

# Form template for TNC agreement

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## Form of Writers' Agreement

THIS AGREEMENT is dated

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### BETWEEN:

1. [●] ("the Writer") care of [●]; and
2. [Insert name of theatre] of [●] ("the Theatre").

### BACKGROUND:

- (A) The Writer and the Theatre have agreed the terms, as set out below, on which the Theatre EITHER (i) commissions the Writer to write a play at present called "[●]" ("the Play") OR (ii) wishes to acquire from the Writer a licence of certain rights in a non-commissioned play written by the Writer at present called "[●]" (the "Play"). [The Play [will be][is] based on [●] by [●]].
- (B) The Theatre subscribes to a minimum terms Agreement dated 1<sup>st</sup> June 2007 between The Writers' Guild of Great Britain and The Royal National Theatre, The English Stage Company Limited and The Royal Shakespeare Company (the "TNC Agreement").

### IT IS AGREED:

#### 1. DEFINITIONS

- 1.1 In this Agreement the words and expressions set out in the Schedules to this Agreement have the meanings given to them in those Schedules.
- 1.2 Headings used in this Agreement are for convenience only and will not affect the interpretation of this Agreement.

#### 2. TNC AGREEMENT

- 2.1 If this Agreement conflicts with the TNC Agreement, this Agreement will prevail to such extent as this Agreement may be more favourable to the Writer.
- 2.2 This Agreement will not be affected by any future amendment or expiry of the TNC Agreement, except that any increases to the financial terms payable under the TNC Agreement will apply to any payment due under this Agreement after the date of the increase. For the sake of clarity, the increase will not apply to payments that have already been made.
- 2.3 This Agreement is in the form provided under the minimum terms of the TNC Agreement and any divergences from that form that are agreed between the parties are set out in Schedule 2 and/or listed by clause number in Schedule 2 for ease of reference.

### **3. COMMISSION**

- 3.1 In consideration of the Writer's obligations under clause 3.2, the Theatre will pay to the Writer the Commission Fee set out in Schedule 3 on signature of this Agreement. The Commission Fee is non-returnable save only as provided by clause 4.2.
- 3.2 The Theatre commissions the Writer and the Writer agrees to write the Play and deliver the script of the Play to the Theatre by not later than the delivery date set out in Schedule 3 or such other date as may be agreed by the parties in writing (the "Delivery Date").

### **4. DELIVERY**

- 4.1 The Theatre will pay to the Writer the Delivery Fee set out in Schedule 3 on delivery of the first full script of the Play. The Delivery Fee is non-returnable save only as provided by clauses 4.2 and 26.4.
- 4.2 If the Writer fails to deliver the first full script of the Play by the Delivery Date without showing good cause for such failure, the Writer will promptly repay to the Theatre the Commission Fee on the Theatre's request and all rights in the Play will revert to the Writer.

### **5. ACCEPTANCE**

- 5.1 Upon receipt of the first full script of the Play the Theatre has 6 weeks within which to notify the Writer whether the Theatre either accepts the Play (in which case clause 5.6 will apply), rejects the Play (in which case clause 5.5 will apply) or requires alterations and revisions to the Play.
- 5.2 If the Theatre requires alterations and revisions to the Play, the Theatre and the Writer will have a period of no longer than 6 weeks from the Theatre's notification to discuss and agree the alterations and revisions.
- 5.3 Once agreed, the Writer will have 8 weeks within which to deliver the Play revised in accordance with alterations and revisions agreed under clause 5.2 (the "Revised Play").
- 5.4 Upon receipt of the Revised Play, the Theatre will have 6 weeks within which to notify the Writer whether the Theatre accepts the Revised Play (in which case clause 5.6 will apply) or rejects the Revised Play (in which case clause 5.5 will apply).
- 5.5 If the Theatre rejects the Play or (if applicable) the Revised Play, no further sums will be payable to the Writer, all rights in the Play will revert to the Writer and the Theatre will return all copies of the Play or the Revised Play to the Writer, except for one copy to be retained for archival purposes, and this Agreement will be of no further effect.
- 5.6 If the Theatre accepts the Play or (if applicable) the Revised Play, the Theatre will pay to the Writer the Acquisition Fee set out in Schedule 3. The Acquisition Fee is not returnable by the Writer in any event (save only as provided by clause 26.4).
- 5.7 All periods of time in this clause 5 may be altered by mutual consent in writing.

## **6. A NON-COMMISSIONED PLAY**

In the case of a non-commissioned Play only, clauses 3, 4 and 5 above will not apply and in consideration of payment by the Theatre of the Total Fee as set out in Schedule 3 the Writer shall grant to the Theatre the rights set out in clause 7. The Total Fee will not be returnable by the Writer in any event (save only as provided by clause 26.4) and shall be deemed to include a payment for such reasonable revisions as may be required and agreed to prepare the Play for production.

## **7. LICENCE (UNITED KINGDOM)**

7.1 Upon payment of the Acquisition Fee, or in the case of a non-commissioned Play the Total Fee, and in consideration of the Royalty, the Writer hereby grants to the Theatre (subject to the remaining provisions of this clause 7) the exclusive right to produce and perform the Play professionally live on the stage in the English language throughout the United Kingdom (excluding the West End of London) and following the Theatre's initial production of the Play the Theatre shall have the right to sub-license its rights in accordance with this Agreement.

7.2 The right granted at clause 7.1 will commence on the date of payment of the Acquisition Fee or (as the case may be) the Total Fee and will be exclusive until the first anniversary of the First Performance. Such right will continue to be exclusive thereafter for so long as at least 40 performances of the Play are given in any one year starting on the anniversary of the First Performance or on any subsequent anniversary of such date. If on any anniversary of the date of the First Performance more than 25 but less than 40 performances have been given in the preceding year, such right will become non-exclusive with effect from the date of such anniversary. For the sake of clarity, the minimum performance numbers shall include no more than 5 paid previews.

7.3 During the term of the licence granted under clause 7.1 and subject to clause 7.4, the Writer also grants to the Theatre a non-exclusive right to produce and perform the Play on tour under the management of the Theatre in the English language in any country in the world outside the United Kingdom (including any country where the Writer has previously granted or may in future grant a licence to produce and perform the Play to a third party), provided that the Theatre:

- (a) gives reasonable notice to any such third party notified to the Theatre by the Writer of its intention to exercise such rights; and
- (b) obtains the prior written consent of the Writer (such consent not to be unreasonably withheld or delayed); and
- (c) negotiates in good faith with the Writer regarding the royalty to be payable for any such performances to which the Writer has consented and no such performances shall be given until the royalty terms have been agreed in writing between the parties.

7.4 The right given under clause 7.3 will not apply in the English Speaking World or North America, except in the case of touring performances not exceeding a total of 20 performances. In all other cases, the Theatre will exercise the relevant Option if it wishes to present the Play in either of those territories.

## **8. MINIMUM PERFORMANCE REQUIREMENTS**

- 8.1 The rights granted in clause 7.1 and 7.2 will automatically terminate and the rights in the Play will revert to the Writer at the end of the relevant year if:
- (a) fewer than 26 performances of the Play (including not more than five previews) are given in the year commencing on the date of the First Performance or any subsequent year starting on the anniversary of the First Performance; or
  - (b) the First Performance is not given within a period of one year from payment of the Acquisition Fee, or in the case of a non-commissioned Play the Total Fee, unless the Theatre extends this period under clause 8.2.
- 8.2 The Theatre may extend the one year period in clause 8.1(b) for giving the First Performance for up to two successive periods of six months upon payment of the Extension Fee set out in Schedule 3 for each such period. If an extension is required, the Theatre will pay the Extension Fee before expiry of the initial one year period or the first six month extension as relevant.
- 8.3 Extension Fees shall be deemed fees not advances and shall not be offset against the Royalty.

