



PUBLISHER MEMBERSHIP AGREEMENT

This PUBLISHER MEMBERSHIP AGREEMENT (“**Agreement**”) is made on

2021.

BETWEEN

- (A) **ESMAA ARABIA FZ-LLC**, of twofour54 Building, Office 901D, 9th Floor, Salam Street, Khalifa Park, PO Box 77905, Abu Dhabi, UAE (on behalf of its member publishers for each Composition licensed hereunder) (“**ESMAA**”); and
- (B) [**PUBLISHER**], of [] (“**Publisher**” or “**Member**”).

AGREED TERMS

1. DEFINITIONS

- (a) “**Affiliate CMO**” means any of the collective management organisations (and/or other third party organisation which purports to license Performing Rights or Mechanical Rights, including without limitation, a performing rights organisation, a publisher or publishing administrator) in other countries, having objects similar to those of ESMAA, with which ESMAA is for the time being affiliated.
- (b) “**Compositions**” means musical works, musical compositions and other works with music, spoken word works and all derivative works, the music and lyrics of all such works, jointly and separately, arrangements, adaptations, versions, editions and translations of any or all of the foregoing, committed to any form, whether published or unpublished, including the titles, librettos, words and music of each.
- (c) “**Copyright Act**” means the UAE Copyright Law Federal Law No. (7) of the year 2002 concerning Copyrights and Neighboring Rights, as amended from time to time.
- (d) “**Distribution Policy and Rules**” means the rate and distribution methodology for determining and allocating royalties payable to all of ESMAA’s writers and publishers on the same basis as determined by ESMAA from time to time. ESMAA shall make such Distribution Policy and Rules available to Publisher periodically throughout the Term on request.
- (e) “**Mechanical Rights**” means: (1) the right to copy or reproduce a Musical Work in a form intended for or in relation to distribution of copies to the public; (2) the right to copy or reproduce a Musical Work intended for or in relation to creation of a database for purposes of subsequent distribution or a Performance; (3) such corresponding rights as exist under the laws relating to copyright in all other countries in the world as in force from time to time; (4) all accrued causes of action in respect of each of the rights licensed hereunder; and (5) all parts and/or shares of or interest in each such right.
- (f) “**Musical Work**” means (to the extent written, composed and/or created by a Writer, and owned and/or controlled by Publisher): (1) any part of a Composition; (2) any vocal or instrumental music recorded on the soundtrack of any film; (3) any musical accompaniment to non-musical plays; (4) any words or music of monologues having a musical introduction or accompaniment, (5) any other words (or parts of words) which are associated with a Composition (even if the Composition itself is not in copyright, or even if the performing right in the Composition is not administered by ESMAA).

- (g) **“Performance”** includes, unless otherwise stated, any mode of acoustic presentation, including any such presentation by means of a sound recording, film, communication to the public, or by any other means, or other performance, rendition or representation made available to the public in any manner, by any method and through any medium now known or hereafter discovered, including transmissions by radio and television broadcasting stations, transmission by telephony or other electronic means, transmission by any means, and renditions of performances by means of devices for reproducing sound recorded in synchronism or timed relation with motion pictures or other audiovisual media (and references to “perform” and “performing” shall be construed accordingly).
- (h) **“Performing Right”** means: (1) the right to perform a Musical Work in public; (2) the right to communicate a Musical Work to the public (including without limitation via broadcast or electronic transmission); (3) such corresponding rights as exist under the laws relating to copyright in all other countries in the world as in force from time to time; (4) all accrued causes of action in respect of each of the rights licensed hereunder; and (5) all parts and/or shares of or interest in each such right.
- (i) **“Prior Agreement”** means any agreement pursuant to which Publisher licensed or assigned any Granted Rights to a third-party society or similar collecting organisation.
- (j) **“Territory”** means the UAE, Saudi Arabia, Qatar, Oman, Kuwait and Bahrain, together with the territories listed in the attached International Mandate.
- (k) **“Writer”** means a writer of a Musical Work who has exclusively licensed or assigned to Publisher his/her rights in (or has otherwise entered into contractual relations with Publisher in respect of) such Musical Work.
- (l) **“Writer’s Share”** means the Writer’s right (subject to the terms and rules of any Affiliate CMO) to receive up to fifty percent (50%) of income received in respect of exploitation of Performing Rights in Musical Works (and the **“Publisher’s Share”** means the Publisher’s right to receive the balance).
- (m) **“Publisher’s Revenue Share”** means all monies derived from the licensing and exploitation of the Publisher’s Share (and the **“Writer’s Revenue Share”** means all monies derived from the licensing and exploitation of the Writer’s Share).

