

**Agreement made this 29 March 2017**

between **The Estate of Arthur Koestler** care of **PFD of Drury House, 34 - 43 Russell Street, London, WC2B 5HA** acting in conjunction with **INTERCONTINENTAL LITERARY AGENCY LTD**, of 5 New Concordia Wharf, Mill Street, London SE1 2BB hereinafter called "the Owner") of the one part, and **Stredisko spolecnych cinnosti AV CR, v. v. i. Nakladatelstvi Academia of Narodni 3, 110 00 Prague, Czech Republic, VAT number: CZ60457856** (hereinafter called "the Publishers") of the other part WHEREAS it is mutually agreed as follows regarding the work entitled:

XXXXXXXXXXXXXXXXXXXXhereinafter referred to as "the Work".

**1. LICENCE**

1.1 The Owner warrants that he has the right to enter into this Agreement and to grant the rights licensed herein.

**Language, territory, term of licence, formats licensed**

1.2 The Owner grants to the Publishers the exclusive licence to translate, produce, publish, sell, make available and communicate to the public the Work in the **Czech** language ("the Translation") in the following formats throughout **the World** for the period of **6 (six)** years from the date of this Agreement subject to the terms and conditions hereinafter mentioned:

in the **physical book format(s)** specified in Clause 5 and or Clause 6 of this Agreement only.

**2. PUBLICATION**

2.1 The Publishers shall publish the Translation in physical book format **within 24 (twenty four) months** of the date of this Agreement. Should the Publishers fail to issue a physical book format edition of the Translation within the aforementioned periods this Agreement shall terminate pursuant to Clause 15.3 and the advance payment or payments provided for in Clause 5 hereof shall be forfeited without prejudice to any claim which the Owner may have for damages and or otherwise.

2.2 The Publishers shall advise the Owner of the published price of each edition of the Translation no later than the date of publication of each edition of the Translation.

**3. THE TRANSLATION**

**Translation**

3.1 The Publishers shall make or cause to be made, at their own expense, the translation into the aforementioned language. The Publishers shall procure by contractual agreement with the translator(s) that the translator's or translators' services are retained by the Publishers solely in connection with the rights licensed under this Agreement and that the translator(s) shall have no claim against the Owner in the Owner's exercise of all rights in the Work.

3.2 The Publishers shall provide the Owner with a copy of their contractual agreement(s) with the translator(s) upon the Owner's prior written request.

3.3 The Publishers indemnify the Owner against any claim the translator(s) might have in relation to the Owner's exercise of all rights in the Work including pursuant to this Agreement.

3.4 The Publishers shall ensure that the translator(s) is/are suitably qualified and competent to carry out the Translation. The Owner shall have the right to request approval of the appointment of a translator(s) such request to be made in writing within 30 (thirty) days of the Owner's signature of this Agreement and following such request should the Owner disapprove of the appointment of the proposed translator(s) the Publishers shall offer an alternative(s) in discussion with the Owner for the Owner's prior written approval however in the event of any disagreement the Owner's instruction regarding the appointment of the translator(s) shall be final.

**Abridgement & Alteration**

3.5 The Publishers shall procure that the translator(s) shall follow the text of the Work faithfully and accurately in creating the Translation and shall not alter, abridge, or add to the Work in any way without the prior written consent of the Owner. The Publishers indemnify the Owner against any liabilities, demands, claims, damages, loss, costs and expenses (including legal expenses) arising from inaccuracies in the Translation resulting from the translation process.

**Title of the Work in English**

3.6 The title of the Work in English shall appear beneath the title on the title page or on the back of the title page of every copy of every edition of the Translation and any sublicense in respect of the Translation provided for

in Clause 6 hereof granted by the Publishers shall impose the aforementioned requirement upon any sublicensee. No change in title shall be made without the prior written consent of the Owner such consent not to be unreasonably withheld.

**Attribution**

3.7 The Publishers also undertake that the name [REDACTED] shall appear in its customary form in due prominence on the title page and on the binding and jacket, if any, of every copy produced and on all advertisements of the Translation issued by the Publishers. The Publishers shall not print advertisements of any kind or for any other book other than by the Owner in any edition of the Translation or on the jacket without the Owner's prior written consent. The Publishers shall not include any illustrations that do not feature in the original edition of the Work in the Translation without the Owner's prior written consent.

**Copyright notice**

3.8 The copyright notice in the Translation shall read as in the original English language edition of the Work. The Publishers shall comply with such formalities as may be necessary to protect the Translation by copyright (including imprint of a copyright notice in form and place as set out in the Universal Copyright Convention) and to keep the Translation so protected in every country within the territories specified in Clause 1 hereof and the Publishers shall do no act, directly or indirectly, which will cause the Translation to enter the public domain in any country whatsoever.

