

## 1. DEFINITIONS – ERA REPERTOIRE AND ERA MEMBERS

### 1.1 GENERAL DEFINITIONS

For the purposes of this ERA Licence:

**"Act" or "the Act"** means The Copyright, Designs and Patents Act 1988 or any relevant law amending, modifying or re-enacting it from time to time.

**"Authorised Users"** means individuals either enrolled to study with a Relevant Educational Establishment or who are members of the academic, research or teaching staff of a Relevant Educational Establishment (whether on a permanent, temporary or contract basis) during the Term and who are authorised by an officer of the Relevant Educational Establishment to access a Relevant Network by means of Secure Authentication.

**"Commercial Use"** means the use of any ERA Repertoire for any commercial or promotional purposes or for the purposes of monetary reward (whether by the Licensee, Relevant Educational Establishments, any Authorised User or third party) or in any way which generates profit.

**"Dealing"** means the uses described in Clause 3 of this Schedule.

**"Educational Communication"** means the electronic transmission of the whole or part of an ERA Recording made by or on behalf of a Relevant Educational Establishment to Authorised Users for the purpose of education (including teaching, research and private study) provided always that the transmission does not either involve Commercial Use or authorise or permit any Dealing.

**"Educational Establishment"** shall mean any school or any other description of educational establishment as defined by section 174 of the Act or as may be specified by order of the Secretary of State under that section.

**"ERA Licence"** means a licence granted under the ERA Licence Scheme incorporating these terms.

**"ERA Licence Scheme"** means the educational licensing scheme which ERA operates for the purposes of section 35 and paragraph 6 of Schedule 2 to the Act.

**"ERA Licence Fees"** means the fees payable under this ERA Licence by the Licensee specified in the ERA Licence Fee Invoice and calculated against the relevant annual tariff published by ERA on the ERA website at [www.era.org.uk](http://www.era.org.uk).

**"ERA Members"** means the bodies specified as Licensor Members of ERA.

**"ERA Notice"** shall mean a clear, legible notice reading **"This recording is to be used only for non-commercial educational purposes under the terms of an ERA Licence"**.

**"ERA Recording"** shall mean a recording of a broadcast, or a copy of such recording to the extent that it comprises or includes ERA Repertoire and is made by or on behalf of an Educational Establishment under an ERA Licence.

**"ERA Repertoire"** means the categories of works and performances owned or controlled by the ERA Members as described in Clause 2 of this Schedule.

**"Relevant Educational Establishment"** means either an Educational Establishment being the Licensee or an Educational Establishment to which an ERA Licence shall have been specifically applied.

**"Relevant Network"** means a network or part of a network (whether a stand-alone network or a virtual network within the Internet) which is only accessible to Authorised Users through Secure Authentication.

**"Secure Authentication"** means the password or other technological protection measures whereby the identity of any individual seeking access to a Relevant Network (and through this ERA Recordings) are authenticated by or with the authority of a Relevant Educational Establishment at the time of login (and periodically thereafter) in a manner consistent with current best practice, and whose conduct is subject to regulation by or on behalf of a Relevant Educational Establishment.

**"Term"** shall mean the period specified in Clause 5 of the ERA Licence.

**"Territory"** means England, Wales, Scotland and Northern Ireland.

## 1.2. ERA REPERTOIRE AND LICENSOR MEMBERS

The Licensor Members of ERA and the works and performances forming part of ERA Repertoire for the purposes of the ERA Licence are respectively

**AUTHORS' LICENSING AND COLLECTING SOCIETY LIMITED ("ALCS")** for those literary and dramatic works which are owned by or controlled by persons represented by ALCS and which are included in any broadcast.

**ASSOCIATION DE GESTION INTERNATIONALE COLLECTIVE DES OEUVRES AUDIOVISUELLES ("AGICOA")** for the films which are owned or controlled by persons represented by AGICOA and which are included in any broadcast from which an ERA Recording is made.

