

DATED

27 SEPTEMBER

2011

---

**The Audio-Visual Copyright Society Ltd**

trading as  
**Screenrights**

("Screenrights")

and

**The Crown in Right of the State of New South Wales  
acting through the NSW Department of Attorney  
General and Justice**

("the Government")

---

**REMUNERATION AGREEMENT  
EXECUTION COPY**

---

I V KNIGHT  
Crown Solicitor  
Level 5  
60-70 Elizabeth Street  
Sydney NSW 2000  
DX 19 Sydney

Tel: 9224-5049  
Fax: 9224-5077  
Ref: AGD01007426

T10 Lynne Shearman

## TABLE OF CONTENTS

1. DEFINITIONS AND INTERPRETATION	3
2. OPERATION	9
3. BULK COPYING AGENCIES – NOTIFICATION AND ELECTION	9
4. SCOPE	10
5. EQUITABLE REMUNERATION	13
6. SAMPLING SYSTEM	20
7. SURVEY FORMS	24
8. REPORTING	24
9. CONFIDENTIAL INFORMATION	26
10. PRIVACY	27
11. WARRANTIES AND INDEMNITIES	28
11A. [NOT USED]	29
11B. SCREENRIGHTS' FURTHER OBLIGATIONS	29
12. REIMBURSEMENT	31
13. TERMINATION	31
13A. CHANGE OF LAW OR DECLARATION STATUS	33
14. DISPUTE RESOLUTION	35
15. MISCELLANEOUS	36

## REMUNERATION AGREEMENT

THIS AGREEMENT IS MADE ON 27 SEPTEMBER 2011

### PARTIES

THE CROWN IN RIGHT OF THE STATE OF NEW SOUTH WALES ACTING THROUGH THE NSW DEPARTMENT OF ATTORNEY GENERAL AND JUSTICE of Level 14, 10 Spring Street, Sydney, NSW 2000 ("the **Government**")

**AUDIO-VISUAL COPYRIGHT SOCIETY LIMITED** trading as **SCREENRIGHTS** ABN 76 003 912 310 of Level 3, 156 Military Road, Neutral Bay, New South Wales, 2089 (**Screenrights**)

### BACKGROUND

- A. This Agreement is entered having regard to sections 183 and 183A of the Act.
- B. Screenrights is the declared collecting society under section 182C of the Act in relation to the relevant copyright owners of the following classes of Copyright Material:
- (a) Sound Recordings;
  - (b) Cinematograph Films;
  - (c) television or sound Broadcasts; and
  - (d) all Works included in a Sound Recording, Cinematograph Film or a television or sound transmission,
- in respect of the making of a Copy of a transmission of a sound Broadcast or a television Broadcast.
- C. This Agreement sets out the agreement between Screenrights and the Government on the method for working out equitable remuneration under section 183A(2) of the Act and on the sampling system for the purposes of section 183A(3) of the Act.

## AGREEMENTS

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

##### 1.1.1 Where commencing with a capital letter:

**Act** means the *Copyright Act 1968*;

**Agency** means a Department or other body listed in Annexure B of this Agreement as amended from time to time by the Government in accordance with cl. 15.1;

**Agreed Interest Rate** means the overdraft rate for overdrafts of \$100,000 or more charged by the Commonwealth Bank of Australia plus 1% calculated on daily rests;

**Agreement** means this remuneration agreement;

**BCA Sampling** means sampling conducted in accordance with the BCA Sampling System;

**BCA Sampling System** means the Sampling System for Bulk Copying Agencies (including forms) which is set out in Annexure C;

**Broadcast** has the same meaning as in the Act;

**Bulk Copying Agency** means an Agency as set out in Annexure A to the Agreement and such other Agencies which have within them a unit which makes on average 20 Copies per week or copies with a total duration of over 100 minutes per week (excluding Previous Copies) and where the Copies:

- (a) are made with or without a specific request; and
- (b) are used within that Agency or for distribution to other Agencies ;

**Business Day** means a day that is not a Saturday, or a Sunday, or a public holiday in the State of New South Wales;

**Cinematograph Film** has the same meaning as in the Act;

**Confidential Information** means, in relation to a Party, information that is not trivial and:

- (a) is by its nature confidential;

- (b) is communicated by the Party to the other Party as being confidential; and
- (c) the other Party knows or ought to know is confidential.

Subject to (a), (b) and (c), Confidential Information includes all trade secrets and know-how, financial information and other commercially valuable information of whatever description and in whatever form provided by a Party to another Party. The expression Confidential Information does not include the Rates or any other terms of this Agreement;

**Consumer Price Index** means the All Groups Consumer Price Index for the eight State and Territory capital cities published by the Australian Bureau of Statistics or any authority substituted by statute;

**Copy** means a copy:

- (a) of a sound Broadcast or a television Broadcast and includes a copy of any Cinematograph Film, Sound Recording or other Work contained in the sound Broadcast or television Broadcast; and
- (b) which is made under section 183 of the Act.

For the avoidance of doubt, the Parties agree that "Copy" includes a copy:

- (c) of a copy of a sound Broadcast or a television Broadcast (including any Cinematograph Film, Sound Recording or other Work contained in the sound Broadcast or television Broadcast); and
- (d) which is made under section 183 of the Act;

**Copyright Material** has the same meaning as in the Act;

**Copyright Tribunal** has the same meaning as in the Act;

**Department** means an administrative unit of the Crown in right of the State of New South Wales;

**Excluded Copies** has the same meaning as in the Act;

**Exempt Copies** means copies:

- (a) of Copyright Material in their respect of which the period of copyright has expired; or
- (b) made under a fair dealing or other exemption under the Act;

**FTE Report Number** for a Year means the total number of full time equivalent staff members employed by Agencies as at 30 June of the preceding Year as reported by Agencies to the Workforce Information Unit of the Department of Premier and Cabinet, excluding employees of any Bulk Copying Agency, employees in educational institutions whose copying is covered by a remuneration notice under Part VA of the Act, and any other employees that the Government notifies Screenrights are to be excluded;

**Government** means the State of New South Wales and includes all Agencies, except that this Agreement shall not be interpreted as imposing any legal obligations on any Agency which is a separate legal entity from the State of New South Wales;

**Government Sampling Representative** means the person notified by the Government to Screenrights from time to time for the purposes of clause 6.3;

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999*;

**June Quarter** means a 3 month period ending on 30 June;

**Letter Agreement** means the letter of agreement signed on behalf of the Government and Screenrights on 11 April 2008.

**Non-BCA Sampling** means sampling conducted in accordance with the Non-BCA Sampling System;

**Non-BCA Sampling System** means the sampling system which the Parties reach agreement on pursuant to the negotiations referred to in clause 6.2.2;

**Non-Bulk Copying Agency** means an Agency other than a Bulk Copying Agency;

**Party** means a party to this Agreement;

**Preview Copies** means Copies which are deleted by an Agency within two (2) weeks of creation and which are not used for the services of the Government;

