

**AUSTRALIAN WRITERS' GUILD  
AUTHORSHIP COLLECTING SOCIETY LIMITED**

**CONSTITUTION**

current as at November 2019

**This Constitution consists of 2 parts:**

**PART A: MEMORANDUM OF ASSOCIATION**

**PART B: ARTICLES OF ASSOCIATION**

CORPORATIONS LAW  
A COMPANY LIMITED BY GUARANTEE

**MEMORANDUM OF ASSOCIATION**

OF

**AUSTRALIAN WRITERS' GUILD  
AUTHORSHIP COLLECTING SOCIETY LIMITED**

1. The name of the company is Australian Writers' Guild Authorship Collecting Society Limited ("the Company").
2. The objects for which the Company is established are:
  - (a) To act as agent or in any other legal capacity and whether on an exclusive non-exclusive or limited basis for the writers of literary and dramatic works and other works to collect, administer and distribute payments to them arising from such works throughout the world whether payable by collecting societies within or outside of Australia or other persons or entities;
  - (b) To exercise and enforce on behalf of Members of the Company and others being the writers of literary and dramatic works and other works all their rights and remedies under any legislation or other legal authority either of Australia or another country regarding the rights in relation to the exploitation or use in any way of such works.
  - (c) In the exercise or enforcement of rights and remedies to make and from time to time rescind vary or alter any arrangements and agreements in relation to any exploitation of such works in relation to the mode, periods or extent to which, and the terms on which, any exploitation of such works may be made or employed, and to collect, receive and give effective discharges for all amounts payable under any such agreements and arrangements in relation to any exploitation by all necessary actions or other proceedings and to recover such amounts, and to restrain and recover damages for the infringement by means of any exploitation of the rights of such writers or of the Company on their behalf in relation to such works and to release compromise or refer to arbitration any such proceedings or actions or any other disputes or differences;
  - (d) To obtain from writers of any literary or dramatic works or other works such assignments or authorities as may be necessary or expedient for enabling the Company to exercise and enforce in its own name or otherwise all such rights and remedies as referred to above and to sign all agreements and do such

things as may be necessary or expedient for the purposes of the exercise or enforcement by the Company of such rights and remedies.

- (e) To distribute net monies received by the Company in the exercise of its powers, after making provision for the expenses and liabilities of the Company incurred in such exercise or in carrying out the purposes and operations of the Company and for any contributions or payments for any of the purposes contained in the Memorandum or Articles of the Company among Members in accordance with the rules for the time being operable in relation to the distribution of such monies.
- (f) To promote the rights and interests of such writers, to make payment by way of loan or gift or on terms as may be thought fit and to establish and administer special funds for any purpose conducive to the improvement or advancement of the creation, teaching or performance of literary and dramatic works and other works whether or not related to the actual or potential rights or interests of the writers of such works or for the benefit of any society, association or company whose objects include any such purpose.
- (g) To encourage the dissemination of information in relation to the rights and interests of such writers;
- (h) To acquire hold and deal with licences and assignments of copyrights and neighbouring rights on an exclusive, non- exclusive or limited basis;
- (i) To print and publish any circulars, newspapers, periodicals or books, or undertake any publicity, that the Company may think desirable for the promotion of its objects;
- (j) To contract with, subscribe to, become a member of and cooperate with or amalgamate with any other association or organisation, whether incorporated or not, whose objects are similar to those of the Company;
- (k) To enter into any arrangement or contract with any association or organisation including other collecting societies within or outside of Australia, and whether incorporated or not, and any government authority, that appears conducive to any of the Company's objects and to obtain from any of them any rights, privileges and concessions which the Company may think it desirable to obtain; and to carry out, exercise and comply with any such arrangement, rights, privileges and concessions;
- (l) To appoint, employ, remove or suspend employees and contractors and other persons as may be necessary or convenient for the purposes of the Company;

