



*Australian Government Solicitor*

**AESHARENET CHARTER**

AN AGREEMENT TO ESTABLISH STREAMLINED COPYRIGHT MANAGEMENT SYSTEMS FOR THE VOCATIONAL EDUCATION AND TRAINING SECTOR IN AUSTRALIA

VERSION #11 - THE CHARTER AS AMENDED AT A GENERAL MEETING OF AESHARENET LIMITED HELD ON 14 MARCH 2007

EFFECTIVE AS FROM 14th MAY, 2007 (THE "TRANSFER COMPLETION DAY")

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## **PREAMBLE**

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An agreement to establish streamlined copyright management systems for the Vocational Education and Training sector in Australia.

## **PARTIES**

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Technical and Vocational Education and Training Australia Limited (“**TVET**”), the members of TVET and all other persons admitted as Members of the Charter in accordance with its terms (collectively “**the Parties**”) are bound by this Charter as in force from time to time.

## **BACKGROUND**

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- A. The Vocational Education and Training Sector (“**the VET Sector**”) includes public TAFE systems, adult and community education institutions, and enterprises, industry bodies, schools and community organisations engaged in the delivery of recognised vocational programs in Australia;
- B. A substantial volume of copyright materials (“**Materials**”) are produced by Commonwealth, State and Territory governments, their instrumentalities, and the various training providers referred to in Recital A to serve the requirements of the VET Sector;
- C. The Materials represent a substantial investment by the nation in the VET Sector as a whole;
- D. Materials created by this investment should be widely and easily available for use, distribution, adaptation and improvement to ensure quality, consistency, relevance, creativity and timeliness of VET Sector training and development;
- E. The quality of copyright management systems accordingly has a significant bearing on the overall efficiency and effectiveness of the VET Sector, particularly as the pool of producers diversifies and as stakeholders operate increasingly in an on-line environment;
- F. Conventional copyright ownership and licensing formalities in the VET Sector are often inconsistent, complex, slow, uncertain of outcome, costly to negotiate and administer, and liable to give rise to error, confusion or dispute;
- G. In particular the delays involved in licensing deter users, and the costs involved often exceed any royalty benefits that might flow to producers;
- H. As a result potential fruitful uses and improvements to the existing national stock of Material are inhibited, and time, effort and expense is incurred unnecessarily in re-development of Material; alternatively use of and building upon existing Material may occur without permission, giving rise to

inconsistency and fragmentation of copyright ownership which further exacerbates the difficulties of licensing;

- I. There is broad agreement that national cooperation in managing copyright and reciprocity in licensing of Materials will benefit all stakeholders in the VET Sector and the nation as a whole;
- J. There is also agreement that copyright Materials in the VET Sector will increasingly be supplied and licensed using digital methods of storage and rights management;
- K. On 1 August 2000 *AEShareNet* Limited (“**AESL**”) was established to implement streamlined copyright management systems and to operate such systems on a self sustainable basis, in particular for the purposes of the VET Sector;
- L. The systems, arrangements and activities necessary for the purpose referred to in Recital K, have subsequently been implemented under the name and style “Australian Educational Sharing Network”, or “**AEShareNet**”, in accordance with the provisions of this Charter;
- M. On 28<sup>th</sup> March, 2007 AESL and TVET executed a Deed of Transfer (“**the Transfer Deed**”) providing for the transfer of *AEShareNet* to TVET with effect from a date to be determined (“**the Transfer Completion Day**”).

## CHARTER PROVISIONS

### 1. **Objects of AEShareNet**

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- 1.1. The objects of *AEShareNet* are to ensure that, within the VET Sector:
- a. information about copyright law is readily accessible;
  - b. copyright ownership rights are respected and protected;
  - c. copyright management systems are visible and well understood;
  - d. forms of licensing of Materials are standardised to the greatest extent possible, whilst providing sufficient flexibility to meet typical licensing needs;
  - e. the processes of licensing are modern, simple, cheap, transparent, durable, rapid and effective, and adapted to an on-line environment;
  - f. through better licensing, use and improvement of existing Materials is facilitated, and duplication of effort minimised;
  - g. Materials relevant to the VET Sector are comprehensively and consistently catalogued, and subject to better version control;
  - h. Materials can readily be located;
  - i. basic Materials are readily shared and accessible at minimal cost;
  - j. there are practical means, where appropriate, to collect royalties for use of commercial Materials;
  - k. creation and copyright ownership of Materials is appropriately attributed;
  - l. uncertain ownership is clarified, and fragmented ownership consolidated, so as to facilitate the use and improvement of Materials;
  - m. any disputes which might arise in connection with copyright ownership and licensing are resolved satisfactorily;
  - n. reliable data on copyright ownership and licensing activity can be accumulated and made available for better planning;
- and that as a consequence the VET Sector enjoys a competitive advantage in exploiting Materials and related services outside Australia.
- 1.2. The Parties commit themselves to the achievement of the Objects.
- 1.3. The Company may undertake anything that is necessary or desirable for the purposes of or related to the Objects, or which serves similar objects outside the VET Sector, provided such activity is consistent with the Constitution.

## 2. Definitions and Interpretation

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### Definitions

2.1. In this Charter, unless the contrary intention appears:

- |   |   |
|---|---|
| <b>Acceptance</b>   | <ul style="list-style-type: none"> <li>a. means acceptance of the offer of a Licence of particular Material under a particular Material Registration in accordance with the systems operated from time to time by the Company; and</li> <li>b. includes any additional or special actions stipulated in the relevant Licence Protocol to be undertaken by a Licensee in order to take a Licence in relation to the Material;</li> </ul> |
| <b>AEShareNet or Australian Educational Sharing Network</b> | means all those systems, arrangements and activities implemented and operated under the Charter for copyright management and licensing by stakeholders in the VET Sector;   |
| <b>AEShareNet Database</b>                                  | means any of the databases required to be established in accordance with the Charter and listed in clause 7.4;  |
| <b>AEShareNet Mark</b>                                      | means the word “ <b>AEShareNet</b> ” registered as a trade mark under the <i>Trade Marks Act 1995</i> ;   |
| <b>AEShareNet Website, or Website</b>                       | means the website described in clause 7;  |
| <b>AESL</b>   | means <i>AEShareNet</i> Limited, a company limited by guarantee incorporated under the <i>Corporations Law</i> , ABN 34 091 619 402;  |
| <b>Assignment</b>   | means an assignment (as that term is used in the <i>Copyright Act 1968</i> ) effected in relation to particular Material under clause 6;  |
| <b>Authorisation</b>  | means a head licence effected under clause 6 for a Licensor to extend Licences in relation to particular Material;  |
| <b>Body Politic</b>   | means any of: <ul style="list-style-type: none"> <li>a. the Crown in right of the Commonwealth of Australia;</li> <li>b. the Crown in right of a State of Australia; or</li> <li>c. the Crown in right of the Australian Capital Territory or the Northern Territory (but not an external Territory);</li> </ul>  |
| <b>Charter or</b>   | means this document as amended and in force from  |

