the decision to the Member by reference to relevant terms of the Membership Agreement provided that the Member may, within one month after receipt of such written notice from the Directors, request the Directors in writing to submit the question of the continuance of its membership to the decision of the Agency in General Meeting and, in the event of such a request being made the notice of termination by the Directors shall not have effect unless and until the Agency in General Meeting approves the termination;
- 11.3 if termination is effected under the terms of the Membership Agreement;

11.4 if the Member ceases to exist by reason of its being dissolved, wound up, going into liquidation or administration, or for any other reason ceases to exist.

## **12. AGENCY EXERCISE OF MANDATED RIGHTS**

12.1 Upon admission to membership the Member shall in accordance with this Article empower the Agency to carry out its functions with respect to the Mandated Rights of the Member:

(a) which the Member itself owns or controls; or

(b) which the Copyright Owners represented by the Member own or control; or

(c) which the Member is authorised to own or control;

for the purposes of exercising Mandated Rights for Mandated Uses.

12.2 The power of the Agency to carry out its functions with respect to rights on behalf of Members and Copyright Owners represented by the Members of the Agency shall, subject to Article 13, be vested in the Agency by assignment, licence or such other form of appointment transfer or mandate as the Directors shall, from time to time, determine; and subject to Article 7 and Article 13, the Membership Agreement or other instrument by which the Agency is empowered by a Member shall be in such form as the Directors shall prescribe.

12.3 The classes of rights in respect of which the Agency may carry out its functions with respect to Mandated Uses are:

(a) copyright in: -

(i) literary works

(ii) dramatic works

(iii) musical works

(iv) artistic works

(v) films

(vi) sound recordings

(vii) broadcasts

and

(b) rights in qualifying performances by performers.

12.4 The Agency may carry out its functions with respect to such of the categories of rights mentioned in Article 12.3 in such classes of works or performances vested in the Agency by copyright owners as the Directors may, from time to time, decide with the approval of the Members in General Meeting.

12.5 After admission a Member may request the Agency in writing to carry out the functions entrusted to it with respect to additional categories of rights. Every such request will be considered by the Directors who may in their discretion agree that

the Agency shall carry out its functions with respect to additional rights on behalf of the Member or copyright owners represented by the Member.

### **13. MEMBERS' POWERS**

13.1 The Members may, by Special Resolution, direct the Directors to take, or refrain from taking, specified action.

13.2 No such Special Resolution as referred to under Article 13.1 invalidates anything which the Directors have done before the passing of the resolution.

13.3 The following matters shall not be carried out without the approval of the Members by a Special Resolution or (where responsibility for such matters has been delegated to the Directors carrying out the supervisory function as specified in Article 14) a resolution supported by at least 75% of those Directors:

(a) the adoption of or any amendment to the Distribution Policy where such change could constitute a change to the Agency's general policy as to:

(i) the distribution of amounts due to Members; or

(ii) the deductions from licence revenue and from any income arising from the investment of licence revenue;

(b) the adoption of or any amendment to the general investment policy with regard to;

(i) licence revenue; and

(ii) any income arising from the investment of licence revenue;

(c) the adoption of or any amendment to the general policy on the use of non-distributable amounts;

(d) the use of non-distributable amounts;

(e) any terms and conditions governing membership of the Agency;

(f) any changes to the standard terms of the Membership Agreement;

(g) any changes to the Mandated Uses;

(h) the adoption of or any amendment to the risk management policy;

(i) the approval of any acquisition, sale or hypothecation of immovable property;

(j) the approval of mergers and alliances, the setting-up of subsidiaries, and the acquisition of other entities or shares or rights in other entities;

(k) the approval of taking out loans, granting loans or providing security for loans;

(l) the delegation of responsibility for the matters listed at sub-paragraphs (h) (i), (j), and (k) of this Article to the Directors exercising the supervisory function pursuant to Article 14.

13.4 The Members may by Ordinary Resolution in General Meeting:

- (a) decide upon the appointment and dismissal of Directors;
- (b) approve any remuneration and other benefits of Directors including without limitation pensions benefits and severance pay;
- (c) decide upon the appointment and removal of the auditor;
- (d) approve the Annual Transparency Report.

#### **14. SUPERVISORY FUNCTION**

- 14.1 The supervisory function required under the Regulations shall be exercised by the non-executive Directors of the Agency in providing a fair and balanced representation of the different categories of Members of the Agency, who shall, acting in compliance with the requirements of the Regulations, continuously monitor the activities and the performance of the duties of the persons who manage the business of the Agency, including the implementation of the decisions of the general assembly of Members and may, subject to Article 13.3, recommend, consider and/or approve remuneration and other benefits of Directors including without limitation pensions benefits and severance pay.
- 14.2 The persons exercising the supervisory function shall meet quarterly and shall report annually on its activities to the Members in General Meeting.
- 14.3 The persons exercising the supervisory function shall have responsibility for the matters set out in Article 13.3 (h) (i) (j) and (k) where these matters have been delegated to those persons by a Special Resolution of the Members.

#### **15. APPOINTMENT OF DIRECTORS**

- 15.1 The number of Directors of the Agency shall be neither less than five in number nor more in number than the number of Members.
- 15.2 A Member shall be entitled to nominate one Director for election to the Board of Directors. Any such nomination shall be confirmed in writing and signed by the Member and served on the Agency at its registered office. No such nomination or confirmation and commencement of appointment shall take effect until it is ratified by Ordinary Resolution of the Members in General Meeting.
- 15.3. No person may be appointed as a Director if by virtue of his appointment there will, following the end of the meeting at which he is appointed, be more than one director who is an employee and/or officer of any particular Corporate Member and/or any "associate" of that Corporate Member.