**Per Channel Bulk Rate** means the relevant rate set out in clause 5.2.1;

**Per Minute Bulk Rate** means the relevant rate set out in clause 5.2.3;

**Per FTE Rate** means the rate set out in clause 5.3.2;

**Rate** means the Per Channel Bulk Rate, the Per Minute Bulk Rate or the Per FTE Rate, as the case may require;

**Rates** means the Per Channel Bulk Rate, the Per Minute Bulk Rate and the Per FTE Rate;

**Retrospective Period** means the period commencing on 1 January 2000 and ending on 30 June 2010;

**Sampling** means either or both of BCA Sampling and Non-BCA Sampling, as the context requires;

**Sampling System** means either or both of the BCA Sampling System and the Non-BCA Sampling System, as the context requires;

**Sound Recording** has the same meaning as in the Act;

**Survey Form** means a form which is required to be completed by an Agency for submission to Screenrights under a Sampling System. (In the case of Bulk Copying Agencies, this means the relevant form which is included in the Sampling System set out in Annexure C.);

**Survey Period** means the 3 month period notified by Screenrights to the Government Representative under clause 6.3, or such other period agreed between Screenrights and the Government, being the period during which Sampling is to take place. (In the case of Bulk Copying Agencies, this is a period in each Year of the Term.);

**Survey Results** means, in relation to an Agency, the results of the Sampling by the Agency;

**Term** means the period referred to in clause 2;

**TV Ephemeral** means television programs classified by Screenrights as news, drama series and drama serials (excluding mini-series), sports, advertisements (other than advertisements incidentally copied) or current affairs magazine programs (other than substantially scripted documentary style current affairs programs) and other programs determined by Screenrights from time to time;

**TV Non-Ephemeral** means all television programs not included in TV Ephemeral;

**Work** has the same meaning as in the Act; and

**Year** means a 12 month period commencing on 1 July and ending on 30 June, provided that where this Agreement does not terminate on 30 June the last Year of the Term is the period from the 1 July preceding the date of termination to the date of termination.

## **1.2 Interpretation**

1.2.1 In this Agreement, where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.2.2 In this Agreement, unless the context otherwise requires, a word which denotes:

- (a) a reference to any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation;
- (b) a reference to any other agreement or document where amended or replaced means that agreement or instrument as amended or replaced;
- (c) a word which denotes the singular denotes the plural and vice versa; and
- (d) a word which denotes a person includes an individual, a body corporate and a government.

1.2.3 In this Agreement, unless the context otherwise requires:

- (a) "including" is to be interpreted as having the same meaning as if it read "including without limitation";
- (b) a reference to a section is a reference to a section of the Act;
- (c) a reference to a schedule is a reference to a schedule to this Agreement;
- (d) a reference to an annexure is a reference to an annexure to this Agreement; and
- (e) a reference to a clause is a reference to a clause of this Agreement.

1.2.4 The schedules form part of this Agreement. If there is any inconsistency, the following have precedence to the extent of the inconsistency, in priority order:

- (a) the main body of this Agreement; and
- (b) the Schedules.

1.2.5 The background of this Agreement does not form part of this Agreement, are included by way of broad introduction for convenience only, and must be ignored in interpreting this Agreement.



- 1.2.6 Headings do not form part of this Agreement and must be ignored in interpreting this Agreement.
- 1.2.7 Where under or pursuant to this Agreement the day on or by which any act, matter or thing is to be done is not a Business Day, such act, matter or thing must be done on the next Business Day.
- 1.2.8 To avoid any doubt, a reference in this Agreement to a Copy made or authorised by or on behalf of the Government or an Agency includes a Copy made or authorised by a Minister of the Crown in right of the State of New South Wales acting for purposes of the executive government of the State of New South Wales.

## **1A. INDEPENDENT STATUTORY BODIES**

### **1A.1 Screenrights acknowledges that:**

- (a) the Government may not be able to compel independent statutory bodies or bodies established by the Government with separate legal identity to the Crown in right of the State of New South Wales and operating within its territory to be bound by this Agreement; and
- (b) where an Agency listed in Annexure B of this Agreement does not wish to be included as an Agency bound by this Agreement and the Government notifies Screenrights by providing an amended Annexure B:
- (i) Screenrights must reimburse the Government the remuneration paid by the Government with respect to the Agency under the Agreement as if clause 12 applied to the Agency; and
- (ii) The State of New South Wales will not:
- A. be liable for any loss or damage suffered by Screenrights arising from or attributable to the acts or omissions of any such Agency;
- B. be required to indemnify Screenrights against any legal liability, claims or proceedings of whatsoever nature, and including but not limited to any negligence, arising from or attributable to any act or omission of such Agency; or
- C. be required to ensure the compliance of any Agency with any provision of this Agreement and

in particular any provision requiring the payment of moneys.

- 1A.2 It is also agreed, and despite any other provisions of this Agreement to the contrary, that any obligation or commitment, of whatsoever nature, of the State of New South Wales in relation to an Agency, as specified in this Agreement, will not extend to cover those Agencies which are subject to clause 1A.1.

## **2. OPERATION**

### **2.1 Term**

- 2.1 This Agreement commences with effect from 1 July 2010 and, subject to earlier termination in accordance with its terms:

- (a) continues until 30 June 2015; and
- (b) after 30 June 2015 continues for successive 1 year periods until either Party gives to the other notice of termination of this Agreement which termination will be effective on the next succeeding 30 June which is not less than three months from the date of notice of such termination.

### **3. Bulk Copying Agencies – notification and election**

- 3.1 Two months prior to the commencement of each Year during the Term, the Government must use its best endeavours to conduct checks with Agencies to ascertain which Agencies are Bulk Copying Agencies, and must provide Screenrights with a list of Agencies which it so identifies as Bulk Copying Agencies in existence for the purposes of this Agreement.
- 3.2 A list of the Agencies which the Parties agree are Bulk Copying Agencies as at the date of signature of this Agreement is attached to this Agreement at Annexure A.
- 3.3 If a new Bulk Copying Agency is created during the Term (or if an existing Agency becomes a Bulk Copying Agency during the Term), the Government must provide Screenrights with written notice of that fact within two (2) months after such event.
- 3.4 (a) Each Bulk Copying Agency must elect the channel(s) in respect of which it elects to pay at the Per Channel Bulk Rates. In respect of other channels the Per Minute Bulk Rates will apply to the Agency based on the Agency's Survey Results.

- (b) Each Bulk Copying Agency (or the Government) must notify Screenrights of the election made for the purposes of clause 3.4(a):
  - (i) at the beginning of each Year during the Term, or
  - (ii) within two (2) months after the Government provides notice to Screenrights under clause 3.3, and then at the beginning of each subsequent Year during the Term.

3.5 The Government must also provide to Screenrights within two weeks following signature of this Agreement a list of Bulk Copying Agencies operating during the Retrospective Period and the dates when each such agency commenced and ceased operating as a Bulk Copying Agency, as applicable.