- (m) To donate, subscribe or guarantee money for charitable or benevolent objects, or for any public, general or useful object;
- (n) To construct, improve, maintain, develop, work, manage, carry out, alter or control any houses, buildings, grounds works or conveniences which may seem calculated directly or indirectly to advance the Company's interests, and to contribute to, subsidise or assist and take part in the construction, improvement, maintenance, development, working, management, carrying out, alteration or control of them;
- (o) To invest and deal with the money of the Company not immediately required in such manner as the Board thinks fit, or as is permitted by law for the investment of trust funds;
- (p) To borrow or raise or secure the payment of moneys in such manner as the Company thinks fit and to secure the same or the repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be entered into by the Company in any way and in particular by the issue of debentures, perpetual or otherwise, charged upon all or any of the Company's property (both present and future), and to purchase, redeem or pay off such securities;
- (q) To make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- (r) To purchase, sell, improve, manage, develop, exchange, lease, dispose of, or otherwise deal with, all, or any part of the property and rights of the Company;
- (s) To take or hold mortgages, liens and charges to secure payment of the purchase price or any unpaid balance of the purchase price, of any part of the Company's property of whatever kind sold by the Company or any money due to the Company from purchasers and others;
- (t) To take any gift of property, whether subject to any special trust or not, for any one or more of the objects of the Company but subject always to the proviso that when the Company takes or holds any property which may be subject to any trusts the Company will only deal with that property in such manner as is permitted by law;
- (u) To take such steps by personal written appeals, public meetings or otherwise, as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Company in the shape of donations, annual subscriptions or otherwise;

- (v) To purchase, acquire or undertake all or any part of the property, assets or liabilities of any one or more of the associations or organisations with which the Company is authorised to amalgamate;
- (w) To transfer all or any part of the property, assets or liabilities of the Company to any one or more of the associations or organisations with which the Company is authorised to amalgamate;
- (x) To support or oppose any legislation which might affect the Company's interests;
- (y) To hold or arrange competitions and provide or contribute towards the provision of prizes or awards for them and to establish and oversee funds;  
and
- (z) To do all other things which are incidental or conducive to the attainment of the objects and the exercise of the powers of the Company.

The powers set forth in Section 161(1) of the Corporations Law will not apply to the Company except insofar as they are included in this Clause 2.

3. The income and property of the Company or any profits, however derived, will be applied solely towards the promotion of the objects of the Company contained in this Memorandum, and no portion of it will be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise, to the Members of the Company.

Provided that this will not prevent the payment in good faith to any Member of the Company in return for any services actually rendered to the Company or for goods supplied in the ordinary course of business.

4. The liability of the Members is limited.
5. Every Member of the Company undertakes to contribute to the property of the Company in the event of the Company being wound up while s/he is a Member, or within one year after s/he ceases to be a Member, for payment of the debts and liabilities of the Company (contracted before s/he ceased to be a Member) and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required, but not exceeding twenty dollars (\$20.00).
6. On the winding up or dissolution of the Company, any property remaining after satisfaction of all its debts and liabilities will not be paid to or distributed among the Members of the Company, but will be given or transferred to some other association or organisation having objects similar to the objects of the Company and whose Memorandum of Association or constitution prohibits the distribution

of its income and property among its Members to an extent at least as great as is imposed on the Company under Clause 3 of this Memorandum and which will be subject to approval under section 78(1)(a) of the Income Tax Assessment Act 1936. Such association or organisation will be determined by the Members of the company at or before the time of the dissolution or, in default of that, by application to the Supreme Court of New South Wales or the Federal Court of Australia for determination.

7. The names, addresses and occupations of the subscribers are as follows:

Geoffrey Atherden,	61 Sutherland Street, Cremorne, NSW, Writer
Ian David,	1/324 Arden Street, Coogee, NSW, Writer
Simon Thomas Lake,	5/51 Gould Street, Bondi, NSW, Executive Director
Keith Thompson,	28A Cardinal Avenue, Beecroft, NSW, Writer
Bruce Wills Pulsford,	4/1a Lamrock Avenue, Bondi Beach, NSW, Solicitor

8. We, the persons whose names, addresses and occupations are subscribed, desire of being formed into a company pursuant to this Memorandum of Association.