For the purposes of this Article:

- (a) a "Corporate Member" is a Member which is a body corporate as defined in the Act;
- (b) a Corporate Member is an associate of another Corporate Member if one of the two has control of the other or both are under the control of the same person; and

(c) a person, persons or a company shall be taken to have control of a company if he, they, or it is entitled to exercise of, directly or indirectly, more than one-half of the voting power at any general meeting of the company.

- 15.4 Each Director shall retire on the fourth anniversary of either the date of adoption of these Articles or (if later) the date of that director's latest appointment as a Director but may, subject to Article 15.2 be nominated to re-election.

## **16. DUTIES OF DIRECTORS AND RECORDS**

- 16.1 The Directors shall cause minutes to be made of all appointments of officers made by them, of the names of the Directors present at each meeting of the Directors and of any committee or working group of the Directors, and of all resolutions and proceedings at all meetings of the Agency, and of the Directors, and of committees or working groups of Directors and any such minutes if signed by the Chair of such meeting or by the Chair of the next succeeding meeting shall be sufficient evidence without any further proof of the facts therein stated.
- 16.2 The Directors may act notwithstanding any vacancy in the Board but if the number of Directors is less than the minimum prescribed herein they may only act as Directors to admit persons to membership of the Agency, fill vacancies in the Board of Directors or summon a General Meeting.
- 16.3 Each Director shall make an annual individual statement in writing that shall be put before the Members in General Meeting containing the following information:
- (a) any interests in the Agency;
  - (b) any agreed remuneration or benefits (including pensions and benefits in kind received in the preceding financial year from the Agency);
  - (c) any amounts received in the preceding financial year as a Right Holder; and
  - (d) any actual or potential conflict between any personal interests and those of the Agency or between any obligations owed to the Agency and any duty owed to any other natural or legal person.

## **17. TERMINATION AND DISQUALIFICATION OF DIRECTORS**

- 17.1 A person ceases to be a Director as soon as:
- (a) the Member by which that Director was appointed chooses to terminate that Director's term of office and notice of such termination signed by the relevant Member is served on the Agency at its registered office and shall be operative when received at the registered office of the Agency;
  - (b) the Member by which that Director was appointed ceases to be a Member pursuant to Article 11;
  - (c) that person ceases to be a Director by virtue of any provision of the Act or is prohibited from being a director by law;
  - (d) a bankruptcy order is made against that person;

(e) a composition is made with that person's creditors generally in satisfaction of that person's debts;

(f) a registered medical practitioner who is treating that person gives a written opinion to the Agency stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;

(g) notification is received by the Agency from the Director that the Director is resigning from office, and such resignation has taken effect in accordance with its terms; or

(h) that person has, for a period of six months or more than three consecutive meetings (whichever is longer), been absent without permission of the Directors from meetings of the Directors and without arranging for an Alternate Director to attend relevant meetings held during that period in circumstances other than in a Conflict Situation and the Directors make a decision that that person's office be vacated.

17.2 The Agency may by Ordinary Resolution of which special notice has been given in accordance with Section 312 of the Act, remove any Director before the expiration of the Director's period of office notwithstanding anything in these Articles or in any agreement between the Agency and such Director.

## **18. AUTHORISATION AND REPORTING OF CONFLICTS OF INTEREST**

18.1 A Director who is in any way directly or indirectly interested in a contract or a proposed contract with the Agency shall declare the nature of his interest at a meeting of the Directors in accordance with Sections 177 and 182 of the Act.

18.2 Subject to and in accordance with the Act:

(a) the Directors may authorise any matter or situation arising on or after the date of adoption of these Articles in which a Director (the "Conflicted Director") has, or can have, a direct or indirect interest which conflicts, or possibly may reasonably be regarded to conflict, with the interests of the Agency (including, without limitation, in relation to the exploitation of any property or information which the Agency could take advantage of) and for this purpose a conflict of interest includes a conflict of interest and duty and a conflict of duties (the "Conflict Situation");

(b) any authorisation given in accordance with this Article 18 shall be effective only if:

(i) any requirement as to the quorum at any meeting of the Directors at which the matter is considered is met without counting either the Conflicted Director or any other interested Director; and

(ii) the matter or situation was agreed to and any relevant resolution was passed without counting the votes of the Conflicted Director and without counting the votes of any other interested Director pursuant to declarations made under Article 18.1 (or such matter or situation would have been so agreed and such relevant resolution would have been so passed if their votes had not been counted);

(c) in considering any request for authorisation in respect of a Conflict Situation, the Directors shall, acting in the best interest of the Agency, be entitled to exclude the Conflicted Director from any meeting or any part of a meeting or other discussion (whether oral or written) including in (but not limited to) circumstances when the declared interests of the Director pursuant to Article 18.1 relate to litigation or arbitration proceedings (whether current or proposed) in which the Agency is or is likely to be involved and the Conflict Situation is relevant to the same. In such circumstances the Directors who are not Conflicted Directors shall also be entitled to withhold from such Conflicted Director any board papers or other documents, papers or information concerning the recognition and/or authorisation of such Conflict Situation;