<b>AEShareNet Charter</b>	time to time under the Constitution;
<b>Class</b>	means a Class of Member referred to in clause 4.1;
<b>Clearance</b>	means an Assignment or Authorisation;
<b>Commencement, or Commencement Day</b>	means the day (subsequent to the day on which the Charter came into effect under clause 3.1) of commencement of <i>AEShareNet</i> operations, as determined by AESL;
<b>Company</b>	means: <ul style="list-style-type: none"> <li>a. in relation to matters arising prior to the Transfer Completion Day - AESL;</li> <li>b. in relation to matters arising on or after the Transfer Completion Day - TVET,</li> </ul> <p>and a reference to <b>any thing done or to be done by the Company</b> includes a reference to the doing of that thing by an executive officer, employee, agent or contractor of the Company under the direction or control of the board of the Company, or by the programmed action of computer systems established as provided under clause 2.3;</p>
<b>Compilation</b>	has the meaning given in the Glossary;
<b>Confidential Information</b>	means information that: <ul style="list-style-type: none"> <li>a. is by its nature confidential;</li> <li>b. is designated by a party as confidential; or</li> <li>c. a party knows or ought to know is confidential;</li> </ul> <p>but does not include information which:</p> <ul style="list-style-type: none"> <li>d. is or becomes public knowledge other than by breach of the Charter or by any other unlawful means;</li> <li>e. is in the possession of a party without restriction in relation to disclosure before the date of receipt; or</li> <li>f. has been independently developed or acquired by a party;</li> </ul>
<b>Constitution</b>	means the Constitution of the Company, as amended and in force from time to time under the <i>Corporations Law</i> ;
<b>Concurrent</b>	has the meaning given in the Glossary;
<b>Consolidated</b>	has the meaning given in the Glossary;
<b>Custodianship</b>	in relation to particular Material, means the convention

	under which a particular department, office or agency of a Body Politic is permitted and commonly accepted to exercise copyright in relation to the Material on behalf of the Body Politic;
<b>Customisation</b>	means the supply by a Licensor of values for the variable fields allowed for in a Licence Protocol, either in the Material Registration or subsequently in the course of negotiating or re-negotiating a particular Licence with a particular Licensee;
<b>Derivative Material or Derivative</b>	has the meaning given in the Glossary;
<b>Dispute</b>	means a dispute to which clause 9 applies;
<b>Enhancement</b>	has the meaning given in the Glossary;
<b>Extrinsic Materials</b>	means the Materials referred to in clause 2.5;
<b>Field</b>	means a field within an <i>AEShareNet</i> Database;
<b>Glossary or Licence Glossary</b>	means the document entitled ' <i>Licence Glossary and Explanation</i> ' or similar, approved by the Company from time to time under clause 5 as Extrinsic Material and, in relation to a Licence, means the version of that document in force at the time when the Licence was transacted;
<b>Instant Licence</b>	means a Licence arising on acquisition of Material to which a Licence Mark is applied, as described in clause 5.14;
<b>Interested Party</b>	means a Nominated Owner or Potential Claimant;
<b>Licence</b>	has the meaning given in the Glossary;
<b>Licence Mark</b>	has the meaning given in the Glossary;
<b>Licence Protocol or Protocol</b>	means a record containing information relating to a Version of a Licence Regime, as required under clause 5;
<b>Licence Regime</b>	means a category of Licence recognised under <i>AEShareNet</i> including all associated business rules, arrangements, understandings, processes and systems, and includes any or all Versions of the Licence Regime as the context requires;
<b>Licensee</b>	has the meaning given in the Glossary;
<b>Licensor</b>	has the meaning given in the Glossary;
<b>Material</b>	has the meaning given in the Glossary;
<b>Mediated Licence</b>	means a Licence mediated through <i>AEShareNet</i> , which arises on acceptance of a Licence offer constituted by a

	Material Registration and any Customisation that may be negotiated, as described in clause 5.16;
<b>Member</b>	includes: <ol style="list-style-type: none"> <li>a. a Subscriber; or</li> <li>b. a Member of the Charter admitted under clause 4,</li> </ol> <p>and in the case of a Body Politic means the Body Politic as represented by a particular department, office or agency, or a group of departments, offices or agencies which are aggregated on one Member Profile as one Membership for the purposes of <i>AEShareNet</i>;</p>
<b>Member Profile or Profile</b>	means a record containing information about a Member, as required under clause 4;
<b>Nominated Owner</b>	means an Interested Party with a major claim to copyright in particular Material, from whom an Authorisation is sought;
<b>Objects</b>	means the objects set out in clause 1;
<b>Ownership Model</b>	has the meaning given in the Glossary;
<b>Partitioned</b>	has the meaning given in the Glossary;
<b>Potential Claimant</b>	means an Interested Party with a minor claim to copyright in particular Material, from whom an Assignment is sought;
<b>Registration</b>	in relation to particular Material: <ol style="list-style-type: none"> <li>a. means the creation of an entry relating to the Material in the Materials Database in accordance with the systems operated from time to time by the Company; and</li> <li>b. includes any associated actions stipulated in the relevant Licence Protocol to be undertaken (such as the Application of a Licence Mark or other functionality implemented in relation to the Material);</li> </ol> <p>by a Licensor in order to extend a Licence in relation to the Material; and “<b>Register</b>” shall be similarly construed;</p>
<b>Status</b>	means the status of an entry in an <i>AEShareNet</i> Database, and may take, without limitation, any of the values referred to in relation to a particular Database under particular provisions of the Charter;
<b>Subscriber</b>	means a person who was an initial subscriber of the AESL Constitution, and is also an initial subscriber of the TVET Constitution;
<b>Transfer</b>	means the date (referred to on the cover page of this Charter) from which TVET assumes control of

<b>Completion Day</b>	<i>AEShareNet</i> , as referred to in Recital M;
<b>Transfer Deed</b>	means the Deed of Transfer executed by AESL and TVET, as referred to in Recital M;
<b>TVET</b>	means Technical and Vocational Education and Training Australia Limited, a company limited by guarantee incorporated under the <i>Corporations Law</i> , ABN 99 062 758 632;
<b>Version</b>	means a version of a Licence Regime documented in a Licence Protocol;
<b>Vetting</b>	has the meaning given in the Glossary.

**Provisions relating to Electronic Communications, etc**

- 2.2. For any purpose under the Charter, unless the contrary intention appears:
- a. where a person is required to **give information in writing**, or to **sign a document**, that requirement is taken to have been met if the person gives the information by means of an electronic communication, or signs an electronic communication, where at the time the information was given, it was reasonable to expect that the information would be readily accessible so as to be useable for subsequent reference;
  - b. a reference to **giving information** includes, without limitation:
    - A. making an application;
    - B. giving, sending or serving a notice;
    - C. appointing a proxy or casting a vote;
    - D. approving or agreeing some matter;
    - E. Registering Material;
    - F. Accepting a Licence of Material;
    - G. giving a clearance in the context of Vetting;
    - H. granting an Authorisation; or
    - I. granting an Assignment;
  - c. a reference to **writing** means any representation of words, figures or symbols, whether or not in a visible form;
  - d. where the **signature** of a person is required, that requirement is taken to have been met in relation to an electronic communication if:
    - A. a method is used to identify the person and to indicate the person's approval of the information communicated; and
    - B. having regard to all the relevant circumstances at the time the method was used (including any standards approved from time to time by the

Company), the method was as reliable as was appropriate for the purposes for which the information was communicated;

- e. “**electronic communication**” means a communication of information by means of guided and/or unguided electromagnetic energy;
- f. a reference to a **document** includes any medium in which writing or other information is embodied, whether or not in a visible form.

