

THIS DEED is made on 05 October 2017

(the "Distribution Agreement")

BETWEEN:

- (1) **THE COPYRIGHT LICENSING AGENCY LIMITED** whose registered number is 01690026 and whose registered office is Barnard's Inn, 86 Fetter Lane, London EC4A 1EN UK ("**CLA**"); and
- (2) **AUTHORS' LICENSING AND COLLECTING SOCIETY LIMITED** whose registered number is 1310636 and whose registered office is Barnard's Inn, 86 Fetter Lane, London EC4A 1EN UK ("**ALCS**"); and
- (3) **PUBLISHERS LICENSING SOCIETY LIMITED** whose registered number is 1575236 and whose registered office is Barnard's Inn, 86 Fetter Lane, London EC4A 1EN UK ("**PLS**");
- (4) **DESIGN AND ARTISTS COPYRIGHT SOCIETY** whose registered number is 1780482 and whose registered office is 33 Old Bethnal Green Road, London, E2 6AA ("**DACS**")
- (5) **THE PICTURE INDUSTRY COLLECTING SOCIETY FOR EFFECTIVE LICENSING LIMITED** whose registered number is 9899186 and whose registered office is 59 Tranquil Vale, London SE3 0BS ("**PICSEL**")

(each a "**Party**", together the "**Parties**").

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 Members, and other, Collective Management Organisations.
- B ALCS, PLS, DACS and PICSEL are the sole Members of CLA and the only parties to the Members Agreement. The Members Agreement provides for the Members to agree the revenue sharing arrangements for the net receipts of CLA which are available for distribution.
- C This Distribution Agreement sets out the agreed revenue sharing arrangements of the Members.

IT IS HEREBY AGREED:

1. DEFINITIONS AND INTERPRETATION

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

"**Articles**" means the articles of association of CLA.

"**Agreed Distribution Model**" means the agreed division of revenues set out in the Schedule, as determined by the independent rights valuation undertaken by Mark Bezant of FTI Consulting in 2015 as the same may be reviewed from time to time.

"**Authority to Act**" means the form of grant of authority to CLA by a Member.

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

"**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.

"Contingency" means such sums by way of contingency as may be determined by the Board in accordance with the Regulations and the Articles to be prudent unless and until released (it being agreed that such sums released will be added back and form part of the Gross Receipts for the purposes of this Distribution Agreement).

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

"Eligible Net Receipts" has the meaning set out in Clause 2.1.

"ECL Scheme" means an extended collective licensing scheme in which the Secretary of State has authorised CLA to grant licences in respect of Works owned or controlled by rightsholders not represented by the Members.

"Gross Receipts" has the meaning set out in Clause 2.1.

"International Agreement" means any arrangements made directly with an overseas Collective Management Organisation in respect of Rights.

"International Fees" means any monies received directly by a Member from an overseas Collective Management Organisation in respect of Rights.

"Mandate" means the right, whether authorised by law or by way of assignment, licence or any other contractual arrangement, to manage Rights.

"Members" means ALCS, PLS, DACS and PICSEL.

"Members Agreement" means the agreement between the Members dated 28 / 02 2017 as such agreement may be updated, amended and/or novated from time to time.

"Regulations" means the Collective Management of Copyright (EU Directive) Regulations 2016.

"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.

"Visual Artist Distribution Methodology Agreement" means the agreement between CLA, DACS, ALCS and PICSEL dated 24 July 2017 as updated, amended and / or subject to novation from time to time.

"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 Distribution Agreement. In this Distribution Agreement references to the singular number only also include the plural and vice versa. References to a **Clause** and the **Schedule** is a reference to a clause of and schedule to this Distribution Agreement. Clause and Schedule headings are for ease of reference only and do not affect the construction or interpretation of this Distribution Agreement.

2. ELIGIBLE NET RECEIPTS

2.1 Subject always to Clause 2.2, the revenue available for distribution to the Members under this Distribution Agreement in each full financial year for which audited accounts are available shall be all monies received by CLA from its conduct of the Business in respect of the Rights, including from UK licensees and overseas Collective Management Organisations, in that year excluding VAT and any other sales related taxes (the "**Gross Receipts**") less the deduction of:

- (a) any monies payable by CLA to overseas rights-holders in that year under an International Agreement or other arrangements with overseas Collective Management Organisations; and
- (b) any monies: (i) payable by CLA to rights-holders; or (ii) received as commission payments to CLA; in that year under any other agency or other arrangements for third-party licences issued separately from any CLA Licences; and
- (c) CLA's administration charge of an amount currently equal to twenty-five per cent (25%) of the Gross Receipts arising from new licences and eleven per cent (11%) of the Gross Receipts arising from renewal licences in each case less (a), (b) and (c) and any monies received by CLA from overseas Collective Management Organisations under repertoire exchange or other arrangements on a non-title specific basis; and
- (d) any Contingency;

(the "**Eligible Net Receipts**").