Signature of Subscribers

Witness to Signatures

Geoffrey Atherden

Full name:

Address:

Signature:

Ian David

Full name:

Address:

Signature:

Simon Thomas Lake

Full name:

Address:

Signature:

Keith Thompson

Full name:

Address:

Signature:

Bruce Wills Pulsford

Full name:

Address:

Signature:

CORPORATIONS LAW  
A COMPANY LIMITED BY GUARANTEE

**ARTICLES OF ASSOCIATION**

OF

**AUSTRALIAN WRITERS' GUILD  
AUTHORSHIP COLLECTING SOCIETY LIMITED**

1. Except as provided in these Articles the Regulations in Table A of Schedule 1 to the Corporations Law ("the Law") will not apply.
2. In these Articles and the attached Memorandum:

"Accounting Period" means a period of not more than 12 months ending on 30 June in any year or on such other date as may be adopted by the Company in accordance with the Law;

"AWG" means Australian Writers' Guild Limited;

"the Board" or "the Board of directors" means the directors of the Company elected or appointed pursuant to these Articles;

"the Company" means Australian Writers' Guild Authorship Collecting Society Limited;

"Distributable Fund" means the fund established for the purposes of holding royalties on trust for writers of literary and dramatic works and other works;

"Distributable Royalties" means all royalties that are distributable to Members, and other writers of literary and dramatic works in accordance with these Articles;

"Errors, Omissions and Growth Fund" means the fund established and operated by the Company for the purpose of Article 62(c);

"the Law" means the Corporations Law or any statutory modification of it;

"Member" means a person admitted as a Member to the Company;

"Royalty Collections" means all royalties received by the Company on behalf of Members and other writers of literary and dramatic, and other works;

"Secretary" means any person appointed to perform the duties of the secretary of the Company;

"Special Trust Account" means the separate trust account established under Article 64;

"the seal" means the common seal of the Company;

"work" has the meaning given it in the Copyright Act 1968;

Words or expressions contained in these Articles will be interpreted in accordance with the provisions of the Law, unless otherwise provided.

3. The Company is established for the purposes set out in the Memorandum of Association and the number of its Members is expressed to be unlimited.

## **MEMBERSHIP**

4. The subscribers to the Memorandum of Association and such other persons as the Board will admit to membership in accordance with these Articles will be Members of the Company.
5. Any person who is:
  - (a) a full member of AWG;
  - (b) a writer of a literary or dramatic work or other work who is not a full member of AWG; or
  - (c) any other person whom the Board consider fit to be a Member; or
  - (d) the executor, administrator or beneficiary of the estate of a person referred to in (a) or (b)

will be eligible for admission as a Member of the Company.

6. Any person who is eligible for membership of the Company (other than the subscribers to the Memorandum of Association) may apply to the Board for admission to membership in writing, signed by the applicant in the form which the Board from time to time determines. The Board may require any applicant to supply evidence of eligibility as it considers reasonably necessary.
7. The Board will consider any application and, if reasonably satisfied that the applicant is eligible, will admit the applicant as a Member. The Board is not required to give any reasons should it reject an application.

8. When an applicant has been accepted for membership, the Secretary will as soon as possible send to the applicant written notice of acceptance.
9. deleted
10. deleted

## **CESSATION AND RESIGNATION OF MEMBERSHIP**

11. deleted
12. A new Member will be considered inactive until their first allocation from the Distributable Fund. In the event that any Member does not, during any 5 consecutive financial years of the Company, have allocated to the Member any share of moneys collected by the Company, then that Member will be considered inactive and will not be entitled to notice of, or to attend or vote at, any general meeting held after the end of the said 5 consecutive financial years and until after the end of a financial year during which that Member will have been allocated to them a share of moneys collected by the Company.
13. A Member may at any time, by giving 6 months' notice in writing to the Secretary, resign the Member's membership of the Company but will remain liable for all arrears due and unpaid at the date of the Member's resignation and for all other moneys due by the Member to the Company and in addition for any sum for which the Member is liable as a Member of the Company under Clause 5 of the Memorandum of Association of the Company.
14. Subject to Article 13, all rights privileges and obligations of the Members will cease on the day of cessation of membership and the Member will cease to have any claim on the assets of the Company and will not be entitled to participate in any further allocations of moneys held or received by the Company provided however that any person who has ceased to be a Member will be entitled, despite the cessation of membership, to continue to receive any allocation and distribution of moneys to which the Member becomes entitled in respect to any period during which the person was a Member of the Company.
15. If any Member wilfully refuses or neglects to comply with the provisions of the Memorandum or Articles of Association of the Company, or is guilty of any conduct which in the opinion of the Board is unbecoming of a Member or prejudicial to the interests of the Company, the Board will have power by resolution to censure, fine, suspend or expel the Member from the Company provided however that at least one week before the meeting of the Board at which such a resolution is passed the Member will have had notice of the meeting, of what is alleged against the Member and of the intended resolution and that the Member will, at the meeting and before the passing of the resolution, have had an opportunity of giving, orally or in writing, any explanation or defence the Member may think fit, and provided