## **9. WRITER'S WARRANTIES AND UNDERTAKINGS**

- 9.1 The Writer warrants and undertakes to the Theatre that:
- (a) the Play will be an original work in copyright in all countries of the world affording copyright protection;
  - (b) the Writer will be the sole owner of the entire copyright in the Play free of all charges and encumbrances;
  - (c) the Writer controls the rights licensed and/or made the subject of Options granted to the Theatre under this Agreement and such rights are unencumbered;
  - (d) the exercise of the rights licensed and/or made the subject of Options granted to the Theatre under this Agreement will not infringe any copyright or to the best of the Writer's knowledge, information and belief any other right vested in any other party;
  - (e) to the best of the Writer's knowledge, information and belief, the Play contains or will contain no defamatory or otherwise unlawful matter; and
  - (f) the Play if publicly performed will not to the best of the Writer's knowledge and belief breach any of the provisions of the Theatres Act 1968.
- 9.2 The warranties set out at clauses 9.1(a) to (c) (inclusive) will not apply to:
- (a) any part of the Play that consists of material written by a third party that is out of copyright and/or otherwise in the public domain; or
  - (b) to the extent that the Play is based on the work referred to in Background paragraph (A) at the head of this Agreement (if any).

## **10. COPYRIGHT**

- 10.1 The copyright in the Play will remain the property of the Writer and no rights will be granted to the Theatre except those specified in this Agreement.
- 10.2 In accordance with section 78(2) of the *Copyright, Designs and Patents Act 1988* the Writer asserts generally his/her moral right to be identified as the author of the Play. The Writer does not waive his/her moral right of integrity in accordance with sections 80-84 of such Act.
- 10.3 The Writer will not license or assign to a third party any rights in the Play (or any part of the Play) in respect of the United Kingdom (excluding publication rights in the Play but including, by way of example only, Screen Rights and audio rights) from the date of this Agreement until the expiry of the Theatre's exclusive rights in the Play without the prior written consent of the Theatre (such consent not to be unreasonably withheld or delayed). For the sake of clarity, nothing in this clause will affect the exclusivity of the licence granted under clause 7.1.
- 10.4 The Writer will not without the prior written consent of the Theatre assign, license or otherwise deal with the right to perform the Play by amateur actors if this would permit the exercise of such rights during the term of the Theatre's rights under this Agreement, provided always that the Theatre agrees not to unreasonably withhold or delay such consent after the end of the First Run by the Theatre or the first run in the West End of London (whichever is later).
- 10.5 In the case of a commissioned Play or a non-commissioned Play agreed by the parties to be staged as a world premiere by the Theatre, the Writer will not permit any performance of another production of the Play anywhere in the world to take place until after the Theatre's Press Night of its production, provided there is no subsequent deferment of such Press Night following the announcement of the scheduled opening of the Play. For the sake of clarity, nothing in this clause 10.5 will affect the exclusivity of the licences granted to the Theatre under this Agreement.
- 10.6 The Writer will notify the Theatre of any quotations of text, libretto and/or lyrics that appear in the Play and the parties will agree which of them will be responsible for arranging any necessary rights clearances.

## **11. NON-EXERCISE OF RIGHTS**

- 11.1 The Theatre will have no liability to the Writer in respect of any failure by the Theatre or its sub-licensee to present the Play or to exercise any or all of the rights and Options granted under this Agreement.

## **12. ASSIGNMENT AND SUB-LICENSING**

- 12.1 Neither the Writer nor the Theatre will assign any of its rights or obligations under this Agreement without the prior written consent of the other party.
- 12.2 The Writer will not assign, license or deal with any rights in the Play in any territory in any way which would prejudice the grant of any right to the Theatre under this Agreement.

- 12.3 No sub-licensing or assignment by the Theatre of any right granted under this Agreement will relieve the Theatre of its liabilities under this Agreement.
- 12.4 The Theatre will ensure that any sub-licence of its rights under this Agreement contains a clause preventing the sub- licensee from assigning or licensing its rights under the sub-licence.
- 12.5 Subject to clause 12.6, in respect of the licensing of the Play (as opposed to the Theatre’s production of the Play) to third parties in the territories in which the Theatre has rights for the term of those rights:
- (a) the licensing will be arranged after mutual consultation and with the agreement of both parties (such agreement not to be unreasonably withheld or delayed);
  - (b) the Writer will administer any agreed licensing;
  - (c) the Writer will base the licence agreement(s) on the outline Option terms set out in Schedule 4 (or as otherwise appropriate in the context of the licensed production) and will negotiate such agreement(s) directly between the Writer and the third party;
  - (d) the Writer will provide a signed copy of all licence agreements to the Theatre;
  - (e) subject to clause 12.6, the Theatre will not be responsible for the negotiation of the licence agreements nor have any liability under the agreements, its only interest in the production by the third party being its participation in the Writer’s receipts from such production; and
  - (f) the Theatre will not be liable to the Writer in respect of any divergence between the terms of any licence agreement negotiated by the Writer and the terms of this Agreement.
- 12.6 If the Theatre sub-licenses its production of the Play to a third party, licenses the third party to use its name or logo in connection with a production by the third party of the Play and/or co-produces the third party’s production, the Theatre will be responsible for the negotiation of the agreement with the third party which shall (where appropriate) be a tripartite agreement with the Writer involved in negotiations and as a signatory to the agreement.

### **13. ROYALTY**

- 13.1 The Theatre will pay to the Writer royalties on the Net Box Office Receipts (the “Royalty”) for each performance of the Play in the United Kingdom under the direct management of the Theatre at the following rates (or in the case of the English Stage Company at the rates set out in paragraph C of Schedule 2):

Net Box Office Receipts expressed as a Percentage of Net House Cash Capacity	Rate of Royalty to be paid on that proportion of Net Box Office Receipts
The first 25%	10%
The next 25% (25%-49%)	5%
The next 25% (50%-74%)	7.5%
The final 25% (75%-100%)	10%

- 13.2 The sums paid by the Theatre (excluding for these purposes the English Stage Company (“ESC”) under clauses 3.1 (Commission Fee), 4.1 (Delivery Fee) and 5.2 (Acquisition Fee), or in the case of a non-commissioned Play the Total Fee, will be

treated as advances on account of the Royalty in the case of performances given in the [Royal Shakespeare Theatre], [the Olivier] [and the Lyttelton] and/or in any other theatre under the direct management of the Theatre which has a seating capacity of more than 800 seats. For the sake of clarity, in all other instances such fees will not be treated as advances on account of the Royalty.

- 13.3 Royalties payable by the ESC at the Royal Court Theatre and treatment of advances paid by the ESC are specified in paragraph C of Schedule 2.

#### **14. ACCOUNTS**

- 14.1 The Theatre will provide to the Writer or his/her Agent returns showing box office receipts and Royalty payments due, together with payment of any Royalty, within fourteen days from the end of the month during which performances of the Play are given in the United Kingdom and within fourteen days following the Theatre's receipt of returns made to the Theatre in respect of performances given outside the United Kingdom.
- 14.2 The Theatre will adopt normal accounting practices in relation to sums due to the Writer under this Agreement and will use reasonable endeavours to collect all such sums (without obligation to incur expense).
- 14.3 The Theatre will on request give to the Writer or the Agent reasonable access to all accounts and other records in the Theatre's possession relating to box office revenue from performances of the Play solely for the purpose of allowing the Writer or the Agent to check the Royalty payable to the Writer and not for disclosure to any other person.
- 14.4 The Writer will submit accounts to the Theatre in accordance with clauses 17.4 and 17.5.

#### **15. VAT**

- 15.1 If the Writer is registered with HM Customs and Excise for the purposes of VAT, the Theatre will add VAT to the Royalty and other sums due to the Writer under this Agreement which are subject to VAT at the rate current on the date of the tax point for each such payment, subject to the submission of a valid VAT invoice. Where applicable, the Writer's VAT registration number is as set out in Schedule 3.

#### **16. OPTIONS TO ACQUIRE FURTHER RIGHTS**

- 16.1 Subject to clause 8.1(b) and in consideration of the fees payable by the Theatre under this Agreement, the Writer hereby grants to the Theatre an exclusive option to acquire the right (together with the right to sub-license such right) to produce and present the Play in a first class manner on the professional stage in the English language in any or all of the following territories on written notice by the Theatre and subject to the conditions set out in Schedule 4 in respect of each territory:
- (a) West End of London; and/or
  - (b) North America; and/or

(c) English Speaking World.