### **Validity of Programmed Actions**

- 2.3. Where an event or transaction is to be initiated by a party under their signature or otherwise authorised by them, that event or transaction is deemed to have validly occurred under the Charter if it is effected by the automated action of programmed systems established by the Company acting upon data digitally signed or authorised by the party - except in the case of a manifest error or malfunction.

### **Constitution**

- 2.4. The Charter shall be construed in accordance with the Constitution, and in the event of any inconsistency the Constitution prevails.

### **Extrinsic Materials**

- 2.5. The Charter and any Licences arising under it shall be construed in accordance with any documents published by the Company from time to time at the *AEShareNet* Website and designated as Extrinsic Materials for the purpose of this clause.

### **Precedence of Documents**

- 2.6. In the event of any discrepancy documents shall be construed in the following order of precedence:

- a. the Constitution;
- b. the Charter;
- c. the Glossary - *inasmuch* as it defines some expressions used in the Charter in relation to Licensing;
- d. the remaining Extrinsic Materials;

and for the purposes of a particular Licence transacted under a Licence Regime:

- e. the current Licence Protocol for that Regime, read in conjunction with the Glossary;
- f. to the extent that the Licence Protocol allows for details to be Customised between the Licensor and the Licensee - those details.

### **Purposive Interpretation**

- 2.7. In the interpretation of this Charter, a construction which promotes the Objects is to be preferred to one which does not.

### **Substantial Compliance**

- 2.8. Where the Charter provides for particular standards, processes, forms or formalities to be observed, exact compliance may not be essential but substantial compliance which serves the Objects equally may be deemed by the Company to be sufficient having regard to the immediate purpose and the Objects.

### **Entire Agreement**

- 2.9. The documents referred to in clause 2.6 represent the entire agreement between the Parties in relation to their subject matter.

### **Application to dealings within a Crown**

- 2.10. To the extent that the Charter or any transaction occurring under the Charter purports to give rise to a binding contractual or other legal relationship between departments, offices or agencies of a single Body Politic, that relationship shall be read down as a mere arrangement, but otherwise shall be given effect for all purposes of *AEShareNet* operation as if it were a transaction binding separate legal entities.

### **Severance**

- 2.11. Any reading down or severance of a particular provision does not affect the other provisions of the Charter.

### **General Interpretation Provisions**

- 2.12. In this Charter, unless the contrary intention appears:
- a. words importing a gender include any other gender;
  - b. words in the singular include the plural and words in the plural include the singular;
  - c. clause headings are inserted for convenience only and have no effect in limiting or extending the language of provisions to which they refer;
  - d. hyperlinks are inserted for convenience only and have no effect in themselves in designating documents or Material in accordance with which the Charter is to be construed;
  - e. all references to dollars are to Australian dollars;

- f. reference to any statute or other legislation (whether primary or subordinate) is a reference to that statute or other legislation as amended or replaced from time to time; and
- g. where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

### 3. Operation and Application of the Charter

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- 3.1. The Charter has effect from the date of incorporation of AESL, and continues in operation upon the transfer of *AEShareNet* from AESL to TVET on the Transfer Completion Day.
- 3.2. Despite clause 3.1, except where expressly provided to the contrary no transaction may be effected under the Charter until the Commencement Day.
- 3.3. The Charter may be amended from time to time by resolution of members of the Company at a general meeting of the Company conducted in accordance with the Constitution. Notice of the making of any such resolution must be given to all Members of the Charter.
- 3.4. A Licence, Assignment or Authorisation shall be construed in accordance with the version of the Charter current at the time of the transaction.
- 3.5. The following persons ("**the Parties**") may take the benefit of, and have obligations to one another under, the Charter:
- a. the Company;
  - b. the Subscribers; and
  - c. any other person who agrees to become a Member of the Charter and is admitted in accordance with clause 4.7 *et seq* [*Applications for Membership*], whether or not they are also a member of the Company.
- 3.6. Members are encouraged to transact Licences and Assignments wherever possible within *AEShareNet*, rather than separately.
- 3.7. Where a Member ceases to be a Member of the Charter in accordance with clause 4, any Licence, Assignment or Authorisation transacted under *AEShareNet* to which the Member is a party shall continue in operation and take its ordinary course; and the provisions of the Charter shall continue to apply in respect of that transaction, including provisions relating to:
- a. interpretation of the transaction;
  - b. the collection of Royalties (if applicable);
  - c. the resolution of Disputes; and
  - d. further assurance,
- and any other provision which expressly or by necessary implication appears intended to survive.
- 3.8. In the event that TVET is wound up the Charter shall be deemed to terminate, except that any Licence, Assignment or Authorisation transacted under

*AEShareNet* shall continue in operation; and the provisions of the Charter relating to:

- a. interpretation of the transaction; and
- b. further assurance,

shall continue to apply in respect of that transaction.

## 4. Membership

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### Eligibility for Membership

- 4.1. Membership of the Charter is open to:
- a. a Body Politic as represented by a particular department, office or agency, or a group of departments, offices or agencies which are aggregated as one Membership for the purposes of *AEShareNet* operation (“**Class A**”);
  - b. a body corporate established under a law of the Commonwealth of Australia, a State or a Territory (“**Class B**”);
  - c. a corporation registered under the Corporations Law in which no foreign person holds a substantial interest for the purposes of section 9 of the *Foreign Acquisition and Takeovers Act 1975* (“**Class C**”);
  - d. a natural person who is an Australian resident (“**Class D**”);
  - e. any other natural person or legal entity recognised as having the capacity to enter into contractual relations under the law of the Australian Capital Territory, whether or not otherwise connected with Australia (“**Class E**”).

### Member Profiles, Effect and Key Fields

- 4.2. In relation to every Member there shall be a Member Profile, in a form determined from time to time by the Company.
- 4.3. A Member may transact Licences and Assignments and operate generally under *AEShareNet* only in accordance with its Member Profile, read with the Charter.
- 4.4. A Member Profile may incorporate, without limitation, the following Fields:
- a. the Member, identified by reference to their name and a unique Member ID;
  - b. the nature of the legal entity constituted by the Member, identified by reference to the Class of Membership;
  - c. in the case of a Member which is a Body Politic (Class A), details of the department(s), office(s) and/or agency/ies to which the Membership pertains;
  - d. whether the Member is also a member of the Company; and
  - e. the Status of the Membership.
- 4.5. The Status of the Membership may be represented, without limitation, by any of the following expressions (or words or coding to similar effect):
- a. “pending” - for a person who has applied for Membership but whose application has not yet been approved by the Company;

- b. “current” - for a person whose application has been approved by the Company (except where paragraph (c) or (d) applies);
- c. “non-financial” - for a person who has not paid the Annual Subscription Fee by the due date;
- d. “terminated” - for a person who has ceased to be a Member under the provisions of the Charter.