#### **4. SCOPE**

##### **4.1 Equitable remuneration agreement – copies made during Retrospective Period or Term**

4.1.1 This Agreement specifies:

- (a) the method for the calculation of equitable remuneration payable under section 183A(2) of the Act; and
- (b) the sampling system for the purposes of section 183A(3) of the Act,

in relation to all Copies made or authorised by the Government during the Retrospective Period or during the Term.

4.1.2 No Party may at any time make an application to the Copyright Tribunal in relation to the determination of the matters agreed in clause 4.1.1, or the fixing of such terms or further terms for Copying by or authorised by the Government during the Retrospective Period or during the Term.

##### **4.2 Equitable remuneration agreement – copies made before 1 January 2000**

4.2.1 The Parties further acknowledge and agree that this Agreement constitutes agreement on:

- (a) the method for the calculation of equitable remuneration payable under section 183A(2) of the Act; and

- (b) the sampling system for the purposes of section 183A(3) of the Act,

in relation to all Copies made or authorised by the Government at any time prior to 1 January 2000, provided that –

- (c) the Government provides Screenrights with a list and copies of all non-privileged, non-confidential correspondence between the Government and copyright owners (or their agents) relating to outstanding claims against the Government for Copies made prior to 1 January 2000; and
- (d) the Government gave notices in accordance with section 183(4) of the Act at the time of (or as soon as possible after) making such Copies prior to 1 January 2000 and provides Screenrights with a copy of all such notices.

4.2.2 No Party may at any time make an application to the Copyright Tribunal in relation to the determination of the matters agreed in clause 4.2.1, or the fixing of such terms or further terms for Copying by or authorised by the Government at any time prior to 1 January 2000.

#### **4.2A Specified Sampling Systems**

4.2A The Parties agree that for the purpose of sections 183A(3)(b) of the Act, the sampling systems to which the Parties have had regard in entering this Agreement are:

- (a) the sampling which was carried out pursuant to the Letter Agreement; and
- (b) the BCA Sampling System.

#### **4.3 Discharge of obligations under sections 183A and 183B**

4.3 The Parties agree that payment of remuneration by the Government to Screenrights in accordance with this Agreement will have the effect of completely discharging any obligation on the part of the Government to pay Screenrights under section 183A or 183B in relation to:

- (a) Copies made or authorised by the Government during the Term;
- (b) Copies made or authorised by the Government during the Retrospective Period; and

- (c) subject to clause 4.2.1(c) and (d), any Copies made or authorised by the Government at any time prior to 1 January 2000,

provided that the Government at all times complies with its obligations under this Agreement which relate to calculation of payments under this Agreement.

4.4 Subject to Clauses 4.1.2 and 4.2.2, if it is held that this Agreement does not give effect to the intention of the Parties as specified in clause 4.3 (for example, if the Copyright Tribunal or a Court holds that this Agreement does not specify a method of working out equitable remuneration which complies with section 183A), then:

- (a) any amount paid by the Government to Screenrights in accordance with this Agreement shall be treated as an advance on any payment which the Government might otherwise be required to pay Screenrights under section 183, section 183A or 183B in relation to any Copies referred to in clauses 4.3;
- (b) if the amount paid by the Government to Screenrights under this Agreement in relation to any Year exceeds the amount the Government is required to pay Screenrights in relation to that Year, Screenrights shall repay to the Government the amount of the overpayment in relation to that Year, provided that Screenrights shall not be required to refund any amount to the Government under this subclause unless the Government requests Screenrights to do so by giving written notice to Screenrights:
  - (i) by 30 June of the Year during which the Government made the relevant payment;
  - (ii) before such later date as the payment received from the Government is transferred into Screenrights' Trust Fund and allocated to copyright owners for distribution; and
- (c) where applicable Screenrights shall make the refund referred to in (b) no later than 30 days after receiving written request from the Government.

#### **4.5 No limitation**

Nothing in this Agreement is to be construed as in any way limiting or derogating from the rights of the Government or an Agency, other

than under section 183 of the Act, to do, or authorise the doing of, acts comprised in the copyright in Copyright Material. To avoid any doubt, this clause 4.5 survives any expiration or termination of the Term or of this Agreement.

## **5. EQUITABLE REMUNERATION**

### **5.1 Remuneration**

The Government must pay Screenrights equitable remuneration each Year calculated in accordance with this Clause 5.

### **5.2 Bulk Copying Agencies – Copying during the Term**

#### Per Channel Bulk Rates

5.2.1 Subject to clause 5.5 (CPI), in respect of Bulk Copying Agencies, the Per Channel Bulk Rates for each Year during the Term in respect of channels notified to Screenrights in accordance with clause 3.4 are as follows:

- (a) Television:
  - (i) main channels and high definition simulcasts - \$60,000 per channel per annum;
  - (ii) television multi-channels other than ABC News 24 - \$30,000 per channel per annum;
  - (iii) ABC News 24 - \$60,000 per annum;
  - (iv) television channels (sound only) - 32.9 % of the relevant per channel rate; and
- (b) Radio: \$40,000 per channel per annum.

5.2.2 For the avoidance of doubt the Parties agree that:

- (a) for the purposes of clause 5.2.1 if an Agency copies from both a main channel and a high definition simulcast channel, that will be treated as copying from only one channel; and
- (b) the Per Channel Bulk Rates for the Year commencing 1 July 2010 are as set out in clause 5.2.1, with no adjustment for CPI under clause 5.5.

## Per Minute Bulk Rates

- 5.2.3 In respect of channels for which a Bulk Copying Agency elects to pay at the Per Minute Bulk Rates for the Year commencing 1 July 2010, the rates set out below in this clause 5.2.3 will apply for that Year (with no adjustment for changes in the Consumer Price Index).

In respect of channels for which a Bulk Copying Agency elects to pay at the Per Minute Bulk Rates for any subsequent Year during the Term, the rates set out below in this clause 5.2.3 will apply subject to adjustment for changes in the Consumer Price Index in accordance with clause 5.5:

- (a) TV Non-ephemeral: \$5.77 (per minute);
- (b) TV Ephemeral: \$1.72 (per minute);
- (c) Radio: \$5.77 (per 15 minutes or part thereof); and
- (d) TV (sound only): 32.9 % of the relevant per minute rate.

- 5.2.4 The reference in clause 5.2.3 to “minutes” is a reference to minutes of Copying during the Year (excluding advertisements, Excluded Copies, Exempt Copies, and Preview Copies) as annualised from the Agency’s Survey Results for the Year.

## **5.3 Non-Bulk Copying Agencies – Copying during the Term**

- 5.3.1 In respect of Non-Bulk Copying Agencies for each Year during the Term, the Government must pay an amount equal to the FTE Report Number for the Year as notified by the Government to Screenrights under clause 5.6 (FTE Report), multiplied by the Per FTE Rate.

- 5.3.2 Subject to clause 5.5 (CPI), the Per FTE Rate is \$0.86 per annum.

- 5.3.3 For the avoidance of doubt, the Parties agree that the Per FTE Rate for any Year before 1 July 2011 is not to be adjusted for changes in the Consumer Price Index.

