

## These terms form part of the attached ERA Plus Agreement.

### 1. DEFINITIONS

In this Agreement:

Terms defined in the Principal Licence shall, unless separately defined below or the context otherwise requires, have the same meaning in this ERA Plus Agreement.

“Act” or “the Act” means The Copyright, Designs and Patents Act 1988 or any statutory modification or re-enactment thereof for the time being in force.

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

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

“Dealing” means the uses described in Clause 3 below.

“Educational Communication” means the electronic transmission of the whole or part of an ERA Digital Recording from within a Relevant Educational Establishment to Authorised Users situated outside the premises of the Relevant Educational Establishment for the purpose of education (including teaching and private study) provided always that the transmission does not either involve Commercial Use or authorise or permit any Dealing.

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

“ERA Certified Licence Scheme” means the educational licensing scheme which ERA has been authorised to operate to the extent that the same has been certified for the purposes of Section 35 and Paragraph 6 of Schedule 2 to the Act.

“ERA Digital Recording” means an encoded copy of ERA Repertoire as included in an ERA Recording made under the Principal Licence.

“ERA Plus Licence Fees” means the fees payable under this Agreement by the Licensee specified in the ERA Plus Licence Fee Invoice and calculated against the annual tariff set out in or as provided by Clause 4 below.

“ERA Plus Licence Fee Invoice” shall mean the invoice issued by ERA specifying the ERA Plus Licence Fees due together with applicable VAT.

“ERA Members” means the bodies specified as Licensor Members of ERA in the Principal Licence.

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

“ERA Recording” shall mean a recording of a broadcast, or a copy of such recording made by or on behalf of an Educational Establishment under a Principal Licence.

“ERA Repertoire” means the categories of works and performances owned or controlled by the ERA Members to the extent that the Principal Licence applies to such works or performances.

“Excluded Material” shall mean any broadcasts or copyright work or performance or other material of any nature which is reproduced in whole or in part in an ERA Recording but which is not ERA Repertoire.

“Relevant Educational Establishment” means either an Educational Establishment being the Licensee under this Agreement or an Educational Establishment to which this Agreement shall have been specifically applied.

“Relevant Network” means a network or part of a network (whether a stand-alone network or a virtual network within the Internet) which is only accessible to Authorised Users.

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

“Term” shall mean the period specified in Clause 5 of the Agreement.

“Territory” means England, Wales, Scotland and Northern Ireland.

## **2. GRANT OF RIGHTS**

- 2.1 Subject to payment of the ERA Plus Licence Fees this Agreement shall permit the Licensee non-exclusively in the Territory and during the Term
- (a) to make or to authorise Relevant Educational Establishments to make ERA Digital Recordings only to the extent that is technically necessary for the purposes of sub-Clause (b); and
  - (b) to make available only by means of Educational Communication to Authorised Users ERA Repertoire included in ERA Digital Recordings and to permit Authorised Users situated outside the Relevant Educational Establishment to access using a Relevant Network ERA Repertoire so made available for personal non-commercial educational use.
- 2.2 For the avoidance of doubt communication of ERA Recordings by or on behalf of the Licensee to an Authorised User who is within the premises of a Relevant Educational Establishment to which the terms of the Principal Licence apply shall be governed by the terms of the Principal Licence and not this Agreement.
- 2.3 This Licence shall not permit or be deemed to authorise any use of Excluded Material.
- 2.4 No copying of ERA Repertoire or making of ERA Digital Recordings under any ERA Plus Agreement shall be made except by or on behalf of an Educational Establishment and any such copying shall be made either
- (a) at the premises of the Educational Establishment by or under the direct supervision of a teacher or employee of the Licensee; or
  - (b) at the premises of a third party authorised by the Licensee to make copies on behalf of the Licensee under written contractual terms and conditions which prevent the retention or use of any copies by that third party or any other third party unless ERA shall have expressly agreed that a specific third party may retain any copies for subsequent use only by current Licensees under an ERA Plus Agreement.

## **3. NO DEALING**

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

## **4. LICENCE FEES**

- 4.1 The grant of rights under this Agreement shall be made in consideration of the Licensee paying to ERA the ERA Plus Licence Fees.
- 4.2 The ERA Plus Licence Fees have been calculated by reference to the period for which the Principal Licence has been granted and to the applicable tariff referred to in Clause 4.4 below in respect of that period.
- 4.3 The annual tariff for fees under this Agreement shall be calculated on a full-time or full-time equivalent per head basis by category of student in the Relevant Educational Establishments to which this Agreement applies and against which Authorised Users under this Agreement will be defined.

4.4 **For Licences taking effect on or after 1st April 2009 the annual tariff shall be:**

Students in Primary schools (including Educational Establishments known as Preparatory Schools)	16p per head
Students in Secondary schools	28p per head
Students in Educational Establishments of Further Education (including former Sixth Form Colleges)	53p per head
Students in Educational Establishments of Higher Education (including Higher Education Colleges, Theological Colleges and Universities)	84p per head
Students in Educational Establishments not listed above specified from time to time by the Secretary of State under section 174 of the Act	84p per head

Discounted rates may be negotiated at ERA's discretion to cover groups of Educational Establishments.

- 4.5 Licence Fees for Agreements running for a period of less than one year shall be calculated on a pro-rata basis against the applicable annual tariff.

