

## **SAMPLE BILATERAL AGREEMENT TYPE A**

### **RECITALS**

1. Society A and Society B are Reproduction Rights Organisations (RROs) as defined in Article 3 of the Statutes of the International Federation of Reproduction Rights Organisations (IFRRO) and are RRO members of that organisation.
2. Society A through its principals/member organisations represents the reprographic reproduction rights of individual rightsholders resident in or citizens of or incorporated in Territory A and collects fees, negotiates licensing terms and/or grants licences for the reprographic reproduction of rights, works and publications in that territory.
3. Society B through its principals/member organisations represents the reprographic reproduction rights of rightsholders resident in or citizens of or incorporated in Territory B and collects fees, negotiates licensing terms and/or grants licences for the reprographic reproduction of rights works and publications in that territory.
4. As Society A desires to discharge its obligations to rightsholders in the Territory of Society B, Society B is willing to act as non-exclusive agent to receive fees due to Territory B rightsholders, not presently represented by Society B but being authors and publishers of the same categories of rights, works and publications presently represented by Society B.
5. Further, Society B is willing to represent other categories of Territory B rightsholders' reprographic reproduction rights in Territory B (if agreed with those rightsholders) and to receive on behalf of such rightsholders from Society A money due to Territory B rightsholders in those categories. If and when Society B has entered into an agreement with those categories of rightsholders, Society B will advise Society A of its representation.
6. Society A and Society B agree to support the principle of National Treatment (also understood as the principle of non-discrimination), and not to discriminate against any rightholder whose right they manage under this Agreement, in particular with respect to applicable tariffs, management fees, and the conditions for the collection of the rights revenue and distribution of amounts due to rightholders.
7. Society A and Society B support the principle of National Treatment and consider the collective administration of reprographic reproduction to be the only workable clearance and licensing procedure for users in their respective territories of operation.
8. Society A and Society B are striving to establish procedures for the licensing of reprographic reproduction and for distributing to rightsholders the fees collected from the licensing of reprographic reproduction in their respective territories of operation.
9. Society A and Society B have entered this Agreement in a spirit of co-operation and goodwill and in the interests of securing and maintaining strong and effective copyright laws of benefit to all rightsholders.

### **AGREEMENT**

#### **1. LICENCE/AUTHORITY TO COLLECT**

On behalf of the rightsholders it represents, Society A hereby grants to Society B the non-exclusive right to enter into licensing agreements with users and to collect fees for the reprographic reproduction

in Territory B of the rights, works and publications as described in Schedule A to this Agreement on the same basis and on the same conditions as Society B licenses and collects fees for reprographic reproduction of the rights, works and publications of the rightsholders it represents.

If, in the event of continued non-use by Society B of any rights transferred by this Agreement, then Society A, by twelve months' notice in writing to Society B, may withdraw those rights from the operation of this Agreement.

## **2. LICENCE/AUTHORITY TO COLLECT**

On behalf of the rightsholders it represents, Society B hereby grants to Society A the non-exclusive right to enter into licensing agreements with users and to collect fees for the reprographic reproduction in Territory A of the rights, works and publications as described in Schedule B to this Agreement on the same basis and on the same conditions as Society A licenses and collects fees for the reprographic reproduction of such rights, works and publications of rightsholders it represents.

If, in the event of continued non-use by Society A of any rights transferred by this Agreement, then Society B, by twelve months' notice in writing to Society A, may withdraw those rights from the operation of this Agreement.

## **3. EXERCISE OF RIGHTS**

In consideration of the above grant, each RRO hereby undertakes within the limits of the grant of rights, works and publications from the other RRO and of its own articles of association or rules and of the governing law of its territory of operation to:

1. exercise the rights of the rightsholders represented by the other RRO in the same ways and to the same extent as it exercises the rights of rightsholders it represents;
2. apply to the rights, works and publications of the rightsholders represented by the other RRO the same tariffs, methods and means of collection and allocation of fees as those applied to the rights, works and publications of its rightsholders providing it does not contravene any governing law;
3. make available for exploitation, and to use all reasonable endeavours to exploit the rights, works and publications granted pursuant to Clauses 1 and 2 hereof in accordance both with each RRO's normal procedures and sound commercial practice;
4. use all reasonable endeavours to collect fees from users at regular intervals;
5. use all reasonable endeavours to promote public awareness of the need, where appropriate, to obtain licences for the reprographic reproduction of works;
6. co-operate with the other RRO in co-ordinating efforts to raise the level of and to increase the effectiveness of copyright protection in their respective territories of operation.

## **4. NO ASSIGNMENT**

Other than for the limited purposes of the management of collection or for central licensing, no assignment or transfer of all or any part of the rights and privileges granted to one RRO under this Agreement is permitted without the express written authorisation of the other RRO.

