

THE EDUCATIONAL RECORDING AGENCY LIMITED

MEMBERSHIP AGREEMENT dated 15 September 2016

BETWEEN

(1)

("the Member") and

(2) THE EDUCATIONAL RECORDING AGENCY LIMITED whose registered office is at Verulam House, 60 Gray's Inn Road, London WC1X 8LU ("ERA").

1. DEFINITIONS

In this Agreement

1.1 words and phrases which are not defined shall have the same meaning as in the Constitution.

1.2 "**Constitution**" means the Articles of Association of ERA together with any Rules and Bye-Laws (which are all available on request) and any changes or additions made from time to time to such documents.

1.3 "**Mandated Rights**" shall for the purposes of this Membership Agreement comprise the non-exclusive right to represent the Works for the purposes of developing, operating and applying licensing schemes for non-commercial educational uses of the Work or off-air educational recording of broadcasts and use of recordings derived from recording of broadcasts in all circumstances when the provisions of section 35 and/or paragraph 6 Schedule 2 of the Copyright Act might otherwise be relevant to the use of the Works ("the s 35 provisions").

Licensing schemes operated by ERA relevant to Mandated Rights are referred to as the "ERA Licensing Scheme".

1.5 "**Mandated Uses**" shall for the purposes of this Membership Agreement mean uses of Works which ERA is authorised to license as part of the Mandated Rights.

1.6 "**Membership Registration Form**" shall mean the Annex to this Membership Agreement as updated and amended by agreement between the Member and ERA from time to time.

1.7 "**Rules and Bye-Laws**" means the rules and bye-laws which are published by ERA with the Agreement of members or the Board of Directors of ERA acting in accordance with the Constitution.

1.4 **“Territory”** means the United Kingdom together with such other territories of the world to which the Member agrees that Mandated Uses authorised by ERA shall apply.

1.5 **“Works”** shall be as specified in the Membership Registration Form.

2. ERA MANDATE

2.1 The Member hereby appoints ERA on a non-exclusive basis to act as the agent of the Member to manage and administer the Mandated Rights in the Works for Mandated Uses whilst the Member shall remain in membership of ERA.

2.2 Any prior Membership Agreement between the parties including (but not limited to) any appointment of ERA as agent concerning any of the Mandated Rights (“the Earlier Membership Agreement”) shall by mutual agreement of the parties cease to have effect with effect from the Commencement Date of the Agreement but without prejudice to the accrued rights of the parties under the Earlier Membership Agreement as at such date.

2.3 Without prejudice to any express provisions included in this Agreement reference to a statutory provision will be interpreted as a reference to that provision as amended or re-enacted from time to time including any statutory instrument order or Government regulation from time to time made or issued pursuant to that provision.

3. APPLICATION OF MANDATED RIGHTS

ERA’s appointment shall include the right (but not the obligation) for ERA to: -

3.1 exercise the Mandated Rights by instituting and operating the ERA Licensing Scheme in relation to one or more Works;

3.2 negotiate and enter into agreements with those who require licences or the appointed representatives of those who require licences in exercise of the Mandated Rights;

3.3 appoint agents to enter into agreements with those who require licences relevant to exercise of Mandated Rights;

3.4 negotiate and enter into agreements with those who require consents from ERA to authorise them to make or use recordings of Works for or on behalf of those who hold licences relevant to exercise of the Mandated Rights for non-commercial educational purposes;

3.5 collect and give a good receipt for all royalties fees and other monies arising in relation to exercise of the Mandated Rights;

- 3.6 verify by audit or otherwise whether or not the parties with whom ERA has entered into agreements in relation to the Mandated Rights are complying with the terms and conditions thereof;
- 3.7 determine by negotiation or otherwise the terms and conditions upon which licences are granted in the exercise of the Mandated Rights including the royalties fees or other monies payable for such licences;
- 3.8 appoint sub-agents to exercise some or all of the Mandated Rights in the Territory;
- 3.9 amend and vary and agree amendments to, or variations in relation to, any ERA Licensing Scheme relevant to exercise of the Mandated Rights but within the scope of the Constitution and subject as provided by this Membership Agreement.

