

DATED

2014

(1) AUTHORS' LICENSING AND COLLECTING SOCIETY LIMITED

- and -

(2) PUBLISHERS LICENSING SOCIETY LIMITED

MEMBERS AGREEMENT

relating to
THE COPYRIGHT LICENSING AGENCY
LIMITED

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THIS MEMBERS AGREEMENT is made on

(the "**Agreement**")

BETWEEN:

- (1) **AUTHORS' LICENSING AND COLLECTING SOCIETY LIMITED** whose registered number is 01310636 and whose registered office is at The Writers' House, 13 Haydon Street, London EC3N 1DB ("**ALCS**"); and
- (2) **PUBLISHERS LICENSING SOCIETY LIMITED** whose registered number is 01575236 and whose registered office is at 55-56 Russell Square, London, WC1B 4HP ("**PLS**").

BACKGROUND:

- A ALCS is a non-profit organisation and is the UK collective rights management society for writers established in 1977 to represent the interests of all UK writers and to ensure that, amongst other things, they are fairly compensated for any works that are copied in the UK and across the world and is authorised/mandated on a non-exclusive basis by individual authors of Works and various international bodies representing authors to license certain of the Rights in the Works under the terms of CLA Licences.
- B PLS is a non-profit organisation representing UK publishers on matters relating to collective administration of copyright and licensing since 1981 and is authorised/mandated on a non-exclusive basis by individual publishers of Works or parts thereof in which copyright subsists to license certain of the Rights in the Works under the terms of CLA Licences.
- C The Copyright Licensing Agency Limited ("**CLA**") is the UK organisation which has been established by ALCS and PLS to administer licences and other agreements in respect of reprographic reproduction and other Rights as their agent and was incorporated under the Companies Acts 1949 to 1980 on 7th January 1983 as a private company limited by guarantee not having a share capital.
- D ALCS and PLS are the founders and the sole-subscribers to CLA and consequently as of the date of this Agreement are the sole members and owners of CLA. ALCS is the sole Member within the Creators Membership Category and PLS is the sole Member within the Publishers Membership Category.
- E As CLA's founder-members ALCS and PLS wish to confirm by the terms of this Agreement the basis upon which the operation, management and governance of CLA is founded including the terms upon which additional members may be admitted to membership of CLA.

IT IS HEREBY AGREED:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following words and expressions shall (except where the context otherwise requires) have the following meanings:

"**Articles**" means the memorandum of association and articles of association of CLA as adopted from time to time.

"Auditors" means BDO LLP of 55 Baker Street London W1U 7EU or such other auditors of CLA as may from time to time be appointed.

"Authority to Act" means the form of grant of authority to CLA set out in the attached Schedule.

"Board" means the board of Directors from time to time of CLA.

"Business" means the conduct of the activities set out in Clause 2.

"Business Day" means a day other than a Saturday or Sunday on which banks are open for business in London.

"CLA Licences" means licences granted by CLA in operation of the Business as introduced, amended or replaced from time to time.

"Collective Management Organisation" means any organisation which 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 which fulfils one or both of the following criteria:

- (a) it is owned or controlled by its members; and/or
- (b) it is organised on a not-for-profit basis.

"Conditions of Membership" has the meaning set out in Clause 8.1.

"Confidential Information" means any and all commercially confidential or sensitive information of whatsoever nature (whether oral, written or in any other form (whether eye- or machine-readable)) relating to the Members and/or CLA and/or the Business obtained by a Member from CLA or another Member, including any compilation of otherwise public information in a form not seen in the public domain but excluding:

- (a) information obtained before the date of this Agreement and which was not made available by the person providing it (being a Member or CLA): (i) subject to any obligation of confidentiality; or (ii) in breach of any obligation of confidentiality imposed upon any other person; and
- (b) information made available by third parties who were entitled to pass such information without the imposition of obligations of confidentiality in respect thereof.

"Conflict of Interest Provisions" means the relevant provisions of the Articles and any specific guidance issued to the Directors from time to time in connection with those provisions subject always to the provisions relating to conflicts of interests of directors in sections 171 to 182 of the Companies Act 2006.

"Creators' Distribution" means the combined Eligible Net Receipts of all Members in the Creators' Membership Category.

"Data Protocols" has the meaning set out in Clause 6.1.8.

"Director" means any director for the time being of CLA including where applicable any alternate director.

"Distribution Agreement" means the revenue sharing arrangements for the Net Receipts of CLA available for distribution as agreed between the Members (or where necessary determined in accordance with the agreed dispute resolution provisions for those arrangements or in the absence of such agreement the provisions set out in Clause 19 of this Agreement) from time to time.

"Eligible Net Receipts" means the Net Receipts of CLA available for distribution to Members under the Distribution Agreement in the most recent full financial year for which audited accounts are available and in the case of a newly admitted Member such part of that financial year in which it was a Member (or where necessary determined in accordance with the agreed dispute resolution provisions for those arrangements or in the absence of such agreement the provisions set out in Clause 19 of this Agreement).

"Insolvency Event" in relation to a Member means any of the following events:

- (a) a meeting of creditors of that Member being held or an arrangement or composition with or for the benefit of its creditors (including a voluntary arrangement as defined in the Insolvency Act 1986) being proposed by or in relation to that Member;
- (b) a chargeholder, receiver, administrative receiver, administrator or other similar person taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within seven days) on the whole or a material part of the assets of that Member;
- (c) that Member ceasing to carry on business or being deemed to be unable to pay its debts within the meaning of section 123 Insolvency Act 1986;
- (d) that Member or its directors or the holder of a qualifying floating charge or a creditor giving notice of their intention to appoint, appointing or making an application to the court for the appointment of, an administrator;
- (e) a petition being advertised or a resolution being passed or an order being made for the winding-up, bankruptcy or dissolution of that Member; or
- (f) the happening in relation to that Member of an event analogous to any of the above in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets.

"Joint Undertakings" has the meaning set out in Clause 6.1.