#### **Transitional**

- 4.6. A person who is a Member immediately before the Transfer Completion Day is entitled to continue as a Member.
- 4.7. The Member Profile for each such Member shall be reviewed and amended as appropriate by the Company as soon as practicable after the Transfer Completion Day.

#### **Applications for Membership**

- 4.8. A person (other than a Subscriber) who claims to be eligible for Membership (“**the Applicant**”) may apply to the Company to become a Member of the Charter.
- 4.9. Subject to the Charter, applications for Membership shall be lodged, processed and accepted in the manner determined from time to time by the Company.
- 4.10. An application must:
  - a. be in writing;
  - b. incorporate an acknowledgment that the Applicant is bound by the Charter;
  - c. be accompanied by a completed draft Member Profile; and
  - d. be accompanied by the appropriate fee (“**the Application Fee**”).
- 4.11. The Company may from time to time determine the amount (or manner of assessment) and manner of payment of the Application Fee.
- 4.12. Subject to payment to the Company of the Application Fee, an Applicant becomes a Member when the application for Membership is approved by the Company.

#### **Annual Subscription Fees**

- 4.13. Each Member must pay an annual fee in respect of their Membership (“**the Annual Subscription Fee**”).

- 4.14. The Company may from time to time determine the amount (or manner of assessment), due date, manner of payment and arrangements for *pro rating* of the Annual Subscription Fee.

**Ceasing to be a Member**

- 4.15. A person may cease to be a Member of the Charter at any time by notice in writing to the Company.
- 4.16. A Member automatically ceases to be a Member:
- a. if the Member becomes subject to any form of insolvency administration;
  - b. in the case of a Member who is a natural person - on the death of that Member.
- 4.17. The Company may cancel the Membership of a Member if:
- a. the Member does not pay the Annual Subscription Fee as determined by the Company; or
  - b. the Company makes a determination that the Member has breached the Charter.

**Members Database**

- 4.18. The Company must establish and maintain an electronic database of Member Profiles ("**the Members Database**").
- 4.19. The Company may determine the extent to which the Members Database or particular Profiles or Fields within Profiles are accessible for viewing or alteration by the Company, the Members and other persons for the operation of *AEShareNet*.
- 4.20. Without limitation to clause 4.19:
- a. each Member is responsible for maintaining information in those Fields of their Member Profile to which they have been granted direct access for alterations;
  - b. a Member Profile may be rectified or altered at any time by the Company upon the request of the Member or in order to correct a manifest error;
  - c. the Status Field shall be under the control of the Company.

**Application to Bodies Politic**

- 4.21. Where a Member is a Body Politic, the Membership operates in respect of the participating department(s), office(s) and/or agency/ies of that Body Politic identified in the Member Profile.

**Application to the Company**

- 4.22. There may be a Member Profile for the Company, which shall operate as nearly as possible as if the Company was a Member in Class C.

## 5. Licensing

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### Licence Regimes

- 5.1. A Licence Regime has effect generally in establishing a basis under which Licences may be transacted under the Charter.
- 5.2. Every Version of a Licence Regime shall be allocated a sequential Version number and shall be documented in a separate Licence Protocol, in a form determined from time to time by the Company, subject to this clause.

### Licence Protocols

- 5.3. The Company may, by a resolution at a meeting of directors of the Company conducted in accordance with the Constitution:
  - a. establish a new Licence Regime by ratification of an initial Licence Protocol;
  - b. change a Licence Regime by adoption of a revised Licence Protocol; or
  - c. cancel a Licence Regime.
- 5.4. The Company must notify all Members in advance of any such resolution proposed by the Directors.

### Protocols Database

- 5.5. The Company must establish and maintain an electronic database of Licence Protocols ("**the Protocols Database**") in accordance with this clause.
- 5.6. A Licence Protocol may incorporate, without limitation:
  - a. in Part A - **Protocol Control Information**, including the Version, the Licence Mark associated with the relevant Licence Protocol, the Status of the Protocol and other details required for the management of the Licence Protocol in accordance with clause 5.3;
  - b. in Part B - **Conditions of Licence**, which sets out general terms and conditions of a Licence transacted under the Licence Protocol, and which may allow for certain details to be Customised by the Licensor and the Licensee;
  - c. in Part C - **Licence Operation**, which specifies the manner in which a Licence may be transacted, and the manner in which the Licence may be varied or terminated, and which may allow for certain details to be Customised by the Licensor and the Licensee.
- 5.7. The Status of a Licence Protocol may be represented, without limitation, by any of the following expressions (or words or coding to similar effect):

- a. “draft” - for a proposed Licence Protocol that has not yet been adopted;
- b. “current” - for a Licence Protocol that is in force;
- c. “superseded” - for a Licence Protocol that has been superseded by a new Version; or
- d. “terminated” - where the relevant Licence Regime has been terminated entirely.

5.8. The Company may at any time:

- a. rectify a Licence Protocol in order to correct a manifest error; or
- b. alter a Licence Protocol for technical or presentational reasons but without effecting a substantive change,

and these actions shall not be regarded as giving rise to a new Version of the relevant Licence Regime.

#### **Mechanisms for Licence Creation**

5.9. The manner in which a Licence may be transacted under a particular Licence Protocol shall be set out in Part C of the relevant Licence Protocol, and includes, without limitation:

- a. Instant Licensing, as described in clause 5.14; or
- b. Mediated Licensing, as described in clause 5.16.

#### **The Materials Database**

5.10. The Company must establish and maintain an electronic database of Material Registrations (“**the Materials Database**”) in accordance with this clause.

5.11. A Material Registration may incorporate, without limitation, Fields containing the following information:

- a. details of the Licensed Material;
- b. the Licensor, identified by reference to their Member-ID;
- c. a Licence Mark identifying the Regime under which the Material may be licensed; and
- d. the Status of the Material Registration.

5.12. The Status of a Material Registration may be represented, without limitation, by any of the following expressions (or words or coding to similar effect):

- a. “active” - where the Registration is operative and Licences may be transacted;

- b. “conditional” - where the Registration is subject to an Authorisation or an Assignment to be obtained under clause 6 [*Copyright Clarification*];
- c. “unconditional” - prior to Commencement, in the circumstances referred to in clause 6.26 and 6.27 [*Transitional &c Application*];
- d. “suspended” - where for any reason the Licensor determines to withdraw the Registration, so that new Licences may not be transacted;
- e. “inactive” - where the relevant Licence Regime has been terminated under clause 5.33; or
- f. “prospective” - where the Registration relates to Material which is yet to be developed or released.

5.13. Where a Licence Regime has been terminated under clause 5.3.c, the Company must change the Status of any Material Registration which contains a Licence Mark designating that Regime to “inactive”, and the Registration shall have no legal effect.

#### **Instant Licensing**

5.14. An Instant Licence:

- a. is extended to prospective Licensees by the action of the Licensor (or a person acting on their behalf) applying the relevant Licence Mark within, on or in relation to a copy (“the Source Copy”) of the Licensed Material; and
- b. arises automatically when the Licensee is legitimately in possession of a copy, directly or indirectly derived from the Source Copy, which legitimately retains the Licence Mark,

in accordance with the more detailed conditions set out in the Glossary.