4. **DISTRIBUTIONS**

- 4.1 ERA shall make distributions of royalties and fees collected and processed and earned to members in accordance with the Distribution Policy which shall form part of the Rules under the Constitution.
- 4.2 Payments to the Member against an agreed distribution in accordance with the Constitution shall be made in the percentage share attributable to the Member as set out in the Membership Registration Form PROVIDED THAT the Member may upon written notice to ERA with the consent of all other members of ERA in the same membership category alter the percentage share of each of the members of that Category.
- 4.3 All payments to the Member shall be subject to: -
 - (a) deductions provided for pursuant to the Distribution Policy and the terms of ERA's Investment Policy and Policy on Deductions each as established under the Constitution from time to time (such Policies being together referred to as "Approved Policies");
 - (b) the deduction or withholding of any taxes required to be deducted or withheld under the laws applicable within the United Kingdom or within any country in which the relevant royalties fees or other sums became payable to ERA;
 - (c) any governmental or other permission required to pay all or any part of such payment to any party outside the United Kingdom or the country in which the relevant royalties fees or other sums arose.

Upon request by the Member ERA will (subject to appropriate arrangements being in place for the recoupment by ERA of any costs incurred by ERA in so doing) use all reasonable endeavours to assist the Member in reclaiming any taxes by providing the Member with such information as is available to ERA in

relation to the sums deducted or withheld. Where ERA has deducted any such sums ERA shall at the request of the Member provide a certificate as to the sums so deducted.

5. VAT

- 5.1 Without prejudice to the specific obligations referred to in this Clause the Member shall comply with any and all obligations imposed on it by the VAT legislation in force from time to time and hereby indemnifies ERA against all claims demands costs and expenses made against or incurred by ERA whether by reason of the Member's failure to comply with such obligations or by reason of any notice or direction by the Commissioners of Customs and Excise (or any successors within the Department of HM Revenue and Customs) (hereinafter "the Commissioners") substituting ERA as the person accountable for VAT concerning any supply by or to or from ERA and/or compliance with such obligations as aforesaid.
- 5.2 The Member undertakes to account to the Commissioners for any VAT due on royalties: -
- (a) collected by ERA as agent for the Member where Section 47(3) of the Value Added Tax Act 1994 or any relevant law amending or re-enacting the same for the time being in force does not apply; and
 - (b) distributed by ERA to the Member.
- 5.3 The Member hereby agrees, should ERA so elect from time to time, to allow ERA to operate any self-billing arrangements approved by the Commissioners and for such purpose undertakes with ERA: -
- (a) not to issue any VAT invoice or document purporting to be a VAT invoice in respect of royalties received from ERA;
 - (b) if registered for VAT at any time during the operation of this Membership Agreement to provide ERA with the name and number under which the Member is registered and any other information requested by ERA in connection with such self-billing arrangements.
- 5.4 If the Member at any time ceases to be registered for VAT to inform ERA of the effective date thereof forthwith upon receipt of notice of cancellation of the Member's registration.
- 5.5 Subject to ERA giving to all Members notice of its intention the Member hereby grants to ERA should ERA so elect full discretion on the Member's behalf to make any application or to support any application made by ERA to the Commissioners concerning the treatment for VAT purposes of any supply of

services (as that term is defined by the Value Added Tax Act 1994) as ERA or by ERA as agent for the Member.

- 5.6 The Member agrees that ERA may exercise the Mandated Rights in its own name as agent for the Member for the purposes of Section 47(3) of the Value Added Tax Act 1994.

6. ERA UNDERTAKINGS

- 6.1 Subject to deductions permitted by Approved Policies and whilst the Member remains in membership of ERA, ERA undertakes to use reasonable endeavours to protect Mandated Rights from infringement and to collect the royalties fees and other sums arising under licences granted by ERA. The obligations imposed on ERA by this undertaking shall at all times be construed in accordance with the general commercial policies including any financial constraints adopted by the Board of Directors from time to time.
- 6.2 ERA shall have no obligation to commence or continue proceedings as part of its obligations under Clause 6.1 where in its reasonable opinion after consultation with the Member the amount of costs and expenses relating to such proceedings not likely to be recovered may be more or not materially less than the amount of damages likely to be recovered; or where ERA has been advised by its lawyers that proceedings should not be commenced or continued on any other reasonable commercial or legal grounds.
- 6.3 ERA undertakes not to discriminate between members of ERA by giving preferential treatment to one member of ERA against another member of ERA except as provided for in this Agreement or in the Constitution.