## **5.4 Copying prior to 1 July 2010**

- 5.4.1 The Parties acknowledge and agree that equitable remuneration for the period prior to 1 July 2010 is equal to the total of annual amounts for each of the Years from 1 July 2002 to 30 June 2010 calculated in accordance with this clause 5.4.

### ***Bulk Copying Agencies – Copying prior to 1 July 2010***

- 5.4.2 Within two months of signing this Agreement, the Government must provide Screenrights with a list of Agencies which were Bulk Copying Agencies between 1 July 2002 and 30 June 2010, including the Years (or part Years) for which each such Agency was a Bulk Copying Agency.
- 5.4.3 For each Bulk Copying Agency included in the list referred to in clause 5.4.2, and for each Year between 1 July 2002 and 30 June 2010 for which the Agency was a Bulk Copying Agency, the Government must elect either:
- (a) to pay equitable remuneration to Screenrights calculated using the Per Minute Bulk Rates (subject to clause 5.5.2 (CPI)) applied (at the Government's choice) to:
    - (i) records of Copying by the Bulk Copying Agency as provided to Screenrights for the purposes of the survey conducted pursuant to the Letter Agreement, annualised to provide an estimate of Copying per year;
    - (ii) records of Copying by the Bulk Copying Agency as referred to in (i) as subsequently amended or corrected by the Government if agreed in writing between the Government and Screenrights and annualised to provide an estimate of Copying per year;
    - (iii) accurate and verifiable records of Copying by the Bulk Copying Agency for the relevant Year; or
    - (iv) incomplete records kept by the Agency, annualised to provide an estimate of Copying for a year, if agreed between the Government and Screenrights;

or

  - (b) to pay a sum of \$200,000 for the Bulk Copying Agency for the Year;

or

  - (c) to pay such other sum(s) as may be agreed in writing between the Government and Screenrights after this Agreement is signed, for the purposes of this clause 5.4.3 (c), being a sum not exceeding \$200,000.

To avoid any doubt, Screenrights agrees that the Government may choose different methods as referred to in (a), (b) and (c) in respect of different Bulk Copying Agencies and in respect of different Years even in respect of the same Bulk Copying Agency.



***Non-Bulk Copying Agencies – Copying prior to 1 July 2010***

- 5.4.4 Subject to clause 5.4.6, the Government shall pay Screenrights for each Year from 1 July 2002 to 30 June 2010 an amount equal to the FTE Report Number for the Year as notified by the Government to Screenrights under clause 5.4.5, multiplied by the Per FTE Rate as set out in Clause 5.3.2, for Copying by or authorised by the Government prior to 1 July 2010.
- 5.4.5 For the purposes of calculating the amount in clause 5.4.4, within two months of signing this Agreement the Government shall provide Screenrights with the FTE Report Number for each of the Years from 1 July 2002 to 30 June 2010.
- 5.4.6 When calculating the amount payable by the Department of Health under clause 5.4.4, the FTE Report Number will be reduced by 60,000 for each Year from 1 July 2002 to 30 June 2010.

**5.5 CPI**

- 5.5.1 On 1 July 2011 and on 1 July each year during the Term the Per Channel Bulk Rates and the Per Minute Bulk Rates applying to Bulk Copying Agencies and the Per FTE Rate applying to Non-Bulk Copying Agencies will be adjusted to take account of changes in the Consumer Price Index in accordance with the following formula:

$$\text{Rate} = \text{Base Rate} \times (A / B)$$

Where:

Base Rate = the relevant Rate for the first Year of the Term (that is, the Year commencing 1 July 2010);

A = the Consumer Price Index published for the June Quarter preceding the commencement of the Year for which the Rate is being calculated; and

B = the Consumer Price Index published for the June Quarter 2010.

- 5.5.2 For each Year from 1 July 2002 to 30 June 2010 the Per Minute Bulk Rates applying to Bulk Copying Agencies will be adjusted to take account of changes in the Consumer Price Index in accordance with the following formula:

$$\text{Rate} = \text{Base Rate} \times (A / B)$$

Where:

Base Rate = the relevant Rate for the first Year of the Term (that is, the Year commencing 1 July 2010);

A = the Consumer Price Index published for the June Quarter preceding the commencement of the Year for which the Rate is being calculated; and

B = the Consumer Price Index published for the June Quarter 2010.

## **5.5A Pro Rata Adjustments**

5.5A.1 Any amount otherwise payable by the Government to Screenrights shall be adjusted on a pro rata basis as follows:

- (a) in respect of a Bulk Copying Agency – if the Agency was not a Bulk Copying Agency for the whole of the Year for which the amount is being calculated, the amount calculated on the basis of the Agency being a Bulk Copying Agency shall be adjusted on a pro rata basis in accordance with the number of days in the Year for which the Agency was a Bulk Copying Agency;
- (b) in respect of any Non-Bulk Copying Agency – if the Agency was not a Non-Bulk Copying Agency for the whole of the Year for which the amount is being calculated, the amount calculated on the basis of the Agency being a Non-Bulk Copying Agency shall be adjusted on a pro rata basis in accordance with the number of days in the Year for which the Agency was a Non-Bulk Copying Agency; and
- (c) if this Agreement terminates on a date other than 30 June and the amount is in respect of the last Year of the Term, – the amount shall be adjusted on a pro rata basis in accordance with the number of days in the last Year of the Term.

5.5A.2 (a) If an adjustment pursuant to this clause results in an overpayment by the Government, Screenrights shall refund the overpaid amount to the Government, provided that Screenrights shall not be required to refund any amount to the Government under this subclause unless the Government requests Screenrights to do so by giving written notice to Screenrights:

- (i) by 30 June of the Year during which the Government made the relevant payment, or
- (ii) before such later date as the payment received from the Government is transferred into Screenrights' Trust Fund and allocated to copyright owners for distribution.

- (b) Where applicable Screenrights shall make the refund no later than 30 days after receiving written request from the Government.

5.5A.3 To avoid any doubt, if an adjustment pursuant to clause 5.5A1 results in an overpayment by the Government, the Government may in its sole discretion choose to set the amount of the overpayment off against any amount payable or becoming payable to Screenrights under this Agreement provided that Screenrights shall not be required to set off the amount of any overpayment against any amount payable or becoming payable to Screenrights under this Agreement unless the Government requests Screenrights to do so by giving written notice to Screenrights:

- (i) by 30 June of the Year during which the Government made the relevant overpayment, or
- (ii) before such later date as the overpayment received from the Government is transferred into Screenrights' Trust Fund and allocated to copyright owners for distribution.

## **5.6 FTE Report**

5.6 The Government shall provide Screenrights in writing with the FTE Report Number for each Year of the Term by 30 September of that Year, except that the Government shall not be required to provide the FTE Report Number for the 2010-2011 Year until two months following signature of this Agreement.

