

TNC agreement

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TNC AGREEMENT - WRITERS' MINIMUM TERMS

This Agreement is dated

2007

PARTIES:

1. **The Writers' Guild of Great Britain** of 15 Britannia Street, London WC1X 9JN (the "WGGB"); and
2. **(i) The Royal National Theatre** of Royal National Theatre, South Bank, London, SE1 9PX;
(ii) The Royal Shakespeare Company of Royal Shakespeare Theatre, Waterside, Stratford-upon-Avon, Warwickshire CV37 6BB; and
(iii) The English Stage Company Limited of Royal Court Theatre, Sloane Square, London SW1W 8AS (together the "Theatres").

BACKGROUND:

- (A) The WGGB and the Theatres entered into an agreement dated 1st March 1993 setting out the minimum terms applicable for writers commissioned by each of the Theatres to write plays (the "Former TNC Agreement").
- (B) The WGGB and the Theatres have renegotiated the Former TNC Agreement and have agreed to replace it with an agreement on the minimum terms and conditions set out in this Agreement.
- (C) The WGGB and the Theatres have additionally negotiated a new minimum terms and conditions agreement for the optional licensing of electronic website rights for education purposes (the "Website Rights") by the Writer when entering into a TNC Writer's Agreement (the "Website Licence"), the form of which is set out in an appendix to this Agreement.

IT IS AGREED:

1. DEFINITIONS

In this Agreement, the following words and expressions have the following meanings:

"Contributor"	means a performer or member of the creative team (other than a Writer or Co-Writer) who collaborates in the writing of the Play and whose contribution to the Play is protected by copyright;
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“Co-Writer”	has the meaning given in clause 2.8;
“Play”	means the text of a play (whether expressed in words or in musical or other notation) together with any stage or other directions for its performance (whether contained in a single document or not) and shall include any changes to the text made in accordance with the Writer’s Agreement, provided also that all rights in the text of the Play are available to be licensed under the terms of this Agreement;
“Translation”	means a translation (other than a literal translation) and Translator shall be interpreted accordingly;
“Writer”	means a freelance writer of a commissioned play, a freelance writer of a non-commissioned play (including a writer in residence under a separate agreement), a Translator, an adaptor, a writer creating a version of a foreign work (from a literal translation), a co-writer, a writer of a play created wholly or partly by improvisation, a lyricist, a writer of the book of a musical, a librettist or any combination of the foregoing and may additionally include a composer and/or Contributor; and
“Writer’s Agreement”	means any agreement entered into between a Theatre and a Writer pursuant to clause 2.2 of this Agreement.

2. FORM OF AGREEMENT AND COPYRIGHT

- 2.1 The parties agree with effect from the date of this Agreement to terminate the Former TNC Agreement and to substitute it with this Agreement (the “TNC Agreement”).
- 2.2 Each Theatre agrees with effect from the date of this Agreement to offer to any Writer that it commissions to write a Play, or to any Writer from whom it acquires the rights in a non-commissioned Play, terms and conditions no less favourable to the Writer than those set out in the form of agreement attached to this Agreement and initialled on behalf of the parties for the purposes of identification.

- 2.3 For the sake of clarity, the parties agree that:
- (a) this Agreement will not apply to revivals of plays; and
 - (b) this Agreement may not be applicable to plays in which underlying rights may not be available to the extent required by this Agreement and such plays shall be the subject of individual negotiation.
- 2.4 Subject to clause 2.5, if a Theatre commissions from a Writer a new adaptation, translation or version of an existing play or other literary work that is in copyright:
- (a) the Theatre will be responsible for acquiring the underlying rights (unless the Writer has previously acquired such underlying rights);
 - (b) the royalties payable under the Writer's Agreement entered into with the Writer will be divided between the Writer and the underlying rights holder in such proportions as are mutually agreed in good faith between the interested parties; and
 - (c) the underlying rights holder and the Writer will each retain their respective copyrights.

In the event that sub-clauses 2.4(a),(b) and/or (c) above are applicable, additional clauses will be included in the individual Writer's Agreement setting out the terms agreed in relation to the underlying rights and if appropriate a side agreement may be negotiable between the Writer and the underlying rights holder(s).

- 2.5 If a Theatre commissions a new adaptation, Translation or version of an existing play that is out of copyright, the Writer will (subject to clause 3.2) be treated as the sole Writer for the purposes of this Agreement.
- 2.6 In cases where the Writer has an arrangement whereby a limited company owns the Writer's copyright in the Play (the "Owner"), the Writer's Agreement shall be made between the Theatre and the Owner.
- 2.7 The copyright in the Play shall remain vested in the Writer, unless otherwise specifically agreed in writing by the Writer.
- 2.8 In the case of a Play to be co-written by more than one Writer (each a "Co-Writer"), the fees and royalties payable under the Writer's Agreement will be divided between the Co-Writers in proportions to be agreed in good faith between the interested parties and which represent the contribution made by each Co-Writer.