"Mandate" means the right whether authorised by law or by way of assignment, licence or any other contractual arrangement to manage Rights (and **"Mandated"** and **"Mandating"** shall be construed accordingly).

"Members" means ALCS and PLS and any other eligible Collective Management Organisation:

- (a) whose application to become a member of CLA is accepted pursuant to the provisions of this Agreement and the Articles; and
- (b) who agrees to be bound by the terms of this Agreement through means of a novation with the then existing members (or as otherwise agreed in writing).

"Member Data" means identification of the titles, authors, publishers/producers, ISBNs, ISSNs and other information related to the Works provided by a Member in whatever form.

"Membership Category" means the category of CLA membership applicable to each Member based upon the type of rights and/or right-holders which that Member predominantly represents which as at the date of this Agreement is either:

- (a) the creators' category (the **"Creators"**); or
- (b) the publishers/producers' category (the **"Publishers"**)

and a Member can belong to one Membership Category only.

"Membership Criteria" has the meaning set out in Clause 3.1.

"Net Receipts" means all monies received by CLA from its conduct of the Business during the term of this Agreement less CLA's administration charge and subject to CLA's payment obligations under repertoire exchange and any other agency agreements under Clauses 2.3.2 and 2.3.3.

"Objectives" has the meaning set out in Clause 2.5.

"Publishers' Distribution" means the combined Eligible Net Receipts of all Members in the Publishers' Membership Category.

"Regulations" means the Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014 and any UK subordinate legislation implementing EC Directive 2014/26/EU.

"Rights" means rights for the exploitation of Works permitting their reproduction and/or other use whatever the format of their primary publication/production or the format of their reproduction and/or use including all print, online and digital formats.

"Rights-holder Constituencies" has the meaning set out in Clause 2.1.

"Strategic Plan" has the meaning set out in Clause 2.6.

"Works" means published literary, dramatic, musical and/or artistic works or typographical arrangements.

- 1.2 Any reference in this Agreement to any provision of any act of Parliament or any subordinate legislation made pursuant to any act of Parliament shall be deemed to be a reference to such act of Parliament or subordinate legislation as amended, modified or re-enacted (whether before or after the date hereof) and any reference to any provision of any such act or legislation shall also include, where appropriate, any provision of which it is a re-enactment (whether with or without modification).
- 1.3 Words and expressions defined in or for the purposes of the Companies Act 2006 and the Copyright Designs & Patents Act 1988 shall, where the context permits, bear the same meanings in this Agreement.
- 1.4 In this Agreement words incorporating the masculine gender only also include the feminine and neuter genders and words incorporating the singular number only also include the plural and vice versa.

- 1.5 Unless otherwise stated, references to **Clauses** and **Schedules** are references to clauses of and schedules to this Agreement. The Schedules form part of this Agreement. Clause headings are for ease of reference only and do not affect the construction or interpretation of this Agreement.
- 1.6 References to a **person** include an individual, partnership, society, guild, unincorporated association or body corporate. Reference to an **organisation** is to a person other than an individual.
- 1.7 The words **for example**, **include** and **including** shall be for illustrative purposes and not be construed to limit the sense of the preceding words
- 1.8 References to **writing** does include e-mail except in relation to any notices under Clauses 3.8.3, 11.1 and 11.2.
- 1.9 Unless otherwise stated references to the **approval**, **agreement** or **consent** of a Member shall be to such approval, agreement or consent being given, withheld or delayed at Member's sole discretion and obtained in writing and in advance.

2. THE BUSINESS OF CLA

- 2.1 ALCS and PLS have established CLA for the collective licensing of certain of the Rights of creators and of publishers/producers (the "**Rights-holder Constituencies**").
- 2.2 The Members agree that CLA collective licensing may operate only in cases:
- 2.2.1 where the Members agree that the collective administration of Rights benefits the Rights-holder Constituencies and furthers one or more of the Objectives; and
 - 2.2.2 where the Members expect to be able to deliver sufficient relevant, clear and flexible Mandates; and
 - 2.2.3 which are within the terms of the Mandates provided by the Members for licensing or in the case of extended collective licensing are under an authority granted by the Secretary of State.
- 2.3 The Members agree that CLA:
- 2.3.1 shall operate as agent for all of the Members in respect of Rights; and
 - 2.3.2 may operate as agent for one or more of the Members (whether jointly or severally) in respect of other rights with the prior approval of the Board; and
 - 2.3.3 may also operate as agent for any Collective Management Organisation or other organisation who is not a Member (including overseas reprographic rights organisations) in respect of the Rights or other rights with prior approval of the Board.
- 2.4 Each Member undertakes to the others that it shall (insofar as it is legally able) exercise all its powers in relation to CLA so as to procure that:
- 2.4.1 the business of CLA consists exclusively of the conduct of the activities set out in this Clause 2; and

- 2.4.2 CLA shall conduct those activities:
- (a) with efficiency, cost-effectiveness and transparency; and
 - (b) fairly and honestly in an impartial and non-discriminatory manner; and
 - (c) in accordance with the Objectives; and
 - (d) with due regard to avoiding unduly prejudicing existing or future licensing solutions or activities which Rights-holder Constituencies are better placed to undertake, or it would be reasonable to believe that they will undertake, for themselves.

2.5 The Objectives of CLA are to:

- 2.5.1 provide and maintain the relevance of collective licensing solutions; and
- 2.5.2 work to achieve fair and appropriate remuneration for right-holders; and
- 2.5.3 deliver efficient and fair revenue distribution to right-holders in accordance with the Distribution Agreement; and
- 2.5.4 facilitate simplified licensing solutions for users.

2.6 The Members shall identify the key issues to be addressed by CLA and CLA shall prepare a plan for approval by the Members in the annual general meeting (the "**Strategic Plan**"). If there is any conflict or inconsistency between the business plan or other operational document actually implemented by CLA and the Strategic Plan this shall be addressed by the Members outside of the Board.