## **5.7 Invoicing**

### **For Years during the Term**

#### Bulk Copying Agencies

- 5.7.1 (a) Screenrights shall invoice the Government for the remuneration payable by it in respect of each Bulk Copying Agency for each Year during the Term as soon as reasonably practicable after -
  - (i) completion of the Sampling of that Bulk Copying Agency for that Year, or

- (ii) 30 June of that Year,  
whichever is the later.
- (b) Screenrights shall deliver separate invoices in respect of each Bulk Copying Agency under this subclause.

#### Non-Bulk Copying Agencies

- 5.7.2 Screenrights shall deliver invoices to groups of Agencies as notified by the Government:
- (i) no earlier than 1 July of the Year following the Year to which the invoice relates, and
  - (ii) by 31 December following the Year to which the invoice relates.

#### **For Years from 1 July 2002 to 30 June 2010**

#### Bulk Copying Agencies

- 5.7.3 Screenrights may invoice the Government for the remuneration payable by it in respect of each Bulk Copying Agency under clause 5.4 as soon as the State has provided Screenrights with the information necessary to calculate such remuneration. Screenrights shall deliver separate invoices in respect of each Bulk Copying Agency under this subclause.

#### Non-Bulk Copying Agencies

- 5.7.4 Screenrights may invoice the Government for the remuneration payable by it in respect of Non-Bulk Copying Agencies under clause 5.4 as soon as the State has provided Screenrights with the information necessary to calculate such remuneration. Screenrights shall deliver invoices to groups of Agencies as notified by the Government.

### **5.8 Payment**

- 5.8.1 The Government must pay each of Screenrights' Correctly Rendered Invoices:
- (a) within 30 days after the date of the invoice; or
  - (b) on 1 July of the Year following the Year to which the invoice relates,

whichever is the later.

5.8.2 For the purposes of this Agreement, an invoice is a Correctly Rendered Invoice if, and only if:

- (a) the amount claimed in the invoice is due for payment under this Agreement;
- (b) the amount claimed in the invoice is correctly calculated in accordance with this Agreement;
- (c) the invoice correctly identifies what it relates to; and
- (d) it is accompanied by a report from Screenrights in accordance with clause 8.

## **5.9 Interest**

5.9 The Government must pay Screenrights interest at the Agreed Interest Rate on each amount outstanding under this Agreement from the due date until the date of payment.

## **5.10 GST**

5.10.1 Unless otherwise indicated, amounts stated in this Agreement do not include GST.

5.10.2 In relation to any GST payable for a taxable supply by a Party under this Agreement, the Party which is the recipient of the supply must pay the amount of the GST to the Party which is the supplier, subject to the supplier providing a tax invoice.

5.10.3 Terms used in this clause 5.10 which are defined in the GST Act have the same meaning as in the GST Act.

## **6. SAMPLING SYSTEM**

### **6.1 Bulk Copying Agencies**

6.1.1 During the Survey Period in each Year of the Term the Government shall ensure that each Bulk Copying Agency conducts BCA Sampling in accordance with this clause 6 and the BCA Sampling System.

6.1.2 Each Bulk Copying Agency must:

- (a) require its staff to complete Survey Forms as required for BCA Sampling;

- (b) provide other reasonable access, facilities, cooperation, participation and assistance in accordance with the BCA Sampling System or which is otherwise necessary for the conduct of the BCA Sampling System; and
- (c) conduct BCA Sampling once in each Year during the Term during a three (3) month period in accordance with the BCA Sampling System set out in Annexure C. The BCA Sampling will establish the channels copied and the amount of Copying.

6.1.3 The Parties agree that a Bulk Copying Agency may be surveyed for a different period of time, and/or may use forms other than those in Annexure C, such variation to be agreed in writing between Screenrights and the Government prior to the commencement of the BCA Sampling (or the BCA Sampling for the Year(s) to which the variation relates).

## **6.2 Non-Bulk Copying Agencies**

6.2.1 (a) Subject to clause 6.2.1(b), each Non-Bulk Copying Agency may be required to conduct Non-BCA Sampling once during the Term to measure Copying for the purposes of informing negotiations for any future agreement to be entered into between the Parties from 2015-2020.

(b) Clause 6.2.1(a) does not apply to any Non-Bulk Copying Agency which is a separate legal entity from the Crown in right of the State of New South Wales unless both the State of New South Wales and the Non-Bulk Copying Agency consent in writing (which consent may be revoked at any time).

6.2.2 Screenrights and the Government agree to enter into good faith negotiations to agree on a Non-BCA Sampling System for Non-Bulk Copying Agencies, to be conducted once during the Term with the intention of conducting the sampling in the Year commencing 1 July 2012.

6.2.3 Screenrights and the Government acknowledge that the Non-BCA Sampling System referred to in clause 6.2.2 may include sampling conducted in Agencies in other States and Territories and that the results may be combined for the purposes of estimating the amount of copying (for the purposes of informing negotiations about a future agreement as referred to in clause 6.2.1).

6.2.4 Screenrights and the Government shall jointly appoint the survey company that conducts the Non-BCA Survey (subject to reaching agreement on the terms of the appointment).

6.2.5 Screenrights agrees to pay 50% of the cost of the survey company's fee for the conduct of the Non-BCA Sampling, and the Government agrees that it will pay a portion of the remaining 50% of the agreed cost of the conduct of the Non-BCA Sampling, as agreed between the Government and the other 7 States and Territories. The Government agrees to negotiate with the other 7 States and Territories in that regard (with a view to the 50 % of the agreed cost of the conduct of the Non-BCA Sampling being borne in agreed portions by the States and Territories).

6.2.6 Screenrights agrees to pay 100% of the cost of the survey company's fee for the design of the Non-BCA Sampling System.

### **6.3 Notice of Survey Period, Government Sampling Representative**

6.3.1 Screenrights must give at least 6 weeks' notice to the Government Sampling Representative of the Survey Period.

6.3.2 The Government must notify Screenrights of the name and contact details of the Government Sampling Representative and any changes in those details.

### **6.4 Copyright Survey Manager (Agency)**

Each Agency which is required to participate in Sampling must nominate one employee as the Copyright Survey Manager who has the responsibility and authority to administer Sampling on behalf of the Agency.

### **6.5 Delivery of completed Survey Forms**

The Agency must in accordance with the Sampling System deliver to Screenrights all completed Survey Forms. Screenrights consents to the Government making and retaining copies of the completed Survey Forms.

### **6.6 Insufficient information**

Where the information provided on a particular Survey Form under this clause 6 is insufficient for Screenrights' purposes, the Agency must promptly provide such additional information as may be reasonably required by Screenrights.

### **6.7 Satisfactory completion of Sampling**

6.7 If Screenrights reasonably considers that:

- (a) the Agency has not conducted the Sampling in accordance with this clause 6 or the Sampling System;

- (b) the Agency has not delivered to Screenrights completed Survey Forms in accordance with clause 6.5; or
- (c) the Survey Results do not accurately reflect the Copying by the Agency during the Survey Period,

Screenrights may:

- (d) require the Agency to re-do the Sampling at the Agency's own cost and expense; or
- (e) disregard any Survey Results provided by the Agency and use instead the Survey Results of another Agency which, in Screenrights' reasonable opinion, is engaged in comparable Copying.