2. TERM

- (a) This Agreement shall commence on the date first written above and continue for a period ending on 31 December of the year following such date. This Agreement shall automatically renewed for subsequent one (1) year periods unless terminated by either party on not less than ninety (90) days written notice. Publisher acknowledges that if Publisher terminates this Agreement, any and all licences then in effect may continue (provided ESMAA continues to pay resulting royalties to Publisher) for the agreed term in each case. However, save for such licences-in-effect, upon expiration of the Term, ESMAA shall not retain any rights to license or otherwise exploit any rights in the Musical Works and shall have no obligations to Publisher in connection with such rights, unless otherwise agreed in writing between the parties.
- (b) In the event that either party materially breaches any term of this Agreement, the non-defaulting party shall have the right to terminate this Agreement if the defaulting party has not cured such breach within thirty (30) days of written notice.

3. LICENCE

- (a) To the extent Publisher owns or controls such rights in Musical Works during the Term (as notified to ESMAA in writing from time to time), Publisher hereby irrevocably grants to ESMAA for the Territory: (i) the exclusive right to license the Performing Rights in the Musical Works; and (ii) the non-exclusive right to license the Mechanical Rights in the Musical Works (subject to the “Mechanical Rights Mandate” attached hereto); (together, the **“Granted Rights”**). As of the date of this

Agreement and throughout the Term, Publisher undertakes to not grant the Granted Rights to any third party in the Territory, save that Publisher may grant certain Mechanical Rights to a third party on a so-called “direct licence” basis subject to timely notice in writing of such grant in each case from Publisher to ESMAA fully disclosing all relevant details.

- (b) Publisher warrants and represents that Publisher has the right and ability to grant the Granted Rights to ESMAA free and clear of any claims by any third parties (unless otherwise notified to ESMAA timely in writing).
- (c) The Granted Rights shall include, without limitation and to the full extent of Publisher’s interest therein, the following rights in the Territory during the Term:
 - (i) to represent Publisher before governments and any other bodies that may be established in royalty setting, rate adjustment and fee distribution matters relating to the Musical Works, and otherwise in relation to exploitation of the Granted Rights;
 - (ii) to do all other things necessary and lawful to exercise and administer the Granted Rights, including the right (i) to negotiate and enforce the provisions of licensing agreements, or to withhold or restrict licensing in appropriate circumstances; (ii) to collect income derived from the Granted Rights from any source, whether now known or hereafter identified; (iii) to represent and seek to advance the interests of Publisher, along with affiliates of ESMAA, in connection with the Granted Rights, in appropriate forums, private or governmental, legislative, judicial or administrative, foreign or domestic;
 - (iii) to enforce and protect the Granted Rights, whether standing in the name of ESMAA or others, to prevent the infringement thereof, to litigate and collect damages arising from infringement, and in ESMAA’s sole judgment, to bring suit in the name of ESMAA or, with Publisher’s prior written consent, Publisher, or others in whose name the copyright may stand, or otherwise, and to release, compromise, or refer to arbitration any actions, in the same manner and to the same extent and to all intents and purposes as Publisher could do;
 - (iv) to prepare, execute, file and register claims of copyright in the Musical Works in Publisher’s name and, to the extent applicable, renewals and extensions thereof (solely as necessary), insofar as the Works are not registered, and to register the Musical Works with all other applicable collective rights management organisations;
 - (v) to collect royalties, advances and other payments hereunder throughout the Territory, to receive all accounting and royalty statements in connection with the foregoing, to execute and deliver receipts for any and all such collections as necessary and to account to Publisher therefor;
 - (vi) without limiting ESMAA’s rights, to assign (upon ESMAA’s sole election) the right to non-exclusively license the Granted Rights and collection of sums in relation thereto to an Affiliate CMO or other entity of ESMAA’s choosing during the Term, provided ESMAA shall remain secondarily liable to Publisher for ESMAA’s obligations hereunder unless and until the applicable licensee has directly covenanted with Publisher to assume such obligations from ESMAA.