3. MEMBERSHIP AND STRUCTURE OF CLA

3.1 Any Collective Management Organisation which can demonstrate that it:

- 3.1.1 represents right-holders:
 - (a) who are within the category of right-holders which that Collective Management Organisation was established to represent; and
 - (b) who, if that Collective Management Organisation is admitted as a Member, will be Mandating that Collective Management Organisation in respect of CLA Licences, even if prior to its admission any of those right-holders were Mandating an existing Member of CLA (it being agreed that for each Work at any time a right-holder may only Mandate one Member in respect of CLA Licences); and
 - (c) who own or control a substantial repertoire of Rights that can be licensed as part of the Business.
- 3.1.2 has acquired the necessary Mandates relevant to CLA Licences from those right-holders; and
- 3.1.3 operates under the terms of and complies with an effective code of conduct compliant with the regulatory regime established in accordance with the Regulations;

(together, the "**Membership Criteria**") shall be eligible to be admitted to membership of CLA.

- 3.2 Any Collective Management Organisation which considers itself eligible for membership may apply to CLA for admission. Such application shall be made in writing and shall be in such form as the Board shall from time to time reasonably prescribe. The Board may require an applicant to supply evidence of eligibility as the Board considers to be reasonably necessary. Any Collective Management Organisation which is eligible shall be admitted to membership on the approval of a resolution for such admission at a general meeting of the existing Members. On admission to the membership the newly admitted Member shall immediately execute:
 - 3.2.1 its agreement to be bound by the terms of this Agreement through means of a novation with the then existing Members (or as otherwise agreed in writing); and
 - 3.2.2 the Authority to Act in accordance with Clause 8.1.7; and
 - 3.2.3 the Distribution Agreement.
- 3.3 Each Member undertakes to the others that it will in good faith:
 - 3.3.1 exercise all its voting rights and powers of control available to it in relation to CLA so as to give full effect to the terms and conditions of this Agreement including, where appropriate, the carrying into effect of such terms as if they were embodied in the Articles; and
 - 3.3.2 support and implement all reasonable proposals put forward at Board and other meetings of CLA for the proper development and conduct of the Business as contemplated in this Agreement; and
 - 3.3.3 refrain from acting in a manner which is likely to hinder or prevent CLA from carrying on the Business in a proper and reasonable manner; and
 - 3.3.4 generally use its reasonable endeavours to promote the Business and the interests of CLA.
- 3.4 The rights and privileges of each Member of CLA shall not be transferable save in the circumstances where such transfer is necessary due to a Member under-going internal re-organisation and/or re-structuring and Provided That notwithstanding such re-constituting the Member shall at all times continue to fulfil the Membership Criteria; and, save as required for the proper distribution of right-holder payments in accordance with this Agreement and the Distribution Agreement, no Member shall legally or equitably dispose or attempt to dispose (including by sale, assignment, gift, transfer or charge) of any of its rights or obligations under this Agreement, nor sub-contract any of its obligations under this Agreement, nor declare a trust of or allow to be constituted as trust property the benefit of its rights or interests in this Agreement.
- 3.5 Subject to the Articles, every Member shall be entitled to attend and vote at general meetings of CLA, by a representative. Every Member shall notify the secretary of CLA in writing not less than twenty four (24) hours before a general meeting of the name of:
 - 3.5.1 its representative who will attend the meeting; or
 - 3.5.2 its alternative representative if the representative is unable to attend; and

- 3.5.3 the observer who, pursuant to Clause 3.6, may accompany the representative at the meeting.
- 3.6 The representative of a Member who attends a general meeting of CLA may be accompanied by not more than one (1) observer nominated in writing by the Member.
- 3.7 Every Member shall have voting rights as set out in Clause 3.9 as well as on a poll as on a show of hands (or their electronic equivalent). No Member shall be entitled to vote on a show of hands unless that Member's representative is in attendance.
- 3.8 The following matters are reserved to the Members and may only be undertaken if approved by the Members passing a resolution by the requisite majority in respect of the same:
- 3.8.1 admission of a new Member;
- 3.8.2 creation of a new Membership Category;
- 3.8.3 expulsion of a Member and a Member may only be expelled by virtue of it:
- (a) no longer fulfilling each of the Membership Criteria, the Joint Undertakings and the Conditions of Membership;
 - (b) being subject to an Insolvency Event; or
 - (c) committing a material breach of this Agreement Provided That if the material breach is capable of remedy the Member has not remedied the breach within thirty (30) days of written notice by another Member specifying the breach and requiring it to be remedied; and
- 3.8.4 approval of the Strategic Plan;
- 3.8.5 alteration of the Articles;
- 3.8.6 entry into negotiations to effect a sale of the whole or substantially the whole of the undertaking, business and assets of CLA; or
- 3.8.7 commencement of any action for the winding-up or dissolution of CLA or the making of an administration order or a composition or arrangement with its creditors.
- 3.9 No resolution, including in respect of any of the matters referred to in Clause 3.8, shall be passed at a general meeting of CLA unless it is supported by the votes cast by the requisite majority of Members. For the purposes of this Clause 3, "**requisite majority**" in relation to a resolution means approved by Members who were entitled collectively to receive at least both:
- 3.9.1 seventy-five per cent (75%) of the Eligible Net Receipts Provided That no Member's share of Eligible Net Receipts in excess of fifty per cent (50%) of the total Eligible Net Receipts may be taken into account for the purposes of this Clause and such excess Eligible Net Receipts shall be re-distributed (for the purposes of this Clause only) to the other Members pro rata to their share of Eligible Net Receipts; and
- 3.9.2 for so long as there are only two (2) Membership Categories of Creators and Publishers within CLA fifty per cent (50%) of the Creators' Distribution and fifty per cent (50%) of the Publishers' Distribution.