7. MEMBERS' WARRANTIES AND UNDERTAKINGS

- 7.1 The Member hereby agrees, represents, warrants and undertakes to ERA that:
- (a) it has full power and authority to enter into this Agreement and to grant the rights and powers referred to and to give ERA all permissions and authorisations contained in this Agreement which are necessary for ERA to carry out its agency and obligations pursuant to this Agreement;
 - (b) the exploitation of the Mandated Rights of the Member by ERA in accordance with the terms of this Agreement or by any licensee of those Mandated Rights pursuant to any ERA Licensing Scheme will not infringe the intellectual property or other rights of any third party anywhere throughout the world;
 - (c) upon the request of ERA the Member will promptly supply ERA with copies of any document relating to the ownership control or administration of the

Mandated Rights or the licensing of such Mandated Rights in the possession power custody or control of the Member and to use all reasonable efforts to obtain any other such document reasonably requested by ERA; and

(d) the Member will promptly do all acts and things (including the execution and delivery of any deeds or documents) which shall be necessary, expedient, or desirable to give effect to the terms of this Agreement and promptly render such assistance and give such information to ERA as ERA may reasonably require for the purposes of this Agreement;

7.2 The Member undertakes to provide the information required under the Membership Registration Form, completely and accurately and will keep ERA fully and promptly informed of any changes becoming known to the Member in the facts and matters referred to in the Membership Registration Form or otherwise notified to ERA as required by this Agreement and to give ERA notification or ensure that ERA is given notification of the date on which the Member ceases to control or administer the Mandated Rights or any of them in any part of the Territory.

7.3 The Member warrants and undertakes that it will

(a) refrain from doing anything likely to limit or prejudice the success of ERA in protecting and furthering the common interest of all members of ERA in ensuring that the Mandated Rights are not infringed and that proper remuneration is paid by copyright users; and

(b) not to do anything which would or might undermine the reputation or good standing of ERA or any of the rights which it administers as agent (whether for the Member or for other members of ERA).

7.4 The Member hereby agrees to indemnify and to hold harmless ERA as soon as reasonably practicable after written request against any and all losses cost actions proceedings claims and demands against ERA and all costs (including legal costs and expenses and applicable VAT actually incurred) damages and expenses which ERA may incur:

(a) as a result of any breach of any warranties or undertakings contained in this Agreement; or

(b) (without limiting the foregoing) because the Member is not entitled to appoint ERA as agent for the exercise of any Mandated Right or Work or the use or exploitation thereof infringes the copyright or other right in any other work of any nature or is not subject to copyright or is defamatory or criminally obscene in each case anywhere in the world;

and in each case howsoever caused and whether or not in the contemplation of the parties and whether or not reasonably or otherwise foreseeable or avoidable and where such indemnity involves the payment or reimbursement of costs such payment or reimbursement shall be made forthwith upon written demand.

- 7.5 The Member shall be obliged to provide ERA with such information, within such period as ERA shall reasonably require, to confirm and to verify ownership of any Mandated Rights from time to time.

8. PROCEEDINGS

- 8.1 In acting under this Agreement ERA shall have the right at its own expense to bring, defend, compromise, abandon, take over or intervene in any proceedings of whatsoever nature as may be necessary for the enforcement or protection of Mandated Rights including (without limitation) before the Copyright Tribunal.
- 8.2 Where the Member's name is specifically referred to as applicant, plaintiff defendant or intervener whether or not in representative proceedings ERA undertakes to keep the Member informed of progress in such proceedings on a reasonable basis and to consult with the Member prior to compromising or abandoning such proceedings.

9. DISPUTES

In the case of any dispute between the Member and any other member of ERA relating to any matter dealt with under this Agreement ERA will endeavour to maintain impartiality giving such assistance as it may deem necessary for the satisfactory settlement thereof. Subject to this, disputes will be addressed as provided for by the Constitution.

10. DURATION

- 10.1 This Agreement shall commence on the date upon which it is executed by the second of ERA and the Member.
- 10.2 Where no Earlier Membership Agreement applies and the Member is not already a member of ERA the Member to which this Agreement applies shall become a provisional member of ERA between the date of execution and the Date of Commencement specified in the Membership Registration Form.
- 10.3 Full membership shall apply from the Date of Commencement and, subject as provided in the Membership Registration Form concerning notified changes of any relevant Mandated Rights, such membership shall continue thereafter unless determined on notice or for breach or otherwise as provided by this Agreement or the Constitution.