(d) subject always to the duty of each Director to declare any interests as required by Article 18.1 and the Act and to Article 18.2(c), it is confirmed and acknowledged that, to ensure the operational efficiency and effectiveness of the Agency as provided under Article 5.4(a), any Director (whether or not he is a Conflicted Director) will be entitled to participate in a meeting and a Conflicted Director, whose Conflict Situation has been authorised by the Directors pursuant to Article 18.2(a), may be authorised by the board of Directors to vote on any matter relevant to Directors (including relating to the Distribution Policy and Membership Criteria) notwithstanding that such Director may otherwise have a Conflict Situation. Any authorisation by the board of Directors as to whether a Conflicted Director can vote, will be made by the board of Directors at any meeting convened pursuant to Article 18.2 and the provisions of Article 18.2(b) will apply mutatis mutandis. In circumstances where a Conflict Situation arises in relation to Distribution Policy or Membership Criteria which affects all Directors then the Directors are authorised to obtain independent advice on such matters and may invoke the Dispute Resolution Procedures in order to determine the appropriate action to be taken.

18.3 If any Conflict Situation is authorised or otherwise permitted under these Articles, the Conflicted Director:

(a) shall not be required to disclose to the Agency (including the Directors or any committee) any confidential information relating to such Conflict Situation which that Director obtains or has obtained otherwise than in that Director's capacity as a Director of the Agency, if to make such disclosure would give rise to a breach of obligation or confidence owed by that Director to another person in relation to such matter, office, employment or position;

(b) shall, subject to authorisation pursuant to Article 18.2(d), be entitled to attend or be absent from all or any meetings of the Directors (or any committee) at which anything relating to such Conflict Situation will or may be discussed; and

(c) shall, subject to authorisation pursuant to Article 18.2(d), be entitled to make such arrangements as that Director thinks fit to receive or not to receive documents or information (including, without limitation, board papers (or those of any committee of it)) relating to any such conflict;

and in so doing, such Conflicted Director shall not be in breach of any general duty owed to the Agency pursuant to Sections 171 to 177 (inclusive) of the Act, and the provisions of this Article 18 shall be without prejudice to any equitable principle or

rule of law which may excuse the Conflicted Director from disclosing information or attending meetings or receiving documents or information, in circumstances where such disclosure, attendance or receipt would otherwise be required under these Article.

18.4 For the purposes of this Article, any interest of a person who is for any purpose of the Act (excluding any statutory modification thereof not in force when this regulation becomes binding on the Agency), connected with a Director shall be treated as an interest of the Director.

18.5 If the Agency has or may have any claim or right against a Member or any associated company of that Member or if any claim is brought, threatened or asserted by a Member or an associated company of that Member against the Agency, no Director appointed by such Member shall be entitled to:

(a) vote on any resolution relating to such matter or attend, speak or be counted in the quorum at any meeting of the Directors or any committee of the Directors to the extent of considering or discussing any such matter;

or

(b) access or to receive or see copies of any board papers (including any agenda, board minutes and draft minutes) or other papers or legal advice provided to the Agency in connection with any such matter.

18.6 The quorum at any meeting of the Directors or a committee or working group of the Directors, to the extent of considering and voting on any resolution in relation to which a Director is not entitled to vote by virtue of a Conflict Situation, shall be the greater of two eligible Directors or one third of the eligible Directors and the eligible Directors shall exercise all the powers of the Agency in relation to the matter in question.

18.7 Any Conflict Situation which arises as a result of any Director being a director or employee of a Member, or an associated company of any Member, or otherwise owing any duty to any such person shall, without prejudice to Articles 18.1 and 18.2 and matters disclosed by the Director in the Register of Interests of the Agency be deemed noted and authorised at any future meeting of the Directors for the purposes of Section 185 of the Act.

18.8 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Chairperson, the question is to be decided by a decision of the Directors at that meeting, for which purpose the Chairperson is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

## **19. DIRECTORS' GENERAL AUTHORITY AND POWERS AND APPOINTMENT OF CHAIR**

19.1 Subject to these Articles and in particular Articles 13 and 14, the Directors are responsible for the management of the business of the Agency, for which purpose they may exercise all the powers of the Agency.

- 19.2 The Directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Generally, unless otherwise provided in these Articles or the Act, all questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes the Chair shall have a second or casting vote. The quorum necessary for the transaction of the business of the Directors shall be two Directors or one third of the Directors (rounded up to the nearest whole number) for the time being whichever is the greater.
- 19.3 The Directors may elect from amongst the current Directors a Chair and Vice-Chair of meetings of the Board of Directors, meetings of the Members and meetings of persons undertaking the supervisory function under Article 14 and may determine the period for which the Chair or Vice-Chair is to hold office. If no such Chair or Vice-Chair is elected, or if at any meeting the Chair or Vice-Chair is not present within ten minutes after the time appointed for holding the same, the Directors present may choose one of their number to be Chair of the meeting. If at any time during a meeting the Chair ceases to be a participating Director, the participating Directors must appoint one of their number to chair the meeting (or the part of the meeting in relation to which a Chair ceases to be a participating Director, as the case may be).
- 19.4 A meeting of the Directors at which a quorum is present, shall be competent to exercise all the authorities, powers and discretions by or under the regulations of the Agency for the time being vested in the Directors generally.
- 19.5 All monies received by the Agency from the grant of licences or otherwise shall, subject to Article 13, be distributed or dealt with by the Directors in accordance with the Distribution Policy.
- 19.6 Before making any distribution to Members, the Directors may, subject to Article 13 and to the Distribution Policy and other applicable relevant decisions adopted by the Members:
- (a) pay or provide for all the expenses and outgoings of the Agency and for the repayment of loans raised by the Agency and the interest (if any) thereon;
  - (b) pay any remuneration or benefits to any person at any time in the employment of the Agency and the families and dependants of any such person and contribute to any pension or similar fund which may be established for the benefit of any such employees; and
  - (c) set aside such sum as it thinks necessary as a reserve fund to meet contingencies and to invest the sums set aside and deal with and vary such investments.
- 19.7 The Directors may, subject to Article 13 and to securing the agreement of the Members in General Meeting whenever required by the Regulations, make (and from time to time alter, delete and add to) rules which may deal with the following matters (without limitation):