4. GOVERNANCE AND DECISION MAKING OF CLA

- 4.1 Each Member undertakes to the others that it shall exercise all its powers in relation to CLA so as to procure (insofar as it is legally able) that during the term of this Agreement meetings of the Board shall be convened at regular intervals not exceeding three (3) months and that no less than seven (7) days' written notice is given to each of the Directors, such notice to be accompanied by an agenda specifying the business to be transacted together with copies of any documents to be tabled at the meeting (or, if such copies are not available, with full details of such documents).
- 4.2 Subject always to the Conflict of Interest Provisions and the duties of each Director to CLA, including the duty of each Director to avoid situations in which the Director has or can have direct or indirect interests that conflict or possibly may conflict with the interests of CLA, it is recognised by each Member that each of the Directors nominated pursuant to Clause 4.4.1 and 4.4.2 is:
- 4.2.1 a representative of the Member(s) within the Membership Category who nominated that Director and of its general interests;
- 4.2.2 at liberty from time to time to make such disclosure to the Member(s) within the Membership Category who nominated him in relation to the Business or affairs of CLA as that Director thinks fit having given due consideration to the Conflict of Interest Provisions and any specific guidance received from CLA; and
- 4.2.3 not obliged to disclose Confidential Information obtained from the Member(s) within the Membership Category which nominated that Director.
- 4.3 Notwithstanding Clause 4.2 and the Conflict of Interest Provisions, the Members recognise that where a conflict of interest arises in respect of a matter due to the Directors' divergent interests resulting from their representation of the Member(s) as set out above then such matter should be resolved directly between the Members outside of the Board.
- 4.4 The Members shall vote in general meeting (and/or pass the necessary resolutions) such that the Board shall consist of up to nine (9) Directors and for so long as there are only two (2) Membership Categories of Creators and Publishers within CLA the Members shall vote in general meeting (and/or pass the necessary resolutions) to procure that:
- 4.4.1 three (3) Directors shall be appointed, removed and/or re-appointed on the basis of nominations by the Members within the Creators' Membership Category and each such Member (a "**Creator Member**") shall have the right to nominate for appointment, removal and/or re-appointment one (1) Director for each full third (1/3) of the Creators' Distribution which that Creator Member is entitled to receive. If not all three (3) Directors can be appointed pursuant to the first sentence of this Clause 4.4.1 then the Creator Members shall nominate for appointment the remaining Director(s) by agreement between themselves and in the absence of agreement no such Director(s) shall be appointed. If no Directors have been appointed pursuant to the first sentence of this Clause 4.4.1 then the Creator Members shall appoint the Directors by agreement between themselves and in the absence of agreement the Member with the largest share of the Creators' Distribution may nominate for appointment a single Director; and
- 4.4.2 three (3) Directors shall be appointed, removed and/or re-appointed on the basis of nominations by the Members within the Publishers' Membership Category and each such Member (a "**Publisher Member**") shall have the right to nominate for

appointment, removal or re-appointment one (1) Director for each full third (1/3) of the Publishers' Distribution which that Publisher Member is entitled to receive. If not all three (3) Directors can be appointed pursuant to the first sentence of this Clause 4.4.2 then the Publisher Members shall nominate for appointment the remaining Director(s) by agreement between themselves and in the absence of agreement no such Director(s) shall be appointed. If no Directors have been appointed pursuant to the first sentence of this Clause 4.4.2 then the Publisher Members shall appoint the Directors by agreement between themselves and in the absence of agreement the Member with the largest share of the Publishers' Distribution may nominate for appointment a single Director; and

- 4.4.3 one (1) Director shall be appointed, removed and/or re-appointed by the Board in consultation with any appropriate third parties including any ombudsman or code reviewer appointed under the regulatory regime established in accordance with the Regulations to represent right-holders whose Works are licensed by CLA under extended collective licensing; and
- 4.4.4 the remaining two (2) Directors shall be the chief executive officer of CLA (however designated) and a chairman of CLA as appointed from time to time by the Members (but the Members shall not be required to appoint an additional Director to serve as Chairman).
- 4.5 If any Member proposes for removal a Director and such Director is so removed in accordance with its rights to do so under Clause 4.4 or under the Articles, it shall be responsible for and indemnify the other Members and CLA against any and all claims by such Director for unfair or wrongful dismissal or other compensation arising out of such removal and against any losses, costs or expenses suffered or reasonably incurred as a result thereof.
- 4.6 Notwithstanding the Articles, no Member will permit a Director to appoint an alternate, without reasonable prior consultation with the other Members with a view to reaching agreement on the person to be appointed as an alternate.
- 4.7 The Members shall vote in general meeting (and/or pass the necessary resolutions) to procure that that the office of a Director appointed under Clause 4.4.1 or 4.4.2 shall be vacated if the Member by whom the Director was nominated ceases to be a Member and a replacement Director shall be appointed in accordance with the provisions of Clause 4.4.1 or Clause 4.4.2.

5. CO-OPERATION AND COLLABORATION

- 5.1 The Members shall at all times co-operate and collaborate in good faith in respect of the Business and affairs of CLA.
- 5.2 The Members shall explore opportunities between themselves and with CLA for achieving greater integration and operational efficiencies where possible from time to time.
- 5.3 Each Member undertakes to the others that it shall exercise all its powers in relation to CLA so as to procure (insofar as it is able) that CLA undertakes to the Members (insofar as it is legally able so to do) that during the term of this Agreement:
 - 5.3.1 each Member shall be afforded access at any reasonable time and from time to time to examine the books, records and accounts to be kept by CLA; and
 - 5.3.2 CLA shall provide each Member in a timely manner with such other trading and financial information in such form and at such times as it may reasonably require in

order to ensure that it is kept fully and properly informed about the business and affairs of CLA; and

- 5.3.3 the accounts of CLA in respect of each accounting reference period are prepared on a basis consistent in all respects with the method of preparation of the accounts for the Members and referred to the Auditors as expeditiously as possible following the end of the period concerned; and
- 5.3.4 CLA shall comply in all respects with the provisions of the Articles; and
- 5.3.5 where CLA requires any approval, consent or licence for the carrying on of the Business in the places and in the manner in which it is for the time being carried on or proposed to be carried on CLA will use its best endeavours to maintain the same in full force and effect.