4. PUBLISHERS OBLIGATIONS

- (a) Publisher shall submit or cause to be submitted to ESMAA a song-registration form, in a form reasonably determined by ESMAA, for each Musical Work subject to this Agreement; Publisher will make such submission upon commencement of the Term for existing Musical Works and in a timely manner for each new Musical Work which comes into existence in any way and in any form during the Term (“**New Works**”). Where ESMAA discovers any error(s) in any such submission, ESMAA may direct Publisher to correct the same but in any event ESMAA shall not be liable to Publisher (or

any third party) for any loss in connection with inaccurate or incomplete notifications, registrations or submissions of any Musical Work(s). ESMAA may impose a financial penalty upon any member that unreasonably fails to withdraw a false or misleading notification, registration or submission.

- (b) Promptly on request, Publisher shall submit or cause to be submitted to ESMAA all available cue sheets in relation to uses of Musical Works within audio-visual programmes, or other documents identifying times and locations of such performances, including programme and/or advertiser logs, for any existing production, advertisement or promotional spot that is broadcast or otherwise performed in any medium or venue, incorporating any of the Musical Work (and Publisher will make such submission upon commencement of the Term for existing Musical Work and shall do so for all New Works in a timely manner). Publisher consents to ESMAA procuring such cue sheets on Publisher's behalf (provided at ESMAA's expense, if any) as and when necessary.
- (c) Upon request, Publisher will provide to ESMAA (at its own expense, if any) a reasonable number of copies of any of the Musical Works (and/or New Works), in any format that ESMAA may reasonably require (including, without limitation, any and all accompanying metadata), in order to facilitate the monitoring of Performances and copies made of, and exploitation and administration of the rights in, such Musical Work(s).
- (d) Upon request, Publisher will use all reasonable endeavours to provide ESMAA any information available to Publisher about the copyright date, copyright registration number and certificate and renewal number, if any, of the Musical Works and respecting any agreements, assignments, or other instruments by which Publisher has granted or obtained, registered or recorded rights in any of the Musical Work in the Territory, as may be required by ESMAA to exercise and enforce the Granted Rights, or to prosecute or defend any actions, or to settle or resolve any disputes, in the Territory.
- (e) Publisher warrants and represents that: (1) Publisher has the right to enter into this Agreement and is not bound by any prior contracts or obligations that conflict with this Agreement except to the extent otherwise disclosed in the Agreement; (2) Publisher owns or controls, and has the right and authority to grant, all rights granted to ESMAA herein; and during the Term, Publisher will permit no adverse claims, liens or encumbrances upon any of the Musical Works to materially interfere with the Agreement; (3) there are no outstanding tax liens against Publisher; (4) each of the Musical Works is original, and no Musical Work registered with or right granted to ESMAA hereunder infringes any copyright or otherwise violates any right of any other person or entity; (5) all domestic and international copyright, or other legal formalities applicable to each of the Musical Works have been, or will, during the Term, be complied with; and (6) all of the information provided by Publisher to ESMAA pursuant to this Agreement is and shall be true and correct, and Publisher will promptly notify ESMAA of any material change in information previously submitted. Publisher will indemnify and defend ESMAA from all reasonable, out-of-pocket damage, cost or expense, including reasonable outside attorney's fees arising out of any third party claim which arises from a breach of Publisher's warranties, representations, undertakings or covenants herein. Publisher will give ESMAA prompt notice of any third party claim which arises in relation to a Musical Work and shall immediately provide ESMAA with a copy of any claim, process or legal pleadings related to any such claim. ESMAA shall have the right, at its own expense and with counsel of its own choice, to control the defence of any such claim and all actions and proceedings in connection therewith provided that Publisher shall have the right to participate in such defence with counsel of its choice but at its own expense. This indemnity shall survive the termination, for any reason, of this Agreement. Concomitantly, to the extent applicable, all of the warranties and representations made by the parties herein shall remain effective beyond the termination of this Agreement.
- (f) In the event of any dispute regarding infringement or ownership of the copyright in a Musical Work (which thereby calls into question Publisher's entitlement to sums allocated or to be allocated for distribution) and provided ESMAA is notified in writing and a request is made to that effect, and if satisfied that such dispute is being actively pursued, ESMAA may direct that payment of all or any part of such sums be suspended until the dispute has been resolved and written notice of any change in entitlement has been given to ESMAA.