(a) the terms and conditions of the Membership Agreement, the Distribution Policy and any other procedures which are relevant to the contractual relationship between the Members and the Agency;

(b) the form of proxy approved for General Meetings;

(c) the forms of licence to be granted to such bodies as may be appropriate. The Board of Directors may enter into contractual arrangements with any appropriate and suitable organisation being an organisation properly authorised and constituted for such purpose for it to grant the licences determined by the Directors, to enforce such licences, to collect the appropriate fees under such licences and distribute them in accordance with the procedures agreed by the Directors;

(d) the payments to be made by such bodies for such licences, differentiating (if necessary) between different categories of licences;

(e) in cases where objections are raised or where doubts exist as between Members or between a Member and the Agency, the procedure for application of relevant Dispute Resolution Procedures;

(f) accounting procedures relating to the fees collected from licensed bodies;

(g) the method and frequency of distribution to Members;

(h) how unclaimed payments are to be dealt with; and

(i) whether legal proceedings may be commenced without the sanction of the Board of Directors.

19.8 The Directors must ensure that the Agency keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the Directors.

19.9 Subject to these Articles, the Directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to Directors.

## **20. DELEGATION OF DUTIES OF DIRECTORS**

20.1 The Directors may delegate any of their powers to committees or working groups consisting of such Directors as they think fit. Any committee or working group so formed shall, in the exercise of the powers so delegated, conform to any regulations which may be imposed on it by the Directors. All acts and proceedings of such committees shall be reported as soon as is reasonably practicable to the full body of Directors.

20.2 The Directors may revoke any delegation in whole or part, or alter its terms and conditions.

20.3. A resolution in writing, signed by all the Directors for the time being entitled to receive notice of a meeting of the Directors, shall be as valid and effectual as if it had been passed at a meeting of the Directors duly convened and held.

20.4. All acts done by any meeting of the Directors or by a committee of Directors, or by any person acting as a Director shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

## **21. COMMITTEES AND WORKING GROUPS**

21.1 Committees or working groups to which the Directors delegate any of their powers must follow procedures and terms of reference which are based as far as they are applicable on those provisions of these Articles which govern the taking of decisions by Directors.

21.2 A committee or working group may elect a Chair of its meetings. If no such Chair is elected, or if at any meeting the Chair is not present within ten minutes after the time appointed for holding the same, the Members present may choose one of their number to be Chair of the meeting.

21.3 A committee or working group may meet and adjourn as it thinks proper. Questions arising at any meeting shall, unless otherwise provided by these Articles be determined by a majority of votes of the Directors present, and in the case of an equality of votes the Chairman shall have a second or casting vote.

## **22. ALTERNATE DIRECTORS**

22.1 A Director may appoint another person as their alternate and may at any time revoke such appointment.

22.2 An alternate Director shall be entitled to notice of meetings of Directors, to attend and vote as a Director at any meeting at which their appointor is not personally present and generally in the absence of his appointor to exercise all the functions of their appointor as a Director.

22.3 An alternate Director shall be deemed not to be an officer of the Agency but shall be deemed to be the agent of his appointor.

22.4 An alternate Director shall cease to be an alternate Director if for any reason their appointment is revoked. In the event that their appointor ceases to be a Director, the alternate may continue to act and attend meetings as a representative of a Member until such time as a new Director is nominated and ratified pursuant to Article 15.2 whereupon the new Director shall be entitled to appoint their own alternate under Article 22.1.

22.5 All appointments and revocations of appointment of alternate Directors shall be in writing under the hand of the appointor left at the Agency's registered office.

22.6 Every instrument appointing an alternate Director shall as nearly as circumstances will admit be in the following form or to the effect following on paper bearing the name of the Agency: -

"I  
"a Director of this Agency in pursuance  
"of the power in that behalf contained in  
"the Articles of Association of the Agency  
"do hereby nominate and appoint  
"

"of  
"to act as alternate Director in my place  
"at any meeting of the Directors which I  
"am unable to attend and to exercise all  
"my duties as a Director of the Agency

"AS WITNESS my hand this ..... day  
of ..... 20.."

**23. DIRECTORS' REMUNERATION**

- 23.1 Directors may undertake any services for the Agency which the Directors decide.
- 23.2 Directors shall not be entitled to any remuneration from the Agency for their services without the prior recommendation of the persons exercising the supervisory function in accordance with Article 14.3 and Ordinary Resolution of the Members in accordance with Article 13.4(b).