**4. COPYRIGHT INFRINGEMENT**

4.1 In the event that the Publishers, in their reasonable opinion, believe the copyright in the Work and or Translation has been or is likely to be infringed within the territory specified in Clause 1 hereof, they shall immediately notify the Owner who shall take whatever action, if any, as the Owner reasonably believes necessary, following consultation with the Publishers. The Publishers shall, and shall procure that the translator shall, co-operate with and give all reasonable assistance to the Owner in relation to such action provided that the Owner shall indemnify the Publishers against any and all reasonable costs incurred by the Publishers with the Owner's prior written approval, in connection with such action. Should the Owner notify the Publishers that he does not intend to take any action, the Publishers shall be entitled to do so at their own cost and, if necessary, use the Owner's name as a party to such action, provided that the Publishers (i) first give the Owner an indemnity against any and all liabilities, demands, claims, damages, loss, costs and expenses (including legal expenses) incurred by the Owner in connection with such action; and (ii) may not settle or compromise such proceedings without the prior written consent of the Owner.

4.2 The Publishers shall be entitled to take urgent proceedings in their sole name (or jointly with the translator(s), where applicable) for interlocutory relief without prior notice to the Owner, provided that the Owner receives notice as soon as reasonably practicable and the Publishers hereby indemnify the Owner for any liabilities, demands, claims, damages, loss, costs and expenses (including legal expenses) incurred by the Owner.

4.3 Any sum recovered by way of damages and or costs by either the Owner or the Publishers pursuant to Clauses 4.1 or 4.2 hereof shall be applied first towards repayment of the costs incurred in proceedings by each party and any balance shall be divided equally between the Owner and Publishers.

4.4 The Owner shall not be obliged to bring or defend any proceedings whether for infringement or otherwise in relation to the Work and or the Translation if he decides in his sole discretion not to do so.

**5. ADVANCE PAYMENT AND ROYALTIES**

**Advance Payment**

5.1 The Publishers shall pay to the Owner on the signing of this Agreement the sum of xxxxxxxxxxxxxxxxxxxx which shall be in advance and on account of all sums due under this Agreement and such payment shall be treated as a fundamental condition of this Agreement the Publishers' failure to comply with which shall give the Owner the right at his option either to terminate this Agreement or to claim damages or other remedies for breach of contract or any other claim available to the Owner from the Publishers.

**Royalties**

5.2 The royalties payable on the published price (less VAT/Sales Tax) of the Publishers' edition(s) shall be:

**xx rrp on all copies sold**

The royalties payable on the Publishers' net receipts shall be:

n/a

“Net receipts” shall mean the gross sums paid to the Publishers less VAT and or any unavoidable government levied tax for the sale of physical copies of the Translation.

**6. SUBSIDIARY RIGHTS**

6.1 No subsidiary rights are granted herein.

**7. ACCOUNTS**

7.1 Accounts of sales of the Translation together with a statement of the stock on hand shall be made up by the Publishers annually to the 31st December and shall be sent in digital form to Intercontinental Literary Agency Ltd [REDACTED] **no later than 28<sup>th</sup> February annually** and any other sums owing to the Owner thereunder shall be due to Intercontinental Literary Agency Ltd **no later than 28<sup>th</sup> February annually**.

7.2 No debit balance arising in the Publishers’ favour under the terms of any other agreements with the Owner for the Work or other works shall be off-set by the Publishers against any credit balance arising in the Owner’s favour under the terms of this Agreement.

7.3 The Publishers shall not hold any monies due to the Owner under Clause 5 hereof as a reserve against returns.

**Owner’s Right to Inspect Publisher’s Accounts**

7.4 The Owner shall have the right himself or by any accountant or other professional person appointed by him no more than once a year under reasonable notice to the Publishers to inspect and take copies of all accounts, records and documents relating to the sales and receipts in respect of the Translation. If any such inspection shall reveal underpayment to the Owner the Publishers shall forthwith make good such underpayment. The Owner shall bear the costs of any inspection unless such inspection reveals errors against the Owner amounting to 2% (two per cent) or more in which case all costs shall be borne by the Publishers.

**8. PAYMENTS DUE AND INTEREST ON LATE PAYMENTS**

8.1 All sums payable under Clauses 5, 6, 7 and 14 hereof shall become due as set out in the aforementioned Clauses unless the Owner wishes to obtain withholding tax exemption where applicable in which event the sums payable shall be due on the Publishers’ receipt of completed tax exemption forms from the Owner.

8.2 The Owner reserves the right to charge the Publishers interest on any sums due to the Owner under this Agreement which have not been paid within 1 (one) month of becoming due at the statutory rate calculated according to the UK Late Payment of Commercial Debts [Interest] Act 1998.