3. CONTRIBUTORS

- 3.1 If the Theatre or the Writer proposes that the Play is to include contributions from any Contributor, the Theatre or the Writer shall (prior to the issue of the Writer's Agreement) specify any proposals for the collaboration with the Writer in writing to the other party, including proposals for any sharing of Royalty and/or fees (if known).

- 3.2 If the Play includes contributions by a Contributor, the royalties payable under the Writer's Agreement will be divided between the Writer and the Contributor(s) pro rata in proportions to be mutually agreed in good faith between the interested parties or as may be prescribed in any collective or other agreement applicable to the Contributor(s), provided always that:
- (a) no such division of royalties may be made without a legally binding agreement in place between the interested parties; and
 - (b) either the proportions of such division, or (in any case where the parties agree that the proportions of the division cannot be ascertained until the Play is complete) the principle that there will or may be such a division, is agreed in advance at the point of commission; and
 - (c) the agreed arrangements shall be recorded in the individual Writer's Agreement.

4. ELECTRONIC EDUCATION WEBSITE RIGHTS

- 4.1 The Writer at his or her option may choose whether or not to sign the Website Licence as part of the TNC Form of Writer's Agreement.
- 4.2 The minimum terms of the Electronic Education Website Licence shall be subject to review after 18 months of signature of this Agreement.

5. TERM OF AGREEMENT

This Agreement shall continue in force unless or until terminated by either the WGGB or the Theatres on six months' notice in writing given on or after the fourth anniversary of the date of this Agreement.

6. ANNUAL INCREASES TO FINANCIAL TERMS

- 6.1 On 1st April in each year of this Agreement, the WGGB will notify the Theatres in writing of the proposed increase to the fees, option payments and participation threshold set out in Schedule 3 of the Appendix which shall be no more than the percentage increase in the Retail Price Index ("RPI") since the date of the last increase (the "Proposed Increase"). The RPI shall be defined as the RPI published monthly by the United Kingdom Government (or any successor index as may be otherwise mutually agreed between the parties).
- 6.2 Unless the Theatres notify the WGGB in writing within 30 days of receipt of notification of the Proposed Increase that they wish to open good faith negotiations in respect of the Proposed Increase, the Proposed Increase will apply automatically from the expiry of such 30 day period (the "Effective Date") to each Writer's Agreement entered into:

- (a) on or after the Effective Date; and
- (b) prior to the Effective Date but only with respect to payments to be made under such agreement after the Effective Date.

7. NATIONAL THEATRE

It is agreed that the National Theatre shall meaningfully consult with the WGGB from time to time regarding any future variations to the National Theatre's first look deal in respect of North America (as described in paragraph A.1 of Schedule 2 of the form of Writer's agreement set out in the Appendix to this Agreement).

8. DISPUTES

- 8.1 If any dispute arises in connection with this Agreement, a joint committee of six representatives, being three representatives nominated by the WGGB and one representative nominated by each of the Theatres with authority to settle the dispute, will within 20 working days of a written request from one party to the others, meet in a good faith effort to resolve the dispute.
- 8.2 If the dispute is not resolved at the meeting referred to in clause 8.1, the parties will attempt to settle it by mediation in accordance with the mediation procedure offered by The Performing Arts Mediation Service set up by the Independent Theatre Council and the Centre for Effective Dispute Resolution ("CEDR").
- 8.3 Unless otherwise agreed between the parties, the mediator will be nominated by CEDR.
- 8.4 No party may commence any court proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or one or more of the other parties have failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

9. GENERAL

- 9.1 No variation of this Agreement will be valid unless made in writing and signed by an authorised representative on behalf of each party.
- 9.2 This Agreement constitutes the entire understanding between the parties regarding its subject matter and supersedes all prior agreements, arrangements and understandings between the parties regarding its subject matter.

10. GOVERNING LAW

This Agreement is governed by the laws of England and Wales.

SIGNED BY:

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Name:.....
Title:.....
FOR AND ON BEHALF OF
**THE WRITERS' GUILD
OF GREAT BRITAIN**

SIGNED BY:

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Name:.....
Title:.....
FOR AND ON BEHALF OF
THE ROYAL NATIONAL THEATRE

SIGNED BY:

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Name:

Title:.....
FOR AND ON BEHALF OF
THE ROYAL SHAKESPEARE COMPANY

SIGNED BY:

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Name:.....
Title:.....
FOR AND ON BEHALF OF
THE ENGLISH STAGE COMPANY LIMITED