## 5. LICENSEE UNDERTAKINGS

The Licensee agrees

- (a) to pay the ERA Plus Licence Fees (together with VAT payable on the total ERA Plus Licence Fees) within 28 days of receipt of the ERA Plus Licence Fee Invoice from ERA as a condition precedent to the operation of grant of rights under this Agreement;
- (b) to observe and ensure compliance with the terms of this Agreement during the Term;
- (c) upon becoming aware of either abuse or breach of the terms and conditions for access to any Relevant Network within which ERA Repertoire is held (whether in the form of ERA Digital Recordings or otherwise), or any Authorised User abusing or breaching the terms and conditions for Secure Authentication or access to the Relevant Network of the Licensee, forthwith to take all reasonable steps to ensure that such activity ceases and to prevent any recurrence and to inform ERA of the steps taken;
- (d) to take all reasonable steps to ensure that Authorised Users are made aware of the terms and conditions for use of ERA Repertoire under this Agreement and that the rights granted under this Agreement are not abused by Authorised Users or any third parties.

## 6. MAINTAINING RECORDS

The Licensee agrees

- (a) to ensure that all ERA Digital Recordings include sufficient acknowledgement of the broadcast relevant to the ERA Recording from which it is made by the inclusion of a written notice within an opening credit or webpage which must also be viewed or listened to before access to the ERA Digital Recording is permitted.  

The notice shall include

  - (i) an ERA Notice
  - (ii) the name of the broadcast service from which the original ERA Recording was recorded off-air
  - (iii) the date of the broadcast; and
  - (iv) the name of the programme.
- (b) to ensure that as part of the terms and conditions for permitting any Authorised User to access or in any way reproduce any ERA Repertoire included in an ERA Digital Recording or part of it, the Authorised User expressly accepts terms and conditions providing that the transaction is subject to the terms and conditions of this Agreement and to provide for an ERA Notice to be included as an integral part of any access or reproduction permitted as a result of licensed Educational Communication.
- (c) to maintain records of the broadcast source of all ERA Recordings (and ERA Digital Recordings) and of the date upon which the broadcast was recorded under the Principal Licence.
- (d) to ensure that any Authorised User shall only be entitled to access a Relevant Network for the purposes of this Agreement by means of Secure Authentication and after entering suitable security password(s) and agreeing to comply with other digital rights management or technological protection systems operated and applied by the Licensee to ensure that ERA Repertoire is only able to be accessed and used within the terms of this Agreement.
- (e) to maintain such further records and answer questionnaires or surveys as ERA may reasonably require to report to its members concerning the level to which ERA Recordings (including ERA Digital Recordings) are used for Educational Communication under this Agreement.
- (f) to permit ERA access to and enable ERA to inspect all records that the Licensee and Relevant Educational Establishments are required to maintain under this Agreement to ensure compliance with its terms.

## **7. REMEDIES AND TERMINATION**

- 7.1 ERA shall be entitled to terminate this Agreement:
- (a) if the ERA Plus Licence Fees are not paid when due; or
  - (b) for any other substantial breach of the provisions of the Agreement or the Principal Licence; provided that ERA shall have given to the Licensee written notice identifying the nature of late payment or the nature of the breach.
- 7.2 The termination will become effective twenty eight days after receipt of the written notice unless either during the relevant period of twenty eight days the Licensee makes payment of outstanding fees or remedies the breach or the breach is not capable of remedy in which event termination will have immediate effect upon receipt of the written notice.
- 7.3 ERA's rights under Clauses 7.1 and 7.2 are without prejudice to any other rights it may have under this Agreement or at law in relation to termination of this Agreement, including without limitation any right to damages.
- 7.4 If payment of agreed era + Licence Fees is not made by the due date for such payment, ERA shall be entitled to charge interest on amounts unpaid (from such due date until the date of actual payment) at the rate of statutory interest prescribed under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.5 The failure to exercise or delay in exercising any remedy under this Agreement shall not constitute a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.
- 7.6 This Agreement will automatically terminate upon the occurrence of any of the following events:
- (a) if and when an administrator, receiver, administrative receiver or other encumbrancer takes possession of, or is appointed over, the whole or any substantial part of the assets of a Licensee;
  - (b) if the Licensee enters into an arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement under the Insolvency Act 1986); or
  - (c) a petition is presented for the purpose of considering a resolution for the making of an administration order, the winding up or dissolution of the Licensee.
- 7.7 Upon expiry of the Term or when this Agreement is terminated ERA shall be entitled to require the Licensee to delete all ERA Digital Recordings or copies of ERA Repertoire made by the Relevant Educational Establishment(s) to which this Agreement related.
- 7.8 If a Licensee is in breach of the terms of this Agreement and ERA incurs costs and expenses either in monitoring and discovering any breach of the terms or in enforcing the conditions, the Licensee shall indemnify ERA in respect of any such costs and expenses so incurred.

## **8. GENERAL**

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

## **9. NOTICES**

All notices given under this Agreement shall be in writing and be sent by first class post, in the case of the Licensee to the address shown at the head of this Agreement and in the case of ERA to New Premier House, 150 Southampton Row, London WC1B 5AL (or any subsequent address notified by ERA to the Licensee) and shall be deemed to have been served on the second working day (which shall exclude weekends and English public holidays) following the date of posting.