

## CONSTITUTION OF COPYRIGHT LICENSING LIMITED

### 1. **CONSTITUTION AND THE COMPANIES ACT 1993**

This Constitution contains regulations relating to the conduct of the Company's affairs and must be read in conjunction with the Companies Act 1993 (the "Act"). The provisions of the Act are amended, adopted, or modified by this constitution as provided below.

#### 1.1 Definitions

In this constitution, the following definitions apply:

"Accounting Period" means a period of not more than 12 months ending on 31 December in any year or on such substituted date as may be adopted by the Company;

"Author Directors" means Directors appointed by the Shareholder holding Author Shares;

"Author Shares" means Shares held by the Shareholder representing authors of copyright works;

"Board" means the board of Directors of the Company from time to time;

"Chairperson" means the chairperson of the Board from time to time;

"Company" means Copyright Licensing Limited;

"Distributable Fund" means the residue of funds remaining in respect of any Accounting Period pursuant to clause 10.1;

"IFRRO" means International Federation of Reproduction Rights Organisations;

"Non-Profit Company" means a company which is not carried on for the purposes of profit or gain to any Shareholder at any time;

"Ordinary Resolution" means a resolution of Shareholders approved by a simple majority of votes of those Shareholders entitled to vote and voting on the resolution;

"Publisher Directors" means Directors appointed by the Shareholder holding Publisher Shares;

"Publisher Shares" means Shares held by the Shareholder representing publishers of copyright works;

"Relevant Date" means the date on which a different regime regarding director appointments to the regime in place as at the date of this Constitution is intended to be implemented and which date shall be 1 June 2014 or such later date (in all cases falling

prior to 1 August 2014) as is agreed in writing for that purpose by a majority of the Board and notified to the Shareholders;

"Reproduction Rights Organisation" means a collective management organisation that acts as a facilitator or intermediary between Rightsholders and copyright users in the fields of reprographic reproduction and certain digital uses;

'Rightsholders' means those Rightsholders identified as the owners of copyright works copied under licensing schemes administered by the Company or by overseas Reproduction Rights Organisations;

"Share" means a share in the Company, the issue of and rights attaching to which are provided for by this Constitution or, in relation to a share issued after the date of adoption of this Constitution, by the terms on which the share is issued;

"Shareholder" means the holder of the Publisher Shares or the holder of the Author Shares, as the case may be;

"Special Resolution" means a resolution of Shareholders approved by a majority of 75% of the votes of Shareholders entitled to vote and voting on the resolution;

Unless the context otherwise requires, words importing the singular include the plural and vice versa. Reference to a person includes any firm, company or other body corporate and includes all successors and permitted assigns of any such person. Words of one gender include all other genders. Reference to a clause means a clause in this Constitution.

## **2 COMPANY OBJECTS & POWERS**

2.1 The Company operates as a Non-Profit Company and, subject to the provisions of Section 16 of the Act, has full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction, both within and outside New Zealand required:

- (a) To acquire the reproduction and neighbouring rights in copyright works from Rightsholders or their agents whether exclusive or non-exclusive;
- (b) To use all reasonable endeavours to exploit the reproduction rights in copyright works in accordance with sound commercial practice and the normal procedures of Reproduction Rights Organisations;
- (c) To develop effective methods for conveyance of rights and fees between and among Rightsholders and users;
- (d) To license users to make reproductions of extracts from the copyright works of the Rightsholders represented by the Company and to collect fees for such reproduction on behalf of such Rightsholders;
- (e) To carry out sampling surveys to identify Rightsholders or agents of copyright works copied by users under licence to determine the distribution of licensing fees received to such Rightsholders or agents;

