

## AUDIOVISUAL LICENSING ALLIANCE (AVLA) LIMITED

### MEMBERSHIP AGREEMENT

*This template has been approved and adopted by the Members of Audiovisual Licensing Alliance (AVLA) Limited (“AVLA”) on 23 August 2022.*

DATE [XXXX]

BETWEEN

(1) [MEMBER, whose registered office is at [ADDRESS] (“Member”) and

(2) AUDIOVISUAL LICENSING ALLIANCE (AVLA) LIMITED, whose registered office is at ALCS, 6th Floor International House, 1 St. Katharine’s Way, London, E1W 1UN (“AVLA”).

#### 1. DEFINITIONS AND INTERPRETATION

In this Agreement

- 1.1 words and phrases which are not defined in this Agreement shall have the meaning given in the Articles.
- 1.2 “**Articles**” means the Articles of Association of AVLA from time to time.
- 1.3 “**Authorised Uses**” means uses of the Member’s Repertoire that AVLA is authorised to license by the members of AVLA further to the terms of licences which have been approved in accordance with the Articles.
- 1.4 “**AVLA Licensing Scheme**” means any licensing scheme operated by AVLA.
- 1.5 “**Commissioners**” means the Commissioners of Customs and Excise (or any successors within the Department of HM Revenue and Customs).
- 1.6 “**Membership Registration Form**” means the annex to this Membership Agreement as updated and amended by agreement between the Member and AVLA from time to time.
- 1.7 “**Member’s Repertoire**” means the body of works specified in the Membership Registration Form.
- 1.8 “**Right Holder Category**” means each of the categories of Right Holder of the Members, which on the formation of the Alliance are producers, directors, performers, authors and visual artists. Pursuant to the Articles, additional categories may be added from time to time.
- 1.9 “**Rights**” means the copyright and/or rights in performances in the Member’s Repertoire.

1.10 “**Territory**” means the United Kingdom together with such other territories of the world in which the Member agrees the Rights may be licensed.

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

## **2. APPOINTMENT OF AVLA**

The Member hereby appoints AVLA to act as the agent of the Member to license and manage the Rights for Authorised Uses in accordance with the Articles for the term of this Agreement. All rights are licensed exclusively unless stated otherwise on a case by case basis.

## **3. LICENSING AND MANAGEMENT OF THE RIGHTS**

AVLA’s appointment shall include the right (but not the obligation) for AVLA, subject to the approvals processes set out in the Articles and only for Authorised Uses, to:

3.1 exercise the Rights by instituting and operating AVLA Licensing Schemes that include the Member’s Repertoire;

3.2 negotiate and enter into agreements with those who require licences for the use of the Rights;

3.3 determine by negotiation or otherwise the terms and conditions upon which licences are granted in the exercise of the Rights including the royalties, fees or other monies payable for such licences;

3.4 appoint agents to enter into agreements with those who require licences for the use of the Rights;

3.5 collect rights revenue paid for the use of the Rights; and

3.6 verify by audit or otherwise whether or not the parties with whom AVLA has entered into agreements in relation to the Rights are complying with the terms and conditions thereof.

## **4. DISTRIBUTIONS**

4.1 AVLA shall make distributions of royalties, fees or other monies collected and processed and earned to the Member in accordance with the Distribution Policy as amended from time to time. The Member shall receive distributions for the Right Holder Category that includes the rights that the Member manages.

4.2 AVLA shall provide the Member with information concerning rights revenue collected and paid and deductions made in accordance with the Distribution Policy.

4.3 All payments to the Member shall be subject to:

- (a) deductions provided for pursuant to the Articles and the Distribution Policy;
- (b) the deduction or withholding of any taxes required to be deducted or withheld under the laws of the United Kingdom or of any other jurisdiction as applicable;
- (c) any governmental or other permission required to pay all or any part of such payment to any party outside the United Kingdom or the country in which the relevant royalties fees or other sums arose.

Upon request by the Member AVLA will (subject to appropriate arrangements being in place for the recoupment by AVLA of any costs incurred by AVLA in so doing) use all reasonable endeavours to assist the Member in reclaiming any sums withheld by way of taxation by providing the Member with such information as is available to AVLA in relation to the sums deducted or withheld. Where AVLA has deducted any such sums AVLA shall at the request of the Member provide a certificate as to the sums so deducted.

## **5. VAT**

5.1 Without prejudice to the specific obligations referred to in this Clause, the Member shall comply with any and all obligations imposed on it by the VAT legislation in force from time to time and hereby indemnifies AVLA against all claims, demands, costs and expenses made against or incurred by AVLA whether by reason of the Member's failure to comply with such obligations or by reason of any notice or direction by the Commissioners substituting AVLA as the person accountable for VAT concerning any supply by or to or from AVLA and/or compliance with such obligations as aforesaid.

