

AT LIVE – MEAA LIVE THEATRE RECORDING AND BROADCASTING AGREEMENT 2020

1. TITLE

This Agreement shall be known as the AT Live - MEAA Live Theatre Recording and Broadcasting Agreement 2024

2. SCOPE OF AGREEMENT

2.1 Where a producer or theatre company is presenting a live theatre production (**'Production'**) and performers are engaged to perform in the production (**'Performers'**), this Agreement will only apply to the recording of the Production (**'Recording'**) and the subsequent exploitation and usage fees applicable and payable to the Performers for the use and exploitation of the Recording.

2.2 It is expected that the Performers will have been engaged separately by a theatre company or producer on a standard Performers' Collective Agreement contract (**'PCA'**) or similar in relation to the Production, and that those arrangements will govern the engagement of the Performers in the Production.

3. PARTIES BOUND

The parties bound by this Agreement are:

- (a) Australian Theatre Live, PO Box 424 Rozelle, NSW 2039 (ABN: 41 634 982 915, Registered Charity Organisation ACNC) (**AT Live**)
- (b) The Media Entertainment and Arts Alliance – Equity Section, an organisation of employees registered under the Fair Work Act 2009 (**MEAA**).

4. APPLICATION OF THE ACTORS' FEATURE FILM COLLECTIVE AGREEMENT – USAGE FEES, VARIATIONS, & RATES INCREASES

4.1 The terms and conditions contained in the Actors' Feature Film Collective Agreement 2012 (**AFFCA**) shall apply to the usage and commercial exploitation fees and rights negotiated under this Agreement in relation to the Recording – except as amended by clauses **9,10** and **11** of this Agreement applies. Where any provision of this Agreement duplicates or differs from any provision contained in the AFFCA, then the provisions of this Agreement shall apply.

4.2 If the AFFCA is amended during the Term, the parties agree to meet and negotiate in good faith as to whether such amendments should apply to this Agreement.

4.3 All rates specified under this Agreement will increase in accordance with any equivalent increases in the AFFCA after the initial agreement period.

5. TERM

This Agreement shall commence on and from 1 January 2024 and shall remain in force until 31 December 2027.

6. DEFINITIONS

Licence Period The Licence Period will be the period beginning on the first release date of The Film and in accordance with this Agreement, up to the end of the Licence Period, as set out in AFFCA and as modified by this Agreement.

Extended Licence Any agreed extension of the initial licence period for which a licence fee will be paid to Performers.

Performer means an artist who takes part in a performance of the Production and the Recording and who has been engaged by a theatre company or producer to appear in a live theatre Production.

7. SCHEDULES

The following documents are schedules to this agreement, and form part of this Agreement.

- a. Schedule 1 – Standard AFFCA Performer Contract as amended by this agreement;
- b. Schedule 2 – Actors’ Feature Film Collective Agreement 2012;

8. PERMISSIONS

8.1 Any use of the Recording by any party other than as expressed in this Agreement or as set out in the Performers’ contracts for the Production (including in relation to Archival Recordings per the PCA, the modern award or any similar contract), must be negotiated with the Performers and MEAA and approved by the Performers and MEAA in writing.

- 8.2** AT Live will provide Performers with a copy of the Recording of the Production in which they appeared for their own personal viewing or use, including for use in Show Reels.
- 8.3** AT Live must obtain the permission of all Performers appearing in the Recording prior to the first day of recording.
- 8.4** For the purposes of this Agreement only, AT Live may require the Performers to undertake camera rehearsals, extra rehearsals and/or microphone checks on the day of the Recording within the Performers' ordinary hours of work, provided that if the total number of hours worked on that day exceed eight, then all-time worked in excess of eight hours on that day will be paid for as overtime pursuant to the PCA (or the relevant agreement under which the Performers have been engaged to perform in the Production).
- 8.5** If any of the time undertaken for the Recording, or rehearsal of the Recording is not within the ordinary hours of the Performers' contract with the theatre company or producer to perform in the Production, then AT Live will be required to pay the Performers additional overtime calculated at the rate pursuant to the PCA or the relevant contract governing the Performers' engagement on the Production.

9. REMUNERATION

- 9.1** Subject to the provisions of this Agreement, AT Live will as consideration for the Recording and all permissions and rights granted by the Performers under this Agreement, pay the Performers, within thirty (30) days of the Recording, a total fee as set out below:

Basic Negotiated Fee (BNF):

- a. AUD\$344.56 (being the Actors' Feature Film Collective Agreement 2012 current daily rate (the "**AFFCA Daily Rate**")),
- b. A \$150 Recording Fee; and

Usage Rights:

- c. Usage Rights – paid as a % of BNF (9.1(a) + 9.1(b) = BNF) as under AFFCA (as set out in schedule 2), but amended here, and which includes the following rights and percentage payments (**total 150%**):
 - i. Australian Free and Pay TV Rights (5 runs over 5 years) – 25%
 - ii. Australian Ancillary (5 years) – 25%
 - iii. World TV Rights (excluding US Networks) – 25% (deferred)
 - iv. World Theatrical Rights – 25%

- v. Australian Cinema Rights – 25%
- vi. World Ancillary Rights (excluding Australia) – 25%; and

d. 11.5% Superannuation.

9.2 Payment of remuneration to Performers is the sole responsibility of ATLive. Payment will be made within 7 days of the Recording.