- 16.2 If the Theatre wishes to exercise an Option, the Theatre shall serve written notice on the Writer within the period of six months following the First Performance (the "Option Period"), together with payment of the applicable Option Fee.
- 16.3 If the Theatre exercises an Option, the parties will enter into a separate written agreement incorporating terms not less favourable to the Writer than the terms set out in Schedule 4. .
- 16.4 The Theatre will ensure that no performance of the Play is given by the Theatre or any sub-licensee in any Option Territory unless and until an agreement is entered into and signed by both parties as set out in clause 16.3, such signature not to be unreasonably withheld or delayed by either party.
- 16.5 The Theatre will treat the Option Fees as non-returnable advances on account of the Royalty.
- 16.6 The Royalty payable by the Theatre in respect of any licence granted under this clause 16 is as set out in Schedule 4. .
- 16.7 If the Theatre does not exercise the Options (or any of them) within the Option Period, the rights in the Play in respect of the unexercised Option(s) will revert to the Writer upon expiry of the Option Period.
- 16.8 If the Theatre decides not to exercise an Option prior to expiry of the Option Period, the Theatre agrees on request of the Writer to release the rights that are the subject of the relevant Option to the Writer as soon as practicable and provide the Writer with written confirmation of the release of such rights.
- 16.9 The Writer will not during the Option Period, or during any licences granted under the Options, license or assign to any third party any rights in the Play (excluding publication rights but including, by way of example only, Screen Rights and audio rights) in respect of any of the Option Territories without the prior written consent of the Theatre. The Theatre shall not unreasonably withhold or delay such consent in the case of release of amateur stage rights in any territory or country after the end of the First Run in the principal city of performance in that territory or country.
- 16.10 Any Royalty payable in respect of performances of the Play outside the United Kingdom will be payable net of any withholding or other tax deducted by the overseas venue pursuant to local tax regulations. The Theatre and the Writer will co-operate with each other to obtain for the Writer any corresponding tax credit in the United Kingdom.

**17. PARTICIPATION**

- 17.1 Subject to clause 8.1(b) and to the remaining provisions of this clause 17 and of Schedule 5, the Writer, in recognition of the fact that by production of the Play the Theatre contributes to the value of the subsidiary rights in the Play, will pay to the Theatre a share of the Gross Revenue deriving from exploitation of the following rights at the percentage rates set out in paragraph A of Schedule 5 (such share referred to in this Agreement as "Participation"):

- (a) the right to perform the Play on the professional stage in the United Kingdom granted to parties other than the Theatre (excluding any performances presented or co-presented by the Theatre);
- (b) the worldwide right to exploit the Screen Rights throughout the world; and
- (c) the worldwide right to make and distribute all forms of audio exploitation of the Play in the English language, including by way of example only radio, sound recordings and podcasts.

17.2 The Theatre's right to Participation will not take effect until the Gross Revenue deriving from the exploitation of the following rights of the Writer has exceeded in total the Participation Threshold set out in Schedule 3:

- (a) the rights set out at clause 17.1 (a) (b) and (c);
- (b) the right to perform the Play in English on the professional stage outside the United Kingdom granted to parties other than the Theatre (excluding any performances presented by or under licence from the Theatre);
- (c) the right to perform the Play in translation on the professional stage granted to parties other than the Theatre;
- (d) the right to publish the text of the Play in book form; and
- (e) the right to make and distribute merchandise connected with the Play (except for any revenue from merchandise marketed by or under the authority of the Theatre).

For the sake of clarity, the Theatre will not participate in the income received by the Writer from exploitation of the rights set out at sub-clauses 17.2 (b) to (e) above, it being agreed that such income is only relevant in that it counts towards the Participation Threshold.

17.3 The Theatre's right to Participation will last from the date of the First Performance and continue until the expiry of five years after the last performance of the Theatre's First Run of the Play. For the sake of clarity, the Theatre's rights to Participation do not arise until 25 performances of the Play have been given as set out in paragraph A of Schedule 5.

17.4 The Writer will collect all royalties and other sums due under this Agreement and the Writer will pay the agreed share to the Theatre within thirty days of receipt of the relevant income (subject to the provisions in paragraph B of Schedule 5 in relation to holding monies on account), together with a statement giving full particulars of how such share is calculated and with such supporting documents as the Theatre may reasonably require.

17.5 The Writer shall submit to the Theatre an annual financial statement within 14 days of the end of each anniversary of the date of signature of this Agreement showing the Writer's Gross Revenue for so long as the Theatre has participation rights as specified in clause 17.3.

17.6 The Theatre shall further be entitled to participate in Gross Revenue as set out in the post Option participation provisions in paragraphs C and D of Schedule 5.

17.7 For the sake of clarity, the Theatre shall only participate in respect of sums actually paid to and received by the Writer. In the event that monies earned by the Writer outside the United Kingdom are withheld (including without limitation on the basis of national, state or local tax withholdings) and subsequently paid to and received by the Writer, the Theatre shall then be entitled to participate in such withheld income. The Writer shall not be under any obligation to claim back any such monies.

## **18. SCREEN RIGHTS**

- 18.1 The Writer reserves to the Writer the Screen Rights, subject to the remaining provisions of this clause 18 and to clauses 10.3, 16.9 and 19.2 to 19.4 (inclusive).
- 18.2 The Writer will not sell, license, assign or otherwise dispose of by any means the Screen Rights in any part of the world other than at a commercially reasonable price negotiated in good faith having regard to the financial and artistic interests of both the Theatre and the Writer and shall consult the Theatre in writing before any such sale, licence, assignment or disposal.
- 18.3 Clause 18.2 will cease to apply once the Theatre no longer has any rights to Participation under clause 17.

## **19. AUDIO AND SCREEN RIGHTS**

- 19.1 The Writer reserves to the Writer all audio and Screen Rights in the Play subject to the remaining provisions of this clause 19. For the sake of clarity, nothing in this clause 19 shall bar the Writer's right to dispose of any audio and/or Screen Rights in the Play independently of any involvement with the Theatre's production, subject to the Writer's compliance with clauses 10.3 and 16.9.
- 19.2 The Theatre will have the exclusive right during the term of its licences under this Agreement to offer its production of the Play for televising, sound broadcasting, sound recording and video taping for video, DVD or other format whether in existence now or at any time in the future subject to the remaining provisions of this clause 19.
- 19.3 If the Theatre wishes to exercise the right referred to at clause 19.2, the Theatre will ensure that any contract to which it is a party in relation to such rights requires the entity making the recording first to negotiate separately with the Writer in relation to the Writer's rights and the Writer shall be under no obligation to come to terms with such entity and to grant such rights.
- 19.4 The Writer shall inform the Theatre of any bona fide offer received by the Writer which may lead to the sale and/or licence of any audio and/or Screen Rights in the Play and the Theatre shall not exercise its right under clause 19.2 above to the prejudice of the exercise of the Writer's rights until such time as the offer to the Writer for the relevant audio and/or Screen Rights has been accepted or rejected.

## **20. ARCHIVAL RIGHTS**

- 20.1 The Theatre will have the right for archival purposes at any time after the First Performance and during the term of the Theatre's rights under this Agreement to make or license the making of a film, video tape, sound recording or other mechanical recording of its own production of the Play (or a recording in any other format developed in the future), provided that such recording may be used for the Theatre's own archival purposes only except by prior written agreement with the Writer and the copyright in the Play shall remain the property of the Writer.