## **6.8 Source licences**

6.8.1 Any Copies made by an Agency under licence from the owner of the copyright (or authorised licensor) will be excluded from the Survey Results provided that:

- (a) the Agency notifies Screenrights when it provides the Survey Results to Screenrights; and
- (b) at the time of notice under paragraph (a), the Agency provides Screenrights with a copy of the licence or a warranty that it has an appropriate licence from the copyright owner(s) (or authorised licensor(s)) to make the Copies in question.

6.8.2 If Screenrights is satisfied on reasonable grounds, or ought (if acting reasonably) be satisfied, that the Copy has been made under a licence from the copyright owner (or authorised licensor), Screenrights will adjust the Survey Results accordingly.

## **6.9 Excluded Copies**

6.9 Any Excluded Copies made by an Agency will not be included in the Survey Results.

## **6.10 Exempt Copies**

6.10 No Agency will be required to report the making of any Exempt Copies. If an Agency does include the making of an Exempt Copy in a Survey Form and it should be reasonably apparent to Screenrights that the Copy is an Exempt Copy, Screenrights shall exclude the making of the Copy from the Survey Results.

## **6.11 Preview Copies**



6.11 Equitable remuneration for any Preview Copies made by an Agency shall be deemed to be nil provided that those Copies are destroyed within 14 days of copying and are not used for the services of the Government.

**6.12 Costs**

6.12 The Parties shall each bear their own internal costs of conducting the Sampling in accordance with this Clause 6.

**6.13 Ministerial Offices**

6.13 Screenrights agrees that regardless of what Agencies participate in Sampling, the Sampling will not be conducted in the office of any Government Minister or Parliamentary Secretary.

**7. SURVEY FORMS**

**7.1 Retention**

7.1 Screenrights must retain in safe custody all completed Survey Forms delivered to it under this Agreement for at least 8 years after the date of delivery.

**7.2 Ownership**

The Government acknowledges and agrees that Screenrights is the owner of the physical property in all completed Survey Forms when they are delivered by the Government to Screenrights.

**7.3 Licence**

To the extent that Screenrights owns intellectual property rights in the completed Survey Forms, Screenrights grants to the Government an irrevocable, perpetual, royalty-free licence to reproduce the completed Survey Forms and to use the information contained in the forms.

**7.4 Access**

Screenrights must grant to the Government and the Government's auditors reasonable access to inspect and copy completed Survey Forms for audit or management purposes.

**8. Reporting**

8.1 Screenrights must, when delivering an invoice to the Government under clause 5.7.1 provide a report of the Copying carried out by each Bulk Copying Agency during the Survey Period together with a

calculation of the remuneration owing for that Bulk Copying Agency for the Year.

- 8.2 When delivering an invoice for a Non-Bulk Copying Agency Screenrights shall provide a report of the calculation of equitable remuneration based on the FTE Report for that Agency for the Year.

## **9. CONFIDENTIAL INFORMATION**

### **9.1 Obligations**

The recipient of Confidential Information must:

- (a) take all such reasonable precautions as are necessary to maintain the confidentiality of the Confidential Information;
- (b) only disclose the Confidential Information to those of its employees who need to know for the purposes of this Agreement; and
- (c) ensure that each employee who comes into possession of the Confidential Information is advised of the confidentiality provisions of this Agreement.

### **9.2 Exclusions**

- (a) The obligations of the recipient under clause 9.1 do not apply to any Confidential Information which the recipient can demonstrate to the reasonable satisfaction of the disclosing party:
  - (i) was in the recipient's possession at the time of disclosure to the recipient and was not acquired in breach of an obligation of confidence or under an obligation of confidence;
  - (ii) is in the public domain;
  - (iii) was acquired from a third party, provided that it was not acquired by the third party unlawfully or in breach of an obligation of confidence; or
  - (iv) is required to be disclosed by law or constitutional convention.
- (b) The obligations of the recipient under clause 9.1 do not prevent disclosure to the Party's legal advisers or a court or tribunal; and do not prevent disclosure to the Party's other professional advisers with the consent of the other Party, such consent not to be unreasonably withheld.
- (c) Without limiting the Government's other rights under or in relation to this clause 9, the Government may at any time use or disclose information relating to Screenrights or this Agreement, including confidential information of Screenrights to which this clause 9 applies:

- (a) to satisfy the requirements of parliamentary accountability;
- (b) pursuant to the *Government Information (Public Access) Act 2009 (NSW)*;
- (c) pursuant to the *Ombudsman Act 1974 (NSW)*;
- (d) to the Government's Auditor-General for the purposes of satisfying his or her duties of office; and
- (e) otherwise to satisfy any public disclosure obligations of the Government.

## 10. PRIVACY

### 10.1 Screenrights must:

- (a) ensure that any personal information obtained by it in connection with this Agreement (**Personal Information**) is dealt with in accordance with the *Privacy Act 1988 (Cth)*;
- (b) only use Personal Information for the purpose of performing its obligations under this Agreement and not otherwise;
- (c) not, without the Government's prior written consent, disclose or permit access to any Personal Information other than in accordance with this Agreement; and
- (d) comply with any applicable Commonwealth or State legislation, Information Privacy Principles, and Code of Practice with respect to any act or practice engaged in by Screenrights under or in connection with this Agreement in the same way and to the same extent as the Government would have been bound to do had it been directly done or engaged by the Government.

10.2 For the avoidance of doubt, the parties acknowledge and agree that for the purposes of Clause 10.1 the names and contact details of Government employees who have participated in a Sampling System constitutes Personal Information.

10.3 To avoid any doubt, this clause does not restrict access by the Government, or by the Government's Auditor-General or other auditors appointed by the Government, to information which is provided by the Government to Screenrights.

## **11. WARRANTIES AND INDEMNITIES**

### **11.1 Warranties by the Government**

The Government represents and warrants to Screenrights as follows:

- (a) It is authorised to enter into this Agreement;
- (b) It will use its best endeavours to conduct checks with Agencies to ascertain which Agencies are Bulk Copying Agencies, and will provide Screenrights with a list of such Bulk Copying Agencies within two (2) months prior to the commencement of each Year during the Term in accordance with Clause 3.2;
- (c) It will use its best endeavours to provide Screenrights on signature of this Agreement with a list of Bulk Copying Agencies operating during the Retrospective Period and the dates on which such Agencies commenced and ceased operating in accordance with Clause 3.5; and
- (d) It will use its best endeavours to provide accurate and verifiable records of Copying to Screenrights in respect of the Retrospective Period on behalf of Bulk Copying Agencies where relevant to the calculation of remuneration payable by a Bulk Copying Agency under clause 5.4.3.