10. USAGE RIGHTS

10.1 Where Usage differs between this agreement and the term of the AFFCA, the terms of this agreement will prevail.

10.2 ATLive must obtain the consent of all Performers, in writing, and the AFFCA Contract at Schedule 1 shall be used to engage Performers for the rights set out in this Agreement.

10.3 This Agreement does not limit the right of any Performer to negotiate higher fees and does not restrict the right of any Performer not to consent to take part in the Recording.

10.4 Australian Television rights limited to 5 plays in the initial Licence Period of 5 years. After 5 years, 50% of the Basic Negotiated Fee (BNF) will be paid for any further television usage, in or across any market, for each and every 5-year extension of the initial licence period. The number of plays in any subsequent licence period is limited to 5.

10.5 All online ancillary and streaming usage, including downloads on the ATLive website, is limited to the initial Licence Period of 5 years. 25% of the Basic Negotiated Fee (paid as a % of BNF) will be paid to Performers for any online or Streaming usage in any market for each and every 5-year extension of the initial licence period.

10.6 Payment of any extended licence fees to Performers is the sole responsibility of ATLive. Payment will be made within 14 days of the decision to activate the extension of the licence period and will be reconciled each financial year by ATLive.

11. PROFIT SHARE

11.1 A share of 10% of gross revenue derived from 'The Production' from all Streaming and online sources made by ATLive or a distributor after the 5 year initial licence period will be shared by the performers.

11.2 10% of net ATL receipts for any cinema screening shared between the Performers. The payment for the cinema screenings will be made within 14 days of any revenue receipts.

11.3 Payment of any profit share to Performers is the sole responsibility of ATLive. Payment will be made within 14 days of any revenue receipts and will be reconciled each financial year by ATLive.

12. RECORDING, BROADCASTING, USAGE AND COMMERCIAL EXPLOITATION

12.1 The parties acknowledge that AT Live has no obligation to broadcast or commercially exploit any Recordings. However, should AT Live not broadcast or commercially exploit a Recording, the Performers shall nevertheless receive all relevant fees listed in this Agreement.

12.3 All performers must agree in writing to the Recording of the production prior to the Recording taking place, and provide consent by signing the appropriate contract at Schedule 1

12.4 Any use of the Recording other than as per this Agreement must be negotiated with MEAA and approved by Performers and MEAA in writing.

13. PUBLICITY

13.1 Any additional rehearsals, camera rehearsals, pick-ups or promotional work which is required to be done in connection to the Recording during the period the Performer is employed by the theatre company in the Production shall be paid for as overtime in line with the *Performers' Collective Agreement* (or the relevant agreement under which the Performers are engaged for the Production) and shall be in addition to ordinary hours worked for the week – and subject to agreement with the Performer/s.

13.2 AT Live may use publicity material and the Production program and other related information from the Production to promote the Recording.

13.3 Any publicity or promotion required to be done subsequent to the conclusion of the Production shall be paid under the AFFCA and will be subject to agreement with the Performer/s.

14. WORK IN ONE PRODUCTION ONLY

14.1 All work performed for in the Recording shall only be used for work which the Performers have agreed pursuant to this Agreement. No footage featuring the Performers may be used in any other production without the written consent of the Performers.

15. NO DUBBING

15.1 The voice of a Performer will not be dubbed in the English language without the written consent of the Performer.

16. NO COMMERCIAL TIE UPS

16.1 The Performers' names or images shall not be used under this Agreement in commercial tie-ups for commercial goods or services or in connection with commercial advertising without her/his written consent and the payment of appropriate remuneration.

17. DISPUTES

17.1 In the event of a dispute about the operation of this Agreement, the parties shall attempt to resolve the dispute according to the *Performers Collective Agreement*. Should the Fair Work Commission decline to deal with a dispute the parties agree to submit to independent mediation and failing agreement to an independent arbitrator agreed to by the parties.

18. FILMING PROTOCOL

18.1 Filming will not occur in the wings during performances nor during the warm-up for the Performance, without prior express approval from Performer/s.

18.2 The Production personnel will not enter into change areas, or film any costume changes without prior approval of the Performer/s then present in the costume change area.

18.3 Nudity or partial nudity will not be included in any footage – except with express consent of the Performer, in writing, and subject to separate negotiations between the Performer and ATLive. Clause 41 of AFFCA will also apply in such circumstances.

18.4 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/s.

18.5 Filming will not occur behind the scenes on the opening night of the Production after 6 pm until before the final curtain call.

18.6 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.

18.7 A Performer may approach AT Live regarding reasonably held concerns about the use of any filmed material under this Agreement and AT Live will not unreasonably refuse to comply with a Performer's request in regard to that concern.

19 AUDITING & REPORTING

AT Live will provide MEAA with a six-monthly report in the first year and yearly after that on the financial status of the exploitation of the Recording

20 GOVERNING LAW

This Agreement shall be construed according to the laws of the State in which the Recording was filmed.

ACCEPTED AND AGREED TO:

On behalf of the MEAA:


.....

[Insert name] Erin Madeley

[insert position] Chief Executive

[insert date] 27/02/2024

ACCEPTED AND AGREED TO:

On behalf of AT Live:

 28/02/2024

Raj Sidhu

Producer / Company Director

Schedule 1 – Standard AFFCA Performer Contract;

Schedule 2 – Actors’ Feature Film Collective Agreement 2