**24. DIRECTORS' EXPENSES**

Subject to Article 14.3 the Agency may pay any reasonable expenses which the Directors and the Secretary of the Agency (if any) properly incur in connection with their attendance at (or returning from):

- (a) meetings of Directors or committees of Directors; or
- (b) General Meetings; or
- (c) otherwise in connection with the business of the Agency, the exercise of their powers and the discharge of their duties and responsibilities in relation to the Agency.

**25. SECRETARY**

- 25.1 The Directors may appoint any person who is willing to act as the Secretary of the Agency for such term, at such remuneration and upon such conditions as they may think fit, and any Secretary so appointed may be removed by them at any time.
- 25.2 The Directors may from time to time, by resolution, appoint a temporary substitute for the Secretary or two or more persons as joint secretaries and one or more deputy and/or assistant secretaries and any person so appointed shall for all the purposes of these Articles be deemed during the term of his appointment to be the Secretary.

**26. THE SEAL**

- 26.1 The Directors shall provide for the safe custody of the Seal, which shall only be used by the authority of the Directors or of a committee of the Directors authorised

by the Directors in that behalf, and every instrument to which the Seal shall be affixed shall be signed by a Director and shall be countersigned by the Secretary or by a second Director or by some other person appointed by the Directors for the purpose.

- 26.2 A document signed with the authority of the Directors or a committee of the Directors, by a Director and the Secretary or by two Directors and expressed to be executed by the Agency shall have the same effect as if executed under the Seal.

## **27. DECISION MAKING BY DIRECTORS**

- 27.1 The general rule about decision-making by Directors is that any decision of the Directors must be

(a) a majority decision at a meeting; or

(b) a decision taken in accordance with Article 28 (Unanimous Decisions);

unless these Articles provide that a resolution approved by not less than 75% of the Directors (who are not Conflicted Directors) is required.

- 27.2 In respect of any of the following matters, the approval by a resolution of Directors approved by not less than 75% of the Directors (who are not Conflicted Directors) shall be required:

(a) a resolution of the Directors for the purposes of Article 5.3;

(b) the commencement of litigation or any related arbitration by the Agency;

(c) taking out or granting any loan or providing any security for any loan by the Agency;

(d) any acquisition, sale, disposal, assignment, leasing or mortgaging by the Agency of any land or immovable property.

## **28. UNANIMOUS DECISIONS**

- 28.1 A decision of the Directors is taken in accordance with this Article when all eligible Directors indicate to each other by any means they share a common view on a matter.

- 28.2 Such a decision may take the form of a resolution in writing where each eligible Director has signed one or more copies of it or to which each eligible Director has otherwise indicated agreement in writing.

- 28.3 A decision may not be taken in accordance with this Article if the eligible Directors would not have formed a quorum at a Directors' meeting held to discuss the matter in question.

## **29. CALLING A DIRECTORS' MEETING**

- 29.1 Any Director, including the Chief Executive Officer appointed by the Directors from time to time, may call a Directors' meeting by giving notice of the meeting to the Directors or by authorising the Secretary (if any) to give such notice.
- 29.2 Notice of any Directors' meeting must indicate:
- (a) its proposed date and time;
  - (b) where it is to take place;
  - (c) the matters to be discussed; and
  - (d) if it is anticipated that Directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- 29.3 Save as provided otherwise in these Articles, notice of a Directors' meeting must be given to each Director in writing but may be communicated by electronic means as provided by these Articles.
- 29.4 Notice of a Directors' meeting need not be given to Directors who waive their entitlement to notice of that meeting.

## **30. PARTICIPATION IN DIRECTORS' MEETINGS**

- 30.1 Subject to these Articles, Directors participate in a Directors' meeting, or part of a Directors' meeting, when:
- (a) the meeting has been called and takes place in accordance with these Articles, and
  - (b) they can each communicate orally (including by means of telephone, video conference or other audio or audio-visual link or any other form of telecommunication) to the others any information or opinions they have on any particular item of the business of the meeting.
- 30.2 In determining whether Directors are participating in a Directors' meeting, it is irrelevant where any Director is or how they communicate with each other, provided that all persons participating in the meeting can hear each other.
- 30.3 If all the Directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

## **31. REGISTER OF MEMBERS**

- 31.1 The Directors shall cause a Register of Members to be kept at the registered office of the Agency.
- 31.2 The Directors shall cause the Register of Members which is kept under the provisions of this Article to be completed and made available for inspection in accordance with the provisions of the Act.

## **32. DECISION MAKING BY MEMBERS AND GENERAL MEETINGS**

- 32.1. The Agency shall hold a General Meeting as its Annual General Meeting in each calendar year in addition to any other meetings in that year, and shall specify the meeting as such in the notice calling it. The Annual General Meeting shall be held at such time and place as the Directors shall appoint.
- 32.2. All General Meetings other than Annual General Meetings shall be called General Meetings.
- 32.3. The Directors may, whenever they think fit, convene a General Meeting, and General Meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by Sections 303 and 304 of the Companies Act 2006. If at any time there are not within the United Kingdom sufficient Directors capable of forming a quorum, any five Directors or any five Members of the Agency may convene a General Meeting in the same manner as nearly as possible as that in which meetings may be convened by the Directors.