- (f) To administer the funds and financial affairs of the Company on behalf of Rightsholders PROVIDED THAT no portion of such funds shall be paid directly or indirectly by way of dividend, bonus or otherwise by way of profits to any Shareholder of the Company;
- (g) To distribute licensing revenue to Rightsholders or agents of copyright works as determined by sampling surveys or other means after deduction of reasonable administrative charges;
- (h) To invest and deal with the revenue of the Company not immediately required in such manner as deemed appropriate;
- (i) To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, warrants and other negotiable or transferable instruments as deemed appropriate;
- (j) To promote and foster the interests of Rightsholders of copyright works by whatever means deemed appropriate;
- (k) To adopt such means of raising awareness of copyright issues and advertising the services of the Company as deemed appropriate;
- (l) To enter into any arrangements with any government or authority, supreme, municipal, local or otherwise that may seem conducive to the Company's objects and to obtain from any such government or authority any rights, privileges and concessions which the Company may think desirable to obtain and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions;
- (m) To apply for, promote, and obtain any statute, order, regulation or other authorisation or enactment which may seem calculated directly or indirectly to benefit the Company's interests and to oppose any bills, proceedings, or applications which may seem calculated directly or indirectly to prejudice the Company's interests;
- (n) To subscribe to, become a member of or co-operate with any other Company, institution, association or organisation, whether incorporated or not, whose objects are altogether or in part similar to those of the Company;
- (o) To represent Rightsholders or agents of copyright works in any proceedings before the Copyright Tribunal;
- (p) To recover, by legal proceedings or otherwise, any accounts payable to the Company;
- (q) To do all such things as are incidental or conducive to the attainment of the objects of the Company, either now or in the future, and to exercise the full rights, powers and privileges of the Company.

2.2 The Company, as a member of IFRRO, will at all times and in all actions taken, or proposed to be taken by it, comply with its obligations as set out in the IFRRO Code of Conduct, as may be amended or supplemented from time to time.

### **3. SHARES**

The Company has issued 100 Shares which are divided into 50 "Publisher Shares" and 50 "Author Shares". Each Share has the same rights and privileges as specified in section 36 of the Act and is subject to the same restrictions. The Shares shall, at all times, be held in equal proportion by representatives of authors of copyright works and representatives of publishers of copyright works.

#### **4. TRANSFER OF SHARES**

##### **4.1 Consent for Transfer**

No Share in the Company shall be sold or transferred by any Shareholder without the written consent of all Shareholders in the Company.

##### **4.2 Signed Transfer**

For the purpose of transferring Shares, a form of transfer signed for or on behalf of the present holder of the Shares must be delivered to the Company, or to any agent of the Company who maintains the Company's share register.

##### **4.3 Entry in Share Register**

Subject to the provisions of this clause 4, Shares may be transferred by entry of the name of the transferee in the share register. The form of transfer must be signed by the transferee if registration as holder of the Shares imposes a liability on the transferee to the Company.

##### **4.4 Board's Right to Refuse Registration**

The Board may within 10 working days of the receipt of a transfer of Shares by the Company, refuse or delay the registration of the transfer if:

- (a) the proposed transfer would no longer result in the Shares being held in equal proportions by representatives of authors of copyright works and representatives of publishers of copyright works;
- (b) the holder of the Shares has failed to pay an amount due to the Company in respect of those Shares;
- (c) the Board acting in good faith in its sole discretion considers that it is not in the best interests of the Company to register the transfer;
- (d) the transfer is not accompanied by such proof as the Directors reasonably require of the right of the transferor to make the transfer; or
- (e) the Board considers that to effect the transfer would result in a breach of the law, the Act, or of this Constitution.

##### **4.5 Full Reasons**

Any resolution of the Board to refuse or delay the registration of a transfer of Shares must set out in full the reasons for doing so, and must be sent to the transferor and transferee within 5 working days of the date of the resolution.

##### **4.6 Registration of Transfer**

Subject to the remainder of this clause, on receipt of a duly completed form of transfer the Company must enter the name of the transferee on the share register as the holder of the Shares, unless the Board has resolved in accordance with clause 4.4 to refuse or delay the registration of the transfer of the Shares.

## **5. SHAREHOLDER MEETINGS**

### **5.1 Annual General Meetings and Special Meetings**

An annual general meeting of Shareholders shall be held once in each calendar year within six months from the end of each Accounting Period of the Company. All meetings other than the annual general meeting shall be called special meetings.

### **5.2 Resolution in Lieu of Meeting**

A resolution in writing signed by all of the Shareholders entitled to vote on that resolution at a general meeting is as valid as if it had been passed at a meeting of Shareholders. Such a resolution may be signed without prior notice being given to Shareholders.

### **5.3 Notice of Meeting**

Except where a resolution in writing is made in lieu of such meeting, 10 working days' notice of any annual general meeting and 10 working days' notice of any special meeting shall be provided to Shareholders specifying the place, date and hour of the meeting, the general nature of any business to be transacted and the text of any special resolution to be submitted to the meeting.

### **5.4 Voting**

At any annual general meeting or special meeting each Shareholder (or representative of a Shareholder) shall have one vote.