**BBC WORLDWIDE LIMITED** for the broadcasts of the British Broadcasting Corporation and all those copyright works owned or controlled by the British Broadcasting Corporation which are included in any broadcast.

**BPI (BRITISH RECORDED MUSIC INDUSTRY) LIMITED ("BPI")** for those sound recordings which are owned or controlled by persons represented by BPI and which are included in any broadcast from which an ERA Recording is made.

**CHANNEL FOUR TELEVISION CORPORATION ("Channel 4")** for the broadcasts made on Channel 4, E4 and/or Film Four and/or any other broadcast service operated by Channel 4 or any of its subsidiary companies and all those copyright works owned or controlled by Channel 4 or any of its subsidiary companies included in any broadcast.

**CHANNEL 5 BROADCASTING LIMITED ("Channel 5")** for the broadcasts made on Channel 5 and/or any other broadcast service operated by Channel 5 or any of its subsidiary companies and all those copyright works owned or controlled by Channel 5 or any of its subsidiary companies included in any broadcast.

**COMPACT COLLECTIONS LIMITED ("Compact")** acting as agent for

- (a) NGC Europe Limited concerning the broadcasts made on the broadcast services operated by NGC Europe Limited including National Geographic Channel, National Geographic Channel HD, Wild UK, Nat Geo Wild (Europe) and Wild HD and all those copyright works owned or controlled by NGC Europe Limited or any of its subsidiary or associated companies included in any broadcast; and
- (b) AETN UK concerning the broadcasts of AETN UK or any of its subsidiary companies and all those copyright works owned or controlled by AETN UK or any of its subsidiary companies which are included in any broadcast.

**560 MEDIA RIGHTS LIMITED** acting as agent for DISCOVERY COMMUNICATIONS EUROPE LIMITED concerning the broadcasts made on the broadcast services operated by Discovery Communications Europe Limited including Discovery Science and all those copyright works owned or controlled by Discovery Communications Europe Limited or any of its subsidiary or associated companies included in any broadcast.

**DESIGN AND ARTISTS COPYRIGHT SOCIETY ("DACS")** for those artistic works (as defined in the Act) in which the copyright is owned or controlled by the members of DACS or the members of copyright societies represented by DACS and which are included in any broadcast.

**DIRECTORS UK LIMITED ("DUKL")** for the copyright works which are owned or controlled by, or in which authorship is owned or controlled by, persons represented by DUKL and which are included in any broadcast from which an ERA Recording is made.

**EQUITY** for the performances by persons represented by Equity which are included in any broadcast.

**FOCAL INTERNATIONAL LIMITED (The Federation of Commercial Audio Visual Libraries) ("FOCAL")** for the film and videotape clips and stills which are owned or controlled by persons represented by FOCAL or its subsidiary or associated companies and which are included in any broadcast from which an ERA Recording is made.

**THE INCORPORATED SOCIETY OF MUSICIANS ("ISM")** for the literary and musical works which are owned by or controlled by persons represented by ISM and the performances by persons who are represented by ISM which are included in any broadcast.

**ITV NETWORK LIMITED ("ITV Network")** for the broadcasts made on the channel branded as ITV 1 in England and Wales, as the STV regions (formerly known as Grampian TV and Scottish TV) in Scotland, as Ulster in Northern Ireland, and as Channel TV in the Channel Islands, on ITV 2, on ITV 3, on ITV 4, ITVBe, ITV Encore and CITV and/or any other broadcast service operated by ITV Network Limited or any of its associated or subsidiary companies and all those copyright works owned or controlled by ITV Network Limited or any of its subsidiary or associated companies included in any broadcast.

**MECHANICAL COPYRIGHT PROTECTION SOCIETY LIMITED ("MCPS")** for those musical works (together with any words associated therewith) and sound recordings the rights in which are owned or controlled by members of MCPS and entrusted by its members to MCPS and which works and recordings are included in any broadcast from which an ERA Recording is made.

**MUSICIANS' UNION ("the MU")** for the performances by persons represented by the MU which are included in any broadcast.