however further that the Member may, by notice in writing lodged with the Secretary at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the Board, elect to have the question dealt with by the Company in general meeting. In that event a general meeting of the Company will be called for that purpose and if at the meeting such a resolution is passed by a majority of two-thirds of those present and voting (the vote to be taken by ballot) the Member concerned will be dealt with accordingly and, in the case of a resolution for the Member expulsion, the Member will be expelled.

### **ANNUAL GENERAL MEETING**

16. An Annual General Meeting of the Company will be held in accordance with the provisions of the Law.

### **GENERAL MEETINGS**

17. Any director may convene a General Meeting if seconded by another director.
18. Subject to the provisions of the Law relating to special resolutions and agreements for shorter notice, 21 days' notice at least (exclusive of the day on which the notice is served or deemed to be served, and exclusive of the day for which the notice is given) specifying the place, the date and time of meeting, and in the case of special business, the general nature of that business, will be given to those persons entitled to receive it.
19. For the purposes of Article 18 all business will be special business which is transacted at a General Meeting or an Annual General Meeting, with the exception of the consideration of the accounts, balance sheets, and the report of the directors and Auditors, the declaration of the election of the Board of directors and the appointment of the Auditors, if necessary.

### **PROCEEDINGS AT GENERAL MEETINGS**

20. No business will be transacted at a General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Except as otherwise provided 5 Members present in person will be a quorum. For the purposes of this Article "Member" includes a person attending as a proxy.
21. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened on the requisition of Members, will be dissolved; in any other case it will stand adjourned to such other time, date or place as the meeting may determine. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Members present

(being not less than three) will be a quorum.

22. The Chair of the Board will preside as chairperson at every General Meeting of the Company, or if the Chair of the Board is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, then the Members present will elect one of their number to be chairperson of the meeting.
23. The chairperson may, with the consent of any meeting at which a quorum is present (and will if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting will be given as in the case of any original meeting; otherwise it will not be necessary to give any notice of the adjournment or the business to be transacted at the adjourned meeting.
24. At any General Meeting a resolution put to the vote of the meeting will be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded
  - (a) by the chairperson; or
  - (b) by at least three Members present in person or by proxy.

Unless a poll is demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, will be conclusive evidence of the fact without proof of the numbers or proportion of the votes recorded in favour of or against the resolution. The demand for the poll may be withdrawn.

25. If a poll is demanded it will be taken in such a manner and either at once or after an interval or adjournment or otherwise as the chairperson directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a chairperson or on a question of adjournment will be taken immediately.
26. In the case of an equality of votes, whether on a show of hands or on a poll, a motion will be declared lost.
27. A Member may vote in person or by proxy or by attorney, or, where approved by the Board, by mail or electronic means (including telephone and fax) and on a show of hands every person present who is a Member or a representative of a Member will have one vote and on a poll every Member present in person or by proxy or by attorney will have one vote.