## **5. WARRANTY AND INDEMNITY**

1. Each RRO warrants and represents to the other RRO that it has the full right and power to enter into this Agreement and to grant to the other RRO all those rights and powers which are hereby granted.

2. Society A indemnifies and agrees to keep indemnified Society B against all actions, judgements, costs and expenses legal and otherwise which may arise as a consequence of or arise out of any rightsholder in Society A's territory of operation taking action, proceeding or making demand against Society B for the payment of compensation for reprographic reproduction in Society B's territory of operation.

3. Society B indemnifies and agrees to keep indemnified Society A against all actions, judgements, costs and expenses legal and otherwise which may arise as a consequence of or arise out of any rightsholder in Society B's territory of operation taking action, proceeding or making demand against Society A for the payment of compensation for reprographic reproduction in Society A's territory of operation.

4. This Agreement does not relieve either RRO of any obligation under the law of their respective territories of operation to meet claims for compensation from individual rightsholders whose rights, works and publications have been copied by reprographic reproduction whether or not the individual rightsholder is a member or affiliate of the other RRO (or its principals/member organisations). The RRO against which such a claim has been made will provide all relevant information to the other RRO and consult with the other RRO on the settlement to be made with the individual rightsholder.

5. Subject to clause (5.4), whenever any claim for compensation is made by a rightsholder for reprographic reproduction by a licensed user for which one RRO receives a transfer of fees from the other, which claim under law, the RRO (or its principals/member organisations) is obliged to meet, the RRO may set off money paid on such claim (including legal and other costs connected therewith) against the next transfer of fees from that RRO to the other RRO. That RRO will provide the other RRO with complete information as to the payment made as well as costs.

6. Paragraph (5.5) shall also apply when either RRO is obliged on the basis of a licensing agreement to meet a claim for redress from anyone required under law to pay compensation to a rightsholder. Where either RRO includes such provisions in its licensing agreements it shall inform the other RRO.

## **6. COVENANTS**

During the term of this Agreement both parties covenant and agree:

1. subject to the confidentiality restrictions set out in Schedule F, supply the other RRO with copies of statutes, by-laws, contractual forms or other documents setting out the conditions under which the RRO represents the individual rightsholder;

2. to notify the other RRO in writing, including by electronic means, on a regular basis, and, when appropriate, of any changes in its mandate from rightsholders which has bearing on the administration of this Agreement, especially with regards to termination of the authorisation to manage rights, categories of rights, or types of works and other subject matter, or withdrawal of any of the rights, categories of rights, or types of works and other subject matter of the choice of the rightsholders represented by the RRO, for the territories of their choice.

3. subject to the confidentiality restrictions set out in Schedule F, upon request from the other RRO, make available all documents records and information which may be of assistance to the other RRO in exercising its obligations under this Agreement including but not limited to information about the types of user licensed, the method of licensing, licences granted or refused, resolutions adopted by the

general assembly of members, in so far as those resolutions are relevant to the administration of the rights under this agreement, and the statistical investigations of reprographic reproduction which the RRO undertakes;

5. to inform the other RRO of any aspect of national law of which it needs to be aware, especially any existing national arrangement concerning the management of rights, such as legal licences, extended collective licensing, mandatory collective management, legal presumptions of representation, etc.. If and where appropriate, this information is incorporated in the Annexes to this Agreement.

6. subject to the confidentiality restrictions set out in Schedule F, allow the other RRO to consult its records of the collection and allocation of the fees in order that the other RRO may monitor the administration of its rights, works and publications.

7. to respect the rights to private life and personal data protection of any rightholder, principal, member, user and other individual, whose personal data they process, and to provide appropriate information about the processing of their data, the recipients of those data, time limits for the retention of such data, in any database, and the way in which rightholders can exercise their rights to access, correct or delete their personal data.

8. to respect the rights of rightholders to terminate the authorisation to manage rights, categories of rights or types of works and other subject-matter, or to withdraw any of the rights, categories of rights or types of works and other subject-matter of their choice, for the territories of their choice, upon serving reasonable notice not exceeding six months, notwithstanding the right of the RRO to decide that such termination or withdrawal is to take effect only at the end of the financial year.

PROVIDED THAT the RRO requiring the information under this Clause 6, arranges for the translation (if required) of any documents supplied in accordance with this clause.

## **7. MEMBERS**

Each RRO agrees that:

1. its member or affiliate rightsholders will be represented by the other RRO for the purposes of this Agreement without any formalities or authorisations being required of those members or affiliates;

2. the rightsholders whose works form the subject matter of this Agreement do not include rightsholders represented by virtue only of agreements that the RRO holds with RROs not party to this Agreement;

3. any dispute between the parties to this Agreement in relation to the representation of rightsholder by either RRO shall be settled in a spirit of compromise and in the best interests of the rightsholder concerned.