### **11.2 Warranties by Screenrights**

Screenrights warrants that:

- (a) Screenrights is authorised and empowered to enter into this Agreement and to give the warranties, indemnities and releases in this Agreement;
- (b) Subject to the Government complying with its obligations under this Agreement which relate to calculation of payments under this Agreement, payment by the Government to Screenrights in accordance with this Agreement will relieve the Government of any obligations under section 183A and 183B in relation to:
  - (i) Copies made or authorised by the Government during the Term;

- (ii) Copies made or authorised by the Government during the Retrospective Period; and
- (iii) subject to clause 4.2.1(c) and (d), any Copies made or authorised by the Government at any time prior to 1 January 2000;
- (c) Screenrights has authority to accept, on behalf of relevant copyright owners, payments which the Government makes under this Agreement;
- (d) Screenrights will not seek remuneration from any Agency relating to Copying prior to or during the Term, other than pursuant to this Agreement;
- (e) at all times since 4 May 2000 and all times during the Term Screenrights was and is the relevant collecting society for the purposes of Division 2 of Part VII of the Act in relation to all Copyright Material to which this Agreement relates, that Screenrights has operated as such, and has not ceased operating as such; and
- (f) any amounts paid to Screenrights pursuant to this Agreement will be disbursed in accordance with Screenrights' legal (including equitable) obligations.

**11A. [Not used]**

## **11B. SCREENRIGHTS' FURTHER OBLIGATIONS**

### **Not to bring actions**

11B.1 Subject to clause 11B.3, Screenrights agrees not to bring any action, claim, demand or proceeding, nor to make any application to the Copyright Tribunal or to any court, nor to seek any further order in any current proceedings, against the Government in relation to section 183 or section 183A which relates to:

- (a) Copies made or authorised by the Government during the Term;
- (b) Copies made or authorised by the Government during the Retrospective Period; or

- (c) Copies made or authorised by the Government at any time prior to 1 January 2000.

#### **Not to encourage actions**

- 11B.2 Subject to clause 11B.3, Screenrights agrees that it will not directly or indirectly encourage the bringing of any claim, action, demand, proceeding or application by any other person, whether for copyright infringement, breach of contract, or otherwise, arising from or in connection with section 183 or 183A which relates to the making of Copies referred to in clause 11B.1.
- 11B.3 The provisions of this clause 11B shall not prevent Screenrights from assisting any member of Screenrights who brings any action, claim, demand, or proceeding or makes any application contemplated in clauses 11B.1 and 11B.2 by providing them with non-confidential information if, and only to the extent that Screenrights is obliged to do so in the terms of its constitution or agreements with members.

#### **Collecting society status**

- 11B.4 Screenrights must promptly notify the Government in writing if Screenrights:
- (a) is not or is no longer or ceases to be the relevant collecting society for the purposes of Division 2 of Part VII of the Act in relation to all or any Copyright Material to which this Agreement relates, or;
  - (b) ceases or has ceased to operate as that collecting society.

#### **Commonwealth Guidelines**

- 11B.5 Screenrights must comply with the requirements of the Guidelines for the Declaration of Statutory Collecting Societies approved by the Commonwealth Attorney-General from time to time.

#### **Annual Report**

- 11B.6 Screenrights must provide to the Government a copy of its annual report for each Year during the Term.
- 11B.7 For the avoidance of doubt the Parties agree that this clause 11B shall survive any expiration of the Term or any expiration or termination of this Agreement.

## **12. REIMBURSEMENT**

### **12.1 If:**

- (a) the Act or any statute of the Government is amended to provide; or
- (b) a court determines,

that an Agency is not an agent or emanation of the Crown in right of the State of New South Wales, Screenrights must refund to the Government the remuneration paid by the Government with respect to the Agency under this Agreement, provided that Screenrights shall not be required to refund any amount to the Government under this subclause unless the Government requests Screenrights to do so by giving written notice to Screenrights:

- (i) by 30 June of the Year during which the Government made the relevant payment; or
- (ii) before such later date as the payment received from the Government is transferred into Screenrights' Trust Fund and allocated to copyright owners for distribution.

**12.2** Any payment by Screenrights under clause 12.1 is the Government's only remedy against Screenrights on account of the circumstances set out in clause 12.1.

## **13. TERMINATION**

### **13.1 By the Government**

- (a) Notwithstanding clause 14 ("Dispute Resolution"), the Government may terminate this Agreement by notice to Screenrights if Screenrights commits a breach of any term of this Agreement and, if the breach is capable of remedy, fails to remedy the breach within 14 days after being required to do so in writing by the Government.
- (b) Notwithstanding clause 14 ("Dispute Resolution"), the Government may terminate this Agreement by notice to Screenrights if:
  - (i) Screenrights goes into liquidation;
  - (ii) an application is made for the winding up or dissolution of Screenrights;
  - (iii) an Administrator, a receiver or receiver and manager, trustee, provisional liquidator or similar officer is



appointed for all or any part of the assets or undertaking of Screenrights;

- (iv) Screenrights enters into, or resolves to enter into, an arrangement, composition or compromise with, or assignment for, the benefit of its creditors generally, or any class of creditors or proceedings are commenced to sanction such an arrangement, composition or compromise;
- (v) Screenrights stops payment of or is unable to pay its debts within the meaning of the *Corporations Act 2001 (Cth)*;
- (vi) Screenrights suffers any other form of external administration;
- (vii) Screenrights ceases to carry on business;
- (viii) Screenrights is not, or is no longer, or ceases to be the declared collecting society for the purposes of Division 2 of Part VII of the Act in respect of all Copyright Material to which this Agreement relates; or
- (ix) Screenrights has ceased to operate or ceases to operate as the declared collecting society for the purposes of Division 2 of Part VII of the Act in respect of all Copyright Material to which this Agreement relates.

## **13.2 By Screenrights**

13.2.1 Notwithstanding clause 14 ("Dispute Resolution"), Screenrights may terminate this Agreement by notice to the Government if any amount is not paid in accordance with clause 5 and the Government fails to remedy the breach within 14 days after being required in writing to do so by Screenrights.

13.2.2 Screenrights may terminate this Agreement insofar as it applies in relation to any particular Agency by notice to the Government if the Agency commits a breach of any material term of this Agreement and fails to remedy the breach within 14 days after being required by Screenrights in writing by notice to both the Agency and the Government to do so.

## **13.3 Effect of termination**

13.3.1 Where this Agreement is terminated part way through any Year of the Term, the Parties agree that the remuneration paid or payable in

respect of that Year will be adjusted on a pro rata basis according to the number of days in that Year for which this Agreement was in force, with any resulting overpayment by the Government being refunded by Screenrights within 28 days of termination.

- 13.3.2 Where this Agreement is terminated by Screenrights part way through any Year of the Term under clause 13.2.2 insofar as this Agreement applies in relation to any particular Agency, the Parties agree that the remuneration paid or payable in relation to that Agency in respect of that Year will be adjusted on a pro rata basis according to the number of days in that Year for which this Agreement was in force in relation to that Agency, with any resulting overpayment by the Government being refunded by Screenrights within 30 days of termination.