2.2 This Distribution Agreement shall apply solely in relation to monies:

- (a) invoiced for in the UK by CLA on or after 1 January 2016; and
- (b) collected by CLA from overseas Collective Management Organisations on or after 1 January 2016.

2.3 CLA shall undertake manual and automated data collection exercises and allocate revenue to Works based on the relevant data collected. CLA shall provide, where practicable, allocation data to Members to assist in regular and accurate distributions.

3. DISTRIBUTION

3.1 The Parties agree to the distribution of the Eligible Net Receipts by CLA in accordance with the Agreed Distribution Model.

3.2 CLA shall pay:

- (a) the share of the Eligible Net Receipts allocated to authors in the Agreed Distribution Model to ALCS; and
- (b) the share of the Eligible Net Receipts allocated to publishers in the Agreed Distribution Model to PLS; and
- (c) the share of the Eligible Net Receipts allocated to visual artists in the Agreed Distribution Model in accordance with the Visual Artist Distribution Methodology Agreement to ALCS, DACS and PICSEL.

3.3 CLA shall distribute the shares of the Eligible Net Receipts regularly, diligently and accurately to Members, together with any allocation data available.

4. NON-DISTRIBUTABLE AMOUNTS

- 4.1 The Parties agree and acknowledge that as the Eligible Receipts are payable to the Members and the Members are Collective Management Organisations CLA does not itself require a non-distributable amounts policy for Eligible Net Receipts.
- 4.2 For any monies collected prior to an ECL Scheme which are payable to overseas rights-holders in a territory where CLA does not yet have an International Agreement, CLA shall retain such monies for a period of three years from the end of the financial year in which the money was collected. If after the three year period, the money remains unpaid, CLA may reallocate and distribute the monies to the Members in accordance with paragraph 6.2(d) of the Schedule hereto.
- 4.3 For any monies collected under any ECL Scheme which are payable to overseas rightsholders in a territory where CLA does not yet have an International Agreement, CLA will distribute such monies to the Members in accordance with the Agreed Distribution Model on a title specific basis.

5. INTERNATIONAL

- 5.1 The Agreed Distribution Model includes distribution instructions for monies received by CLA from its arrangements with overseas Collective Management Organisation in respect of the Rights.
- 5.2 Each Member shall disclose to CLA International Agreements which it has in place for the purposes of reporting any International Fees received in respect of the exercise of Rights in Works included in that Member's grant of authority to CLA at any time during the continuance of this Distribution Agreement.
- 5.3 Any International Fees received by a Member in respect of the exercise of Rights in Works included in that Member's grant of authority to CLA but which have not been paid by that Member to CLA shall be set-off against the amount payable to that Member under Clause 3 and added to the amounts payable to the other Members pro rata, notwithstanding:
- (a) where a Member receives International Fees in respect of the exercise of Rights in artistic works featured in UK publications, that Member shall pay those International Fees to CLA for distribution as income from overseas Collecting Management Organisations as prescribed under paragraph 6 of the Schedule;
 - (b) where a Member receives International Fees in respect of the exercise of Rights in artistic works featured in overseas publications, that Member shall not be required to account for those International Fees to CLA and shall retain those International Fees for distribution to its members;
 - (c) where a Member receives International Fees in respect of the exercise of Rights in artistic works and the Member is unable to determine the proportion of the International Fees received by that Member relating to UK and overseas publications respectively, then that Member shall pay 50% of those International Fees to CLA for distribution as income from overseas Collecting Management Organisations as prescribed under paragraph 6 of the Schedule and shall retain the remaining 50% of those International Fees for distribution to its members; and
 - (d) the Parties acknowledge that there may be occasions where International Fees in respect of the exercise of Rights in artistic works warrant a treatment different to the one as described in 5.3 (a) to 5.3 (c). The Member receiving these royalties shall make a representation to the CLA in respect of these International Fees and their treatment shall be discussed on a case by case basis.
- 5.4 In the event that CLA is required to repay any International Fees already distributed under this Distribution Agreement due to a change in legislation, or in the application or interpretation of any relevant legislation applicable to the overseas Collective Management Organisation claiming repayment, CLA shall deduct the amount so repaid from the Eligible Net Receipts prior to the next distribution under this Distribution Agreement.