## **8. FUNDS**

Each RRO agrees that:

1. in accordance with the principle of National Treatment, the fees collected in respect of rights, works and publications which are the subject matter of this agreement, shall be determined and allocated to individual rightsholders in accordance with the system that the RRO collecting the fees applies to rights, works and publications of rightsholders represented by it. Each RRO hereby agrees to accept that determination as it is made by the other RRO.

2. the fees collected in respect of rights, works and publications which are the subject matter of this Agreement shall be treated according to the systems which the respective parties apply to the rights, works and publications of their rightsholders PROVIDED THAT, where the transferring RRO (by registration, sample, survey or other means) attributes the fees to individual rightsholders, those fees may at the discretion of the receiving RRO be distributed to the individual rightsholders concerned subject to the distribution principles which the receiving RRO otherwise applies to the relevant categories of rights, works and publications HOWEVER where the transferring RRO is unable to identify particular rightsholders or specific amounts due to particular rightsholders the receiving RRO shall use its best judgement to make an equitable distribution to rightsholders or to otherwise apply those fees to a collective purpose of benefit to the particular rightsholders concerned.

3. When fees under this agreement are collected and allocated by the transferring RRO to rightsholders in categories of works which the receiving RRO does not at the time represent, the RRO will transfer the fees as in (8.2) above HOWEVER, the receiving RRO will hold the fees thus received in trust for the rightsholder(s) or the organisation(s) representing the rightsholders in those categories of rights, works and publications until such time as the receiving RRO and such rightsholder(s) or organisation(s) shall agree on terms of representation or, if an agreement on representation is not reached within [insert period] then on distribution. Where no agreement can be reached then after <>the receiving RRO may otherwise apply those fees to a collective purpose of benefit to the particular rightsholders concerned.

4. the receiving RRO shall distribute and pay the amounts due to its rightholders as soon as possible but no later than six months from receipt of those amounts, unless objective reasons relating in particular to reporting by users, identification of rights, rightholders or matching of information on works and other subject-matter with rightholders prevent the receiving RRO from meeting that deadline. The transferring RRO shall not be liable for any undue delay in the distribution by the receiving RRO. The receiving RRO shall hold harmless the distributing RRO for any claims by the rightholders of the receiving RRO for any untimely distribution.

5. Fees allocated and distributed according to the present Agreement shall include the respective income arising from the investment of the fees unless otherwise provided in Annex ... and/or Annex... ,schedule H, to the agreement of the receiving RRO respectively.

## **9. ACCOUNTS**

Each of the parties shall as transferring RRO transfer the fees due to the receiving RRO as soon as possible but no later than nine months from the end of the financial year in which the rights revenue was collected, unless objective reasons relating, in particular, to reporting by users, identification of rights, rightholders, or matching of information on works and other subject-matter which rightholders prevent the transferring RRO from meeting that deadline. The times and the currencies are set out in Schedule C (in respect of Society A) and Schedule D (in respect of Society B) to this Agreement.

Fees are considered due when they have been collected and allocated to the rightsholders represented by the receiving RRO. Such allocation shall take place within a reasonable time and within the terms set out in Schedule C and Schedule D respectively. When remitting the payment, the transferring RRO shall submit a statement to the receiving RRO which includes:

1. a summary of the rights revenue attributed, the amounts paid by each RRO per category of rights managed, and per type of use, for the rights it manages, and any revenue attributed, which is outstanding for any period;
2. the amounts deducted for management fees and other consented fees, in accordance with clause 10, with a breakdown per category of rights;

3. the amounts deducted for any purpose other than management fees in accordance with clause 11, with a breakdown per category of rights;
4. all information in the possession of the transferring RRO in order to enable the receiving RRO to distribute the fees to rightholders including but not limited to the information specified in Schedules C and D of this Agreement;
5. an indemnity and undertaking in the form annexed as Schedule E for execution by the receiving RRO; and
6. a statement of such amounts, if any, as each transferring RRO is required by law to deduct in respect of taxation (such as, but not limited to, withholding tax).

Each of the parties as receiving RRO hereby undertakes to make any necessary application to the taxation authorities in the territory of the transferring RRO for consent to receive all payments of fees under this agreement gross and without deduction of tax in that territory, the transferring RRO undertaking to provide the receiving RRO with all necessary information and assistance in connection with such application.

Each RRO agrees to make available to the other RRO information on works and other subject-matter for which one or more rightholders have not been identified or located as soon as possible but no later than twelve months from the end of the financial year in which the rights revenue was collected, unless objective reasons relating in particular to reporting by users, identification of rights, rightholders or matching of information on works and other subject-matter with rightholders prevent the RRO from meeting that deadline.