5.15. In order to facilitate discovery of the Licensed Material by prospective Licensees, the Company may implement systems and arrangements for the Licensor to Register the Material in the Materials Database.

#### **Mediated Licensing**

5.16. A Mediated Licence:

- a. is extended to prospective Licensees by the action of the Licensor (being an *AEShareNet* Member) Registering the Licensed Material in the Materials Database; and
- b. is binding when the Licensee accepts the Licence offer, whether or not after a period of negotiation between the parties on the Customisation details,

in accordance with the systems and arrangements implemented by the Company from time to time.

- 5.17. In order to facilitate discovery of the Licensed Material by prospective Licensees, the Licensor may apply a Licence Mark within, on or in relation to a copies of the Licensed Material, linked to the Material Registration in the Materials Database.
- 5.18. A Mediated Licence may be accepted only where the following conditions for Licence creation are met at the relevant time:
- a. the relevant functionality for Licence creation is not currently suspended by the Company under clause 11.1.1;
  - b. there is a current Licence Protocol for the Licence Regime referenced by the Licence Mark;
  - c. the Licensor is a current Member of the *AEShareNet* Charter and is within the Class(es) of Licensor permitted under the Licence Protocol;
  - d. the Licensee is within the Class(es) of beneficiary permitted under the Licence Protocol; and
  - e. the Status of the Material Registration is “active”.

#### **Licences Database for Mediated Licences**

- 5.19. The Company must establish and maintain an electronic database of Licences Mediated through *AEShareNet* (“**the Licences Database**”) in accordance with this clause.
- 5.20. A Licence record in the Licences Database may incorporate, without limitation, Fields containing the following information:
- a. details of the Material the subject of the Licence;
  - b. the Licensor, identified by reference to their Member-ID;
  - c. the Licensee, identified (where applicable) by reference to their Member-ID;
  - d. the Licence Protocol under which the Material was licensed;
  - e. where the Licence Protocol allows for Customisation details to be negotiated between the Licensor and the Licensee - those details as entered by the Licensor;
  - f. the date on which the Licence offer was accepted by the Licensee;
  - g. where the Licence Protocol allows for Customisation details to be varied - details of such variations as entered by the Licensor, and the date on which they were accepted by the Licensee; and
  - h. the Status of the Licence record.
- 5.21. The Status of a Licence record may be represented, without limitation, by any of the following expressions (or words or coding to similar effect):

- a. “pending” - where the Licensee has elicited a formal offer of a Licence but has not yet accepted the Licence;
- b. “under negotiation” - where the parties are still negotiating over the Customisation details of the Licence;
- c. “current” - where the Licence has been transacted and is still in operation;
- d. “terminated” - where the Licence has been terminated by agreement of the parties in accordance with the Licence Protocol; or
- e. “expired” - where the Licence has expired normally in accordance with the Licence Protocol.

### **Effect and operation of a Licence**

- 5.22. A Licence gives rise to a binding legal contractual relationship between the Licensor and Licensee, including any representation, waiver, estoppel, warranty or indemnity (however described) specified in Part B of the Licence Protocol (as interpreted in accordance with the Glossary).
- 5.23. Where a Mediated Licence provides in the Customisation details for payment of a licence fee and/or royalties, such payments shall be mediated through the Company, in accordance with the systems and arrangements established by it from time to time.
- 5.24. The Company may mediate variations to a Mediated Licence where stipulated in Part C of the relevant Licence Protocol. Variations shall be effected by creation of a new Licence record in the Licences Database, by processes similar to those for Mediation of the original Licence.
- 5.25. The Company may mediate termination of a Mediated Licence where stipulated in Part C of the relevant Licence Protocol.
- 5.26. A Mediated Licence shall be construed in accordance with the Licence Protocol in force at the time the current Licence record was created.
- 5.27. Where a Material Registration has been suspended by the Licensor, any Mediated Licences transacted before the suspension continue in operation.

### **Protection of *AEShareNet* Mark, Licence Marks and Licence Protocols**

- 5.28. Each Licence Mark may incorporate a representation of the *AEShareNet* Mark.
- 5.29. A Member may use a Licence Mark in the course of extending a Licence, but only as stipulated under the relevant Licence Protocol.
- 5.30. A Member may use the *AEShareNet* Mark in isolation to signify that they are a Member of the Charter.

- 5.31. The Company may use the *AEShareNet* Mark generally for all activities necessary or desirable to further the Objects.
- 5.32. A Member shall not use the *AEShareNet* Mark or a Licence Mark in a manner prejudicial to the achievement of the Objects, or which is misleading or deceptive.
- 5.33. A Member shall not use a Licence Mark to transact a Licence other than under *AEShareNet*, unless they have first obtained the authorisation of the Company.
- 5.34. A Member shall not publish a Licence Protocol on a website or otherwise, unless they have first obtained the authorisation of the Company.

**Policy on Licensing**

- 5.35. A Member is not compelled to Register any particular Material in any particular way, or at all.

**Application to Bodies Politic**

- 5.36. Where a Body Politic extends a Licence, it warrants that Custodianship of the relevant copyright is exercised by the participating department(s), office(s) and/or agency/ies of that Body Politic identified in the Member Profile.
- 5.37. Where a Body Politic takes a Licence, the Licence operates only for the benefit of the participating department(s), office(s) and/or agency/ies of that Body Politic identified in the Member Profile.

**Application to the Company**

- 5.38. The Company may be a Licensor or a Licensee as nearly as possible as if the Company was a Member in Class C.

## 6. Copyright Clearances

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### Clearances Database

- 6.1. The Company must establish and maintain an electronic database of Authorisations and Assignments sought or obtained under this clause ("**the Clearances Database**").

### Context

- 6.2. The following provisions of this clause 6 apply where:
- a. a Member ("**the Licensor**") Registers particular Material ("**the Material**") under a particular Licence Mark ("**the Registration**"); and
  - b. the Registration is "conditional", and that Status is linked to a Clearance record under which Authorisation(s) and/or Assignment(s) are sought under this clause.

### Seeking a Clearance

- 6.3. The Licensor may create a Clearance record in the Clearances database which asserts ownership of copyright in the Material by the Licensor and/or another person or persons (collectively "**Nominated Owners**"), and:
- a. if applicable - seeks a Clearance from some or all of the Nominated Owners; and/or
  - b. if applicable - also notes a possible interest in the copyright in the Material by a person or persons other than a Nominated Owner (collectively "**Potential Claimants**"), and seeks a Clearance from all of them.
- 6.4. The Company shall give notice to each Interested Party who is a Member of the Clearance(s) sought from them.

### Obtaining a Clearance

- 6.5. Each Interested Party may give a Clearance as sought.
- 6.6. The Clearances sought under a Clearance record shall take effect only after all the Clearances have been given, and the record has been activated by the Licensor. The Company shall give notice to all Interested Parties of this event.