6. REVIEW

6.1 The Agreed Distribution Model shall be subject to review in accordance with the following cycle:

- (a) in respect of journals by the end of 2019;
- (b) in respect of magazines by the end of 2022; and
- (c) in respect of books by the end of 2025;

in each case including relevant associated online content.

6.2 The reviews shall be conducted materially in accordance with the process and procedure used for the determination of the Agreed Distribution Model.

7. INDEMNITY

The Members acknowledge their indemnification obligations in respect of CLA set out in Clause 7 of the Members Agreement and in Clause 4 of the Authority to Act.

8. TERM AND TERMINATION

8.1 This Distribution Agreement shall remain in full force and effect unless and until: (a) agreed otherwise in writing by the Parties at any time; or (b) a Member's membership of CLA is terminated under and in accordance with the Members Agreement subject to the provisions of Clause 8.2.

8.2 On termination of a Member's membership of CLA under and in accordance with the Members Agreement this Distribution Agreement shall cease to have any force and effect save in respect of:

- (a) monies 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 (subject to any reasonable amount retained as a reserve against any potential claims under the Members' indemnity referred to under Clause 7); and
- (b) any other right or remedy which any Party may have in respect of any breach of this Distribution Agreement which existed at or before the date of termination.

9. GENERAL

9.1 No failure to exercise or delay in exercising any right or remedy under this Distribution Agreement shall constitute a waiver thereof and no waiver by a Party of any breach or non-fulfilment by another of any provision of this Distribution 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 Distribution Agreement shall preclude or restrict the further exercise of any such right or remedy. The rights and remedies of a Party provided in this Distribution Agreement are cumulative and not exclusive of any rights and remedies provided by law.

9.2 No variation of this Distribution Agreement shall be valid unless it is in writing and executed by or on behalf of each Party.

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

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

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

SCHEDULE

The Agreed Distribution Model

Effective 1 January 2016

1. UK revenue relating to copying from magazines and journals

	Publishers	Authors	Visual artists
Magazines	72.5%	17.5%	10.0%
Journals	76.0%	23.0%	1.0%

2. UK revenue relating to copying from books

	Publishers	Authors	Visual artists
Schools	42.0%	42.0%	16.0%
Further education	42.5%	42.5%	15.0%
Higher education	48.0%	48.0%	4.0%
Business	49.5%	49.5%	1.0%
Public sector: NHS	49.5%	49.5%	1.0%
Public sector: Government.	49.5%	49.5%	1.0%
Transactional: document delivery	49.5%	49.5%	1.0%
Transactional: Media monitoring	n/a	n/a	n/a
Transactional: HE second extract	48.0%	48.0%	4.0%

3. UK revenue relating to copying from websites

Where websites are online or digital versions of specific magazine, journal or book titles (such as a 'soft copy' or an 'e-book'), the distribution will follow the allocation for the relevant format.

Where websites do not relate to specific magazine, journal or book titles, distribution will follow the allocation for books.

4. Where it is not possible to determine the format of work copied, distribution will follow the same ratio as UK licence income across all formats in the financial year immediately prior to that in which the income is distributed.

5. Revenue relating to copying from overseas works

Revenue attributable to the copying of overseas works is sent to the relevant Collective Management Organisations where CLA has an International Agreement.

6. Income from overseas Collective Management Organisations

6.1 As a first step in distributing overseas income, CLA shall use title-specific data provided by overseas Collective Management Organisations to determine, where possible, the amount of the income that relates to each of books, magazines and journals. There will be a residual amount received for which title-specific information is not available and hence where it is not possible to determine the formats of the works copied.

6.2 Subject to the following paragraph 6.3, CLA's overseas income for these categories will be distributed between publishers, authors and visual Artists as follows:

- (a) where overseas income is known to relate to books, using the same overall ratio as UK licence income relating to the copying of books in the financial year immediately prior to that in which the overseas income is distributed by CLA to rights-holders;
- (b) where overseas income is known to relate to magazines, using the same ratio as UK licence income relating to the copying of magazines;
- (c) where overseas income is known to relate to journals, using the same ratio as UK licence income relating to the copying of journals; and
- (d) where it is not possible to determine the format of work copied, using the same ratio as UK licence income across all formats in the financial year immediately prior to that in which the overseas income is distributed by CLA to rights-holders.

6.3 The exception to the above is where income relates to a sub-section, but not all classes of rights-holders. In this case the distribution shall be shared only between the parties representing this subsection of rights-holders and in the same proportions.