## **33. NOTICE OF GENERAL MEETINGS**

- 33.1 Any General Meeting of the Agency including an Annual General Meeting or a meeting called for the passing of a Special Resolution or a resolution appointing a person as a Director shall be called by at least twenty eight clear days' notice in writing unless the Members shall have given consent to shorter notice being provided for the transaction of business as required by the Act in accordance with Article 34.11.
- 33.2 The notice shall specify the place, the day and the hour of meeting and, the general nature of the business to be dealt with at that meeting and shall be given, in any manner permitted by these Articles (as permitted by the Act) or in such other manner, if any, as may be prescribed by the Agency in General Meeting, to such persons as are, under these Articles, entitled to receive such notice from the Agency provided always that a meeting of the Agency shall, notwithstanding that it is called by shorter notice than that specified in this Article be deemed to have been duly called if it is so agreed: -
- (a) in the case of a meeting called as the Annual General Meeting, by all the Members entitled to attend and vote; and
- (b) in the case of any other meeting, by agreement of not less than the equivalent of 80% of the Members having a right to attend and vote at the meeting.
- 33.3 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

## **34. PROCEEDINGS AT GENERAL MEETINGS**

- 34.1 All Members of the Agency shall have the right to participate in, and the right to vote at, any General Meeting of the Agency. When a Member gives notice that they wish to participate in a General Meeting by telephone link, the Member will be enabled to participate in this way.

- 34.2 No business shall be transacted at any General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business; save as herein otherwise provided, one half of the Members present in person or by proxy shall be a quorum.
- 34.3 If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the Directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Members present shall be a quorum.
- 34.4 The Chair appointed under Article 21.4 shall preside as Chair of the meeting at every General Meeting of the Agency or, if there is no such Chair, or if the Chair shall not be present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, the Directors present shall elect one of their number or an officer of the Agency to be Chair of the meeting. Such person shall be the Chair of the meeting.
- 34.5 If at any meeting no Director is willing to act as Chair or if no Director is present within fifteen minutes after the time appointed for holding the meeting, the Members present shall choose one of their number or an officer of the Agency to be Chair of the meeting.
- 34.6 The Chair of the meeting may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- 34.7 At any General Meeting a resolution put to the vote of the meeting shall (subject to the Act) be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded (a) by the Chair or (b) by at least two Members present in person or by proxy or (c) by any Member or Members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the Members having the right to vote at the meeting. Unless a poll be so demanded a declaration by the Chair that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of proceedings of the Agency, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.
- 34.8. Except as provided in Article 34.7 if a poll is duly demanded it shall be taken in such manner as the Chair directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

- 34.9. In the case of an equality of votes, whether on a show of hands or on a poll, the Chair of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.
- 34.10 A poll demanded on the election of a Chair, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the Chair of the meeting directs, and any business other than that upon which a poll has been demanded may be conducted pending the taking of the poll.
- 34.11 Subject to the provisions of the Act and the Membership Agreement, a resolution in writing signed by the Relevant Percentage of Members for the time being entitled to receive notice of and to attend and vote at General Meetings (or being corporations by their duly authorised delegates or representatives) shall be as valid and effective as if the same had been passed at a General Meeting of the Agency duly convened and held and any written resolution must comply with the provision of Part 13 of the Act. For the purposes of this Article, "Relevant Percentage" shall mean the percentage of Members required to pass either an Ordinary Resolution or Special Resolution (as the case may be) if that resolution was passed at a General Meeting of the Agency.
- 34.12 If at any General Meeting any vote shall be counted which ought not to have been counted, or might have been rejected, the error shall not vitiate the results of the voting unless it be pointed out at the same meeting, and not in that case unless it shall, in the opinion of the Chair of the meeting, be of sufficient magnitude to vitiate the result of the meeting.

## **35. VOTES OF MEMBERS AND PROXY NOTICES**

- 35.1 Every Member shall have one vote.
- 35.2 On a poll votes may be given either personally or by proxy. Every Member has the right to appoint another person as proxy to participate in, and vote at, a General Meeting of members on the Member's behalf provided that the appointment does not result in a conflict of interest.
- 35.3 An appointment of a proxy shall be:
- (a) by means of an instrument or contained in electronic form;
  - (b) any usual or common form or in any other form which the Directors may from time to time approve; and
  - (c) executed by the Member or his agent or, if the Member is a corporation by a duly authorised officer, attorney or other authorised person or under its common seal.
- 35.4 For the purpose of this Article 35, an electronic communication which contains a proxy appointment need not comprise writing if the Directors so determine. In such case, if the Directors so determine, the appointment shall not be executed but shall instead be subject to such conditions as the Directors may approve.
- 35.5 The Directors may, if they think fit, but subject to the Act, at the expense of the Agency send forms of proxy for use at the meeting and issue invitations contained

in electronic communications to appoint a proxy in relation to the meeting in such form as the Directors may approve.

35.6 A proxy need not be a Member of the Agency.

35.7 The appointment of a proxy shall:

(a) in the case of an instrument, be delivered personally or by post to the registered office or such other place within the United Kingdom as may be specified by or on behalf of the Agency for that purpose

(i) in the notice convening the meeting; or

(ii) in any form of proxy sent by or on behalf of the Agency in relation to the meeting;

not less than 48 hours before the time fixed for holding the meeting.