**9. ILLUSTRATIONS, THIRD PARTY MATERIAL AND ORIGINAL COVER ARTWORK**

The use of any illustrations, third party material and or cover artwork featured in the original edition of the Work is not licensed herein. Should the original edition of the Work feature any internal illustrations the Publishers shall as far as is practicable use such illustrations in all of the Publishers’ edition(s) of the Translation unless otherwise agreed in writing with the Owner. The Publishers shall be responsible at their own cost for clearing any permissions required and arranging supply of necessary production materials for any such illustrations or third party material and or cover artwork.

**10. OWNER’S APPROVAL OF TRANSLATION AND PUBLISHERS’ JACKET**

**Owner’s Approval of Translation**

10.1 The Publishers shall at the Owner’s written request supply a copy of the Translation for prior written approval before it is sent to the printer and the Owner shall respond within 30 (thirty) days of receipt of said Translation and should the Owner disapprove of the Translation the Owner shall request that the Publishers submit a new version of the Translation in accordance with the Owner’s directions and the terms of this Clause 10.1 shall apply to such resubmitted version. If the Publishers are unable or unwilling to submit such new version they shall notify the Owner within 7 (seven) days of the Owner’s written request and the Owner may terminate this Agreement. Following termination pursuant to this Clause 10.1, the Owner shall repay the Advance as may have been paid by the Publishers under Clause 5 hereof unless the Publishers have failed to adhere to any of the provisions of Clauses 3.1, 3.2, 3.3, 3.4 and 3.5 hereof in which event the advance payment or payments provided for in Clause 5 hereof shall be forfeited without prejudice to any claim which the Owner may have for damages and or otherwise.

**Owner's Approval of Publishers' Jacket**

- 10.2 The Publishers shall submit a proposed jacket for their first edition of the Translation and any new jackets designed for subsequent editions of the Translation including all sublicensed editions of the Translation for the Owner's prior written approval no later than 14 (fourteen) days before it is due to be sent to the printer and the Owner shall respond within 10 (ten) days of receipt. Should the Owner disapprove of the proposed jacket the Publishers shall submit an alternative version of the jacket in discussion with the Owner for the Owner's prior written approval however in the event of any disagreement the Owner's instruction regarding the Publishers' jacket shall be final.

**11. USE OF EXTRACTS FOR PROMOTION**

The Publishers shall have the right to use an extract comprising a maximum of 1 (one) chapter of the Translation or 10% (ten per cent) of the text of the Translation whichever is the shorter for the purposes of promotion of their edition(s) of the Translation both in print and online provided that any promotional use of the said extract shall always feature the copyright notice reproduced as it appears in the original English language edition of the Work. Such promotional use may include a straight reading audio recording of the said extract embedded on the Publishers' own website but not available for download.

**12. EXTENT OF PUBLISHERS' RIGHTS**

The Publishers shall not assign this licence nor issue the Translation under any imprint other than their own without the written permission of the Owner.

**13. FREE COPIES**

- 13.1 The Publishers shall send 4 (four) free copies of each print format edition of the Translation on first publication to the Owner c/o Intercontinental Literary Agency Ltd of 5 New Concordia Wharf, Mill Street, London SE1 2BB, UK. Similarly, 2 (two) free copies shall be sent to Andrew Nurnberg Associates Prague s.r.o., Jugoslavskych partyzanu 17, 160 00 Praha 6, Czech Republic.

- 13.2 The Owner shall have the right to purchase additional copies of the Translation from the Publishers at the lowest price for which the Publishers shall at said time sell copies of the Translation to the trade.

**14. REMAINDERS**

On any copies sold as remainders the Publishers shall pay to the Owner a royalty of 10% (ten per cent) of the net receipts received it being provided that such 10% (ten per cent) shall be in lieu of royalties hereinbefore mentioned and that no such royalty shall be paid on copies sold at or below cost price and that no such remainder copies shall be sold within a period of 2 (two) years from the date of first publication of the Translation.

**15. EXPIRATION OR TERMINATION OF THE AGREEMENT****Expiration**

- 15.1 This Agreement shall automatically terminate on expiry of the term specified in Clause 1.2 hereof.

**Out of Print**

- 15.2 If the Translation shall become out of print and unavailable (meaning sales across all editions of the Translation total less than 150 (one hundred and fifty) copies (the "Reversion Level")) in one royalty period in all editions and formats issued by the Publishers then the Owner may give notice in writing to the Publishers to revive sales of the Translation to the Reversion Level within 6 (six) months. In the event of the Publishers' failure to revive sales of the Translation to the Reversion Level within such 6 (six) months, the Owner shall be entitled to terminate this Agreement forthwith by notice to the Publishers, whereupon this Agreement shall terminate.