### **13A. CHANGE OF LAW OR DECLARATION STATUS**

13A.1 If:

- (a) there is a change in the law which impacts on any obligations of the Government under section 183 or section 183A (including equitable remuneration payable by the Government to Screenrights under section 183A); or
- (b) Screenrights is not, or ceases to be, or ceases to operate as the declared collecting society for any category or categories or subcategory(ies) of Copyright Material for the purposes of Division 2 of Part VII of the Act,

then:

- (c) the Government may terminate such part of this Agreement that relates to that category or categories or subcategory(ies) of Copyright Material or to the relevant Year or part thereof for which remuneration is payable;

and if the Government does so, then:

- (d) the definition of Copyright Material will be deemed to be amended to exclude that category or categories or subcategory(ies) of Copyright Material;
- (e) Screenrights will refund to the Government, within 28 days of written request by the Government, a portion of the remuneration agreed in writing to represent that portion paid by the Government in respect of the period after the date from

which such category or categories or subcategory(ies) of Copyright Material ceased to be included as Copyright Material for which Screenrights is the declared collecting society ("the Relevant Date"), provided that Screenrights shall not be required to refund any amount to the Government under this clause 13A.1(e) unless the Government requests Screenrights to do so by giving written notice to Screenrights:

- (i) by 30 June of the Year during which the Government made the relevant payment; or
  - (ii) before such later date as the payment received from the Government is transferred into Screenrights' Trust Fund and allocated to copyright owners for distribution;
- (f) the remuneration paid or otherwise payable in respect of the period from the Relevant Date will be reduced to reflect the exclusion of the relevant category or categories or subcategory(ies) of Copyright Material, as agreed in writing by the Parties, with any resulting overpayment by the Government being refunded by Screenrights to the Government within 28 days of written request by the Government for same, provided that Screenrights shall not be required to refund any amount to the Government under this clause 13A.1(f) unless the Government requests Screenrights to do so by giving written notice to Screenrights:
- (i) by 30 June of the Year during which the Government made the relevant payment; or
  - (ii) before such later date as the payment received from the Government is transferred into Screenrights' Trust Fund and allocated to copyright owners for distribution.

13A.2 In default of agreement as to any of the matters specified in clause 13A.1, such matter(s) will be determined by the Copyright Tribunal and the Parties agree both to abide by and comply with any such orders (unless overturned on appeal or similar process), and that this Agreement must be read and construed in accordance with any such orders.

## **14. DISPUTE RESOLUTION**

### **14.1 Dealing with disputes**

- 14.1.1 The parties must, during and after the Term, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with this Agreement prior to commencing any proceedings.
- 14.1.2 If a party requires resolution of a dispute during or after the Term, it must do so in accordance with the provisions of this clause 14 and the Parties acknowledge that compliance with these provisions is a condition precedent to any entitlement to claim relief or remedy, whether by way of proceedings in a court of law or otherwise in respect of such disputes, except in the case of applications for urgent interlocutory relief or a breach by the other Party of this clause 14.
- 14.1.3 The existence of a dispute or the commencement of proceedings does not affect the obligation of the Parties to continue to perform their obligations under this Agreement.

### **14.2 Resolution by management**

- 14.2.1 If a Party requires resolution of a dispute it must immediately submit full details of the dispute to:
- (a) if the other Party is Screenrights, Screenrights' Chief Executive Officer; or
  - (b) if the other Party is the Government, the Government's Dispute Contact Officer as referred to in clause 14.2.3.
- 14.2.2 A Party may not commence proceedings (except urgent interlocutory proceedings) in respect of the dispute unless the dispute is not resolved within 1 month of submission of the dispute to them, or such other time as they agree.
- 14.2.3 For the purposes of clause 14.2.1, the Government must, within 30 days after:
- (a) the date of this Agreement, notify Screenrights of the name, position and contact details of the Government's Dispute Contact Officer nominated for the purposes of this clause; and
  - (b) any change in the particulars of the Government's Dispute Contact Officer, notify Screenrights of the change.

## **14A. ACKNOWLEDGMENTS**

14A.1 The parties acknowledge and agree that this Agreement does not reflect an agreement as to the value of equitable remuneration payable in relation to Copies made by the Government after the Term but rather reflects the agreement between the Government and Screenrights in relation to what the Government is prepared to pay and Screenrights is prepared to accept as equitable remuneration for Copies made during the Term and the Retrospective Period and (subject to clause 4.2.1(c) and (d)) at any time prior to 1 January 2000.

14A.2 The Parties acknowledge that, except as may be expressly provided in this Agreement, nothing in this Agreement will be construed as in any way limiting or derogating from the rights of the Parties under the Act.

## **15. MISCELLANEOUS**

### **15.1 Notices**

15.1.1 A notice under this Agreement must be in writing and may be given to the addressee by:

- (a) delivering it to the address of the addressee;
- (b) sending it by pre-paid registered post to the address of the addressee; or
- (c) sending it by facsimile to the facsimile number of the addressee,

which is specified in clause 15.1.3 or any substitute address as may have been notified in writing by the relevant addressee from time to time.

15.1.2 Notice will be deemed to be given:

- (a) when delivered by hand; or
- (b) 2 Business Days after deposit in the mail as pre-paid registered mail; or
- (c) if sent by facsimile transmission, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the addressee,

as the case may be.

15.1.3 The address for each Party is:

**Screenrights**

Address: Level 3, 156 Military Road,  
Neutral Bay, NSW 2089

Postal Address: P.O. Box 1248  
Neutral Bay, NSW 2089

Attention: Chief Executive Officer

Telephone (02) 9904 0133

Facsimile: (02) 9904 0498

**The Government**

Address: Department of Attorney General and Justice

Postal Address: GPO Box 6  
Sydney, NSW 2001

Attention: Ms Helen Dakin  
A/State Copyright Manager

Telephone: (02) 8061 9228

Facsimile: (02) 8061 9370

**15.2 Amendment**

This Agreement may only be varied by the written agreement of the Government and Screenrights.

**15.3 Assignment**

The Government may only assign a right under this Agreement with the prior written consent of Screenrights.

**15.4 Entire agreement**

(a) This Agreement embodies the entire understanding and agreement between the Parties as to its subject matter and, subject to clause 15.4(b), all previous negotiations, understandings, representations, warranties, memoranda or

commitments in relation to, or in any way affecting, that subject matter are merged in and superseded by this Agreement.

- (b) This Agreement does not vary the terms of the Letter Agreement except to the extent (if any) which a provision of this Agreement is directly inconsistent with a provision of the Letter Agreement.

**15.5 Waiver**

A waiver under this Agreement is not binding on a Party unless it is in writing and signed by or on behalf of the Party. A waiver is not a waiver of any other right.

**15.6 Severance**

Each clause under this Agreement is severable from the others and the severance of a clause does not affect the other clauses.

**15.7 Further assurance**

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

**15.8 Governing law and jurisdiction**

This Agreement is governed by and must be construed in accordance with the laws of New South Wales. Each Party:

- (a) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and the Commonwealth and all courts which have jurisdiction to hear appeals from those courts; and
- (b) waives any right to object to proceedings being brought in those courts for any reason.

[Signature page follows]