6. JOINT UNDERTAKINGS

6.1 Each Member undertakes to the others:

- 6.1.1 to act in good faith in relation to its dealings with the others; and
- 6.1.2 to instruct CLA as its agent in furtherance of the Objectives; and
- 6.1.3 to pay its respective share of fees received from CLA to the appropriate right-holders or their chosen intermediaries, in accordance with its clear and equitable distribution policy in the manner referred to in Clause 8.1.4; and
- 6.1.4 to use all reasonable endeavours to secure the widest appropriate Mandate in order to maximise repertoire for the benefit of users; and
- 6.1.5 that, without prejudice to the ability of its right-holders to withdraw Rights from its Mandate in accordance with the terms of that Mandate, it will not seek to reduce the current extent of its Mandate without written notice to the others; and
- 6.1.6 to meet together with the other Members no less than three (3) times per year; and
- 6.1.7 to develop programmes through CLA and other bodies to foster an improved understanding of copyright, remuneration rights and moral rights amongst users of Works and the public at large; and
- 6.1.8 to agree and update from time to time data supply protocols for the provision and exchange of Member Data and other data between (or on behalf of) Members and CLA (the "Data Protocols");

under and in accordance with the Regulations (together, the "**Joint Undertakings**").

7. INDEMNITIES

7.1 Each Member hereby severally agrees to keep indemnified CLA against all demands, claims, liabilities, costs and expense incurred by CLA or its licensees whatsoever arising out of:

- 7.1.1 any claims by a right-holder that the inclusion of the Works within the repertoire Mandated by that Member for inclusion in CLA Licences was not authorised by such

right-holder or that such right-holder was not paid the monies due to him by that Member pursuant to such CLA Licences; and

7.1.2 any claims by a right-holder for late or non-payment of a due proportion of Net Receipts;

Provided That the above indemnities:

- (a) shall cover any such claims where made by a successor or an assignee of a creator's or publisher/producer's rights in any Work; and
- (b) do not extend to any claims arising by reason of any wrongful act or default by CLA, its servants, agents or others whether acting or purporting to act on its behalf or authorised by it.

Each Member acknowledges that CLA may include indemnities in favour of licensees of CLA Licences against copyright infringement of Works copied under those CLA Licences.

7.2 In the event of such claim as is mentioned in Clause 7.1 which does not arise out of either a breach of Clause 6.1.3 or a wrongful act of CLA, then the responsibility will be jointly shared either by all Members (in proportion to the extent that such claim relates to each Member's Mandated repertoire) and CLA or where the claim relates to one Member (the "**Relevant Party**") or the rights it administers then by CLA and the Relevant Party.

7.3 In the case of claims arising under Clause 7.1.1 the Members agree that CLA shall bear the cost of defending or meeting such claims as an operating cost for cumulative amounts up to ten thousand pounds (£10,000) in aggregate in any period of twelve (12) months to 31st March. The provisions of Clause 7.4 shall apply equally to any such claim under this Clause.

7.4 Each Member shall:

7.4.1 notify the other Members promptly upon becoming aware of any matter or claim to which the indemnity relates; and

7.4.2 not make any admission or settlement in respect of such matter or claim without the prior consent of the Member against whom the Indemnity is being claimed (the "**Indemnifier(s)**") (such consent not to be unreasonably withheld or delayed); and

7.4.3 allow the Indemnifier(s), where appropriate, to appoint legal advisers of its/their choice and to conduct and/or settle negotiations and/or proceedings relating to such matter or claim (where it is appropriate for the Indemnifier(s) to have conduct of such negotiations or proceedings) the Indemnified shall comply with the Indemnifier(s)'s reasonable requests in the conduct of any such negotiations and/or proceedings.

8. CONDITIONS OF MEMBERSHIP

8.1 The Members agree and acknowledge that it is a continuing condition of membership of CLA that at all times each Member must:

8.1.1 operate in accordance with the Regulations; and

8.1.2 have the independent financial means to be able to provide its indemnity under Clause 7 when required to do so in accordance with its terms and be able to demonstrate that through the Member's maintenance of appropriate insurance

cover for, or a verifiable reserve of, a sufficient amount which unless otherwise agreed by the Members must be not less than ten thousand pounds (£10,000); and

- 8.1.3 agree to comply with and notify CLA of any changes to the Distribution Agreement and procure that the Net Receipts shall be distributed by CLA to the Members in accordance with such Distribution Agreement; and
- 8.1.4 demonstrate that it allocates and distributes right-holders' payments appropriately and effectively in compliance with a clear and equitable policy enabling regular, diligent and accurate payments using the best available right-holder information and deducting management and administration fees which are fair, reasonable and transparent; and
- 8.1.5 agree to and ensure that its Member Data shall be provided materially in accordance with the Data Protocols; and
- 8.1.6 keep CLA informed in a timely manner of all changes to its Mandated repertoire; and
- 8.1.7 to the extent of the Mandate granted by its right-holders, grant to CLA as its non-exclusive agent the authority to administer and exploit and enforce the Rights throughout the world in such manner as the Members decide on the terms set out in CLA Licences on the terms of the Authority to Act;

(together, the "**Conditions of Membership**").

- 8.2 The terms of any Distribution Agreement including any change in the distribution of Net Receipts to the Members shall apply as soon as reasonably practicable or such later date as notified by the Members to CLA.

9. CONFIDENTIAL INFORMATION

Each Member agrees with and acknowledges to the others that before the date hereof it has obtained and that during the term of this Agreement it will obtain Confidential Information and, accordingly, each Member hereby undertakes to the others that it will not at any time after the date of this Agreement (save by compulsion of law) use any Confidential Information (other than for the purposes of CLA) or disclose or divulge any Confidential Information to any person (other than to officers or employees of CLA whose province it is to know the same) or to the other Members and that it shall use its best endeavours to prevent such use or publication or disclosure of any Confidential Information by any other person.

10. TERM OF THIS AGREEMENT

This Agreement shall continue in full force and effect unless and until it is terminated as a whole in respect of all Members with the prior written agreement of all the Members in writing.