## 21. BROADCASTING EXCERPTS AND ELECTRONIC PRESS KIT

- 21.1 The Theatre will have the right at any time during the term of the Theatre's licences or Options under this Agreement in any of the territories covered by this Agreement to authorise the televising or sound broadcasting of excerpts from performances of the Play given by the Theatre (or in association with another management or producer or by any sub-licensee of the Theatre) by any and all audio and/or audiovisual media for the sole purposes of publicity or promotion of the production, provided that:
- (a) no such excerpts shall exceed five minutes running time individually, nor shall the total of excerpts exceed fifteen minutes total running time or (if shorter) 10% of the total running time of the Play;
  - (b) the Theatre obtains the Writer's approval of the choice of excerpt (such approval not to be unreasonably withheld or delayed).
- 21.2 The Writer will not receive a fee for the broadcast of any excerpt of the Play in accordance with clause 21.1 if the broadcast is covered by the fair dealing provisions of the *Copyright, Designs and Patents Act 1988* and no other member of the creative team or the Theatre receives payment from the producer of the relevant broadcast.
- 21.3 If clause 21.2 does not apply and a fee is therefore required, the Theatre will ensure that the producer of the relevant broadcast agrees to pay the Writer a fee for each excerpt of the Play broadcast in accordance with clause 21.1, such fee to be agreed in advance by the Writer with the producer of the relevant broadcast (and the Writer's agreement shall not be unreasonably withheld or delayed).
- 21.4 The Theatre will have the right at any time in respect of the Theatre's production of the Play during the term of the Theatre's licences or Options under this Agreement to use excerpts of the Play in an Electronic Press Kit (the "EPK") on the following basis:
- (a) an excerpt of up to five minutes completed edited recording may be used for promotion and publicity only;
  - (b) an excerpt of up to three minutes (broadcast duration) may be supplied for use on radio or television by all news or topical audio and/or audio visual magazine programmes;
  - (c) uses of the EPK excerpts may include, but shall not be limited to, marketing purposes, group sales videos, ticket sales sites, travel agents displays, airline videos, exhibition stands, fundraising videos, the Theatre's talks and presentations, but not for any purpose other than promotion and publicity;
  - (d) the excerpts in the EPK may be used on the Internet, but this use is restricted to ticket sales sites related to the Theatre's activities and on internet news websites, but such use is limited to three minutes' duration.
- 21.5 The Writer will not receive a fee for inclusion of an excerpt of the Play in an EPK, provided that no other member of the creative team or the Theatre receives payment for such use. In the event that a fee is applicable, the procedure specified in clause 21.3 shall apply.

## **22. ELECTRONIC EDUCATION WEBSITE RIGHTS**

- 22.1 In consideration of the sums payable to the Writer under this Agreement, the Writer may grant to the Theatre an additional licence of the electronic website rights in the Play for education purposes only (the "Website Rights").
- 22.2 If the Writer chooses to grant the Theatre the Website Rights, the Theatre and the Writer shall negotiate separate terms to be agreed in good faith and to be not less favourable to the Writer than the minimum terms and conditions agreed between the Theatre and the WGGB for the exploitation of the Website Rights as set out in the appendix to the TNC Agreement. A copy of the separately signed licence agreement between the Writer and the Theatre for the Website Rights shall be attached as Schedule 6 to this Agreement.

## **23. MARKETING AND PRESS**

- 23.1 The Theatre will consult the Writer about programmes and all marketing material relating directly to the Play that is under the control of the Theatre, provided that the Writer is available for consultation within three working days of any notification by the Theatre.
- 23.2 Unless the Writer has advised the Theatre on or before signature of this Agreement that he or she will not participate in any publicity for the Play, the Writer will (subject to his or her professional commitments as notified to the Theatre) be reasonably available for agreed interviews and other publicity activities, provided that the Theatre has consulted with the Writer in advance about the nature of the press campaign.

## **24. AGENT**

- 24.1 The Writer hereby instructs the Theatre to deal with the agent, if any, appointed by the Writer and named in Schedule 3 as his or her agent (the "Agent") and authorises the Agent to collect and receive into its clients account all sums of money due to the Writer under the terms of this Agreement. If no Agent is named in Schedule 3, the Theatre will deal directly with the Writer in all matters relating to this Agreement.
- 24.2 The Writer declares that the receipt of the Agent (if any) will be a good and valid discharge of all persons paying sums due to the Writer under this Agreement.

## **25. CREDITS**

- 25.1 The Theatre will credit the Writer on all programmes, posters and marketing material relating directly to the Play which are under the control of the Theatre (except in classified newspaper and so-called "teaser" advertisements) in the form set out in Schedule 3.
- 25.2 The Writer's name will appear in the credit in a type size which conforms with the Theatre's established practice at the time but in any event shall be displayed not less prominently than those of the director and leading actors of the Play.

- 25.3 The Theatre will permit the Writer to use a non-de-plume, provided that it has been notified to the Theatre in writing prior to signature of this Agreement and is unique to the Writer.
- 25.4 In respect of a Play commissioned by the Theatre only or a non-commissioned Play to be staged as a world premiere by the Theatre, the Writer will contractually require all licensees of first class professional productions of the Play in the English language for a period of 10 years from the First Performance to give the Theatre credit in the programme for the relevant production as the commissioner or original producer of the Play. Such credit will be in the form "*Name of Play* was first presented by *Name of Theatre* at .....Theatre on *Date*" or such other form as may be agreed. The Writer will use all reasonable endeavours contractually to require all such licensees to provide the Theatre with a copy of the programme for each such production.

## **26. TEXTUAL CHANGES**

- 26.1 The Theatre will not make or permit to be made any changes to the text of the Play (including the title of the Play except in the case of translations) without the consent of the Writer, provided that he or she is reasonably available for consultation. If it is not possible to submit to the Writer in person a proposal for a change in the text, the Theatre shall submit the proposal to the Agent (if any) whose response shall not be unreasonably delayed.
- 26.2 Any changes in the manuscript, presentation or performance of the Play made by any person will be deemed to be a part of the Play and the copyright in such changes will belong (as far as the same constitutes intellectual property) to the Writer and the Writer will not be required to pay any person suggesting or making such changes unless the Writer has entered into a legally binding agreement to do so.
- 26.3 The Theatre may at all times require the Writer to make such changes to the Play as are necessary to avoid involving the Theatre in legal action after meaningful consultation with the Writer (including as to the means of preserving the Play's textual integrity) and after legal advice from suitably qualified lawyers taken by the Theatre and disclosed to the Writer.
- 26.4 The Writer will not refuse to make the changes referred to at clause 26.3 without having reasonable grounds for so refusing and disclosing such grounds to the Theatre. If the Writer does not make the changes referred to in clause 26.3, following consultation and legal advice as specified in 26.3, the Theatre may require the Writer to repay to the Theatre all sums under clauses 3, 4 and 5 or (in the case of a non-commissioned Play only) 6 of this Agreement. Subject to the repayment in full of all such sums, the rights in the Play under this Agreement shall revert to the Writer.

## **27. CONSULTATION**

- 27.1 The Theatre shall agree with the Writer the choice of actors, director, designers, composer, musical director and choreographer of the Play (and any replacements of any of these individuals), provided that due consideration will be given by the Writer to the artistic requirements, financial resources, casting and company policies, and custom and practice of the Theatre.

## **28. CLEARANCE OF MUSIC RIGHTS**

- 28.1 The Theatre shall be responsible for clearing at its expense the rights in any Incidental Music used in the production of the Play (whether or not requested in the stage directions and whether or not controlled by the Performing Right Society ("PRS")), provided that the Theatre shall be under no obligation to use the Incidental Music in question if the costs of clearing the rights exceeds those provided by the then current PRS Tariff "T" for Incidental Music.
- 28.2 The Theatre shall be responsible for clearing the rights in any Interpolated Music used in the production of the Play in co-operation with the Writer subject to sub-clauses 28.3 to 28.5.
- 28.3 The Theatre has the right to change any Interpolated Music specified by the Writer if the rights are not available.
- 28.4 If the licence fees payable to the PRS or other copyright controller in respect of any Interpolated Music exceed 5% of the maximum possible payment by the Theatre to the Writer by way of royalty under the applicable Writer's Agreement and the Writer nonetheless requires such music to be used, the Theatre shall be entitled (on notice to the Writer) to recoup the balance of such licence fees from the royalty due to the Writer except in the circumstances set out in clause 28.5.
- 28.5 If clause 28.4 applies, the Writer may in any event require the Theatre to use no more than twenty minutes of the Interpolated Music in question, provided that this does not exceed 30% of the total running time of the Play, without any additional payment becoming due from the Writer to the Theatre.

## **29. ATTENDANCE**

- 29.1 The Writer has the right to attend all readings, workshops, rehearsals and previews of the Play.
- 29.2 The Theatre shall give advance notice of all such readings, workshops and rehearsals to the Writer.
- 29.3 The Theatre will pay the Writer the attendance payments set out in Schedule 3 for attending rehearsals or carrying out any production-related activity required by the Theatre. For the sake of clarity, this shall include attending any reading or workshop of the Play that falls outside the rehearsal or production period.
- 29.4 The Writer and the Theatre in consultation with the Director will agree in advance of the rehearsal period for the Play the periods of time during which the Writer will be available and will attend rehearsals. If, subsequently, it is agreed that the Writer will not attend on any dates during the agreed periods, the Writer will nevertheless remain eligible to receive the applicable attendance payment for those dates.

