

COLLECTION AGREEMENT FOR SECONDARY RIGHTS

BETWEEN

You, (the **Member**)

AND

AUSTRALIAN WRITERS' GUILD AUTHORSHIP COLLECTING SOCIETY LIMITED (ACN 073 648 076) of Level 4 Pitt Street Sydney 2000 (**AWGACS**)

BACKGROUND:

- A. AWGACS is a not-for-profit collecting society established to collect, administer and distribute payments due to its members arising from the reuse of their literary and dramatic works in Australia and overseas.
- B. The Member is a member of AWGACS and wishes to grant AWGACS the exclusive licence to exercise all rights on the Member's behalf in relation to the Secondary Use of the Member's Works.
- C. This exclusive licence entitles AWGACS to exercise rights on the Member's behalf as part of the collective administration of royalties in Australia and internationally.

1. DEFINITIONS

In this Agreement:

- 1.1 **Administration Charge** means the administration charge levied by AWGACS on the monies it collects on behalf of its members in accordance with Article 62 of AWGACS' Constitution;
- 1.2 **Collecting Society** means AWGACS, Screenrights, SACD, LIRA and any collecting society authorised to administer copyright and collect and distribute royalties derived from the Secondary Use of a Member's Work;
- 1.3 **Collecting Society Royalties** means royalties administered by Collecting Societies;
- 1.4 **Secondary Rights** means the right to make a Secondary Use of a Member's Work in return for the payment of equitable remuneration or levy;
- 1.5 **Secondary Use** means the reuse of a work that has already been published or distributed (including the copying, communication and reproduction of broadcasts by educational institutes under Parts VA and VB; government copying under section 183; and the retransmission of free-to-air broadcasts under Part VC of the *Copyright Act (Cth)* 1968 and analogous uses in foreign jurisdictions);
- 1.6 **Term** means the period specified in clause 6;
- 1.7 **Territory** means the world; and
- 1.8 **Member's Work(s)** means any literary, dramatic and other works written by the Member, either in whole or in part, after the date of this Agreement.

2 GRANT OF LICENCE

- 2.1 The Member grants AWGACS the exclusive licence in the Territory to:
 - (a) collect and recover Collecting Society Royalties on behalf of the Member;
 - (b) negotiate agreements with other Collecting Societies in respect of the Member's Secondary Rights;
 - (c) for the purpose of collecting and recovering fees or if there is any unauthorised exercise of any of the Secondary Rights in the Member's Works, commence such proceedings in the name of the Member as it may decide including the recovery of fees or damages and injunctions to restrain such unauthorised use; and
 - (d) otherwise administer the Member's Secondary Rights to the exclusion of all others in accordance with AWGACS' Constitution, and all rules made thereunder, as in force from time to time

- 2.2 It is agreed that this Agreement:
- (a) only relates to Secondary Rights in the Member's Works;
 - (b) does not relate to the exercise of any right not specifically granted under this Agreement (namely, primary rights); and
 - (c) does not operate to assign or transfer any copyright in the Member's Works to AWGACS.

3 ADMINISTRATION, DEDUCTIONS AND PAYMENTS

The Member authorises AWGACS:

- (a) to collect and recover fees for use of the Member's Secondary Rights in its own name pursuant to this Agreement;
- (b) to deduct the Administration Charge from payments due to the Member; and
- (c) to make payments to the Member in accordance with AWGACS standard payment and proof of entitlement procedures.

4 MEMBER'S WARRANTY AND INDEMNITY

4.1 The Member will provide AWGACS in the form required by AWGACS from time to time, with the title of each Member's Work written by the Member either in whole or in part.

4.2 The Member warrants to AWGACS that:

- (a) the Member has the full right and title to grant the licence to AWGACS contained in clause 2.1;
- (b) the information provided to AWGACS under this Agreement will be complete and correct; and
- (c) none of the Member's Works infringe the copyright in any other work.

4.3 The Member indemnifies AWGACS against all damages, losses, costs and expenses incurred by AWGACS arising out of a breach by the Member of a warranty contained in clause 4.2 above.

5 AWGACS' OBLIGATIONS

AWGACS undertakes to use all reasonable endeavours to collect, recover and distribute all Collecting Society Royalties it receives during the Term in accordance with AWGACS standard payment and proof of entitlement procedures.

6 TERM AND TERMINATION

6.1 This Agreement will continue until terminated in accordance with clause 6.2.

6.2 Either party may terminate this Agreement with or without cause by providing the other party with six (6) months' notice of termination in writing.

6.3 Termination of this Agreement will have no effect on any licence granted or other agreement entered into by AWGACS in relation to a Member's Works prior to the termination.

7 ASSIGNMENT

The Member and AWGACS agree that this Agreement will bind its successors and legal assigns.

8 VARIATION

This Agreement may only be varied, modified, amended or added to in writing executed by both parties.

9 JURISDICTION

This Agreement is governed by the laws of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

10 FURTHER STEPS

Each party agrees to take reasonable steps as requested by the other party (such as obtaining consents, signing and producing documents and getting documents completed and signed) as

may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

11 NOTICES

Any notice given pursuant to this Agreement must be in writing and must be sent to the postal or email address specified in this Agreement or as subsequently notified in writing. The Member undertakes to promptly notify AWGACS of any change to his or her postal or email address.

12 DISPUTE RESOLUTION

The parties agree that any dispute arising out of the subject matter of this Agreement will be submitted for mediation prior to either party commencing arbitration or court action.

13 COUNTERPARTS

This Agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

EXECUTED as an Agreement

EXECUTED by the **MEMBER**)
)
)

Witness Signature

Member's Signature

Print Witness' Name

Print Member's Name

Date

Print Member's email address

EXECUTED by **AUSTRALIAN WRITERS'**)
GUILD AUTHORSHIP COLLECTING)
SOCIETY LIMITED)

Signature

Print Name / Job Title

Date