28. A Member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote, whether on a show of hands or on a poll, by the Member's committee or by the Member's trustee or by such other person as properly has the management of the Member's estate, and any such committee, trustee or other person may vote by proxy or attorney.
29. No Member will be entitled to vote at any general meeting if the Member is inactive, as defined in Article 12, at the date of the meeting.
30. The instrument appointing a proxy will be in writing signed by the Member or the Member's attorney duly authorised in writing or, if the appointor is a corporation, either under seal or signed by an officer or attorney duly authorised in writing. The instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll. A Member will be entitled to instruct the Member's proxy in favour of or against any proposed resolutions. Unless otherwise instructed the proxy may vote as the Member thinks fit.
31. The instrument appointing a proxy may be in the following form or in a common or usual form.

*Australian Writers' Guild Authorship Collecting Society Limited ("the Company")*

*I, ..... of ..... being a Member of the Company appoint ..... of ..... as my proxy to vote for me on my behalf at the (Annual General Meeting or General Meeting+ as the case may be) of the Company to be held on ..... and at any adjournment of the meeting.*

*My proxy is authorised to vote +in favour of/+against the following resolutions:*

*(Insert details if applicable)*

*Signed:*

.....

*Date:*

.....

*NOTE: In the event of the Member desiring to vote for or against any resolution the Member will instruct their proxy accordingly. Unless otherwise instructed, the proxy may vote as the proxy thinks fit.  
+ delete whichever is not applicable.*

32. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a copy of that power (certified by a justice of the peace) or authority will be deposited at the registered office of the Company or at such other place as is specified for that purpose in the notice convening the meeting, not less than 24 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; in the case of a poll, not less than 24 hours before the time appointed for the taking

of the poll. In default the instrument of proxy will not be treated as valid.

33. A vote given in accordance with the terms of an instrument of proxy or attorney will be valid despite the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, if no intimation in writing of such death, unsoundness of mind or revocation has been received by the Company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

### **BOARD OF DIRECTORS**

34. The following persons will constitute the first Board of directors:

Karin Altmann  
Ian David  
Keith Thompson  
Christopher Tugwell  
Simon Lake

all of whom will retire at the first Annual General Meeting and be eligible for re-election.

35. After the first Annual General Meeting, the Board will consist of:
- (a) 3 directors appointed by AWG ("AWG Directors"), two of whom are Members of the Company and one of whom is the person occupying the position of Executive Director (or its equivalent title from time to time) of AWG; and
  - (b) Two directors elected by the Members of the Company ("Member Elected Directors").
36. (a) Subject to Article 41, all directors will hold office for 2 years. No director, with the exception of that director who is also the Executive Director of AWG, will be eligible to hold office as a director for more than 3 consecutive 2 year terms without first standing down from the Board for at least 1 year.
- (b) At least 21 days before the first and each subsequent Annual General Meeting, AWG must give written notification to the Company of its nominated AWG Directors.
37. (a) Any two Members of the Company may nominate any other Member as a candidate for Member Elected Director.

- (b) The nomination, which must be in writing and signed by the Member and the Member's proposer and seconder, will be lodged, together with a biographical note about the candidate of not more than 100 words, with the Secretary at least 28 days before the date set by the Board for the election. The election date must be within 14 days prior to the date of the Annual General Meeting.
- (c) A list of the candidates' names, in alphabetical order, with the proposers' and seconders' names, will be posted in a conspicuous place in the registered office of the Company for at least 7 days immediately preceding the date of the election.
- (d) In case there are not sufficient candidates nominated, the Board may fill up the remaining vacancy or vacancies.
- (e) If there are only nominations sufficient for the vacancies on the Board the chairperson of the Annual General Meeting next held after the election will declare those candidates duly elected.
- (f) Wherever there are more nominations than vacancies for positions on the Board, ballot papers will be prepared containing a list of the names of the candidates in alphabetical order. Each Member will be entitled to vote for any number of the candidates not exceeding the number of vacancies and will be sent by post at least 14 days prior to the date of the election a ballot paper and a copy of the biographical notes submitted by the candidates.
- (g) The voter will mark the voter's ballot paper by marking a cross opposite the names of each of the candidates for whom the voter votes. The ballot paper will be placed in a sealed envelope on the front of which the Member will write the Member's name and signature. The envelope will be returned to the Secretary prior to the date of the election.
- (h) The result of the ballot will be determined by a Returning Officer appointed by the Board assisted by up to two scrutineers appointed by the Board.
- (i) After the closing of the ballot the Returning Officer and scrutineers will check the names and signatures of Members on the front of the sealed envelopes as to their qualification to vote and proceed to an anonymous examination of the ballot papers and will report in writing the result of the ballot to the chairperson of the Annual General Meeting next held after the election. Those candidates who receive the greatest number of votes will be deemed elected.
- (j) A declaration of the results of the election will be made at the Annual General Meeting next held after the election.