### Effect of Clearance by Nominated Owner

- 6.7. Where a Nominated Owner ("**the Nominated Owner**") has given a Clearance which has been activated by the Licensor:
- a. to the extent the Nominated Owners include any other persons - the Nominated Owner must not challenge or call into question the validity of the

assertion as to copyright ownership contained in the Nominated Owners Field;

- b. to the extent of its own ownership - the Nominated Owner shall be taken to have Authorised the Licensor to extend Licences in relation to the Material as envisaged under the Registration.

6.8. The Authorisation may be subject to any collateral contractual conditions agreed between the Licensor and the Nominated Owner.

6.9. Subject to any agreement to the contrary, the following are collateral conditions:

- a. the Nominated Owner may not withdraw or vary the Authorisation; and
- b. the Licensor may not withdraw or vary the Licence Mark specified in the Registration,

within 12 months of the effective date of the Authorisation. The Company shall provide 1 months' notice to the Licensor and the Nominated Owner of the expiration of this period.

6.10. Failure by a party to comply with a condition applying under clause 6.9 may be dealt with as a Dispute.

#### **Effect of Clearance by Potential Claimant**

6.11. Where a Potential Claimant ("**the Potential Claimant**") has given a Clearance which has been activated by the Licensor:

- a. the Potential Claimant must not challenge or call into question the validity of the assertion as to copyright ownership contained in the Nominated Owners Field;
- b. the Potential Claimant will be taken to have Assigned to the Nominated Owner(s) (whether or not a Member) any copyright in the Material which might otherwise have been owned by the Potential Claimant.

6.12. The Assignment is irrevocable, but may be accompanied by any collateral contractual conditions agreed between the Licensor and the Potential Claimant.

6.13. Subject to any agreement to the contrary it is a collateral condition that the Licensor may not withdraw or vary the Licence Mark specified in the Registration within 12 months of the effective date of the Assignment. The Company shall provide 1 months' notice to the Licensor and the Potential Claimant of the expiration of this period.

6.14. Failure by the Licensor to comply with a condition applying under clause 6.13 may be dealt with as a Dispute.

- 6.15. An Assignment does not of itself affect the validity of an assertion as to copyright ownership contained in any existing Material Registration. To the extent that the records relate to the same Material, copyright in the Material shall be exercised Concurrently by the respective owners.

**Bodies Politic - Amnesty for Enhancements published prior to end-1997**

- 6.16. The succeeding sub-clauses apply (in the circumstances referred to in clause 6.2 [Context]), where the following further conditions are met:
- a. the Material is an Enhancement;
  - b. copyright in the original Material is owned by a single Member who is a Body Politic (“**the Original Owner**”);
  - c. copyright in the Enhancements is owned by a single Member who is a Body Politic (“**the Enhancements Owner**”);
  - d. the Enhanced Material has been published by the Enhancements Owner prior to the end of calendar year 1997; and
  - e. copyright in the Enhanced Material has not previously become the subject of dispute between the Original Owner and the Enhancements Owner.
- 6.17. The Enhancements Owner may Register the Material under the *AEShareNet-S* Licence Regime and the Status of the Registration may be shown as “active”.
- 6.18. Immediately upon Registration:
- a. the Enhancements Owner shall give notice of the Registration to the Original Owner;
  - b. the Original Owner shall be deemed to have Authorised the Licensor to extend Licences in relation to the Material as envisaged under the Registration. The Authorisation is irrevocable;
  - c. the Enhancements Owner will be taken to have Assigned copyright in the Enhancements to the Original Owner.

**Bodies Politic - Moratorium for Enhancements made prior to Commencement**

- 6.19. The succeeding sub-clauses apply (in the circumstances referred to in clause 6.2 [“Context”]), where the following further conditions are met:
- a. the Material is an Enhancement made prior to Commencement;
  - b. copyright in the original Material is owned by a single Member who is a Body Politic (“**the Original Owner**”);
  - c. copyright in the Enhancements is owned by a single Member who is a Body Politic (“**the Enhancements Owner**”);

- d. copyright in the Enhanced Material has not previously become the subject of dispute between the Original Owner and the Enhancements Owner; and
  - e. the Licensor is either the Original Owner or the Enhancements Owner; and
  - f. the Material is Registered by the Licensor under the *AEShareNet-S* Licence Regime.
- 6.20. The Licensor (either the Original Owner or the Enhancements Owner) may Register the Material under *AEShareNet-S*, and the Status of the Registration may be shown as “active”, subject to the succeeding subclauses.
- 6.21. If the Original Owner is the Licensor, then the claim of the Enhancements Owner shall be dealt with as follows:
- a. immediately upon Registration, the Licensor shall give notice of the Registration to the Enhancements Owner;
  - b. the Enhancements Owner shall be taken for the time being to have authorised the Licensor to extend Licences in relation to the Material as envisaged under the Registration, subject to this clause 6.21;
  - c. at any time within 3 months after the Registration, the Enhancements Owner may withdraw the deemed authorisation by 7 days’ notice to the Licensor. Withdrawal of the deemed authorisation does not affect the validity of a Licence granted prior to the effective date of the notice. The Licensor must then either:
    - A. cancel the Registration, or
    - B. reduce the Status of the Registration to “conditional” and seek to negotiate an Assignment or Authorisation in accordance with this clause 6;
  - d. if after the expiration of 3 months from the Registration the deemed authorisation has not been withdrawn, the Enhancements Owner shall be deemed to have Assigned copyright in the Enhancements to the Licensor.
- 6.22. If the Enhancements Owner is the Licensor, then the claim of the Original Owner shall be dealt with as follows:
- a. immediately upon Registration, the Licensor shall give notice of the Registration to the Original Owner;
  - b. the Original Owner shall be taken for the time being to have authorised the Licensor to extend Licences in relation to the Material as envisaged under the Registration, subject to this clause 6.22;
  - c. at any time within 3 months from the Registration the Original Owner may withdraw the deemed authorisation by 7 days’ notice to the Licensor. Withdrawal of the deemed authorisation does not affect the validity of a

Licence granted prior to the effective date of the notice. The Licensor must then either:

- A. cancel the Registration, or
  - B. reduce the Status of the Registration to “conditional” and seek to negotiate an Assignment or Authorisation in accordance with this clause 6;
- d. if after the expiration of 3 months from the Registration the deemed authorisation has not been withdrawn, the Original Owner shall be deemed to have Authorised the Licensor to extend Licences in relation to the Material as envisaged under the Registration. The Authorisation is irrevocable.

**Perfecting Assignments if Necessary**

- 6.23. Where a provision of this clause 6 purports to effect an Assignment of copyright, but such provision is not adequate in law, the provisions of clause 13.1 [*Further Assurance*] apply to perfect the Assignment.

## 7. ***AEShareNet* Technical Infrastructure**

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### **General**

- 7.1. The Company shall establish and maintain an *AEShareNet* Website, *AEShareNet* Databases and associated systems, functionality and standards as necessary or convenient for the operation of *AEShareNet* in accordance with this clause and the Objects.
- 7.2. The Members shall cooperate with, and use their best endeavours to assist, the Company generally for the purposes of clause 7.1, so that to the extent possible *AEShareNet* operations are conducted using efficient, effective and secure information and communications technology.