11. TERMINATION OF MEMBERSHIP

- 11.1 Each Member may at any time serve six (6) months' written notice to the other Members and to CLA of its intention to terminate this Agreement in respect of itself and thereby cease to be a Member during which period the Members shall use their best endeavours to resolve any areas of dispute. If at its sole discretion the terminating Member agrees in writing to revoke its termination notice within such six (6) month period then the notice shall be deemed to be

withdrawn and of no legal effect. Otherwise the notice shall come into full force and effect two (2) years from the date of initial service of notice.

11.2 Any Member may at any time by notice in writing to the other Members and to CLA terminate this Agreement in respect of itself and thereby cease to be a Member as from the date of service of such notice if:

11.2.1 an Insolvency Event occurs in relation to any of the other Members; or

11.2.2 any of the other Members commit a material breach of this Agreement Provided That if the material breach is capable of remedy the notice of termination may only be given if the Member in breach shall not have remedied the breach within 30 days of written notice by the terminating Member specifying the breach and requiring its remedy; or

11.2.3 it is no longer fulfilling each of the Membership Criteria, the Joint Undertakings and the Conditions of Membership.

11.3 This Agreement shall terminate immediately in respect of any Member which is expelled in accordance with Clause 3.8.3.

12. EFFECT OF TERMINATION OF MEMBERSHIP

12.1 Immediately upon the termination of membership of CLA of any Member in accordance with Clauses 11:

12.1.1 except as otherwise expressly provided in this Agreement and as set out in the Authority to Act, the rights and the obligations of that Member under this Agreement shall terminate and the rights and the obligations of any remaining Members in respect of that Member under this Agreement shall terminate Provided That if there are amounts due to that Member for acts of exploitation which occurred before the termination took effect or (in respect of CLA Licences entered into prior to and still in force on the date of termination) after termination took effect such amounts shall be paid and that Member shall retain such rights in relation to them as apply in accordance with the Distribution Agreement (subject to any reasonable amount retained as a reserve against any potential claims under the Members' indemnity under Clause 7) ; and

12.1.2 Clauses 1, 7, 9, 12, 14 to 21 (inclusive) and 23 to 25 (inclusive) shall remain in effect in respect of that Member as shall the Authority to Act executed under Clause 3.2 in respect of all CLA Licences entered into prior to and still in force on the date of termination in accordance with its terms;

12.2 Termination shall not affect or prejudice any right to damages or other remedy which any Member may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Member may have in respect of any breach of the Agreement which existed at or before the date of termination.

13. ANTI-CORRUPTION

- 13.1 Each Member undertakes to the others that so long as this Agreement remains in force and effect:
- 13.1.1 it will, and it will procure that its directors, officers, employees, subsidiaries and CLA will, comply with all applicable anti-bribery and anti-corruption laws in any jurisdiction in which it operates (including the Bribery Act 2010) and all applicable anti-bribery and anti-corruption regulations and codes of practice ("**Anti-Corruption Laws**");
 - 13.1.2 it will implement and maintain appropriate policies and procedures designed to ensure, and which are reasonably expected to ensure, compliance by it and CLA and each of their directors, officers, employees, subsidiaries and Business Intermediaries with all Anti-Corruption Laws in relation to the Business, its business and the business of any of its subsidiaries;
 - 13.1.3 it will procure that CLA will implement and maintain appropriate policies and procedures designed to ensure, and which are reasonably expected to ensure, compliance by CLA and each of CLA's directors, officers, employees and subsidiaries with all Anti-Corruption Laws in relation to the Business; and
 - 13.1.4 from time to time, at the reasonable request of the other Member, it will confirm in writing that it has complied with its covenants under Clauses 13.1.1 to 13.1.3 and will provide any information reasonably requested by the other Member in support of such compliance.
- 13.2 Breach by a Member of any of the undertakings in Clause 13.1 shall be deemed to be a material breach of that Member's obligations under this Agreement for the purpose of Clause 3.8.3(c) and 11.2.2.

14. THIS AGREEMENT NOT TO CONSTITUTE A PARTNERSHIP

None of the provisions of this Agreement shall be deemed to constitute a partnership between the Members and none of them shall have any authority to bind the others in any way.

15. COSTS

Except as otherwise expressly provided hereunder, each Member is responsible for all costs and expenses incurred by it in connection with its negotiation, execution and performance of this Agreement.

16. WAIVER AND FORBEARANCE

No failure to exercise or delay in exercising any right or remedy under this Agreement shall constitute a waiver thereof and no waiver by any Member of any breach or non-fulfilment by the other Members of any provision of this Agreement shall be deemed to be a waiver of any subsequent or other breach of that or any other provision hereof and no single or partial exercise of any right or remedy under this Agreement shall preclude or restrict the further exercise of any such right or remedy. The rights and remedies of the Members provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

17. VARIATION

No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Members.

18. THIRD PARTY RIGHTS

A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

19. GOVERNING LAW AND DISPUTE RESOLUTION

19.1 This Agreement shall be governed by and construed in accordance with English law and the Members hereby submit for all purposes in connection with this Agreement to the non-exclusive jurisdiction of the English courts.

19.2 Any disputes arising out of the subject matter of this Agreement undertakings will, in the first instance, be dealt with by the Chief Executive Officers ("CEOs") and the Chairs or their nominees (who shall be Directors of the nominating Member) of each Member. If the matter remains unresolved for longer than twenty-one (21) days after the date on which the dispute arose, it shall be referred to a joint committee including the CEOs and Chairs or their nominees (who shall be Directors of the nominating Member) of each Member plus one Director from each Member.

19.3 If this joint committee is unable to resolve the issue within a period of twenty (21) days from the day on which the dispute was referred to such joint committee, the Member will attempt to settle it by negotiation using the services of a mediator in accordance with the Rules of the Centre for Effective Dispute Resolution ("CEDR"). If any Member shall refuse to initiate the procedure within a further fourteen (14) days, or if the Members fail to agree terms of settlement within twenty-eight (28) days of the initiation of the mediation procedure, the dispute shall be referred to arbitration. The initiation of the procedure is defined as the request to CEDR for mediation.