- (k) In any case of doubt as to the validity of any ballot paper the matter will be referred to the chairperson of the Annual General Meeting whose decision will be final.
  - (l) In the event of an equality of votes in favour of two or more candidates, the chairperson of the Annual General Meeting next held after the election will choose the name of one of them by lot so as to decide the election.
  - (m) The Board of directors may direct the Returning Officer to destroy the ballot papers at any time after the expiration of one month after the date of the declaration of the election.
38. In the event of a vacancy arising among AWG Directors, AWG will nominate a replacement in writing.
39. The Board will have power at any time to appoint any Member of the Company as a Member-Elected Director to fill a vacancy arising under Article 41. Any Member Elected Director so appointed will hold office only until the next Annual General Meeting. The Board may co-opt a Member or Members of the Company onto the Board as a temporary replacement or replacements for a director or directors who may be unable to attend Board meetings and who has or have first obtained the Board's permission. Such person(s) will hold office only until the next following Annual General Meeting or the absent director(s) return(s) to Board meetings.
40. The Company may, by special resolution of which notice pursuant to Section 227 of the Law has been given, remove any director before the expiration of the director's period of office, and may, by a special resolution appoint another person in the director's place. The person so appointed will hold office only until the next Annual General Meeting.
41. The office of a director will become vacant if the director -
- (a) becomes insolvent under administration or makes any arrangement or composition with the director's creditors generally;
  - (b) becomes prohibited from being a director of a company by reason of any order made under the Law;
  - (c) ceases to be a director by operation of Section 228 of the Law;
  - (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (e) resigns the director's office by notice in writing to the Company;

- (f) is absent without permission of the Board from more than 3 consecutive meetings of the Board; or
- (g) (with the exception of that director who is also the Executive Director of AWG) ceases to be a Member of the Company.

42. No director will be:

- (a) disqualified by virtue of holding any office of profit in the Company and any director may be or become a director of, or hold an office of profit in, any other company promoted by the Company or in which the Company may be interested as vendor, shareholder or otherwise;
- (b) disqualified by virtue of contracting with the Company either as vendor, purchaser or otherwise, and no such contract or arrangement entered into by the Company in which any director is in any way directly or indirectly interested will be avoided; or
- (c) liable to account to the Company for any profit arising from any office of profit or realised by any such contract or arrangement by reason only of the director holding that office or of the fiduciary relations established because of it, provided however that a director must disclose to the Company any interest referred to in Article 42 (a), (b) or (c), and must not vote in relation to any contract or arrangement with the Company in which the director is in any way, whether directly or indirectly, interested or in relation to any matter arising out of such contract or proposed arrangement. If the director votes in contravention of this article, the director's vote will not be counted.

43. The directors will be paid all travelling, accommodation and other expenses properly incurred by them in attending meetings of the Board or in connection with the business of the Company.

## **POWERS AND DUTIES OF THE BOARD**

44. The business of the Company will be managed by the Board who may pay all expenses incurred in promoting and registering the Company and may exercise all such powers of the Company as are not, by the Law or by these Articles, required to be exercised by the Company in general meeting. Any rule, regulation or by-law of the Company issued or made by the Board may be disallowed by the Company in general meeting provided however that no resolution passed by the Company in general meeting will invalidate any prior act of the Board which would have been valid if that resolution had not been passed.

45. The Board may exercise all the powers of the Company to borrow money and to mortgage or charge its property, or any part of it, and to issue debentures and other securities whether outright or as security for any debt, liability, or obligation

of the Company.

46. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, will be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two directors or in such other manner as the Board from time to time determines.
47. The Board will cause minutes to be made:
  - (a) of all appointments of officers and employees;
  - (b) of the names of the directors present at all meetings of the Company and of the Board; and
  - (c) of all proceedings at all meetings of the Company and of the Board.

The minutes will be signed by the chairperson of the meeting at which the proceedings were held or by the chairperson of the next meeting.

#### **PROCEEDINGS OF THE BOARD OF DIRECTORS AND OFFICER BEARERS**

48. The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit, but will not meet less than 4 times each year. Any 2 members of the Board may at any time, and the Secretary will on the requisition of a member of the Board, convene a meeting of the Board. All members of the Board are entitled to receive reasonable notice of any Board meeting.
49. Subject to these Articles questions arising at any meeting of the Board will be decided by a majority of votes and a determination by such a majority will for all purposes be deemed a determination of the Board. In case of an equality of votes a motion will be declared lost.
50. The quorum necessary for the transaction of the business of the Board will be a majority of the total number of members of the Board or such greater number as may be fixed by the Board.
51. The continuing members of the Board may act despite any vacancy on the Board, but if and so long as their number is reduced below the number fixed by Article 50 as the necessary quorum of the Board, the continuing member or members of the Board may act for the purpose of increasing the number of members of the Board to that number or of convening a general meeting of the Company, but for no other purpose.

52. The office bearers of the Company, being the Chair and the Secretary will be elected by the Board.
53. The Chair of the Board will preside as chairperson at every meeting of the Board, or if the Chair is not present within ten minutes after the time appointed for holding the meeting, or is unwilling to act, then the members of the Board may choose one of their number to be chairperson of the meeting.
54. The Board may delegate any of its powers or functions (not being duties imposed on the Board as the directors of the Company by the Law or the general law) to one or more committees consisting of such Member or Members of the Company as the Board thinks fit. Any committee so formed will conform to any regulation that may be imposed by the Board and, subject to that, will have the power to co-opt any Member or Members of the Company.

### **SECRETARY**

55. The Secretary will, in accordance with Section 240 of the Law, be appointed by the Board for such term and on such conditions as it thinks fit. Any Secretary so appointed may be removed by the Board.

### **SEAL**

56. The Board will provide for the safe custody of the seal which will only be used by the authority of the Board or of a committee of the Board authorised by the Board. Every instrument to which the seal is affixed will be signed by a member of the Board and will be countersigned by the Secretary or by a second member of the Board or by some other person appointed by the Board for that purpose.

### **ACCOUNTS**

57. The Board will cause proper accounting and other records to be kept and will distribute at the time of giving notice of the Annual General Meeting copies of every profit and loss account and balance sheet (including every document required by law to be attached) accompanied by a copy of the Auditor's report as required by the Law, provided however that the Board will cause to be made out and laid before each Annual General Meeting a balance-sheet and profit and loss account made up to a date not more than five months before the date of the meeting.
58. The directors will cause separate accounts and records to be kept in relation to:
  - (a) the receipt and expenditure of Royalty Collections;

- (b) the manner in which the entitlement of Members to Distributable Royalties is determined and carried out;
- (c) the receipt and expenditure of moneys held in reserve as part of the Errors, Omissions and Growth Fund;

and, in doing so, will as far as possible, adopt a consistent practice in allocating receipts and expenditure to Accounting Periods.

- 59. A Member of the Company will be entitled to inspect the accounting and other records of the Company at such times and places and under such reasonable conditions or regulations as the directors from time to time determine, subject to the provisions of the Law, provided however that no Member who is not a director of the Company will be entitled to require or receive any information concerning the business trading or customers of the Company or any trade secret or secret process of or used by the Company.
- 60. The writer of any work not being a Member will be permitted to inspect the records of the Company as they relate to that work at such times and places and under such reasonable conditions or regulations that the directors from time to time determine provided however that any such writer gives 7 days' notice to the Company in writing that the Member wishes to do so.