**OPEN UNIVERSITY WORLDWIDE LIMITED ("OUW")** for the films and other copyright works which are owned or represented by Open University Worldwide Limited or any of its subsidiary or associated companies and which are included in any broadcast made by the British Broadcasting Corporation or any other broadcast on behalf of the Open University Worldwide Limited from which an ERA Recording is made.

**THE PERFORMING RIGHT SOCIETY LIMITED ("PRS")** for the musical works (together with any words associated therewith) the rights in which are owned or controlled by the PRS or by persons represented by the PRS and which works are included in any broadcast from which an ERA Recording has been made.

**PHONOGRAPHIC PERFORMANCE LIMITED ("PPL")** for those sound recordings which are owned or represented by PPL and which are included in any broadcast from which an ERA Recording is made.

**RADIO INDEPENDENTS GROUP ("RIG")** for the sound recordings and any other copyright audio works owned or controlled by members of RIG and entrusted by its members to RIG and which are included in any broadcast from which an ERA Recording is made.

**SIANEL PEDWAR CYMRU ("S4C")** for the broadcasts made on S4C, S4C Digital and/or S4C2 and/or any other broadcast service operated by S4C or any of its subsidiary companies and all those copyright works owned or controlled by S4C or any of its subsidiary companies included in any broadcast.

For the above purposes "broadcast" shall have the meaning provided by section 6 of the Act.

## **2. GRANT OF RIGHTS**

2.1 Subject to payment of the ERA Licence Fees and to the other terms of this ERA Licence ERA grants to the Licensee in the Territory and during the Term

- (a) the non-exclusive right to cause or authorise the making of ERA Recordings and to access ERA Recordings made under Clause 2.2 of this Schedule for the non-commercial educational purposes of the Licensee and
- (b) the non-exclusive right to make available only by means of Educational Communication to Authorised Users ERA Repertoire in the form of ERA Recordings and to permit Authorised Users using a Relevant Network to access ERA Recordings so made available for personal non-commercial educational use.

Additionally this ERA Licence may be relevant to the terms and conditions for online services that authorise defined rights of non-commercial educational access or use for educational establishments on the condition that they hold a current ERA Licence.

2.2 No use of ERA Repertoire or making or use of ERA Recordings shall be authorised by an ERA Licence except by or on behalf of an Educational Establishment and any ERA Recordings shall be made either

- (a) at the premises of the Educational Establishment by or under the direct supervision of a teacher or employee of the Licensee; or
- (b) at the residence of a teacher employed by the Licensee by that teacher; or
- (c) at the premises of a third party authorised by the Licensee to make ERA Recordings on behalf of the Licensee under written contractual terms and conditions which prevent the retention or use of any ERA Recordings by that third party or
- (d) at the premises of any other third party under an agreement whereby ERA shall have expressly agreed that a specified third party may retain ERA Recordings for subsequent access to and use only by current Licensees under an ERA Licence.

### **3. NO DEALING**

- 3.1 This Agreement does not permit or authorise any Dealing with any ERA Repertoire or ERA Recordings (or part or parts of them) by the Licensee or any Authorised Users.
- 3.2 For the specific purposes of this Agreement "Dealing" shall mean
- (a) any Commercial Use;
  - (b) printing captured still pictures from ERA Recordings;
  - (c) the adaptation or manipulation of an ERA Recording or any ERA Repertoire;
  - (d) any copying, sale, distribution, redistribution, publication, public performance, communication to the public or other use of ERA Repertoire or ERA Recordings not expressly provided for by the ERA Licence;
  - (e) permitting anyone other than Authorised Users to have access to ERA Repertoire;
  - (f) permitting ERA Repertoire to be electronically transmitted to any recipient other than an Authorised User;
  - (g) removing, obscuring or modifying any copyright notices, digital on-screen logos, labels or tags which refer to ERA or the basis upon which an ERA Recording has been made;
  - (h) Authorised Users copying, reproducing, downloading, posting, broadcasting, transmitting, communicating or making available to the public, or otherwise using ERA Repertoire in any way except for personal non-commercial educational use;
  - (i) Authorised Users altering ERA Repertoire or creating any derivative work from any ERA Repertoire except for their own personal non-commercial educational use.