### **5.5 Quorum**

A quorum for a meeting of Shareholders is present if both the Shareholder holding the Author Shares and the Shareholder holding the Publisher Shares, or their respective representatives appointed in accordance with clause 5.8, are present.

### **5.6 If a quorum is not present 30 minutes after the time appointed for the meeting:**

- (a) in the case of a special meeting, the meeting is dissolved; and
- (b) in the case of an annual general meeting, the meeting is adjourned to the same day in the following week, at the same time and place, or to such other date, time and place as the Directors may appoint and, if, at the adjourned meeting, a quorum is not present the Shareholder or Shareholders present shall constitute a quorum.

### **5.7 Voting Thresholds**

Except as may be otherwise provided for in this Constitution or the Act, at any annual general meeting or special meeting, any resolution put forward for approval by the Shareholders shall be passed if approved by a simple majority of the votes of all Shareholders entitled to vote and voting on that resolution.

### **5.8 Representatives**

A body corporate which is a Shareholder may appoint one representative to attend a meeting of Shareholders on its behalf as permitted by, and in accordance with, Schedule 1 of the Act.

### **5.9 Method of Holding Meetings**

A meeting of Shareholders, where notice of the meeting has been given, may be held either:

- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

#### 5.10 Minutes

The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders. Minutes which have been signed correct by the chairperson of the meeting are on the face of it evidence of the proceedings at the meeting.

## **6. DIRECTORS**

### 6.1 Number of Directors

Unless and until otherwise determined by the Company by way of Ordinary Resolution, the Board shall consist of a maximum of six Directors.

### 6.2 Composition of Board on or prior to the Relevant Date

Prior to and including the Relevant Date, the Board shall consist of six Directors, three being appointed by the Shareholder holding Publisher Shares and three being appointed by the Shareholder holding Author Shares.

### 6.3 Composition of Board after the Relevant Date

After the Relevant Date, the Board shall consist of six Directors appointed as follows:

- (a) two Directors, who may be existing Directors prior to the Relevant Date, who are appointed, and who may be removed, by the holder of the Author Shares;
- (b) two Directors, who may be existing Directors prior to the Relevant Date, who are appointed, and who may be removed, by the holder of the Publisher Shares; and
- (c) two independent Directors, who are not members of either the Shareholder holding the Author Shares or the Shareholder holding the Publisher Shares who are appointed, and who may be removed, by a majority of the Board provided that to be appointed as a Director each such independent Director must, in the opinion of a majority of the Board, acting reasonably, have business skills matching the position descriptions for each of those directorship roles previously prepared by the Board.

### 6.4 Existing Directors to Continue

The persons holding office as Directors on the date of adoption of this Constitution continue in office and are deemed to have been appointed as Directors pursuant to this Constitution.

#### 6.5 Director's Term of Office on or prior to the Relevant Date

Each Director shall hold office from the date of his or her appointment until the Relevant Date at which time he or she may, if he or she wishes, offer himself or herself for re-election in accordance with clause 6.7. At any time prior to the Relevant Date, a Director may vacate his or her office pursuant to section 157 of the Act. If a Director vacates his or her office prior to the Relevant Date, the Shareholder who appointed that Director may appoint another Director to hold office for the remainder of the vacating Director's term.

#### 6.6 Director's Term of Office after the Relevant Date

Each Director appointed on or after the Relevant Date shall hold office for a period starting on the date of his or her appointment and ending at the conclusion of the third following annual general meeting after such date of appointment. At the expiration of his or her term of appointment, such Director may, if he or she wishes, offer himself or herself for re-election in accordance with clause 6.7. At any time prior to the expiration of his or her term of appointment a Director may vacate his or her office pursuant to section 157 of the Act. If a Director vacates his or her office prior to the end of his or her term of appointment, the Shareholder who appointed that Director (if that Director is a Publisher Director or an Author Director) or the Board (if that Director is an independent Director) may appoint another Director to hold office for the remainder of the vacating Director's term.

#### 6.7 Re-election of Retiring Director

A Director retiring at the end of his or her term of appointment pursuant to clause 6.5 or 6.6 shall, if standing for re-election, be deemed to have been re-elected unless:

- (a) in relation to a Publisher Director or an Author Director: some other person is appointed by the relevant Shareholder (in accordance with clause 6.3(a) or clause 6.3(b), as applicable) to fill the vacated office; or
- (b) in relation to an independent Director: the Board resolves to appoint some other person (in accordance with clause 6.3(c)) to fill the vacated office.