19.4 If any dispute arising under this Agreement is not resolved by mediation in accordance with the preceding provisions of this Clause, then the dispute shall be referred to a single arbitrator in London to be agreed between the Members. Failing such agreement within thirty (30) days of the request by one Member to the others that a matter be referred to arbitration in accordance with this Clause such reference shall be to an arbitrator appointed by the President for the time being of the Law Society of England and Wales. The decision of such arbitrator shall be final and binding upon the Member. Any reference under this Clause shall be deemed to be a reference to arbitration within the meaning of the Arbitration Act 1996.

19.5 Nothing in the preceding sub-clauses of this Clause shall prevent a Member from applying to the English Courts for any provisional, interim or protective measure.

20. SEVERABILITY

If any of the provisions of this Agreement is found by a court or other competent authority to be void or unenforceable, such provision shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect. Notwithstanding the foregoing, the Members shall thereupon negotiate in good faith in order

to agree the terms of a mutually satisfactory provision to be substituted for the provision so found to be void or unenforceable.

21. ENTIRE AGREEMENT

21.1 This Agreement and any documents referred to within it contain the entire agreement and understanding of the Members in connection with the subject matter thereof and supersede and extinguish all previous agreements between the Members relating to the subject matter hereof and all and any representations and warranties previously given and/or made other than those expressly set forth herein or in any such documents (and also other than any misrepresentation or breach of warranty which constitutes fraud).

21.2 In particular (but without prejudice to the generality of the other provisions of this Clause 21) each Member acknowledges to the others (to the intent that the other shall execute this Agreement and any documents referred to within it in reliance upon such acknowledgement) that it has not been induced to enter into this Agreement and such other documents by nor relied upon any representation or warranty other than the representations and/or warranties expressly set forth in this Agreement or in any such document. This acknowledgement shall not apply to any misrepresentations and/or breaches of warranty which constitute fraud.

21.3 Without prejudice to the generality of the other provisions of this Clause 21, each Member hereby irrevocably and unconditionally waives any right it may have to claim damages or to rescind this Agreement and such other documents as aforesaid by reason of any misrepresentation and/or warranty not set forth in this Agreement or in any such document (unless such misrepresentation and/or breach of warranty constitutes fraud).

22. ANNOUNCEMENTS

Save as may be required by law, no announcement, communication or circular in connection with the subject matter of this Agreement shall be made by or on behalf of the Members without the prior written approval of the other or others (such approval not to be unreasonably withheld or delayed).

23. AGREEMENT TO PREVAIL

In the event of any ambiguity or conflict arising between the terms of this Agreement and those of the Articles, the terms of this Agreement shall prevail.

24. COUNTERPARTS

This Agreement may be executed in any number of parts each of which, when executed by one or more Members, shall constitute an original document but all of which shall together constitute one and the same instrument.

25. NOTICES

Any notice to be given pursuant to the terms of this Agreement shall be given in writing to the Member due to receive such notice at its registered office from time to time marked for the attention of the CEO or such other address as may have been notified for the purpose to the other Members in accordance with this Clause 25. Notice shall be delivered personally or sent by first class prepaid recorded delivery or registered post or by email (subject to Clause 1.8) and shall be deemed to be given: in the case of personal delivery, on delivery; in the case of posting (in the absence of evidence of earlier receipt), on the second Business Day after the date of posting (six Business Days if sent by airmail); and in the case of email, immediately

on sending Provided That no error message (other than an "out-of-office" or equivalent reply) has been received.

SCHEDULE

Authority to Act

THIS DEED is made on [] (the "**Authority to Act**")

BETWEEN:

- (1) **THE COPYRIGHT LICENSING AGENCY LIMITED** whose registered number is 01690026 and whose registered office is Saffron House, 6-10 Kirby Street, London EC1N 8TS UK ("**CLA**"); and
- (2) [] whose registered number is [] and whose registered office is at [] (the "**Authorising Member**").

BACKGROUND:

- A CLA is a Collective Management Organisation established to administer licences and other agreements in respect of reprographic reproduction and other Rights as agent for its Member, and other, Collective Management Organisations.
- B The Authorising Member is a Collective Management Organisation that has become a Member of CLA and wishes to grant Rights to CLA on the terms of this Authority to Act.

IT IS HEREBY AGREED:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Authority to Act the following words and expressions shall (except where the context otherwise requires) have the following meanings:

"Business" means the conduct of the activities forming the business of CLA as agreed from time to time by the Members under and in accordance with the Members Agreement.

"CLA Licences" means licences granted by CLA in operation of the Business as introduced, amended or replaced from time to time.

"Collective Management Organisation" means any organisation which 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 which fulfils one or both of the following criteria:

- (a) it is owned or controlled by its members; and/or
- (b) it is organised on a not-for-profit basis.

"Mandate" means the right whether authorised by law or by way of assignment, licence or any other contractual arrangement to manage Rights subject always to the ability of an individual right-holder to withdraw, opt-out or otherwise exclude Works or individual Rights within up to six (6) months of the right-holder's request to do so.

"Members" means the Authorising Member and the other members from time to time of CLA.

"Members Agreement" means the agreement between the Members dated [] as such agreement may be updated, amended and/or novated from time to time.

"Net Receipts" means all monies received by CLA from its conduct of the Business less CLA's administration charge and subject to CLA's payment obligations under repertoire exchange and any other agency agreements.

"Rights" means rights for the exploitation of Works permitting their reproduction and/or other use whatever the format of their primary publication/production or the format of their reproduction and/or use including all print, online and digital formats.

"Works" means published literary, dramatic, musical and/or artistic works or typographical arrangements.

- 1.2 Words and expressions defined in the Copyright Designs & Patents Act 1988 (as amended, modified or re-enacted) shall, where the context permits, bear the same meanings in this Authority to Act. In this Authority to Act references to the singular number only also include the plural and vice versa. References to a **Clause** is a reference to a clause of this Authority to Act. Clause headings are for ease of reference only and do not affect the construction or interpretation of this Authority to Act.