### ***AEShareNet* Website**

- 7.3. The *AEShareNet* Website may incorporate, without limitation:
- a. the Constitution;
  - b. the *AEShareNet* Charter;
  - c. the Extrinsic Materials, including the Glossary;
  - d. other Materials to explain the operation of *AEShareNet* for Members;
  - e. information intended to promote the concept and enlarge the Membership of *AEShareNet*;
  - f. an electronic bulletin board in which the Company may consult Members, and Members may participate in discussion on all aspects of *AEShareNet* operation;
  - g. links to the *AEShareNet* Databases.

### ***AEShareNet* Databases**

- 7.4. The *AEShareNet* Databases may include, without limitation:
- a. a database of Member Profiles ("**the Members Database**");
  - b. a database of Licence Protocols ("**the Protocols Database**"), including each Version of a Licence Regime;
  - c. a database of Material Registrations ("**the Materials Database**");
  - d. a database of Mediated Licences transacted under *AEShareNet* in accordance with clause 5 ("**the Licences Database**"); and
  - e. a database of Assignments and/or Authorisations transacted under *AEShareNet* in accordance with clause 6 ("**the Clearances Database**").

- 7.5. Copyright in the *AEShareNet* Databases (including each record) vests in the Company, but to the extent that a record created by a Member is derived from Material that was previously in existence Concurrent ownership is retained by the Member or as it might arrange.

#### **Operation of Licences**

- 7.6. Registration of Material by a Licensor, and Acceptance by a Licensee of a Licence in relation to the Material, in accordance with the associated Licence Protocol, may entail aspects of inter-operability with the *AEShareNet* Website and *AEShareNet* Databases.
- 7.7. Transactions, operations and events mediated by technical systems established in accordance with this clause may have legal effect, including by way of contract, Licence, Assignment, authorisation, clearance, certification, representation, waiver, estoppel, warranty or indemnity (however described), in accordance with their plain terms or as specified under the Charter.

#### **Obligations of Members re Security**

- 7.8. Each Member undertakes:
- a. to protect any password or private key issued to the Member for the purposes of *AEShareNet* operations;
  - b. to be bound by any transactions authenticated by their password or private key, except where they can establish positively that such use occurred without their authorisation and was not facilitated by their failure to take reasonable precautions to protect their password or private key;
  - c. not to attempt to compromise, subvert or bypass any password, private key or system of security established by the Company;
  - d. to immediately draw to the attention of the Company any threat or potential threat to the security of a password, private key or other system of security established by the Company; and
  - e. to participate in any systems analysis and design and to cooperate generally with the Company for the purposes of this clause.

#### **Obligations of Company re Confidential Information**

- 7.9. The Company undertakes:
- a. to use any Confidential Information held or controlled by it in connection with the Charter only for the purposes of fulfilling its obligations under the Charter;
  - b. to take all reasonable measures to ensure that Confidential Information in its possession or control in connection with this Agreement is protected against loss and unauthorised access, use, modification or disclosure; and

- c. to ensure that any person who has an access level which would enable that person to obtain access to any Confidential Information is made aware of, and undertakes in writing to observe, the obligations referred to in this clause.

7.10. Without limitation to clause 7.9, information contained in the Licences Database and the Clearances Database shall be treated by the Company as Confidential Information, and shall not be disclosed to any person other than a party to the relevant transaction.

### **Access, Reports and Notifications**

7.11. Subject to clause 7.10:

- a. the Company may determine arrangements for access by Members to the *AEShareNet* Databases;
- b. the Company may impose conditions on the use of any software made available to Members to facilitate their interactions with *AEShareNet* Databases, and used by them for that or any directly or indirectly related purposes;
- c. the Company may use the *AEShareNet* Databases in order to generate notifications and reports to Members as necessary or convenient for *AEShareNet* operations.

7.12. Each Member warrants and undertakes that any Material placed in an *AEShareNet* Database or on the Website under its direction or control:

- a. does not and will not infringe copyright or other intellectual property rights of any person;
- b. is not and will not be offensive, objectionable or unlawful.

**8. Cooperation to Protect Copyright**

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- 8.1. Each Member undertakes to give each Licensor prompt notice of any infringement of copyright in Material Registered by the Licensor which comes to its attention, and agrees to cooperate with the Licensor in order to protect such copyright.
- 8.2. The costs of any action taken shall be borne by the Licensor, and the proceeds of such action shall accrue to the Licensor.
- 8.3. However if the Company is willing to take action and the Licensor agrees, the Company may do so bearing all costs and acquiring on its own account all proceeds therefrom.

## **9. Dispute Resolution**

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- 9.1. This clause applies to:
- a. a dispute between Members relating to the ownership of copyright in particular Material which has been Registered, or to which a Licence Mark has been applied, by one of those Members;
  - b. a dispute between a Licensor and a Licensee regarding any matter arising under a Licence, including the treatment and copyright ownership of any Derivative Material created by the Licensee or the alleged failure of the Licensee to account for royalties;
  - c. a dispute between Members regarding any matter arising under an Assignment or Authorisation, including the failure of a Member to comply with any collateral conditions of the Assignment or Authorisation; or
  - d. a dispute of any character arising under the Charter between the Company and a Member or Members.
- 9.2. A Dispute shall be dealt with as follows:
- a. the party claiming that there is a Dispute will send to the other party/ies to the Dispute a notice setting out the nature of the Dispute;
  - b. within 7 days each party will nominate a representative, preferably not having any prior involvement in the Dispute;
  - c. the representatives will try to settle the Dispute by direct negotiation between them;
  - d. failing settlement within a further 14 days, any party may refer the Dispute to an independent third person with power:
    - A. if all parties agree - to intervene and direct some form of resolution, in which case the parties shall be bound by that resolution; or
    - B. in any other case - to mediate and recommend some form of non-binding resolution;
  - e. the parties shall cooperate fully with any process instigated under clause 9.2(d) in order to achieve a speedy resolution;
  - f. failing a resolution within a further 28 days, any party may commence legal proceedings.
- 9.3. Where the parties involved in a Dispute (not involving the Company) cannot agree on the selection of an independent third person for the purposes of clause 9.2(d), the Company may nominate a person.

- 9.4. The Company may charge for the services of a Director, executive officer, employee or agent of the Company to whom a Dispute is referred under clause 9.2(d).
- 9.5. Nothing in clause 9.2 prevents a party commencing legal proceedings for urgent interlocutory relief.
- 9.6. Failure by a party to comply with any binding decision or resolution flowing from a Dispute shall be deemed a breach of the Charter.
- 9.7. Resolution of a Dispute may include a request to the Company to take certain action, including any appropriate rectification or amendment of the *AEShareNet* Databases.
- 9.8. Each party to a Dispute shall meet its own expenses incurred in compliance with this clause.