## **30. WRITER'S ROLE**

- 30.1 The Theatre will in no event (except under clause 30.2 of this Agreement) require the Writer to perform any role other than that of writer. In particular but by way

of example only the Theatre will not require the Writer to act as literary manager, dramaturg or script reader, nor to run workshops.

- 30.2 If the Theatre engages the Writer to perform in and/or direct the Play, the Writer will enter into the appropriate actor or director's contract with the Theatre. This will not affect the terms of this Agreement, including the payments due to the Writer, except that if the Theatre engages the Writer to direct or co-direct or to perform in the Play, clauses 29 and 30.1 of this Agreement will not apply.

### **31. EXPENSES**

- 31.1 The Theatre will reimburse the Writer in accordance with its company policy on expenses for such reasonable out-of-pocket expenses incurred by the Writer in:

- (a) attending readings, workshops, rehearsals and previews of the Play;
- (b) engaging in other production-related work (both within and outside the rehearsal and preview period), including (by way of example only) auditions, script meetings, production and design meetings, production-related articles and programme compilation; and
- (c) subject to obtaining the Theatre's advance written agreement, conducting necessary research for the Play and in participating in interviews and other publicity activities for the Play.

- 31.2 In this clause 31, reasonable out-of-pocket expenses shall include, by way of example only, travel costs and costs of hotel accommodation (if any).

- 31.3 The Theatre will not reimburse the Writer for any claim for expenses that is not supported by receipts or other appropriate documentation.

- 31.4 The Theatre will notify the Writer of its expenses policy at or prior to signature of this Agreement and will subsequently notify the Writer of any changes to such policy.

### **32. TICKETS**

- 32.1 The Theatre will provide the Writer free of charge with at least four seats for the first press night of the Play. The Writer may attend any other performance of the Play free of charge, subject to the availability of seats.

- 32.2 In addition to the seats referred to at clause 32.1, the Theatre will hold one pair of house seats for purchase by the Writer or his nominee at the regular box office prices for each performance of the Play (other than the first press night) under the direct management of the Theatre, such seats to be paid for by no later than 6pm on the day prior to the relevant performance. For the sake of clarity, this will apply to performances in the West End of London, and provisions for house seats may be negotiated under any licence granted under the Options.

### **33. SCRIPT**

- 33.1 The Theatre will provide to the Writer free of charge:

- (a) two copies of the production script of the Play prepared for the beginning of rehearsals and a reasonable number of further copies at cost at the Writer's request made no later than 30 days after the First Performance; and
- (b) one copy of the prompt script prepared for the First Run of the Play.

#### **34. PUBLICATION**

- 34.1 If the Writer enters into an agreement for the Play to be published in book form, the Writer will notify the Theatre in advance of the publisher and the Theatre will provide the publisher with cast list information and the Writer will use all reasonable endeavours contractually to require the publisher to provide a copy of the cast list and any other material referring to the Theatre for approval prior to publication.
- 34.2 The Theatre shall not be responsible for any clearance of any third party rights in respect of any publication of the Play, including (by way of example only) quotations of text, libretto and/or lyrics.

#### **35. TERMINATION**

- 35.1 The Writer may terminate this Agreement (and the licences granted under it) on written notice to the Theatre, if the Theatre:
- (a) commits a material breach of this Agreement and fails to remedy the breach within one month of being required by the Writer in writing so to do;
  - (b) fails to pay any sums due to the Writer under this Agreement within one month of the due date for payment; or
  - (c) enters into liquidation (except for the purpose of a bona fide reconstruction or amalgamation) or makes an arrangement or composition with its creditors or if a receiver is appointed over the whole or any part of the assets of the Theatre.
- 35.2 The Theatre may terminate this Agreement (and the licences granted under it) on written notice to the Writer if the Writer:
- (a) commits a material breach of this Agreement and fails to remedy the breach within one month of being required by the Theatre in writing to do so; or
  - (b) commits any act which would bring the Theatre into disrepute; or
  - (c) is in breach of any of the warranties and undertakings in clause 9 of this Agreement.
- 35.3 This Agreement will terminate automatically on the expiry of all licences and other rights granted under this Agreement.
- 35.4 Termination of this Agreement will not affect any rights or obligations of either party which have accrued as at the date of termination.
- 35.5 Those provisions of this Agreement that need to survive the termination or expiry of this Agreement in order to give effect to their meaning will survive termination or expiry.

## **36. RESERVATION OF RIGHTS**

The Writer reserves to the Writer with full right of use (subject to the provisions of clauses 10 and 16.9) all rights not specifically licensed or made the subject of Options to the Theatre in this Agreement, subject always to the provisions of clause 17 in respect of the Theatre's entitlement to Participation.

## **37. GENERAL**

- 37.1 This Agreement will not constitute a partnership, joint venture, employer-employee or principal-agent relationship between the parties.
- 37.2 This Agreement is binding upon the executors, administrators, lawful assigns and successors of the parties, except for the sake of clarity for any obligations of the Writer under this Agreement that may only be personally performed by the Writer.
- 37.3 This Agreement together with the Schedules to this Agreement constitutes the entire Agreement of the parties.
- 37.4 This Agreement may not be varied unless in writing signed by the parties.
- 37.5 Unless otherwise stated, any reference to any statute or any section of it includes any statutory extension or modification, amendment or re-enactment of such statute, section or legislation.

## **38. DISPUTES**

- 38.1 If any dispute arises in connection with this Agreement, the Writer and his or her nominated representative and two representatives nominated by the Theatre with authority to settle the dispute will within 20 working days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- 38.2 If the dispute is not resolved at the meeting referred to in clause 38.1, 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").
- 38.3 Unless otherwise agreed between the parties, the mediator will be nominated by CEDR.
- 38.4 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 the other parties have failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

## **39. GOVERNING LAW AND JURISDICTION**

- 39.1 This Agreement is governed by the laws of England and Wales and the parties will submit to the non-exclusive jurisdiction of the courts of England and Wales.

The parties or their duly authorised representatives have signed this Agreement on the date written at the start of this Agreement.

For the Writer

Signed by

For the Theatre

Signed by  
for and on behalf of  
[name of Theatre]

## **Schedule 1 Definitions**

<b>Acquisition Fee</b>	has the meaning given in clause 5.6;
<b>Agent</b>	has the meaning given in clause 24.1;
<b>Commission Fee</b>	has the meaning given in clause 3.1;
<b>Delivery Date</b>	has the meaning given in clause 3.2;
<b>Delivery Fee</b>	has the meaning given in clause 4.1;
<b>EPK</b>	has the meaning given in clause 21.4;
<b>English Speaking World</b>	means all countries in the world where English is the first language or used as an official language except the United Kingdom, USA and Canada;
<b>Extension Fee</b>	has the meaning given in clause 8.2;
<b>First Run</b>	means the first straight run of the Play or, where played in repertoire, the first sequence of performances given by the Theatre and any subsequent performances in any venue if resumed within three months;
<b>First Performance</b>	means the first paid performance of the Play by the Theatre;
<b>Gross Revenue</b>	means the gross revenue received by the Writer (after deduction of agency commission paid or payable in accordance with standard industry custom and practice) from the sale, licence, assignment or other exploitation of the Writer's rights in the Play;
<b>Incidental Music</b>	means music that is not specially composed for the production of the Play which is used as part of the Play (whether to add atmosphere to the action within the Play, to accompany a scene change or otherwise), but excludes Interpolated Music;
<b>Interpolated Music</b>	means music not specially written for the production of the Play, but performed by a character(s) to be heard by another character(s) in the production;
<b>Net Box Office Receipts</b>	means the sums actually received at the box office after the deduction of either Value Added Tax at the prevailing rate or, if the Theatre is culturally exempt from VAT and VAT has not been charged at the point of ticket sale, the equivalent of VAT at the prevailing rate and any other tax (except income tax and corporation tax), library, credit card, charge card and other sales commissions, sales-stimulating discounts offered at the discretion of the Theatre in accordance with the Theatre's established custom and practice for previews, matinees, parties, affinity groups, stand-by sales, the sale of tickets linked to the offer of other good and services (such offers being generally applicable to any of the plays in repertoire with the Play) and for such other special discount unique to the Play as may be agreed between the Theatre and the Writer for the sale of admissions to each performance of the Play;
<b>Net House Cash Capacity</b>	means the total revenue (less VAT or any other tax but

without any other deduction) which would have been received by the box office for the sale of admissions for a performance if all admissions had been sold at the advertised price;