5.2 The Member undertakes to account to the Commissioners for any VAT due on royalties:

- (a) collected by AVLA as agent for the Member where Section 47(3) of the Value Added Tax Act 1994 does not apply; and
- (b) distributed by AVLA to the Member.

5.3 The Member hereby agrees, should AVLA so elect from time to time, to allow AVLA to operate any self-billing arrangements approved by the Commissioners and for such purpose undertakes with AVLA:

- (a) not to issue any VAT invoice or document purporting to be a VAT invoice in respect of royalties received from AVLA;
- (b) if registered for VAT at any time during the operation of this Membership Agreement to provide AVLA with the name and number under which the Member is registered and any other information requested by AVLA in connection with such self-billing arrangements.

- 5.4 If the Member at any time ceases to be registered for VAT to inform AVLA of the effective date immediately after receipt of notice of cancellation of the Member's registration.
- 5.5 Subject to AVLA giving to all Members notice of its intention the Member hereby grants to AVLA should AVLA so elect full discretion on the Member's behalf to make any application or to support any application made by AVLA to the Commissioners concerning the treatment for VAT purposes of any supply of services (as that term is defined by the Value Added Tax Act 1994) as AVLA or by AVLA as agent for the Member.
- 5.6 The Member agrees that AVLA may exercise the Rights in its own name as agent for the Member for the purposes of Section 47(3) of the Value Added Tax Act 1994.

## **6. MEMBERS' WARRANTIES AND UNDERTAKINGS**

- 6.1 The Member hereby agrees, represents, warrants and undertakes to AVLA that in relation to Authorised Uses that it has approved:
- (a) it has full power and authority to enter into this Agreement and to grant AVLA the rights and powers referred to and to give AVLA all permissions and authorisations contained in this Agreement which are necessary for AVLA to carry out its agency and obligations pursuant to this Agreement;
  - (b) the exploitation of the Rights by AVLA in accordance with the terms of this Agreement or by any licensee of those Rights pursuant to any AVLA Licensing Scheme will not infringe the intellectual property or other rights of any third party anywhere throughout the world;
  - (c) upon the request of AVLA the Member will promptly supply AVLA with copies of any document relating to the ownership control or administration of the Rights or the licensing of such Rights in the possession, power custody or control of the Member and to use all reasonable efforts to obtain any other such document reasonably requested by AVLA; and
  - (d) the Member will promptly do all acts and things (including the execution and delivery of any deeds or documents) which shall be necessary, expedient or desirable to give effect to the terms of this Agreement and promptly render such assistance and give such information to AVLA as AVLA may reasonably require for the purposes of this Agreement.
- 6.2 The Member undertakes to provide the information required under the Membership Registration Form completely and accurately and will keep AVLA fully and promptly informed of any changes becoming known to the Member in the facts and matters referred to in the Membership Registration Form or otherwise notified to AVLA as required by this Agreement and to give AVLA notification or ensure that AVLA is given notification of the date on which the Member ceases to own, control or administer the Rights or any of them in any part of the Territory.
- 6.3 The Member warrants and undertakes that it will

- (a) refrain from doing anything likely to limit or prejudice the success of AVLA in protecting and furthering the common interest of all members of AVLA in ensuring that rights which it administers as an agent are not infringed and that proper remuneration is paid by copyright users; and
- (b) not to do anything which would or might undermine the reputation or good standing of AVLA or any of the rights which it administers as agent (whether for the Member or for other members of AVLA).

6.4 The Member hereby agrees to indemnify AVLA and to hold AVLA harmless against any and all losses, costs, actions, proceedings, claims and demands against AVLA and all costs (including legal costs and expenses and applicable VAT actually incurred), damages and expenses which AVLA may incur:

- (a) as a direct result of any breach by the Member of any warranties or undertakings contained in this Agreement; or
- (b) (without limiting the foregoing) because the Member is not entitled to appoint AVLA as agent in respect of the Rights or any of them or the use or exploitation thereof infringes the copyright or related rights in any other work;

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

6.5 AVLA shall promptly notify the Member of any claim to which the indemnity in Clause 6.4 applies. Notwithstanding Clause 7, the Member shall, if it requests, have conduct of any such claim and AVLA shall not settle any such claim without the prior written consent of the Member (not be unreasonably withheld or delayed). AVLA is obliged to mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

6.6 Clause 6.4 is required for the protection of the membership of AVLA as a whole to ensure that AVLA does not suffer damage or loss which might affect its ability to keep its administration expenses as low as possible. AVLA will only seek an indemnity where the Board of Directors in its absolute discretion determines that the circumstances are such that the claim should be enforced after giving the Member an opportunity to make representations to the Board of Directors in relation to the claim.