#### 6.8 Vacation of Office

A Director ceases to be a Director if he or she:

- (a) is removed from office by an Ordinary Resolution in accordance with clause 6.3 (a), (b), or (c), as applicable or;
- (b) dies, or becomes mentally disordered or subject to a property order or personal order made under the Protection of Personal and Property Rights Act 1988; or
- (c) resigns by written notice delivered to the Company at its address for service or at its registered office (such notice to be effective at the time when it is so received unless a later time is specified in the notice); or
- (d) becomes disqualified from being a Director pursuant to the Act; or
- (e) becomes bankrupt or makes an arrangement or composition with his or her creditors generally; or
- (f) [is absent for more than three consecutive meetings of the Board without approval of the Board and the Board resolves that the office be vacated.]

## 6.9 Timing of Retirement and Appointment

If:

- (a) a Director retires at a meeting of shareholders and is not re-elected or deemed to be re-elected at that meeting, the Director shall remain in office until, and his or her retirement shall take effect at, the conclusion of the meeting;
- (b) a Director is removed from office at a meeting of shareholders by Ordinary Resolution, the Director shall remain in office until, and his or her removal shall take effect at, the conclusion of the meeting;
- (c) a person who is not already a Director is appointed or elected as a Director at a meeting of shareholders, that person shall take office as a Director immediately after the conclusion of the meeting.

## 6.10 Directors' Indemnity and Insurance

The Company is expressly authorised to indemnify any Director or employee of the Company for any of the matters provided in section 162(3) and (4) of the Act. In addition, the Company is expressly authorised to effect insurance for any and all Directors and employees of the Company provided that:

- (a) The Board gives its prior approval as required by section 162(5) of the Act;
- (b) The Directors who vote in favour of authorising insurance are forthwith entered into the interest register in accordance with section 162(6) and (7) of the Act.

## **7. PROCEEDINGS OF THE BOARD**

### 7.1 Chairperson

The Board shall at the first meeting in each calendar year elect from one of its number a Chairperson for its meetings for that year. If no Chairperson has been elected or if at any meeting the Chairperson is not present within five minutes after the time appointed for the meeting, the Directors present may choose one of their number to be Chairperson of the meeting.

### 7.2 Method of Holding Meetings

A meeting of the Board may be held either:

- (a) by a number of Directors sufficient to form a quorum being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual communication by which all the Directors participating in the meeting and constituting a quorum can simultaneously hear each other throughout the meeting.

### 7.3 Quorum

The quorum necessary for the transaction of business by the Board shall be:

- (a) on or prior to the Relevant Date: two of the Publisher Directors and two of the Author Directors; and

- (b) after the Relevant Date: not less than four Directors together comprising at least one Publisher Director, one Author Director and one independent Director.

#### 7.4 Voting Thresholds

Except as may be otherwise provided for in this Constitution or the Act, a resolution of the Board is passed if it is agreed to by all Directors present or if a majority of the votes cast on it are in favour of it. The Chairperson does not have a casting vote.

#### 7.5 Voting Entitlements

Each Director must, when exercising powers or performing duties as a Director, act in a manner which he or she believes is in the best interests of the Company, even though (in the case of a Publisher Director or an Author Director) it may not be in the best interests of the Shareholder or Shareholders they represent.

#### 7.6 Unanimous Resolution

A resolution in writing, signed or assented to by all Directors then entitled to receive notice of a Board meeting is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more Directors. A copy of any such resolution must be entered in the minute book of Board proceedings.

#### 7.7 Authority to Remunerate the Directors

The Board may authorise the payment of remuneration or the provision of other benefits by the Company to a Director or former Director for services as a Director, or in any other capacity if the Board is satisfied that to do so is fair to the Company. The Board must ensure that, immediately after authorising any payment, benefit or contract under this clause 7.7, the particulars of the payment, benefit, or contract are entered in the interests register. The Directors who vote in favour of authorising a payment, benefit, or contract under this clause 7.7 must sign a certificate stating that, in their opinion, the making of the payment or the provision of the benefit, or the entering into of the contract is fair to the Company, and the grounds for that opinion.

### 8. **METHOD OF CONTRACTING**

#### 8.1 Method

A contract or other enforceable obligation may be entered into by the Company as follows:

- (a) an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:
  - i. two or more Directors of the Company; or
  - ii. a Director, or other person or class of persons whose signature or signatures must be witnessed, and who must first be approved by the Board;
- (b) an obligation which, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the Company in writing by the Chief Executive

- of the Company or any other person acting under the Company's express or implied authority; and
- (c) an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by the Chief Executive of the Company or any other person acting under the Company's express or implied authority.