Each RRO shall keep the information submitted in accordance herewith confidential and neither RRO shall disclose beyond its organisation (unless required by court action or governmental action or unless the information is, or becomes, part of the public domain through no fault of either RRO) information thus obtained as to reprographic reproduction in the territory of the other RRO, except that either RRO may disclose such information to its principals/member organisations, but only on a basis of confidentiality. Neither RRO shall divulge information from which the reprographic reproduction activities of a specific user may be identified.

## **10. DEDUCTION OF MANAGEMENT FEES**

Each RRO shall be entitled to deduct from the fees it collects on behalf of the other RRO an amount necessary to cover its effective management fees which shall not exceed the justified and documented costs incurred by the collecting RRO in managing the (categories of) rights under this Agreement. This amount shall also not exceed in percentage terms that which is deducted for this purpose from fees collected by the RRO for the rightholders it represents through its own principals/member organisations or by law. Each RRO shall always endeavour in this respect to keep such deductions within reasonable limits having regard to local conditions within its territory of operation. Any other deduction, being occasional or not, shall be subject to the express consent of the receiving RRO, as well as any change in those deductions.

## **11. SOCIAL, CULTURAL OR EDUCATIONAL DEDUCTIONS**

Each RRO shall be entitled to deduct a proportion of the fees it collects for social, cultural or educational purposes upon express consent of the receiving RRO as specified in the Annex. This amount shall not exceed in percentage terms that which is deducted for this purpose from fees collected by the RRO for the rightholders it represents through its own principals/member organisations. Each RRO, within the limits of its national legislation, shall always endeavour in this

respect to keep such deductions within reasonable limits, having regard to local conditions within its territory of operation.

## **12. COMPLAINT PROCEDURES AND DISPUTE SETTling MECHANISM**

Each RRO shall make available to the other RRO effective and timely procedures for dealing with complaints, particularly in relation to authorisation to manage rights and termination or withdrawal of rights, the collection of amounts due to rightholders represented by the other RRO, deductions, distributions and payments. Each RRO shall respond to a complaint by the other RRO in writing, including by electronic means, and, if it rejects a complaint, give reasons.

## **13. DISPUTE SETTling MECHANISM**

Each RRO has entered into this Agreement in good faith and in the spirit of co-operation and will use its best endeavours to resolve by conciliation or mediation any disputes that may arise in relation to the interpretation of this Agreement. Any dispute as to the interpretation or application of this agreement not thus settled shall be resolved by arbitration. The arbitration tribunal shall apply the law of the country in which the reprographic reproduction to which the dispute is related, has taken or will take place. If the dispute is independent of a particular act of reprographic reproduction as mentioned, it shall be subject to the law of the territory of operation of the RRO against whom the claim giving rise to the dispute, is directed. The arbitration shall take place in the territory the law of which is to be applied. The arbitration tribunal shall be composed in accordance with the rules applying in that territory and the arbitration shall be conducted in accordance with the law and custom of that territory, except that no appeal shall lie against the decision of the tribunal on the grounds of fact or law.

When according to the above a dispute or several disputes which are dealt with simultaneously, would involve arbitration in both territories, the arbitration shall take place in the territory of the party against whom the claim which originally gave rise to the dispute, is directed, and the composition of the arbitration tribunal and the procedure shall be according to the rules applied in that territory, except that no appeal shall lie against the decision of the tribunal on the grounds of fact or law. The member or members of the tribunal shall be knowledgeable in relevant copyright matters.

## **14. TERM**

This Agreement shall take effect on signature and shall be for an initial period ending on the [insert date] and shall continue from year to year, unless the Agreement is terminated by either RRO by a notice delivered at least six (6) months prior to the date of expiry of the then current period. However, any licence with users shall include the rights, works and publications of the other RRO for the entire period of such licence or for [three/five] years from the date of expiry of this Agreement, whichever period is the shorter. The obligations of the parties under this Agreement shall continue in respect of such licences.

## **15. NOTICES**

Notices under this Agreement shall be in writing, including by electronic means, insofar as the RRO to which the Notice is addressed has confirmed the receipt thereof. Notices under this Agreement shall be in writing and shall be sufficiently served if sent prepaid by recorded delivery or by facsimile transmission to the address specified below or to such other address as may be notified by each RRO from time to time. Any notice sent prepaid by recorded delivery shall be deemed served on the commencement of business on the tenth business day next following the sending of the Notice.

Address of Society A:

Address of Society B:

## **16. WHOLE AGREEMENT**

This Agreement and the Schedules hereto embody all the terms agreed between the parties relating to the transfer of Reproduction Rights. The terms and conditions of this Agreement may only be varied by documents in writing, in terms agreed between the parties and any such documents shall be signed by both parties hereto.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first hereinbefore mentioned.

- END -