## 7. PROCEEDINGS

7.1 Subject to Clause 6.5, in acting under this Agreement AVLA shall have the right (but not the obligation) at its own expense to bring, defend, compromise, abandon, take over or intervene in any proceedings of whatever nature as may be necessary for the enforcement or protection of the Rights including (without limitation) before the Copyright Tribunal or to protect the Rights from infringement.

7.2 Where the Member's name is specifically referred to as applicant, respondent, claimant, defendant or intervener whether or not in representative proceedings AVLA undertakes to keep the Member informed of progress in such proceedings on a reasonable basis and to consult with the Member prior to compromising or abandoning such proceedings.

## 8. DURATION AND TERMINATION

8.1 This Agreement shall commence on the date upon which it is executed by the second of AVLA and the Member ("**the Date of Commencement**"). Such membership shall continue thereafter unless determined on notice or for breach or otherwise as provided by this Agreement or the Articles.

8.2 Membership may be terminated on notice by either party upon such party giving to the other at least 3 months' written notice prior to the last date of the calendar year, such notice to take effect upon the last date of the calendar year ("**the notified withdrawal date**") or as otherwise provided in the Articles provided that to the extent licences have been issued at any time prior to the notified withdrawal date under an AVLA Licensing Scheme for a term not exceeding 12 months ("**Pre-termination Licences**") the Member acknowledges and agrees that the terms of this Agreement shall apply to such licences as if the notified withdrawal date had not been reached.

8.3 Upon the expiry of any period of notice referred to under 8.2 or when the Member shall have ceased to be a member in accordance with the Articles or if the agency under this Agreement expires or properly terminates in accordance with this Agreement for any reason, AVLA shall retain the right to collect all royalties, fees and other monies relevant to the Rights or to the participation in AVLA by the Member which in the ordinary course of business should have been paid prior to the expiry of such notice or which relate to payments pursuant to Pre-termination Licences or periods prior to such expiry and all the rights and powers of AVLA under the agency shall continue for those purposes until terminated by AVLA or by operation of law.

8.4 Upon the termination of the agency under this Agreement in respect of any Rights for any reason the Member shall be entitled (subject to the Distribution Policy of AVLA in force) to the distributions already accrued to it at the date of such expiry or termination in relation to the Rights pursuant to this Agreement and which may additionally become due to it in accordance with this Clause, but not further or otherwise.

8.5 A party ("**Initiating Party**") may terminate the agency of AVLA under this Agreement in relation to all or any Rights with immediate effect at any time by giving written notice to the other party ("**Breaching Party**") on or at any time after the occurrence of an event specified in 8.6 below and such termination shall apply without prejudice to the accrued rights of the parties at the date upon which termination takes effect.

8.6 The events are the Breaching Party committing:

- (a) an irremediable breach of this Agreement;
- (b) a remediable breach of a material obligation under this Agreement which breach, if capable of remedy, has not been remedied within 30 days after the Initiating Party has served written notice on the Breaching Party specifying the breach and the steps required to remedy it and stating that a failure to remedy the breach may give rise to termination under 8.5 above;
- (c) the Breaching Party passing a resolution for its winding up, a court of competent jurisdiction making an order for the Breaching Party's winding up or the presentation of a petition for the Breaching Party's winding up which is not dismissed within 7 days;
- (d) the Breaching Party having an order made for the appointment of an administrator to manage its affairs or business and property or documents are filed with a court of competent jurisdiction for the appointment of an administrator or notice of intention to appoint an administrator is given by a qualifying floating charge holder (as defined in paragraph 12 Schedule 1B to the Insolvency Act 1986);
- (e) the Breaching Party has a receiver appointed over its assets or undertaking or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party or if any other person takes possession of or sells the Breaching Party's assets;
- (f) the Breaching Party makes any voluntary arrangement or composition with its creditors generally or applies to a court of competent jurisdiction for protection from its creditors in any way;
- (g) the Breaching Party ceases, or threatens to cease, to carry on business;
- (h) the Breaching Party is unable to pay its debts as they fall due, within the meaning of s. 123 of the Insolvency Act 1986; or
- (i) if any analogous situation to any of the above occurs in relation to the Breaching Party under the law of any jurisdiction.