### **4. LICENCE FEES**

- 4.1 Rights granted under ERA Licences shall be granted in consideration of payment to ERA of relevant ERA Licence Fees.
- 4.2 The ERA Licence Fees shall be calculated by reference to the period for which the ERA Licence has been granted and by reference to the applicable tariff published on the ERA website in respect of that period.
- 4.3 The annual tariff for fees under ERA Licences shall be published on the ERA website at [www.era.org.uk](http://www.era.org.uk) and calculated by category of student in the Relevant Educational Establishments to which an ERA Licence applies and against which Authorised Users relevant to the ERA Licence will be defined.
- 4.4 ERA Licence Fees for Agreements running for a period of less than one year shall be calculated on a pro-rata basis against the applicable annual tariff.
- 4.5 Discounted rates or fee abatements against published tariffs may be negotiated at ERA's discretion when ERA Licence Fees are paid by or on behalf of recognised and identified groups of Relevant Educational Establishments to which the terms of an ERA Licence shall be applied.

### **5. LICENSEE UNDERTAKINGS**

The Licensee agrees

- 5.1 to pay the ERA Licence Fees (together with VAT payable on the total ERA Licence Fees) within 30 days of receipt of the ERA Licence Fee Invoice from ERA as a condition precedent to the operation of grant of rights under this Agreement;
- 5.2 to observe and ensure compliance with ERA Licence terms during the Term;
- 5.3 upon becoming aware of either abuse or breach of the terms and conditions for access to any Relevant Network within which ERA Repertoire is held (whether in the form of ERA Recordings or otherwise), or any Authorised User abusing or breaching the terms and conditions for Secure Authentication or access to the Relevant Network of the Licensee, forthwith to take all reasonable steps to ensure that such activity ceases and to prevent any recurrence and to inform ERA of the steps taken;
- 5.4 to take all reasonable steps to ensure that Authorised Users are made aware of the terms and conditions for use of ERA Repertoire under this ERA Licence and that the rights granted are not abused by Authorised Users or any third parties.

## 6. MAINTAINING RECORDS

The Licensee agrees

- (a) to ensure that all ERA Recordings made or acquired under an ERA Licence include sufficient acknowledgement of the service from which they were sourced
  - (i) with each physical ERA Recording being marked with an ERA Notice and the name of the source, the date upon which the recording was secured by or for an Educational Establishment and the title of the programme or clip; and
  - (ii) within all ERA Recordings held in digital formats an opening credit or webpage which must also be viewed or listened to before access to the ERA Recording is permitted including an ERA Notice, the name of the service from which the original ERA Recording was sourced; and the name of the programme or clip.
- (b) to ensure that as part of the terms and conditions for permitting any Authorised User to access or in any way reproduce any ERA Repertoire included in an ERA Recording or part of it, the Authorised User expressly accepts that the transaction is subject to the terms and conditions of this ERA Licence and to provide for an ERA Notice to be included as an integral part of any access or reproduction permitted as a result of licensed Educational Communication.
- (c) to maintain records of the source of all ERA Recordings used by the Licensee.
- (d) to ensure that any Authorised User shall only be entitled to access a Relevant Network for the purposes of this ERA Licence by means of Secure Authentication and after entering suitable security password(s) and agreeing to comply with other digital rights management or technological protection systems operated and applied by the Licensee to ensure that ERA Repertoire is only able to be accessed and used within the terms of this ERA Licence.
- (e) to maintain such further records and answer questionnaires or surveys as ERA may reasonably require to report to its members concerning the level to which ERA Recordings are used for Educational Communication under this Agreement.
- (f) to permit ERA to have access to and to enable ERA to inspect all records that the Licensee and Relevant Educational Establishments are required to maintain under this ERA Licence to ensure compliance with its terms.