2. GRANT OF AUTHORITY

The Authorising Member hereby, to the extent of the Mandate granted by its right-holders, grants to CLA as its non-exclusive agent the authority to administer and exploit and enforce the Rights throughout the world in such manner as the Members decide on the terms set out in CLA Licences subject to and in accordance with the terms of this Authority of the Act.

3. WARRANTY AND UNDERTAKING

The Authorising Member warrants and undertakes with CLA that it shall allocate and distribute right-holders' payments appropriately and effectively in compliance with a clear and equitable policy enabling regular, diligent and accurate payments using the best available right-holder information and deducting management and administration fees which are fair, reasonable and transparent.

4. INDEMNITIES

- 4.1 The Authorising Member hereby agrees to keep indemnified CLA against all demands, claims, liabilities, costs and expense incurred by CLA or its licensees whatsoever arising out of:

4.1.1 any claims by a right-holder that the inclusion of the Works within the repertoire Mandated by that Member for inclusion in CLA Licences was not authorised by such right-holder or that such right-holder was not paid the monies due to him by that Member pursuant to such CLA Licences; and

4.1.2 any claims by a right-holder for late or non-payment of a due proportion of Net Receipts;

Provided That the above indemnities:

- (a) shall cover any such claims where made by a successor or an assignee of a creator's or publisher/producer's rights in any Work; and
- (b) do not extend to any claims arising by reason of any wrongful act or default by CLA, its servants, agents or others whether acting or purporting to act on its behalf or authorised by it.

The Authorising Member acknowledges that CLA may include indemnities in favour of licensees of CLA Licences against copyright infringement of Works copied under those CLA Licences.

- 4.2 In the event of such claim as is mentioned in Clause 4.1 which does not arise out of either a breach of the Authorising Member's undertaking to pay its respective share of fees received from CLA to the appropriate right-holders or their chosen intermediaries in accordance with its clear and equitable distribution policy referred to in Clause 3 or a wrongful act of CLA, then the responsibility will be jointly shared either by the Authorising Member and all other Members (in proportion to the extent that such claim relates to each Member's Mandated repertoire) and CLA or where the claim relates to the Authorising Member or the rights it administers then by CLA and the Authorising Member.

4.3 In the case of claims arising under Clause 4.1.1 it is agreed that CLA shall bear the cost of defending or meeting such claims as an operating cost for cumulative amounts up to ten thousand pounds (£10,000) in aggregate in any period of twelve (12) months to 31st March. The provisions of Clause 4.4 shall apply equally to any such claim under this Clause.

4.4 CLA shall:

4.4.1 notify the Authorising Member and the other Members promptly upon becoming aware of any matter or claim to which the indemnity relates; and

4.4.2 not make any admission or settlement in respect of such matter or claim without the prior consent of the Authorising Member (such consent not to be unreasonably withheld or delayed); and

4.4.3 allow the Authorising Member, where appropriate, to appoint legal advisers of its choice and to conduct and/or settle negotiations and/or proceedings relating to such matter or claim (where it is appropriate for the Authorising Member to have conduct of such negotiations or proceedings) CLA shall comply with the Authorising Member's reasonable requests in the conduct of any such negotiations and/or proceedings.

5. TERM AND TERMINATION

5.1 Without prejudice to the ability of its right-holders to withdraw Rights from its Mandate in accordance with the terms of that Mandate and the Members Agreement at any time, this Authority to Act shall remain in full force and effect unless and until the Authorising Member's membership of CLA is terminated under and in accordance with the Members Agreement subject to the provisions of Clause 5.2.

5.2 On termination of the Authorising Member's membership of CLA under and in accordance with the Members Agreement this Authority to Act shall cease to have any force and effect save in respect of:

(a) all CLA Licences entered into prior to and still in force on the date of termination in respect of which the Rights granted hereunder shall continue so as to permit those CLA Licences to continue in force and effect for their remaining duration in accordance with their terms and in respect of which applicable Net Receipts shall continue to be paid to the Authorising Member which the Authorising Member shall distribute in accordance with Clause 3; and

(b) any other right or remedy which either the Authorising Member or CLA may have in respect of any breach of this Authority to Act which existed at or before the date of termination.

6. GENERAL

6.1 Each of the Authorising Member and CLA shall on the written request of the other promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Authority to Act.

6.2 No failure to exercise or delay in exercising any right or remedy under this Authority to Act shall constitute a waiver thereof and no waiver by the Authorising Member or CLA of any breach or non-fulfilment by the other of any provision of this Authority to Act shall be deemed to be a waiver of any subsequent or other breach of that or any other provision hereof and no single or partial exercise of any right or remedy under this Authority to Act shall preclude or restrict the further exercise of any such right or remedy. The rights and remedies of the Authorising Member and CLA provided in this Authority to Act are cumulative and not exclusive of any rights and remedies provided by law.

6.3 No variation of this Authority to Act shall be valid unless it is in writing and executed by or on behalf of each of the Authorising Member and CLA.

- 6.4 A person who is not a party to this Authority to Act shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Authority to Act. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 6.5 This Authority to Act shall be governed by and construed in accordance with English law and the Authorising Member and CLA hereby submit for all purposes in connection with this Authority to Act to the non-exclusive jurisdiction of the English courts.

IN WITNESS of which this Authority to Act has been duly executed as a deed and has been delivered on the date specified on page 1 of this Authority to Act

EXECUTED AS A DEED by)
CLA)
 [acting by a duly authorised director])
 in the presence of a witness:)

Signature _____
 Director
 Name _____

Witness Signature _____
 Witness Name _____
 Witness Address _____

EXECUTED AS A DEED by)
AUTHORISING MEMBER)
[acting by a duly authorised director])
in the presence of a witness:)

Signature _____
Director

Name _____

Witness Signature _____

Witness Name _____

Witness Address _____

Signed by _____)
for and on behalf of **ALCS**)
)

Signature -----
Director
Authorised signatory

Signed by _____)
for and on behalf of **PLS**)
)

Signature -----
Director
Authorised signatory