<b>North America</b>	means the USA and Canada;
<b>Options</b>	means the options set out in clause 16.1, each of which are exercisable separately, and "Option" will be construed accordingly;
<b>Option Fee</b>	means the fee payable by the Theatre on exercise of any Option as set out in Schedule 3 and "Option Fee" will be construed accordingly;
<b>Option Period</b>	has the meaning given in clause 16.2 and "Option Periods" will be construed accordingly;
<b>Option Territories</b>	means the territories which are the subject of the Options;
<b>Participation</b>	has the meaning given in clause 17.1;
<b>Participation Threshold</b>	has the meaning given in clause 17.2;
<b>PRS</b>	has the meaning given in clause 28.1;
<b>Recoupment</b>	means when the Net Box Office Receipts less the weekly running costs of the presentation of the Play will in the aggregate have exceeded the production costs directly and specifically incurred in producing the Play and definitions of weekly running costs and production costs will be negotiated in good faith on exercise of the relevant Option;
<b>Royalty</b>	has the meaning given in clause 13.1 in relation to performances in the United Kingdom, and in respect of performances in the West End of London, North America and the English Speaking World the relevant royalty rate as negotiated subject to the minimum terms of the TNC Agreement and set out in Schedule 4;
<b>Screen Rights</b>	means the right to make and distribute by any means in existence now or devised in the future a recording of the Play or a version of the Play by cinematographic film or electronic or any other process in existence or devised in the future in such a way that the images so recorded are intended to be exhibited to viewers and audiences without the presence of live performers. For the sake of clarity, Screen Rights will include English language television rights in the Play (including video, satellite, cable and any other means devised in the future) and English language television rights including any television production dubbed or sub-titled from an original English language soundtrack;
<b>Total Fee</b>	has the meaning given in clause 6;
<b>Website Rights</b>	has the meaning given in clause 22.1; and
<b>West End of London</b>	means the following list of theatres under the rules of the Society of London Theatre:  Adelphi, Aldwych, Apollo, Apollo Victoria, Cambridge, Coliseum, Comedy, Covent Garden, Criterion, Drury Lane, Duchess, Duke of York's, Fortune, Garrick, Gielgud,

Haymarket, Her Majesty's, London Palladium, Lyric, New Ambassadors (formerly the Ambassadors), New London, Noel Coward (formerly the Albery), Novello (formerly the Strand), Palace, Phoenix, Piccadilly, Playhouse, Prince Edward, Prince of Wales, Queens, St Martin's, Savoy, Shaftesbury, Trafalgar Studios One, Vaudeville, Victoria Palace and Wyndham's.

**Schedule 2**  
**Divergences from form of Agreement provided in the TNC Agreement**

**A. Specific to The Royal National Theatre (“NT”)**

1. NT is deemed to have consulted the Writer regarding the choice of third party to present or co-present or co-produce the Play or to license or authorise performances thereof in North America and the Writer accepts that NT has entered into a “first look deal” with American producers Ostar Enterprises, Inc. and Robert Boyett Theatricals LLC (the “NT’s Partners”) and the Writer approves NT’s appointment of them as the producers in the North American Territory of the NT production of the Play. In the event that the NT’s Partners (or either of them) do/does not exercise the transfer right for North America, and NT wishes to choose a different third party to present or co-present or co-produce the Play in North America, then NT shall consult the Writer before concluding any agreement with that third party.

**B. Specific to The Royal Shakespeare Company (the “RSC”)**

1. The RSC will not be required to exercise the West End of London Option in the event that the RSC presents the Play in the West End of London under its own direct management. Any presentation of the Play in the West End of London by a commercial producer or other third party under licence from the RSC will require the exercise of the West End of London Option.

**C. Specific to The English Stage Company (*clause amended July 2013*)**

1. The Theatre will pay the Writer a guaranteed attendance payment for a four week rehearsal period of £1151.
2. In respect of the Royal Court Downstairs, the Theatre will pay a flat rate Royalty of 10% for the first run of the Play. 75% of the sums payable under clauses 3.1 (Commission Fee), 4.1 (Delivery Fee) and 5.2 (Acquisition Fee) will be treated as an advance against the Royalty. In the case of a Non Commissioned Play 75% of the Total Fee, will be treated as an advance against the Royalty.
3. In respect of the Royal Court Upstairs, the Theatre will pay a flat rate Royalty of 10% for the first run of the Play. 100% of the Acquisition Fee will be treated as an advance against the actual Royalty due to the Writer. In the case of a Non Commissioned play 14.4% of the Total Fee will be treated as an advance against the Royalty due to the Writer

**D. Additional divergences from the TNC Agreement agreed between Theatre and Writer**

1. The following clauses in the Agreement are optional. It is indicated below whether they apply:

Electronic rights granted (clause 22):	Yes/No (If yes, add separately agreed signed licence terms as Schedule 6)
Involvement in publicity (clause 23.2):	State here if Writer declines.
Nom-de-plume notified (clause 25.3):	Yes/No (If yes, state nom-de-plume)

2. The following clauses contain variations from the minimum terms in the TNC Agreement:

**Schedule 3  
Financial and other Terms**

**Delivery Date**

**Commission Fee** £3,350 (except for Royal Court Upstairs £2500)

**Delivery Fee** £3,350 (except for Royal Court Upstairs £2000)

**Acquisition Fee** £3,300 (except for Royal Court Upstairs £1500)

**Total Fee ( relevant to non-commissioned Plays only)** £10,000 (except for Royal Court Upstairs £6000)

[NT/RSC only] The above fees will be treated as advances on account of Royalty in the case of any venue under the direct management of the Theatre which has a seating capacity of more than 800 seats.

[ESC only] For details of whether the above fees are treated as advances on account of Royalty, see paragraph C of Schedule 2.

**Extension Fee (clause 8.2)** £1508

**Option Fee** West End of London: £4,000

North America: £4,000

English Speaking World: £4,000

**Option Extension Fee (see Schedule 4)** West End of London: £2,000

North America: £2,000

English Speaking World: Not applicable

**Attendance fee**

RSC/NT:

£25 per half day

£50 per full day

£250 per week

Royal Court:

£1000 for a four week rehearsal period

**Writer's VAT number**

**Agent**

**Credit**

["name of play"] by ["name of Writer"]

**[specific payment details]**

**Participation Threshold** £30,000

## **Schedule 4 Options**

**(These are minimum terms and enhancements may be negotiated in individual  
Writer's Agreement)**

### **West End of London**

Option Fee:	As set out in Schedule 3 payable on exercise of the Option
Commencement period:	Performances to commence within 18 months of the First Performance
Further option payment:	Commencement period can be extended to 24 months from the First Performance by payment of the Option Extension Fee for the West End of London set out in Schedule 3 prior to expiry of commencement period, provided that at the time of obtaining the extension the Theatre has entered into a contract with either the venue, the director or a leading actor for the production of the Play or is otherwise able to demonstrate to the Writer that the Theatre has a serious intention to produce the Play in the West End of London.
Royalty	5% of Net Box Office Receipts until Recoupment 7.5% of Net Box Office Receipts thereafter  PROVIDED that in any week in which payment of the full royalty results in an operating loss then the Writer agrees that his or her royalty may be reduced pro rata with royalty payments or fees paid to the director, designer, composer, management or anyone else (except actors) in reduction of the operating loss, subject always to a guaranteed minimum payment per percentage point of the Royalty that the Writer would otherwise have received, such amount to be agreed following exercise of the West End of London Option, and subject further to negotiation after six weeks of implementation.
Accounting	Agreement to provide for weekly accounting to the Writer.
Tickets	Four complimentary tickets for the Writer for all previews and press night. One pair of house seats per performance to be available for purchase up until 48 hours before the performance by the Writer or the Writer's nominee.
Consultation	The Theatre will consult in good faith with the Writer in relation to the choice of producer or co-producer and the theatre for performance of the Play in the West End and give serious consideration to the views of the Writer.