## **9. ACCOUNTS**

The Board shall cause to be kept such accounting and other records as are required by the Act. Full financial statements will be prepared within five months from the end of each Accounting Period and laid before the Company in the annual general meeting.

## **10. RECEIPT AND ALLOCATION OF MONIES**

### **10.1 Application of Monies**

In each Accounting Period, all monies received by the Company on behalf of Rightsholders together with all income arising from the investment of any such monies, shall be held and applied in accordance with the following distribution policy (the "**Distribution Policy**"):

- (a) in payment of all proper and reasonable expenses of the Company of and incidental to the collection, allocation and distribution of such monies and any other amounts properly chargeable by the Company;
- (b) if the Board so determines, such amounts not exceeding two per centum of all such monies received as the Board may consider proper for cultural and/or social purposes or for such other purposes as the Board shall in its absolute discretion think conducive to the interests of Rightsholders represented by the Company;
- (c) any surplus then remaining shall become part of a fund (the "**Distributable Fund**") for that Accounting Period which shall be allocated and distributed to Rightsholders in accordance with a method of entitlement to be fixed from time to time by the Board.

10.2 The Distribution Policy will be reviewed by the Board annually. Any amendments shall be approved by a majority of the Directors present, including at least one Director representing the Publisher Shareholder and at least one Director representing the Author Shareholder, at a duly convened, quorate meeting of the Board or by unanimous resolution in writing.

### **10.3 Entitlement**

- (a) Any method of entitlement fixed by the Board shall comply with the terms and conditions of any agreement in force from time to time between the Company and any mandated Rightsholder or Reprographic Rights Organisation.
- (b) Allocations and distributions, when made by the Board, shall be final and binding except that the Board shall be at liberty to consider and, if thought fit, to admit any claims

made by any interested persons within two years of the date of the allocation or distribution concerned.

#### 10.4 Time of Distribution

Monies allocated to Rightsholders from the Distributable Fund in respect of any Accounting Period shall be distributed to Rightsholders as soon as practicable after allocation. To the extent that payment of any such allocation has not been effected, the unpaid balance shall be treated as a liability of the Company in its annual accounts for a period of five years (or longer period as determined by the Board) from the end of the Accounting Period in which the monies were received.

#### 10.5 Reallocation of Undistributed Funds

All monies held as part of a Distributable Fund for any Accounting Period shall be held for a period of five years from the end of the Accounting Period in which the monies were received, or such further period as the Board may in its discretion determine. At the expiration of the five-year period (or longer period as determined by the Board) after every effort has been made to correctly identify and locate the Rightsholders to whom monies have been allocated, any undistributed funds shall be transferred to the Distributable Fund for reallocation and distribution where the Board considers that the information available to the Company is insufficient to enable an equitable and accurate distribution.

### **11. NOTICES**

11.1 A notice may be served by the Company on a Shareholder or Director by personal delivery or by post to the last known address of the person or, with the consent of the person, by facsimile, or email.

11.2 For the purposes of clause 11.1:

- (a) If a notice is served by personal delivery, service must be made by either handing it to the person, or if the person refuses to accept the document, by bringing it to their attention and leaving it at a place accessible to that person;
- (b) If a notice is posted or delivered to a document exchange, it is deemed to have been received 5 working days after it is posted or delivered;
- (c) If a notice is sent by facsimile, it is deemed to have been received on the working day following the day on which it was sent;
- (d) if a notice is sent by email, it is deemed to have been received upon the earlier of receipt by the sending party of confirmation of successful delivery or 2 days after leaving the sending party's network for delivery to the receiving party's network, provided the sending party does not receive any indication of failure or delay of delivery within those 2 days.

### **12. WINDING UP**

In the event that the Company may cease its activities and be wound up, any available funds or surplus arising from any sale of assets or property after settlement of all liabilities shall be

disposed of in such a manner as agreed by the Board PROVIDED THAT such funds or surplus will not, whether by way of money, property or otherwise howsoever, be paid to or distributed to Shareholders.

**13. ALTERATION TO CONSTITUTION**

The Company may alter this Constitution pursuant to the Act provided however that no such amendment enables the Company to amend clause 2.1(f), or clause 12, prohibiting pecuniary gain to Shareholders.