- 10.4 Membership may be terminated on notice by either party upon such party giving to the other at least 3 months written notice not to take effect except on the first day of a calendar month (“the notified withdrawal date”) or as otherwise provided in the Constitution provided that to the extent licences have been issued under an ERA Licensing Scheme for a term not exceeding 12 months at any time prior to the notified withdrawal date (“Pre-termination Licences”) the Member acknowledges and agrees that the terms of this Agreement shall apply to such licences as if the notified withdrawal date had not been reached; and the agency of ERA under this Agreement shall expire automatically on the date which is 40 years after the Date of Commencement.
- 10.5 Upon the expiry of any period of notice referred to under 10.4 or when the Member shall have ceased to be a member in accordance with the Constitution or if the agency under this Agreement expires or properly terminates in accordance with this Agreement for any reason, ERA shall retain the right to collect all royalties fees and other monies relevant to the Mandated Rights or to the participation in ERA by the Member which in the ordinary course of business should have been paid prior to the expiry of such notice or which relate to payments pursuant to Pre-termination Licences or periods prior to such expiry and all the rights and powers of ERA under the agency shall continue for those purposes until terminated by ERA or by operation of law.
- 10.6 Upon the termination of the agency under this Agreement in respect of any Mandated Rights for any reason the Member shall be entitled (subject to the Approved Policies of ERA in force and the relevant time) to the distributions already accrued to it at the date of such expiry or termination in relation to the Mandated Rights pursuant to this Agreement and which may additionally become due to it in accordance with this Clause, but not further or otherwise.
- 10.7 A party (**“The Initiating Party”**) may terminate the agency of ERA under this Agreement in relation to all or any Mandated Rights with immediate effect at any time by giving written notice to the other party (**“Breaching Party”**) on or at any time after the occurrence of an event specified in 10.8 below and such termination shall apply without prejudice to the accrued rights of the parties at the date upon which termination takes effect.
- 10.8 The events are the Breaching Party committing:
- (a) an irremediable breach of this Agreement;
 - (b) a remediable breach of a material obligation under this Agreement which breach, if capable of remedy, has not been remedied within a reasonable period after the initiating party has served written notice on Breaching Party specifying the breach and the steps required to remedy it and stating

that a failure to remedy the breach may give rise to termination under 10.7 above;

- (c) the Breaching Party passing a resolution for its winding up, a court of competent jurisdiction making an order for the Breaching Party's winding up or the presentation of a petition for the Breaching Party's winding up which is not dismissed within 7 days;
- (d) the Breaching Party having an order made for the appointment of an administrator to manage its affairs or business and property or documents are filed with a court of competent jurisdiction for the appointment of an administrator or notice of intention to appoint an administrator is given by a qualifying floating charge holder (as defined in paragraph 12 Schedule 1B to the Insolvency Act 1986);
- (e) the Breaching Party has a receiver appointed over its assets or undertaking or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party or if any other person takes possession of or sells the Breaching Party's assets;
- (f) the Breaching Party makes any voluntary arrangement or composition with its creditors generally or applies to a court of competent jurisdiction for protection from its creditors in any way;
- (g) the Breaching Party ceases, or threatens to cease, to carry on business;
- (h) the Breaching Party is unable to pay its debts as they fall due, within the meaning of S123 of the Insolvency Act 1986;

or if any analogous situation to any of the above occurs in relation to the Breaching Party under the law of any jurisdiction.

10.9 For the avoidance of doubt an Initiating Party may terminate the agency under this Agreement in respect of some, or any or all Mandated Rights which are subject to ERA's agency at the relevant time.

11. MISCELLANEOUS

11.1 Whilst acting under this Agreement ERA must have regard to what the Board of Directors and those providing the supervisory function for ERA in accordance with the Constitution consider to be the general interest of its members and in the event of conflict the general interest of the members of ERA shall be paramount over the specific interest of the Member.

11.2 Subject to the Constitution the Member shall use its reasonable endeavours to procure any representative nominated for and appointed as a Director of ERA in

accordance with the Constitution shall at all times act in the best interests of ERA.

- 11.3 This Agreement shall be construed according to the Laws of England and Wales and the parties hereto agree to submit to the exclusive jurisdiction of the High Court of Justice in England and Wales.

12. REMEDIES AND WAIVERS

- 12.1 A failure to exercise or delay in exercising any right, remedy or power provided under this Agreement or by law does not constitute a waiver of the right, remedy or power or a waiver of any other right, remedy or power. No single or partial exercise of any right, remedy or power prevents any further exercise of it or the exercise of any other right, remedy or power.
- 12.2 Except where this Agreement provides otherwise, the rights, remedies and powers provided by this Agreement are cumulative and not exclusive of any rights, remedies or powers provided by law.
- 12.3 Any waiver of a breach of any of the terms of this Agreement or of any default under this Agreement shall not be deemed a waiver of any other breach or default and shall not affect the other terms of this Agreement.