### **RECEIPT AND ALLOCATION OF MONIES**

- 61. Any monies received by the Company from any source other than royalties may be dealt with at the absolute discretion of the Board.
- 62. In each Accounting Period, Royalty Collections will be expended in the following order:
  - (a) For the payment of all reasonable expenses that are incidental to the conduct, management and operation of the Company, as the Board considers appropriate;
  - (b) For such special purposes that the Board considers in the interest of the Company, such as cultural purposes, provided that the funds expended for special purposes do not exceed 5% of Royalty Collections for that Accounting Period;
  - (c) To be set aside in the Errors, Omissions and Growth Fund to meet any anticipated future obligations as the Board considers appropriate; and
  - (d) To be allocated and distributed according to the Company's distribution policy, which may be amended by the Board from time to time.

63. If the Company is unable to distribute monies accrued under Article 62(d) to a person because the person is not a Member or for any other reason, the Company must hold that money in trust as specified in Article 64 until such time as payment can be made to that person under Article 62.

### **UNDISTRIBUTED MONIES**

64. If any monies remain undistributed under Article 62 for a period of four years from the end of the Accounting Period in which the Royalty Collections were collected, the monies may be distributed as the Board sees fit, unless the Board is satisfied that special circumstance justify the monies to be held on trust for a further period not exceeding two years.

### **DETERMINATION OF ENTITLEMENT AND DISTRIBUTION OF MONIES**

65. The Board must determine the total amount of Distributable Royalties at least once in each Accounting Period.
66. The Board must endeavour to ensure that the Distributable Fund is allocated equitably and accurately.
67. In determining the allocation of the Distributable Fund, the Board must consider all relevant matters such as:
- (a) Records and information in relations to the Royalty Collections;
  - (b) Any information obtained by the Company used to ascertain the nature and extent of the share of the Distributable Fund to be paid to each Member; and
  - (c) Any obligation the Company has as part of any professional rules, codes or similar regulations that bind the Company.
68. The Board may request that an individual supply the Company with any details, including without limitation details relating to any Copyright Work or a Registered Title for any purpose, including verifying that the individual is the writer of any Copyright Work.
69. Except as provided in Article 71, each and every decision by the Board in relation to the allocation of the Distributable Fund will be conclusive and binding on all Members.
70. Where the accumulated value of Distributable Royalties allocated to a Member is less than \$100, or such other sum that the Board may determine from time to time, the Board may retain the amount in trust until the next allocation from the

Distributable Fund.

71. If the Board determines that a Member has been overpaid Distributable Royalties, the Company may deduct an amount equivalent to the overpayment from any subsequent allocation to that Member. If deemed necessary by the Board, AWGACS may require Members to pay back the excess royalties.
72. If a person claims to be entitled to Distributable Royalties and has not been allocated any Distributable Royalties, the Board may, if satisfied that the person is entitled, make any payment to the person the Board considers fit, from the Errors, Omissions and Growth Fund.

### **AUDIT**

73. A properly qualified Auditor or Auditors will be appointed and their duties regulated in accordance with Section 327 of the Law.

### **NOTICES**

74. Any notice required by law or by or under these Articles to be given to any Member will be given by sending it by post or by email to the Member at the address supplied to the Company by the Member. Any such notice will be deemed to have been given 48 hours after the notice is sent either by post or email
75. (a) Notice of every general meeting will be given in any manner authorised to:
  - (i) every Member except those Members for whom the Company has no address; and
  - (ii) the Auditor or Auditors for the time being of the Company.
- (b) No other person will be entitled to receive notices of general meetings.

### **WINDING UP**

76. The provisions of Clause 6 of the Memorandum of Association relating to the winding up or dissolution of the Company will have effect and be observed as if the same were repeated in these Articles.

### **INDEMNITY**

77. Every Member of the Board, Auditor, and other officer for the time being of the Company will be indemnified out of the assets of the Company against any liability arising out of the execution of the duties of their office which is incurred by them in

defending any proceedings, whether civil or criminal, in which judgment is given in their favour or in which they are acquitted or in connection with any application under the Law in which relief is granted by the Court pursuant to Section 241(2) of the Law in respect of any negligence, default, breach of duty or breach of trust.

We, the persons whose signatures are subscribed, being the subscribers to the Memorandum of Association, agree to the preceding Articles of Association.

Signature of Subscribers

Witness to Signatures