### **North America**

Option Fee:	As set out in Schedule 3 payable on exercise of the Option
Commencement period:	To present in a first class manner in New York (unless otherwise agreed) and performances to commence within 24 months of the First Performance. Commencement may

be extended to 30 months from first performance if the Play is still being presented by the Theatre in the United Kingdom (including the West End of London) subject to payment of the Option Extension Fee for North America set out in Schedule 3.

- Terms: Terms to be negotiated to be not less favourable to the Writer than those contained in the Dramatists' Guild of America Approved Production Contract (APC) but excluding all parts of the APC which refer to the British Territory or to Australia or New Zealand or to foreign language rights or to motion picture rights (or to the "Negotiator" as defined in the APC) or television rights or producer's participation, all of which to be governed by the terms of the original agreement between the Writer and Theatre or as otherwise separately negotiated.
- Option and advance sums: The option and advance sums payable to the Writer under the agreement for North America to be at least the minimum sums set out in the APC, subject to allowance in respect of the Option Fee already paid by the Theatre on exercise of the Option.
- Consultation: The Theatre (excluding the NT) to consult with the Writer before concluding any agreement with a third party to present or co-present or co-produce the Play or to license or authorise performances of the Play in North America.
- NT consultation as specified in Schedule 2 section A.1.
- Royalty: To be negotiated in good faith on exercise of the Option for North America subject always to the minimum terms of the APC with a royalty not less than:
- 5% of the Net Box Office Receipts until Recoupment
- PROVIDED that in any week in which payment of the full royalty results in an operating loss then the Writer agrees that his or her royalty may be reduced pro rata with royalty payments or fees paid to the director, designer, composer, management or anyone else (except actors) in reduction of the operating loss subject to negotiation after six weeks.
- Expenses: The Theatre will pay to the Writer one economy class round trip air fare for the Writer's personal use from the United Kingdom to New York City and the costs of equivalent transportation to and from other cities where the Play is to be presented prior to New York City together with living expenses of a minimum of \$250 (two hundred and fifty dollars) per day (inclusive of hotel costs) for a period not exceeding ten days and including the first Press Night performance in New York City.

### **English Speaking World**

- Option Fee: As set out in Schedule 3 payable on exercise of the Option

Commencement period: Performances to commence within 24 months of the First Performance.

Minimum performances: If fewer than 26 performances of the Play are given in any one year from the First Performance in each country in the English Speaking World where rights have been exercised, the rights in such country will lapse and revert to the Writer at the end of such year.

Royalty To be negotiated in good faith subject to a minimum royalty scale on the Net Box Office Receipts at the following rates:

Net Box Office Receipts expressed as a percentage of Net House Cash Capacity	Rate of Royalty to be paid on that proportion of Next Box Office Receipts
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The first 50% (0-50%)	5%
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The next 25% (51-75%)	7.5%
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The final 25% (76-100%)	10%
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## **Schedule 5 Participation**

### **A. Percentage shares**

The following are the applicable percentage shares in respect of the Theatre's Participation under clause 17.1. The applicable percentage depends on the number of performances of the Play that have been given and on whether the Theatre has exercised the Option for North America:

- A.1. 10% of Gross Revenue where the Theatre has given at least 25 but not more than 49 paid performances of the Play (including no more than five reduced-price previews).
- A.2. 20% of Gross Revenue where the Theatre has given 50 or more paid performances of the Play.
- A.3. An additional 20% of Gross Revenue in respect of Screen Rights and audio rights only where the Theatre exercises the Option for North America under clause 16.1 and qualifies for such Participation under the terms of its licence to present the Play in North America.

### **B. Holding on Account provisions:**

In order to protect the Theatre's Participation in any Gross Revenue received by the Writer until it can be determined what the applicable percentage share is under paragraph A above, the following will apply:

- B.1 The Writer will hold 10% or 20% (as relevant) of such revenue on account for the Theatre until the Theatre has given the 25<sup>th</sup> or 50<sup>th</sup> performance (as the case may be) upon which the Writer will pay the appropriate share to the Theatre.
- B.2 If the Theatre exercises the Option for North America under clause 16.1 and the Writer disposes in accordance with clause 16.9 of the Screen Rights and/or the audio rights in the Play before the Theatre has produced the Play (or caused it to be produced) in North America, the Writer will hold the additional 20% share referred to at paragraph A.3 above on account for the Theatre and pay such share to the Theatre when the Play has been produced in North America for the relevant number of performances and within the period specified in Schedule 4.
- B.3 Where under the terms of the Option to present the Play in North America, the Theatre may qualify for a share of the subsidiary rights in excess of the rights granted under this Agreement, the Writer will hold any such excess on account for the Theatre until it is determined whether the Theatre has qualified or not.

### **C. Post Option Participation**

#### **C.1 West End of London**

C.1.1 Subject to the remaining provisions of this paragraph C.1 and to paragraph D below, the Writer will pay to the Theatre a share of the Gross Revenue deriving from exploitation of the following rights at the percentages set out below:

- (a) professional stage rights in the Play in the English language (other than performance by or in association with the Theatre):

- (i) In the United Kingdom and Eire 33 1/3%
- (ii) In the British Commonwealth (excluding Canada) 33 1/3%
- (iii) In Europe (excluding the UK and Eire) 25%
- (b) the worldwide Screen Rights and all forms of audio exploitation of the Play in the English language, including by way of example only radio, sound recordings and podcasts and any other such medium existing now or devised in the future: 20%

C.1.2 The entitlement set out at paragraph C.1.1 above will apply for a period of five years from the date of the last paid performance in the West End of London, provided that the Theatre gives or authorises to be given not fewer than 26 consecutive performances in the West End of London (including not more than 5 paid previews).

## C.2 North America

C.2.1 Subject to the remaining provisions of this paragraph C.2 and to paragraph D below, the Writer will pay to the Theatre a share of the Gross Revenue deriving from the exploitation of the following rights at the percentages set out below:

- (a) professional stage rights in the Play in the English language (other than performance by or in association with the Theatre):
  - (i) In the European Union (excluding the United Kingdom) 25%
  - (ii) In North America 33 1/3%
- (b) repertory or stock and amateur stage rights in North America: 40%
- (c) the worldwide Screen Rights and all forms of audio exploitation of the Play in the English language or dubbed or sub-titled from an original English soundtrack, including by way of example only radio, sound recordings and pod casts and any other such medium in existence now or developed in the future: 20%

C.2.2 The entitlement set out at paragraph C.2.1 above will apply for a period of seven years from the date of the first paid performance in North America, provided that the Theatre gives or authorises to be given not less than 26 performances in New York City within three months of the first paid performance in North America.

C.3. English Speaking World

C.3.1 Subject to the remaining provisions of this paragraph C.3 and to paragraph D below, the Writer will pay to the Theatre a share of the Gross Revenue deriving from exploitation of the following rights at the percentages set out below:

professional stage rights in the Play in the English language (other than performances by or in association with the Theatre):

In the English Speaking World	33 1/3 %
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C.3.2 The entitlement set out at paragraph C.3.1 above will apply during the subsistence of the Theatre's rights in the English Speaking World, provided that the Theatre gives or authorises to be given in the English Speaking World not fewer than 26 performances.

**D. General**

D.1 The Theatre's entitlement to a share of Gross Revenue under paragraph C above will come into effect once the Gross Revenue deriving from the exploitation of the Writer's rights as described in clauses 17.1 and 17.2 of the main body of this Agreement has exceeded the Participation Threshold.

D.2 If the Theatre is or becomes qualified under clause 17.1 of the main body of this Agreement to receive Participation, the shares payable under paragraph C above shall be payable only insofar as is necessary to secure that the Theatre shall receive one such share in each case of double qualification.

## Electronic Education Website Rights

### Appendix to the TNC Agreement

#### **These minimum terms are to be reviewed after 18 months of signature of the TNC Agreement**

**The minimum terms are in the form of a template for the Schedule 6 electronic education website rights licence agreement to be attached to the specific Writer's Agreement if the Writer elects to grant Website Rights to the Theatre**

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**Name of Theatre**

#### **SCHEDULE 6**

To the Agreement dated.....  
Concerning TITLE OF PLAY by NAME OF WRITER

#### **The Electronic Education Website Licence**

The Writer and the Theatre have entered into an agreement (the "Writer's Agreement") dated [xxx] in respect of the stage rights in [title of Play] (the "Play"). This Schedule sets out the terms and conditions upon which [name of Writer] (the "Writer") agrees to license to [name of theatre] (the "Theatre") the use of the text of the Play on an educational website known as "*name of Theatre's website and its website address*" (the "Website").