(b) in the case of an appointment contained in an electronic communication, where an address has been specified by or on behalf of the Agency for the purpose of receiving electronic communications:

(i) in the notice convening the meeting; or

(ii) in any form of proxy sent by or on behalf of the Agency in relation to the meeting; or

(iii) in any invitation contained in an electronic communication to appoint a proxy issued by or on behalf of the Agency in relation to the meeting

be received at that electronic address not more than 48 hours before the time appointed for holding the meeting.

In calculating the 48 hour period above, no account shall be taken of any day or part of a day that is not a working day.

35.8. No appointment of a proxy shall be valid after the expiration of twelve months from the date stated in it as the date of its execution.

35.9 An appointment of a proxy shall, unless the contrary is stated on the proxy, also be valid for any adjournment of the meeting as for the meeting to which it relates. An appointment relating to more than one meeting (including any adjournment of a meeting) having been duly delivered for the purposes of any meeting shall not need to be delivered again in relation to any subsequent meetings to which it relates.

35.10 An instrument or electronic communication appointing a proxy shall be in the following form or any other form which the Directors may approve from time to time: -

"I/We \_\_\_\_\_ of \_\_\_\_\_  
 " \_\_\_\_\_, being a Member/Members of the "above-  
 named Agency, hereby appoint \_\_\_\_\_ of \_\_\_\_\_  
 "or failing \_\_\_\_\_  
 "of \_\_\_\_\_ as my/our proxy to vote "for  
 me/us on my/our behalf at the (Annual General or General as the case "may be)  
 Meeting of the Agency to be held on \_\_\_\_\_ "the  
 day of \_\_\_\_\_ 20 \_\_\_\_\_, and at any "adjournment thereof.

"Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_."

35.11 The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

### **36. REPRESENTATIVES OF MEMBERS**

Any corporation or unincorporated body which is a Member of the Agency may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Members of the Agency, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation or body represented as that corporation or body could exercise if it were an individual Member of the Agency. Every such Member shall notify the Secretary of the Agency in writing not less than twenty-four hours before a General Meeting of the name of its representative who will attend the meeting. Any Director or the Secretary may (but shall not be bound to) require evidence of the authority of any representative.

### **37. ACCOUNTS AND DIRECTORS' AND ANNUAL TRANSPARENCY REPORT**

37.1 The Directors shall cause proper books of account to be kept in accordance with the provisions of Section 386 of the Companies Act 2006 with respect to: - (a) all sums of money received and expended by the Agency and the matters in respect of which the receipt and expenditure takes place; and (b) the assets and liabilities of the Agency; and (c) all those matters required by the Act to be shown in the accounts of the Agency.

37.2 Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the Agency's affairs and to explain its transactions.

37.3 The books of account shall be kept at the registered office of the Agency, or, subject to Section 388 of the Companies Act 2006 at such other place or places as the Directors think fit, and shall always be open to the inspection of the Directors.

37.4 The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Agency or any of them shall be open to the inspection of Members or representatives not being Directors, and no Member or representative (not being a

Director) shall have any right of inspecting any account or books or document of the Agency except as conferred by the Regulations or at law or authorised by the Directors or by the Agency in General Meeting.

- 37.5 The Directors shall from time to time cause to be prepared and laid before the Agency in General Meeting such profit and loss accounts, balance sheets and Directors' reports and Annual Transparency Reports as are provided for in the Act and the Regulations.
- 37.6 A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the Agency in General Meeting, together with a copy of the Auditor's report, shall not less than fourteen days before the date of the meeting be sent to every Member of, and every holder of debentures of, the Agency, provided that this Article shall not require a copy of those documents to be sent to any person of whose address the Agency is not aware.
- 37.7 The declaration of the Directors supported by the certificate of the Auditors as to the amount of the monies received by the Agency shall be conclusive.

### **38. AUDIT**

Auditors shall be appointed and their duties regulated in accordance with the Act and the Regulations.

### **39. COMMUNICATIONS**

- 39.1 Subject to the provisions of the Act (and save as otherwise provided in these Articles), any document or information required or authorised to be sent or supplied by the Agency to any Member or any other person (including a Director) pursuant to these Articles, the Act or any other rules or regulations to which the Agency may be subject, may be sent or supplied in hard copy form, in electronic form or in any other way in which documents or information may be sent or supplied by the Agency pursuant to the Act.
- 39.2 Subject to these Articles, any notice or document to be sent or supplied to a Director in connection with the taking of decisions by Directors may also be sent or supplied by the means by which that Director has asked to be sent or supplied with such notices or documents for the time being.
- 39.3 The provisions of the Act which apply to sending or supplying a document or information required or authorised to be sent or supplied by the Act by making it available on a website shall, mutatis mutandis, apply to the sending or supplying of any document or information required or authorised to be sent by these Articles or any other rules or regulations to which the Agency may be subject, by making it available on a website.
- 39.4 The Agency may send or supply any document or information to a Member or any other person (including a Director) pursuant to these Articles, the Act or any other rules or regulations to which the Agency may be subject, either personally, or by post in a prepaid envelope addressed to the Member (or such other person) at its registered address or address for service, or by leaving it at that address or any

other address for the time being notified to the Agency by the member (or such other person) for the purpose, or by sending or supplying it using electronic means to an electronic address for the time being notified to the Agency by the Member (or such other person) for the purpose, or by any other means authorised in writing by the Member (or such other person) concerned.