**10. Notices**

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- 10.1. This clause applies to any notice, request or other communication to be given under the Charter (“**a Notice**”), except where the contrary intention appears.
- 10.2. A Notice shall be in writing signed by the sender, addressed to the recipient and marked for the attention of the contact officer as specified in the Member Profile for the recipient.
- 10.3. A Notice may be:
- a. delivered by hand to the physical address of the recipient - and is deemed to be given upon delivery;
  - b. sent by pre-paid ordinary post within Australia to the postal address of the recipient - and is deemed to be given upon the expiration of 5 business days after the date on which it was sent;
  - c. sent by facsimile message to the facsimile address of the recipient - and is deemed to be given upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient; or
  - d. sent by email to the email address of the recipient - and is deemed to be given when the email enters an information system accessible to the recipient.
- 10.4. In this clause a reference to any kind of “**address**” means such address as stated in the Member Profile for the recipient.
- 10.5. Despite the preceding subclauses, if the Company so determines, Notices for a particular purpose may be posted electronically on a specified information system, and are deemed to be given, in accordance with any particular software requirements and by means of any particular kind of electronic communication approved for that purpose from time to time by the Company.

## 11. Powers of Company

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- 11.1. In addition to any powers or functions provided elsewhere in the Constitution or the Charter, the Company may in pursuance of the Objects:
- a. determine a date on which *AEShareNet* operations are to commence (“**the Commencement Day**”);
  - b. provide services to Members;
  - c. levy fees in respect of Memberships, transactions mediated by it, collection of royalties and Dispute resolution and other services provided by it;
  - d. establish information and communications systems for the purposes of clause 7 [*AEShareNet Technical Infrastructure*];
  - e. determine and compel compliance with technical standards for the purposes of clause 2.3 [*Validity of Programmed Actions*];
  - f. develop and revise Extrinsic Materials from time to time as provided in clause 2.5 [*Extrinsic Materials*];
  - g. waive any requirement for compliance with standards, forms or formalities as provided in clause 2.8 [*Substantial Compliance*];
  - h. determine the manner in which Notices may be posted for the purposes of clause 10 [*Notices*];
  - i. rectify *AEShareNet* Databases:
    - A. of its own motion in order to correct a manifest error; or
    - B. in accordance with a request arising from a Dispute resolution process or otherwise;
  - j. remove the Registration of any Material which in the Company’s reasonable opinion is unlikely to be Licensed;
  - k. remove or suspend any Registration or other material contained in an *AEShareNet* Database or on the Website which in the Company’s opinion may be offensive, objectionable or unlawful;
  - l. suspend operations under the Charter, in whole or in part, during such periods as it considers necessary or desirable for any reason;
  - m. act as agent:
    - A. of a Member for the purpose of issuing a tax invoice and/or for the payment of any GST or other tax levied on transactions involving the Member - where requested to provide such a service;
    - B. of a Member to the extent expressed or necessarily implied by the Charter;

- C. of a Licensor or a Licensee to the extent expressed or necessarily implied under the relevant Licence Protocol;
  - D. of any person where otherwise requested to do so;
  - n. retain interest on any moneys held for the time being on trust for a Member, whether arising from an agency or otherwise under the Charter - except where not permitted to do so by law;
  - o. facilitate discussion and meetings between *AEShareNet* Charter Members.
- 11.2. Each Member shall facilitate, and cooperate with the Company in, the exercise of the Company's powers and functions.

## 12. Liability

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### General Indemnity

- 12.1. Each Member (“**the Indemnifying Party**”) indemnifies the Company and each other Member (“**the Indemnified Parties**”) from and against any:
- a. liability incurred by the Indemnified Party;
  - b. loss of or damage to property of the Indemnified Party; or
  - c. loss or expense incurred by the Indemnified Party in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Indemnified Party,

arising from:

- d. any unlawful or negligent act or omission by the Indemnifying Party, its officers, employees, agents or subcontractors in connection with the Charter; or
  - e. any breach by the Indemnifying Party of its obligations or warranties under the Charter.
- 12.2. The Indemnifying Party’s liability to indemnify the Indemnified Party under clause 12.1 will be reduced proportionately to the extent that any unlawful or negligent act or omission of, or breach of the Charter by, the Indemnified Party contributed to the relevant liability, loss or damage, or loss or expense.
- 12.3. The right of the Indemnified Party to be indemnified under this clause 12 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Indemnified Party is not entitled to be compensated in excess of the amount of the relevant liability, loss or damage, or loss or expense.
- 12.4. In this clause 12, “**Indemnified Party**” includes officers, employees and agents of the Indemnified Party.

### Information Published by the Company

- 12.5. Information published by the Company on the *AEShareNet* Website or elsewhere, including purported statements of law and analysis of the legal effect of *AEShareNet* transactions, is assembled for the convenience of Members, and for purposes of *AEShareNet* operations only, on the understanding that the Company is not thereby engaged in rendering professional advice.
- 12.6. Members understand that whilst reasonable care may be taken in assembling such information, it is not feasible to cover every situation, and for presentational reasons the Material may simplify or abbreviate some detail, or

fail to deal with considerations relevant to a particular transaction. In addition the Company does not warrant that any statements of law will be continuously corrected to take account of changes in the law.

- 12.7. Before relying on the information in connection with a Licence, Assignment or any other important matter, Members should take steps to verify the accuracy, completeness and currency of the information, and its relevance to their purposes, including by obtaining any appropriate professional advice.
- 12.8. Each Member releases and indemnifies the Company and its executive officers, employees, agents and sub-contractors from and against any and all liability for loss, damage, expense or injury which may result from the Member's reliance upon information referred to in clause 12.5.
- 12.9. The release and indemnity in clause 12.8 applies in addition to, and not in derogation of, any more particular disclaimers or exclusions appearing on the Website or brought to the attention of a Member.

**Material Licensed under *AEShareNet***

- 12.10. Members understand that the Company does not necessarily endorse:
- a. the content of any Material Licensed under *AEShareNet*;
  - b. any linked website; or
  - c. any services or products offered by a Member.

**Survival**

- 12.11. This clause 12 will survive the expiration or termination of the Charter.

**13. Additional Provisions**

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**Further Assurance**

- 13.1. A party shall join in and execute any further instrument which may be necessary to give effect to a Licence or Assignment under the Charter.

**Fees**

- 13.2. Each Member will promptly pay any fees levied by the Company in accordance with clause 11.1.

**Confidential Information**

- 13.3. Each party agrees not to disclose to any person any Confidential Information of another party without prior approval in writing from that other party. A party may impose any conditions or restrictions it considers appropriate when giving such approval.

- 13.4. The obligations on a party under clause 13.3 will not be taken to have been breached where the information referred to is legally required to be disclosed.

- 13.5. The obligation in clause 13.3 shall survive the termination of the Charter.

**Negation of Employment, Partnership and Agency by Members**

- 13.6. A Member agrees not to represent itself, and to use its best endeavours to ensure that its officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the Company, or as otherwise able to bind or represent the Company.

- 13.7. A Member is not by virtue of the Charter an officer, employee, partner or agent of the Company, nor does the Member have any power or authority to bind or represent the Company.

**Waiver**

- 13.8. If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.

- 13.9. A single or partial exercise by a party of any of its rights does not prevent the further exercise of any right.

- 13.10. In this clause, "**rights**" means rights or remedies provided by the Charter or at law.

**Assignment and Novation**

- 13.11. A party cannot assign its obligations, and agrees not to assign its rights, under the Charter.

**Applicable Law**

- 13.12. The laws in the Australian Capital Territory apply to the Charter.