- (g) Publisher hereby undertakes to notify ESMAA immediately if/when Publisher enters into an agreement with a Publisher (or any other third party agreement involving Publisher's publishing rights).

5. PRIOR AGREEMENTS

Publisher represents that concurrently with the execution of this Agreement, Publisher shall terminate any and all Publisher's Prior Agreements to the extent such agreements conflict with or contradict this Agreement, and that Publisher has no other Prior Agreements for the Territory. Publisher agrees that, during the Term, ESMAA may receive any and all prior earnings under any such Prior Agreement(s) which are remitted to ESMAA and in such case such amounts shall be treated as sums received pursuant to the rights licensed hereunder. Publisher shall indemnify ESMAA from and against losses incurred by ESMAA in relation thereto. Publisher warrants and represents that: (i) Publisher (and any relevant person or entity owned or controlled by Publisher in respect of the Granted Rights) has terminated or will terminate all Prior Agreements solely for the Territory in a timely manner effective prior to or upon the date of this Agreement; (ii) neither Publisher nor any publishing entity controlled by Publisher is party to any other Prior Agreements in the Territory; and (iii) neither Publisher nor anyone acting on Publisher's behalf will take any advances of any kind in connection with the Publisher's Share in the Musical Works or otherwise permit any adverse claims, liens, or encumbrances of any kind or nature upon any of the Musical Works or the Publisher's Share therein which might interfere with this Agreement.

6. ROYALTIES

ESMAA shall account for and pay royalties to Publisher for sums owing hereunder in accordance with the Distribution Policy and Rules. During the Term, ESMAA shall render bi-annual statements to Publisher in a manner consistent with ESMAA's accountings to all of its writers and publishers (i.e., no less frequently than twice (2) times per year) within ninety (90) days of the close of the accounting period immediately succeeding the period concerned (i.e., accountings are delayed by one (1) quarter plus ninety (90) days). Such statements will show the royalties payable to Publisher from ESMAA and will be accompanied by any payments due to Publisher. ESMAA shall have the right to deduct from monies payable to Publisher hereunder any portions thereof in accordance with relevant statutes, regulations, treaties and laws (provided that if ESMAA obtains a tax credit with respect to any monies deducted from Publisher pursuant to this paragraph, ESMAA shall account to Publisher therefor). In the event that a valid tax lien is filed with ESMAA prior to the payment of any monies payable hereunder, ESMAA shall have the right to suspend or terminate such payment and all future payments, up to the amount of such lien.

7. NOTICES AND PAYMENTS

- (a) Payments and written notices to Publisher shall be sent to Publisher as follows (or as otherwise notified to ESMAA from time to time):

Payments:

Written notices:

- (b) In the event that a particular transaction that is required in order to effectuate the terms of this Agreement is necessarily accomplished on a computer website or through a similar mechanism, Publisher will provide ESMAA with all necessary information in order to enable ESMAA to complete that transaction on Publisher's behalf.
- (c) No monies due or becoming due to Publisher hereunder will be assignable, whether by way of assignment, sale or power granted to an attorney-in-fact, without ESMAA's prior written consent. If

any assignment of such monies is made by Publisher without such prior written consent, no rights of any kind against ESMAA will be acquired by the assignee, purchaser or attorney-in-fact.

