

**The MEAA and LPA
Education and Accessibility Recording Agreement**

1. PARTIES:

1.1. _____ ABN/ACN _____ (“the Company”),

AND

1.2. The Media, Entertainment and Arts Alliance (“**MEAA**”)

2. PURPOSE:

The Parties agree to the provisions set out in this Agreement for the purpose of:

- 2.1. Securing simple and consistent terms of agreement with which the Company will comply whenever it makes a Recording of a Performance available to educational bodies for educational purposes;
- 2.2. Ensuring the consent of all Performers in a Performance is obtained by the Company prior to making Recording of a Performance available to education bodies for educational purposes;
- 2.3. Providing Performers the payments and benefits contemplated under this Agreement;
- 2.4. Mitigating cash flow and financial disincentives to making Recordings;
- 2.5. Ensuring that the Company informs all performers of their rights in accordance with this Agreement.

3. DEFINITIONS:

For the purposes of this Agreement, the following terms shall have the following meanings:

- 3.1. “**Agreement**” means this Educational/Accessibility Recording Agreement and any attached schedules or annexures;
- 3.2. “**Net Receipts**” means all actual revenue received by the Company as a direct result of making a Recording available to educational audiences, such as access fees, advertising revenue or sponsorship revenue in connection with the Recording, less relevant tax payable by the Company and all the amounts incurred by the Company in the course of making the Recording available;
- 3.3. “**Performer**” means an employee of the Company who is engaged to perform in a Performance and includes an actor, singer, dancer, understudy/swing performer, puppeteer, compere, comedian or any other type of performer;
- 3.4. “**Performance**” means a performance presented by the Company embodying performances of the Performers which is open to the general public on payment of an admission charge and for which the Performers receive payment or other benefit; and
- 3.5. “**Recording**” means an audio, visual or audio-visual recording, transmission or communication embodying performances of the Performers in a Performance that is made available to an authorised educational audience and is not used for commercial sale or distribution or public broadcast and where:
 - (a) the Company and Performers agree in writing to make the Recording in accordance with this Agreement; and
 - (b) the Company keeps a record of all Performers who participate in the Recording;
- 3.6. “**Term**” means the period commencing on the date of execution of this Agreement and continuing until execution of an amended agreement that varies or updates this Agreement;
- 3.7. “**Territory**” means the world.

4. INTERPRETATION:

In this Agreement, unless otherwise indicated by the context:

- 4.1. Words importing the singular include the plural and vice versa;
- 4.2. References to a statute include amending, consolidation or replacing the statute;
- 4.3. Any thing includes a part of the thing;
- 4.4. Where a word or phrase is given a defined meaning, its other grammatical forms have corresponding meanings;
- 4.5. All monetary amounts are expressed in Australian dollars;
- 4.6. Obligations of persons defined collectively are owned jointly and severally.

5. RECORDING:

- 5.1. The Company will notify all Performers of the intention to record a Performance with reasonable notice of the date of the intended recording and the purpose of the recording, in writing prior to the date of the intended recording.
- 5.2. The Company will procure that each Performer who appears in a Recording agrees to the Company making the Recording available to authorised educational audiences in accordance with this Agreement, in return for the benefits contemplated under this Agreement.
- 5.3. The Company will provide all Performers who appear in a Recording with a copy of that Recording for their personal and private archival viewing. The Performers and the Company agree that the copy of the Recording, or any part thereof, must not at any time or in any territory be used for copying, broadcast, distribution, streaming, transmission or non-personal viewing, other than as set out in this Agreement, subject to the terms of any other express agreement between the Company and relevant rights holders in the Performance.
- 5.4. The Company will comply with the following filming protocols:
 - 5.4.1. Filming will not occur in the wings during performances nor during the warm-up for the Performance, without prior express approval from the Performer;
 - 5.4.2. Production personnel will not enter into change areas, or film any costume changes without prior approval of the Performer then present in the costume change area;
 - 5.4.3. Where nudity is part of the production, the Performance will be recorded for viewing as it was intended by the director;
 - 5.4.4. Filming will only occur during the prescribed working hours of Performers and not during breaks on or after or before such prescribed working hours, except with the express approval of the Performer; and
 - 5.4.5. Each Performer will receive reasonable advance notice of not less than two (2) days of any request to film an interview of the Performer (unless the Performer genuinely consents to a lesser period of notice) and a Performer may refuse any such request; and
 - 5.4.6. Each Performer may approach the Company regarding reasonably held concerns about the use of any filmed material under this Agreement and the Company will not unreasonably refuse to comply with a Performer's request in regard to that concern.
- 5.5. The Recording Fee detailed at Clause 8.1 will be payable to each Performer who performs for the Recording.