**Termination**

- 15.3 This Agreement shall automatically terminate in the event that the Publishers commit a material breach of any of the terms and conditions of this Agreement. For the avoidance of doubt, the Publishers' failure to publish the Translation in physical book format pursuant to Clause 2 hereof shall be a material breach of this Agreement.
- 15.4 The Owner may terminate this Agreement with immediate effect by serving written notice upon the Publishers: if the Publishers are unable to pay their debts, or if the Publishers are declared bankrupt, or if a liquidator or receiver is appointed in respect of the Publishers, or if any situation analogous to the preceding events occurs in respect of the Publishers under the laws of any jurisdiction.

### **Effects of Termination**

- 15.5 Upon termination of this Agreement howsoever occurring all rights granted to the Publishers hereunder shall revert to the Owner and the Publishers shall immediately destroy any remaining copies of the Translation.
- 15.6 Termination of this Agreement howsoever occurring shall be without prejudice to:
- (a) the Owner's right to damages for the Publishers' breach or default of this Agreement, any other rights or remedies available to the Owner, and the Publishers' obligation to account for and pay to the Owner all sums due to the Owner at the effective date of termination or which may become due to the Owner after termination, whether from sales or sublicences of the Translation made pursuant to Clause 6 hereof or otherwise;
  - (c) any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination or expiration of this Agreement.
- 15.7 Clauses 3.3, 3.5, 7, 16, 17, 18, 19, 20, 21, 22, 23, 24 hereof and this Clause 15.7 shall continue in force after termination of this Agreement.

### **16. OWNER'S AGENT**

The Owner hereby appoints the firm of **PFD of Drury House, 34 - 43 Russell Street, London, WC2B 5HA in conjunction with Intercontinental Literary Agency Ltd of 5 New Concordia Wharf, Mill Street, London SE1 2BB** in association with **Andrew Nurnberg Associates International Limited of 20-23 Greville Street, London EC1N 8SS, UK** and **Andrew Nurnberg Associates Associates Prague** as his agent and authorises the said agent to collect and receive all sums of money due to him under the terms of this Agreement and he declares that the receipt of the said agent shall be a good and valid discharge of all persons paying such sums of money to him and the Owner further declares that this appointment shall be binding upon his heirs and executors. The Owner hereby authorises and empowers the Publishers to treat with the said agent on his behalf in all matters concerning this Agreement. All payments due under the terms of this Agreement shall be made by the Publishers by bank transfer for the gross amount, free of all bank charges to Andrew Nurnberg Associates Int. Prague client, [REDACTED] Sort Code: [REDACTED], Account No. [REDACTED], IBAN: [REDACTED] Swift/bic Code: [REDACTED]. The Publishers shall simultaneously provide a copy of the bank transfer advice note to Andrew Nurnberg Associates Prague.

### **17. RESERVATION OF RIGHTS**

All rights in the Work either now existing or which may hereafter come into existence or be recognised by law which are not specifically granted to the Publishers in this Agreement are reserved to the Owner for use or assignment and without limitation. All rights and goodwill in and to the Work shall inure for the benefit of and are, and shall remain, vested in the Owner.

### **18. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement, and supersedes any previous agreement, arrangement or understanding (whether oral or written) between the parties relating to its subject matter.

### **19. WAIVERS**

A failure to exercise or delay in exercising any right, remedy or power provided under this Agreement or by law does not constitute a waiver of the right, remedy or power or a waiver of any other right, remedy or power. No single and partial exercise of any right, remedy or power prevents any further exercise of it or the exercise of any other right, remedy or power.

### **20. VARIATION**

No variation or modification of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

### **21. SEVERANCE**

- 21.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 21.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the parties agree to negotiate in good faith to amend such provision such that, as

amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original economic, legal and commercial objectives.

**22. THIRD PARTY RIGHTS**

No person other than a party to this Agreement shall have any rights to enforce any term of this Agreement.

**23. GOVERNING LAW AND JURISDICTION**

This Agreement and any and all matters and disputes arising hereunder (including non-contractual disputes or claims) shall be governed by English law and the parties irrevocably agree that the English courts shall have exclusive jurisdiction over any suit, action, proceedings or dispute (including non-contractual disputes or claims arising out of or in connection with the negotiation, validity or enforceability of this Agreement, and or the legal relationships established by this Agreement).

**24. COUNTERPARTS AND ELECTRONIC SIGNATURE**

This Agreement may be executed in 2 (two) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile or PDF transmission of the signed Agreement will be legal and binding on both the Owner and the Publishers.

[Redacted Signature]

18-04-2017

PUBLISHERS

DATE

[Redacted Signature]

18-04-2017

OWNER

DATE

[Redacted]