- 39.5 If, on at least two consecutive occasions, the Agency has attempted to send any document or information by electronic means to any address specified (or deemed specified) for the purpose and a delivery failure (or other similar) notification has been received by the Agency, the Agency thereafter shall send documents or information in hard copy form or electronic form (but not by electronic means) to such Member at its registered address or address for service within the United Kingdom (whether by hand, by post or by leaving it or them at such address), in which case the provisions of Article 39.6 shall apply.
- 39.6 If on three consecutive occasions, documents or information have been sent or supplied to any Member at its registered address or address for service of such documents or information but have been returned undelivered, such Member shall not thereafter be entitled to receive any documents or information from the Agency until it shall have communicated with the Agency and supplied in writing a new registered address or address for the service of documents or information or an electronic address to which documents or information may be sent or supplied using electronic means.
- 39.7 Any Member present, in person or by proxy, at any meeting of the Agency shall be deemed to have received due notice of such meeting and, where requisite, of the purpose for which such meeting was called.
- 39.8 Save as provided otherwise in these Articles, any document or information addressed to a Member (or other person to whom such document or information is required or authorised to be sent pursuant to these Articles, the Act or otherwise) at its registered address or address for service or electronic address, as the case may be, shall:
- (a) if hand delivered or left at a registered address or other address for service be deemed to have been served or delivered on the day on which it was so delivered or left;
  - (b) if sent or supplied by post be deemed to have been received at the expiration of 48 hours after the envelope was posted;
  - (c) if sent or supplied by electronic means (other than by means of a website), be deemed to have been received (if sent or supplied between the hours of 9 a.m. and 5 p.m. on a working day) at the time it was sent, or (if sent or supplied at any other time) at 9 a.m. on the next following working day; and
  - (d) if sent or supplied by means of a website, be deemed to have been received when the material was first made available on the website or, if later, when the recipient received (or is deemed to have received) notice of the fact that the material was available on the website.

- 39.9 In calculating a period of hours for the purpose of Article 39.8 no account shall be taken of any part of a day that is not a working day.
- 39.10 A Director may agree with the Agency that documents sent to that Director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than those set out in Article 39.8.
- 39.11 Subject to Article 39.6, in providing such service or delivery it shall be sufficient to prove that the envelope containing the document or information was properly addressed and put into the post in a prepaid envelope or, in the case of a document or information sent or supplied by electronic means, that it was sent or supplied in accordance with the guidance issued by the Institute of Chartered Secretaries and Administrators entitled "Electronic Communications with Shareholders 2007" (as such guidance is amended or updated from time to time).
- 39.12 The Agency shall not be held responsible for any failure in transmission beyond its reasonable control and the provisions of this Article shall apply regardless of any document or information being returned undelivered and regardless of any delivery failure notification or "out of office" or other similar response and any such "out of office" or other similar response shall not be considered to be a delivery failure.
- 39.13 Notice of every General Meeting shall be given in any manner hereinbefore authorised to:-
- (a) every Member except those Members who (having no registered address within the United Kingdom) have not supplied to the Agency an address within the United Kingdom or overseas for the giving of notice to them;
  - (b) the Auditor for the time being of the Agency.

No other person shall be entitled to receive notices of General Meetings.

#### **40. INDEMNITY AND FUNDS**

Subject to the provisions of the Act, but without prejudice to any indemnity to which he may otherwise be entitled, each person who is a Director, Alternate Director, officer, manager or Secretary of the Agency shall be indemnified out of the assets of the Agency against all costs, charges, losses, and liabilities incurred by him in the proper exercise of his powers, authorities and discretions including, without limitation, a liability incurred:

- (a) defending proceedings (whether civil or criminal) in which judgment is given in his favour or in which he is acquitted, or which are otherwise disposed of without a finding or admission of material breach on his part; or
- (b) in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Agency.

For these purposes "the Act" as defined in Article 1 shall be deemed to include the Companies (Audit and Investigations and Community Enterprise) Act 2004 (the

"2004 Act") including any statutory modification or any statutory re-enactment or substitution of the 2004 Act and any regulations made under the 2004 Act for the time being in force.

#### **41. INSURANCE**

41.1 Without prejudice to Article 40 the Directors shall have the power to purchase and maintain insurance for or for the benefit of any person who is or was at any time:

- (a) a Director or other officer of any Relevant Company (as defined in Article 41.2 below) or
- (b) a trustee of any pension fund or retirement, death or disability scheme for the benefit of any employee of any Relevant Company or employees' share scheme in which the employees of any Relevant Company are interested,

including (without limitation) insurance against any liability within Article 40 incurred by him in relation to any Relevant Company, or any such pension fund, retirement or other scheme or employees' share scheme.

41.2 In these Articles "Relevant Company" shall mean the Agency or any other undertaking which is or was at some time:

- (a) a subsidiary undertaking of the Agency; or
- (b) otherwise associated with the Agency or any subsidiary undertaking or the predecessors in business of the Agency or of any subsidiary undertaking or associate.

#### **42. WINDING UP**

In the event of and upon the winding up of the Agency, whether voluntary or otherwise, at any time, the assets of the Agency (other than any rights vested in or controlled by the Agency pursuant to these Articles and any sums distributable) shall, insofar as they are available for the purpose, be apportioned among the Members in the proportions in which the Copyright Owners represented by each Member received shares of all the Agency's receipts during the year ending 31 March immediately prior to such winding up.