6. ACCESS:

- 6.1. An educational body is authorised to access Recordings in accordance with this Agreement if:
 - 6.1.1. it is a learning institution;
 - 6.1.2. it agrees in writing that it will only make the Recording available to a closed educational audience;
 - 6.1.3. the educational body's access to the Recordings is limited for a period of two (2) terms or six (6) months (whichever is greater) in each one (1) year period of the Company's (2) year licence term; and
 - 6.1.4. it will not make the Recording available to the public in violation of the terms of this Agreement.
- 6.2. The Recording must be made available to participating educational bodies for viewing via a password protected link on the Company's website or another streaming service that is provided to the educational body on their request. The broadcast or transmission of the Recording will be geo-blocked (or, in the event that geo-blocking is not available on the relevant platform, geo-targeted) to Australia, and not available for download.
- 6.3. If an authorised educational body is unable to access the Recording via the Company's website or other streaming platform, the Company may make a downloadable version of the Recording available to them on agreed terms that are necessary to restrict the institution or its learners from making the Recording publicly accessible or downloadable by third parties.
- 6.4. If the Company receives any income in connection with making the Recordings available to participating educational bodies, whether from or on behalf of them directly or through advertising or other means, it will pay each Performer who appears in the Recording the Royalty Share detailed under Clause 8.2.

7. RIGHTS:

- 7.1. The Performer grants to the Company an exclusive licence, for the duration of the Term of (2) years, to:
 - 7.1.1. create the Recordings; and
 - 7.1.2. make the Recordings available to educational audiences in accordance with this Agreement.
- 7.2. The Company will own the intellectual property rights, title and interests in all Recordings created by, for or on behalf of the Company, including all Recordings featuring a Performer.
- 7.3. In making the Recordings available to authorised educational bodies, the Company will be entitled to use, publish and distribute the name, image, likeness, portrait, voice, performance and visual and audio representations of Performers in the Recordings.
- 7.4. The Company agrees that it is responsible for obtaining all necessary permissions and rights to deal with the Recordings in accordance with this Agreement, from all relevant rights holders.

8. REMUNERATION:

- 8.1. The Company agrees that it will pay each Performer within seven days of the recording of the Performance, an Recording Fee of AU\$329.41 (the '**Recording Fee**'), in line with the "AFFCA Daily Rate" within the *Australian Feature Film Collective Agreement 2021*, plus applicable superannuation contributions in accordance with the relevant superannuation guarantee legislation. Such Recording Fee shall be in addition to payment made for the Recording Hours of Work as set out at clauses 8.3 and 8.4.