#### **1. Duration of licence and fee**

- 1.1 The Writer hereby grants to the Theatre a non-exclusive licence for the use of those extracts approved by the Writer (as defined in paragraph 2 below) (the "Approved Extracts") for an initial period of three years (the "Initial Term") commencing on [...] (the "Website Licence").
- 1.2 The Theatre may request that this Website Licence be renewed for a further term following expiry of the Initial Term. Any renewal agreed by the Writer shall be recorded in writing and signed by both parties. Any renewal of the Website Licence shall be for thirty years or such other term as may be agreed by the parties.
- 1.3 Unless otherwise agreed, the Writer may terminate any renewal of the Website Licence on giving six months' notice in writing at any time, provided that the Writer has good reason for terminating. Good reason would include (but not be limited to) the requirement of a film company acquiring film rights in the Play for the Website Licence to be terminated, and in such event the Writer shall use all reasonable endeavours to dissuade the film company from insistence on termination of the Website Licence.
- 1.4 There shall be no fee payable to the Writer in respect of the use of the Approved Extracts during and in accordance with the terms of this Website Licence provided that no other member of the creative team or the Theatre receives payment for such use.

## 2. Approved Extracts - Definition and Duration

- 2.1 An Approved Extract consists of a section of text, the form in which it is presented (text, rehearsal and/or performance), the context of use of the extract and its website location.
- 2.2 The choice of Approved Extracts may be determined at a later date to this Website Licence, but prior to any use under the terms of this licence.
- 2.3 In any event the Approved Extracts used in accordance with this Website Licence shall not exceed 5 minutes (or 5% of the text of the Play if shorter) at any one time nor 15 minutes (or 10% of the text of the Play if shorter) in aggregate. Extracts from rehearsals and performances shall both be included in this aggregate.
- 2.4 Once approved the Approved Extracts shall be listed in the annex to this Schedule, and shall be subject to all the terms and conditions set out in this Website Licence.

## 3. Use

The Theatre may use the Approved Extracts and make the same available to third parties from the Website by streaming in video form from the Website the performance of the Approved Extracts in rehearsal and/or in production at the Theatre and by the reproduction of the actual text of the Approved Extracts on the Website subject always to the conditions in paragraph 4 below and **subject further if applicable to the permission of the publisher of the Play in the case of reproduction of textual Approved Extracts any/or in the case of any other electronic rights held by the publisher of the Play.**

## 4. Restrictions on use

The Theatre shall clearly state in the terms and conditions of the Website that any use of the Approved Extracts shall be restricted for educational use and for the purposes of teaching and research and that users may print out but not modify hard copies of the textual Approved Extracts but save as aforesaid users may not reproduce, modify or commercially exploit the Approved Extracts in whole or in part in any way whatsoever. The Theatre shall use all reasonable endeavours to implement and maintain appropriate technical measures to prevent users from modifying the Approved Extracts.

## 5. Changes

Any and all changes to the Approved Extracts used (including but not limited to lengthening and shortening of or additions to or subtractions from the Approved Extracts) shall be subject to the prior written approval of the Writer. Such approval shall be in the Writer's sole discretion provided that the exercise of such discretion shall not be unreasonably withheld or delayed.

## 6. Notices

The Website shall carry a notice in substantially the following form wherever Approved Extracts are used (the content of such notice to be pre-approved by the Writer prior to any

use by the Theatre on the Website, and the Writer shall have right to supply subsequent modifications to the notice (if applicable), in which event the Theatre will use all reasonable endeavours to include such modifications as promptly as reasonably possible):

(c) *name of copyright owner, year of copyright*

and on every page of the Website containing the actual text of Approved Extracts the words "*TITLE OF PLAY..... by name of Writer*" shall appear together with a working link called "reservation of rights" to notices in the following form:

*Name of Writer* has asserted *his/her* right to be identified as the author of the play;

All rights whatsoever in this play are strictly reserved. Requests to reproduce the text in whole or in part should be addressed to the publisher, *Name of Publisher* [*insert link to Publisher's website*].

Amateur Performing Rights: Applications for performance, including readings and excerpts, by amateurs in English should be addressed to *Name and address of Licensee of the English amateur performing rights including street address, fax and telephone numbers, and email address*

United States of America & Canada: *state name of relevant Agent (if applicable)*.

Professional Performing Rights: Applications for performance by professionals in any medium and in any language throughout the world (*and [if applicable] by amateurs in the United States of America and Canada*) should be addressed to *Name of principal agent of the Writer, with street address, fax, telephone numbers and email address*.

No performance of any kind may be given unless a licence has been obtained. Applications should be made before rehearsals begin. Publication and use of extracts of this play does not necessarily indicate its availability for amateur performance.

## **7. Link to publisher**

The Theatre shall (if applicable) include on the Website a prominent and working hyperlink to the official website of *Name of Publisher* as publisher of the Play and the Writer shall request the publisher to include such a hyperlink from the publisher's website to the Website.

## **8. Copyright**

Copyright in the text of the Play shall remain vested in the Writer and all rights other than those granted under this agreement are hereby reserved.

## **9. Failure to exercise rights**

The Theatre shall not be obliged to exercise its rights under this Website Licence, but the Theatre's rights under this Website Licence shall automatically lapse if not exercised during the term of the Theatre's stage rights in the Play (including the Options as defined in the Writer's Agreement).

## **10. Theatre's Warranty**

The Theatre warrants, undertakes and represents to the Writer that it has obtained all necessary permissions from third parties in respect of use of the Approved Extracts on the Website (including but not limited to actors, musicians, stage management, technical staff and any third party copyright holders) and the Theatre shall indemnify the Writer from any and all claims against the Writer in respect of any breach of this warranty.

## **11. Quitclaim**

The Theatre confirms that it has no objection to any film company who may purchase the motion picture rights in the Play acquiring the same rights granted by the Writer to the Theatre under this Website Licence, and the Theatre confirms that it has no claims or interests in the cinematograph film rights or CD-Rom, tape or similar electronic or any form of audiovisual rights in the Play (except with regard to the holdback period for the release of such rights as per clauses 10.3 and 16.9 of the Writer's Agreement) and will provide a quitclaim in any form reasonably requested in this respect

## **12. Termination**

In the event of a material breach of any term of this Website Licence by the Theatre, which in the case of a breach which is capable of remedy has not been remedied by the Theatre within 30 days of receiving written notice of the breach (including notice of the intention to terminate), the Writer may terminate this Website Licence forthwith on written notice to the Theatre. For the sake of clarity, if the Website Licence is terminated, the Writer's Agreement shall continue in accordance with its terms.

## **13. Miscellaneous**

13.1 This Website Licence is personal to the Theatre and its rights under the Website Licence may not be assigned in whole or in part. The Website shall at all times remain in the ownership and under the control of the Theatre, provided that the Writer acknowledges and agrees that this shall not prevent the Theatre from having the Website hosted externally, provided always that in such event:

- (a) the Theatre shall notify the Writer of the details of the entity hosting the Website;
- (b) the Theatre shall be responsible to the Writer for ensuring that the Website hosting party complies with all the conditions of this Website Licence; and
- (c) any material breach of the terms of this Website Licence by the Website hosting party shall constitute a material breach of this Website Licence by the Theatre.

13.2 This Website Licence will not constitute a partnership, joint venture, employer-employee or principal-agent relationship between the parties.

13.3 This Website Licence is binding upon the executors, administrators, lawful assigns and successors of the parties.

13.4 This Website Licence constitutes the entire agreement of the parties with respect to its subject matter.

13.5 This Website Licence may not be varied unless in writing signed by the parties.

13.6 Any dispute between the parties shall be resolved by reference to the disputes procedure set out in clause 38 of the Writer's Agreement.

#### **14. Governing Law**

This Website Licence shall be construed in accordance with the law of England and Wales and the parties hereby submit to the non-exclusive jurisdiction of the courts of England and Wales.

**Signed by:**

**Name of Writer**

**Date:**

**Signed:**

For and on behalf of  
NAME OF THEATRE

Date:

ANNEX TO SCHEDULE 6

SCHEDULE OF EXTRACTS