13. INVALIDITY

- 13.1 If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction:
- (a) the legality, validity and enforceability in that jurisdiction of the remaining provisions shall be unaffected; and
 - (b) the legality, validity and enforceability in any other jurisdiction of that or any other provision shall be unaffected.
- 13.2 Subject and without prejudice to Clause 13.1 the parties shall replace such illegal, invalid or unenforceable provision with legal, valid and enforceable provisions which will achieve, to the greatest extent possible, the economic, business and other purposes of the illegal, invalid or unenforceable provision provided that the commercial balance of this Agreement shall not be materially altered.

14. SET-OFF

- 14.1 ERA may at any time set off any liability of the Member to ERA against any liability of ERA to the Member, in either case however arising, or whether such liability is present or future, liquidated or unliquidated.
- 14.2 If the liabilities of the parties are in different currencies, ERA may convert any liability at a market rate of exchange for the purpose of set-off.

14.3 Any exercise by ERA of its rights under this clause shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

15. NOTICES

Communications and notices between the parties under this Agreement shall be governed by the Communication provisions within the Constitution.

16. THIRD PARTY RIGHTS

The parties agree that the provisions of this Agreement are personal to them and are not intended to confer any rights of enforcement on or any third party. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement or to any of its provisions.

ANNEX

MEMBERSHIP REGISTRATION FORM

MANDATED RIGHTS

The Member confirms that with effect from the Date of Commencement ERA's appointment shall apply in respect of "Members Rights" which shall comprise those legal rights which the Member owns or controls or which are owned or controlled by Right Holders whom the Members is appointed to represent but in "Works" comprising: -

(herein together "the Mandated Rights")

The Member shall notify ERA in writing should the description of the Works relevant to Mandated Rights change or require change and such notification shall be drawn to the attention of the full membership of ERA for the purposes of application of the Constitution.

As at the Date of Commencement the Territory in which Mandated Rights may be applied shall include the United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man.

MEMBERSHIP CATEGORY

Category

NET REVENUE SHARE OF DISTRIBUTABLE REVENUE WITHIN ALLOCATED MEMBERSHIP CATEGORY TO BE APPLIED IN ACCORDANCE WITH APPROVED POLICIES

The Member acknowledges and agrees that any distributions and payments under this Agreement shall be made from the percentage of Net revenue allocated to Category in accordance with Appendix 1 of the Distribution Policy (or as otherwise agreed from time to time under this Agreement) ("Category Revenues").

The percentage of Net revenue allocated to Category shall be % of the total revenue allocated to all Categories of ERA Membership.

The Member and ERA agree that the percentage of Category Revenues which shall be payable to the Member with effect from the Date of Commencement shall be %.

DATE OF COMMENCEMENT

15 September 2016

NOMINATED DELEGATE OF MEMBER FOR ERA MEMBER NOTIFICATIONS

CONTACT DETAILS AND ADDRESSES FOR THE SERVICE OF NOTICES

The Member confirms that its contact details for the purposes of this Agreement are: -

Registered Office:

The business address to which all statements and notices under the Agreement shall be sent ("the Correspondence Address") shall be:

Telephone number at Correspondence Address:

Email at Correspondence Address:

The Member agrees that it shall forthwith notify ERA in writing of any changes to the contact information relevant in this Membership Registration Form.

ERA confirms that its address for the purposes of correspondence and for the giving of notices shall be its principal place of business unless and until otherwise notified to the Member in writing.

VAT AND TAX ISSUES

The Member is/is not registered for VAT in the UK under VAT registered number .

The Member is/is not resident or ordinarily resident in the United Kingdom for tax purposes.

PAYMENT DETAILS

The Member confirms that its bank details for the receipt of distribution fees approved payable to the Member under this Agreement are:-

Bank Name:

Bank Address:

Name of Account:

Bank Sort Code:

Bank Account Number:

unless and until otherwise notified to ERA in writing.

EARLIER MEMBERSHIP AGREEMENT AND REGISTRATION FORMS

This Membership Registration Form has been executed as part of the Membership Agreement between the Member and ERA agreed to take effect from 15 September 2016. Its terms shall be applied with effect from 15 September 2016 but without prejudice to any accrued rights of the Member and ERA under the terms of any Earlier

Membership Agreement in place between the Member and ERA and applied up to the time and date upon which the terms of this Agreement shall take effect.

The parties confirm the above terms

ACCEPTED AND AGREED

SIGNED BY:

For and on behalf of

THE EDUCATIONAL RECORDING AGENCY LIMITED

SIGNED BY:

For and on behalf of