- 8.2. For the purposes of this Agreement only, the Company may require the Performers to undertake camera rehearsals, extra rehearsals and/or microphone checks within the Performers' ordinary hours of work, provided that if the total number of hours worked on the relevant day exceeds eight, then all time worked in excess of eight hours on that day will be paid for as overtime pursuant to the current Performers' Collective Agreement or the current Live Performance Award, whichever is applicable.
- 8.3. If any of the time undertaken for the Recordings, or rehearsal of the Recordings is not within the ordinary hours of the contract, then the Company will be required to pay the Performers the correct hourly rate pursuant to the current Performers' Collective Agreement or the current Live Performance Award, whichever is applicable, for their time – including any casual loadings, annual leave and allowances.
- 8.4. For any Recording released where a fee is paid, the Company will pay each of the Performers an equal share of 8.333% of the Net Receipts recovered by the Company from the release of the Recording ("**Royalty Share**"). Once all costs associated with producing, broadcasting and transmitting the Recording are recouped, the Performers' respective shares of the Royalty Share shall be payable by the Company on a yearly basis.
- 8.5. The Company agrees that, wherever feasible and reasonable, it will procure that an appropriate fee is paid in consideration for an educational body's access to the Recordings in order to maximise the Royalty Share payable to Performers.
- 8.6. The Parties agree that in the event that a Performer is paid a personal margin in relation to their engagement by the Company for the Performance, being an amount over and above the applicable rate prescribed by the current Performers' Collective Agreement or the current Live Performance Award, whichever is applicable for that Performer, and that personal margin exceeds the amount of the Recording Fee, the personal margin will be paid in addition to the Recording Fee.

9. CREDITS:

- 9.1. The Company shall use their best endeavours to procure that all Performers appearing in a Recording are accurately billed in the Recording, subject to the Company's current Performers' Collective Agreement or the current Live Performance Award, whichever is applicable.
- 9.2. No inadvertent failure to procure the accurate billing of Performers will constitute a breach of this Agreement or the Company's current Performers' Collective Agreement or the current Live Performance Award, whichever is applicable, but the Company will use its best endeavours (but without obligation to commence legal proceedings) to correct any such failure if capable of rectification on a prospective basis promptly upon notification.
- 9.3. The Company will use their best endeavours to ensure that Performers will not be presented in a manner that may be detrimental to their personal or professional reputation in the Recordings, and the Company will use their best endeavours to ensure that no degradation or derogatory treatment of the Performer's performance occurs in a Recording.

10. PERFORMER CONSENTS:

- 10.1. The Company may procure that Performers unconditionally and irrevocably consent, for the benefit of the Company and their nominated representatives to the Recordings being produced, edited, combined or associated with other footage and otherwise exploited in a manner that the Company reasonably deems appropriate in order to fulfil the objectives of this Agreement, provided any such exploitation is not misleading, defamatory, harmful, discriminatory, vilifying, abusive, offensive, or otherwise inappropriate.

11. DISPUTES:

- 11.1. Any disputes arising under this Agreement will be managed in accordance with the relevant Dispute Resolution Clause under the Company's current Performers' Collective Agreement or the current Live Performance Award, whichever is applicable.
- 11.2. Any use by any party of the streaming or recording of the Performance other than as expressed in this Agreement must be negotiated with the MEAA and the Performers and approved by the Performers in writing.

12. ENTIRE AGREEMENT:

- 12.1. Subject to Clause 12.2, this Agreement comprises the entire agreement between the Company and MEAA in relation to its subject matter and no earlier agreement, understanding or representation, in relation to any matter dealt with in this Agreement shall have any effect from the date of this Agreement, unless expressly agreed between the parties in writing.
- 12.2. For the avoidance of doubt, this Agreement operates in conjunction with the current Performers' Collective Agreement or the current Live Performance Award, whichever is applicable, and to the extent that there is any inconsistency between this Agreement and the applicable Performers' Collective Agreement or the Live Performance Award, the terms of the current Performers' Collective Agreement or the current Live Performance Award, whichever is applicable will take precedence.
- 12.3. This Agreement may only be amended in writing and signed by all parties.
- 12.4. This Agreement shall be binding upon and shall inure to the benefit of each party's respective successors and assigns.

13. GOVERNING LAW:

- 13.1. This Agreement is governed by and will be construed in accordance with the laws of New South Wales, Australia.
- 13.2. Each Party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings, which may be brought at any time relating to this Agreement.

ACCEPTED AND AGREED TO:

On behalf of the Company

On behalf of MEAA



.....
[inset name]
[inset position]
[inset date]

Adam Portelli
Deputy Chief Executive
22 December 2022



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Witness: [inset name]

Witness: Tess Chappell