## 7. REMEDIES AND TERMINATION

7.1 ERA shall be entitled to terminate this Agreement:

- (a) if the ERA Licence Fees are not paid when due; or
- (b) for any other substantial breach of the provisions of the ERA Licence provided that ERA shall have given to the Licensee written notice identifying the nature of late payment or the nature of the breach.

7.2 The termination will become effective thirty days after receipt of the written notice unless either during the relevant period of thirty days the Licensee makes payment of outstanding fees or remedies the breach or the breach is not capable of remedy in which event termination will have immediate effect upon receipt of the written notice.

7.3 ERA's rights under Clauses 7.1 and 7.2 of this Schedule are without prejudice to any other rights it may have under this ERA Licence or at law in relation to termination, including without limitation any right to damages.

7.4 If payment of agreed ERA Licence Fees is not made by the due date for such payment, ERA shall be entitled to charge interest on amounts unpaid (from such due date until the date of actual payment) at the rate of statutory interest prescribed under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998.

7.5 The failure to exercise or delay in exercising any remedy under this ERA Licence shall not constitute a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this ERA Licence shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

7.6 An ERA Licence granted for the benefit of a Relevant Educational Establishment will automatically terminate upon the occurrence of any of the following events:

- (a) if and when an administrator, receiver, administrative receiver or other encumbrancer takes possession of, or is appointed over, the whole or any substantial part of the assets of the Relevant Educational Establishment;
- (b) if the Relevant Educational Establishment enters into an arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement under the Insolvency Act 1986); or

(c) a petition is presented for the purpose of considering a resolution for the making of an administration order, the winding up or dissolution of the Relevant Educational Establishment.

- 7.7 Upon expiry of the Term or when this Agreement is terminated ERA shall be entitled to require the Relevant Educational Establishment(s) to delete all ERA Recordings or copies of ERA Repertoire made by or for the Relevant Educational Establishment(s) to which this Agreement related.
- 7.8 If a Licensee is in breach of the terms of this Agreement and ERA incurs costs and expenses either in monitoring and discovering any breach of the terms or in enforcing the conditions, the Licensee shall indemnify ERA in respect of any such costs and expenses so incurred.

## 8. GENERAL

- 8.1 If Dealing with any ERA Repertoire takes place then any ERA Recording including any ERA Repertoire shall be treated as an infringing copy for the purposes of that Dealing and all subsequent purposes.
- 8.2 Information provided to ERA under this ERA Licence will be used by ERA for the purposes of administering the ERA Licence Scheme and the accounts and records of ERA. The Licensee acknowledges that for this purpose ERA may share this information with ERA Members and for the purpose of compliance with statutory and regulatory requirements
- 8.3 No provision of this ERA Licence is intended to, or shall in fact, confer any right or benefit on any third party; and the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement including, without limitation, with regard to Authorised Users.
- 8.4 Nothing in this ERA Licence shall constitute a waiver of any statutory rights of the parties under the Act from time to time.
- 8.5 This ERA Licence constitutes the entire agreement between the parties relating to ERA Repertoire and supersedes all prior communications, understanding and agreements (whether written or oral) relating to its subject matter and may not be amended or modified except by agreement of both parties in writing.
- 8.6 If a court rules that any condition of this ERA Licence is not valid and cannot be enforced, the other conditions will continue to be valid and enforceable.
- 8.7 This ERA Licence is made under the law of England and Wales and any court proceedings must be in the English courts. If a Licensee is established in Scotland or Northern Ireland, ERA will accept the local law and courts where the Licensee is established. Enforcement of a court order may be done in any law or court system that is relevant under this Clause.

## 9. NOTICES

All notices given under this ERA Licence shall be in writing and be sent by first class post, in the case of the Licensee to the address shown at the head of the ERA Licence and in the case of ERA to 1st Floor, Barnard's Inn, 86 Fetter Lane, London EC4A 1EN (or any subsequent address notified by ERA to the Licensee) and shall be deemed to have been served on the second working day (which shall exclude weekends and English public holidays) following the date of posting.