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

## **9. MISCELLANEOUS**

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

9.2 Subject to the Articles the Member shall use its reasonable endeavours to procure that any representative nominated by the Member and appointed as a Director of AVLA in accordance with the Articles shall at all times act in the best interests of AVLA.

## **10. REMEDIES AND WAIVERS**

10.1 A failure to exercise or delay in exercising any right, remedy or power provided under this Agreement or by law does not constitute a waiver of the right, remedy or power or a waiver of any other right, remedy or power. No single or partial exercise of any right, remedy or power prevents any further exercise of it or the exercise of any other right, remedy or power.

10.2 Except where this Agreement provides otherwise, the rights, remedies and powers provided by this Agreement are cumulative and not exclusive of any rights, remedies or powers provided by law.

10.3 Any waiver of a breach of any of the terms of this Agreement or of any default under this Agreement shall not be deemed a waiver of any other breach or default and shall not affect the other terms of this Agreement.

## **11. INVALIDITY**

11.1 If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction:

(a) the legality, validity and enforceability in that jurisdiction of the remaining provisions shall be unaffected; and

(b) the legality, validity and enforceability in any other jurisdiction of that or any other provision shall be unaffected.

11.2 Subject and without prejudice to Clause 11.1 the parties shall replace such illegal, invalid or unenforceable provision with legal, valid and enforceable provisions which will achieve, to the greatest extent possible, the economic, business and other purposes of the illegal, invalid or unenforceable provision provided that the commercial balance of this Agreement shall not be materially altered.

## **12. SET-OFF**

12.1 AVLA may at any time set off any liability of the Member to AVLA against any liability of AVLA to the Member, in either case however arising, or whether such liability is present or future, liquidated or unliquidated.

12.2 If the liabilities of the parties are in different currencies, AVLA may convert any liability at a market rate of exchange for the purpose of set-off.

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



**13. NOTICES**

- 13.1 Wherever one party is required or permitted to give notice to the other pursuant to this Agreement, such notice must be delivered via email to the email address which is notified by each party to the other for such purposes, and will be deemed given when so delivered.
- 13.2 The email address for AVLA for this purpose is [corporate@avla.org.uk](mailto:corporate@avla.org.uk) and the email address for the Member is the email address at the Correspondence Address given in the Membership Registration Form, or such other address as may be notified by one party to the other from time to time.
- 13.3 Notices must be accompanied by a copy to the respective addresses for each Party set out at the head of this Agreement, or to such new address as either Party has notified to the other, which must be sent by hand, by courier, or by registered or certified mail.

**14. THIRD-PARTY RIGHTS**

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

**15. JURISDICTION AND GOVERNING LAW**

This Agreement shall be construed according to the laws of England and Wales and the parties hereto agree to submit to the exclusive jurisdiction of the courts of England and Wales.

The parties confirm the above terms  
**ACCEPTED AND AGREED**

SIGNED BY: .....

For and behalf of **AUDIOVISUAL LICENSING ALLIANCE (AVLA) LIMITED**

DATED: .....

SIGNED BY: .....

For and behalf of .....

DATED:.....

**ANNEX**

**MEMBERSHIP REGISTRATION FORM**

**MEMBER'S RIGHTS**

The Member confirms that with effect from the Date of Commencement AVLA's appointment shall apply in respect of the Rights described below, when exploited in the context of Authorised Uses which the Member has approved (as such terms are defined in the Membership Agreement).

The Member's Repertoire (as defined in the Membership Agreement) comprises:

[ ]

The Member shall notify AVLA in writing should the Member's Repertoire change or require change.

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

**DATE OF COMMENCEMENT**

.....

**NOMINATED DELEGATE OF MEMBER FOR AVLA MEMBER NOTIFICATIONS**

.....

**CONTACT DETAILS AND ADDRESSES FOR THE SERVICE OF NOTICES**

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

Registered Office: .....  
.....  
.....

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

.....  
.....  
.....

Telephone number at the Correspondence Address: .....

Email address at the Correspondence Address: .....

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

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

**VAT AND TAX ISSUES**

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

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

**PAYMENT DETAILS**

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

Bank Name: .....

Bank Address: .....  
.....

Name of Account: .....

Bank Sort Code: .....

Bank Account Number: .....

unless and until otherwise notified to AVLA in writing.

**The parties confirm the above terms.**

**ACCEPTED AND AGREED**

SIGNED BY: .....

For and on behalf of **AUDIOVISUAL LICENSING ALLIANCE (AVLA) LIMITED**

DATED: .....

SIGNED BY: .....

For and on behalf of DATED: .....