8. GENERAL

- (a) In order to maintain flexibility in administering this Agreement, ESMAA may vary the terms of this Agreement from time to time in its sole discretion. Such changes shall be effective immediately. Publisher shall be deemed to have notice of such changes when they are made available on the ESMAA web site (or otherwise notified to Publisher). Notwithstanding the foregoing, if Publisher does not wish to accept any changes, Publisher shall have the right to terminate this Agreement by written notice within thirty (30) days of notice of any changes to this Agreement.
- (b) This Agreement contains the entire understanding of the parties to this Agreement in relation to the subject matter hereof.
- (c) Publisher agrees to execute and deliver (at ESMAA's reasonable cost, if any), to ESMAA all documents and such other instruments as ESMAA reasonably deems necessary to effectuate the rights granted hereunder. Publisher hereby irrevocably grants to ESMAA a power of attorney, as Publisher's agent and attorney-in-fact, for the limited purpose of executing such documents and instruments in Publisher's name, and to dispose of such documents and instruments, which power of attorney may only be exercised if Publisher fails to execute and deliver to ESMAA any document which ESMAA may reasonably submit to Publisher for execution within five (5) business days after such document is submitted to Publisher. ESMAA will exercise reasonable commercial efforts to promptly thereafter deliver to Publisher a fully executed copy of such document or instrument, provided that non-repetitive failure to do so shall not be deemed a breach hereof. Publisher acknowledges that ESMAA's agency and power are coupled with an interest and are thereby made irrevocable.
- (d) For the avoidance of doubt, ESMAA shall have the right, at its election and without limitation, to assign and/or license any of ESMAA's rights hereunder.
- (e) Publisher acknowledges that the nature of this Agreement, the terms set forth in this Agreement and the non-public information provided by ESMAA to Publisher in the carrying out of this Agreement (collectively, the "**Confidential Information**") are strictly confidential and are not to be disclosed by to any third party other than to Publisher's professional representatives (including managers, accountants and attorneys), nor are they to be disclosed by said professional representatives, subject to any disclosure that Publisher may be required to make by judicial process from a court of competent jurisdiction or otherwise as a matter of law, without the express consent of ESMAA. If Publisher is required to disclose any Confidential Information as a matter of law, before doing so, Publisher shall provide ESMAA with fifteen (15) days' notice prior to disclosing the Confidential Information and ESMAA shall have a fifteen (15) day period in which to obtain a protective order from a court of competent jurisdiction to limit or quash the potential disclosure. The parties acknowledge that the Confidential Information is of great value and if disclosed to third parties without the express written consent of ESMAA would cause irreparable harm. Accordingly, Publisher agrees that any breach or threatened breach of this confidentiality provision shall entitle ESMAA, in addition to any legal remedies available to it, to apply to a court of competent jurisdiction to enjoin any breach or threatened breach of this Agreement.
- (f) This Agreement shall be governed by and construed in accordance with the laws of the Emirate of Dubai and the federal laws of the United Arab Emirates (as applicable). The parties agree to the jurisdiction of the DIFC Court of First Instance and the DIFC Court of Appeal as established under Article 3 of Dubai Law No. 12 of 2004, pursuant to Dubai Law No. 9 of 2004) to settle any dispute arising hereunder. If ESMAA should succeed in any legal action against Publisher in connection with this Agreement, ESMAA shall be entitled to all reasonable legal costs on an indemnity basis.

IN WITNESS WHEREOF, the parties agree the terms herein, including the attached Schedules.

ESMAA ARABIA FZ-LLC

PUBLISHER

By: _____
Name:
Date:

By: _____
Name:
Date:

SCHEDULE A – MECHANICAL RIGHTS MANDATE

The following Mechanical Rights shall be included with the Granted Rights:

- Retail sale of physical copies such as vinyl and CDs
- All forms of digital distribution and storage online, including digital music service providers
- All types of analogue and/or digital storage device or service used to support the use of music on playout systems for all types of public performance activity
- Any 'blanket' licensing scheme or agreement approved and operated by ESMAA for the use of Compositions within audio music content, including radio stations.
- Any 'blanket' licensing scheme or agreement approved and operated by ESMAA for the use of Compositions within audio-visual content, including audio-visual productions such as television and on-demand productions (subject to exclusions in relation to usages which are titles, sponsored or derogatory or prejudicial etc.)
- Any type of 'copyright' or 'blank tape' levy or national archive or similar
- All other types of exploitation by reproduction under a 'blanket' licensing scheme or agreement approved and operated by ESMAA

SCHEDULE B – INTERNATIONAL MANDATE

Except with respect to those territories listed for exclusion below: (i) Publisher designates ESMAA as its agent, throughout the world and for the term of this Agreement, to license the Granted Rights to Affiliate CMOs (for onward sub-licensing) and to collect all amounts, royalties and other sums (hereafter "**International Royalties**") payable to Publisher by any Affiliate CMO in relation to the Granted Rights; and (ii) Publisher shall not similarly authorise any other person or entity, including without limitation a foreign performing rights society, to undertake such activities on a collective basis for Publisher. ESMAA shall distribute International Royalties according to the terms of the Distribution Rules and Policy, this Agreement and applicable law or, in the absence thereof, in such manner and at such times as authorized by the ESMAA Board. This Agreement supersedes, cancels and/or revokes any other prior mandate or agreement with any other collecting society for the collection of amounts derived from the Granted Rights throughout the world except those territories listed below.

EXCLUDED TERRITORIES:

- []