

# Writing Musical Theatre

A Working Playwright  
Guide

[www.writersguild.org.uk](http://www.writersguild.org.uk)

The Writers' Guild of Great Britain is a trade union  
registered at 134 Tooley Street, London SE1 2TU

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The **Writers' Guild of Great Britain** has produced  
*Writing Musical Theatre – A Working Playwright Guide*.

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# Introduction

These guidelines were originally produced in 2006 and jointly endorsed by the **Writers' Guild of Great Britain (WGGB)**, the **Personal Managers' Association (PMA)** and **Mercury Musical Developments (MMD)**. In 2015 **WGGB** revised and updated the guidelines. We hope they will be useful to all those involved in creating musicals.

## GENERAL

Musical theatre is a sub-set of theatre; these guidelines should be read in conjunction with the appendices on pages 18-31 and the WGGB *The Working Playwright* guidelines ([www.writersguild.org.uk/resources/](http://www.writersguild.org.uk/resources/)). They are a guide to the terms and conditions for which you should aim

## DEFINITION OF CREATORS OF MUSICAL PLAYS

The writers of words and writers of music eg bookwriter<sup>(1)</sup>, lyricist, composer, songwriter etc, may be one person, or two (or more) separate people.

As the functions are distinct, even if both functions involve one person, they should be kept distinct in contractual terms.

In these guidelines, the overall phrase **the Writers** is applied to the whole writing team.

Seek advice from the WGGB if a director/producer or person other than those in the writing team seeks writing credits and/or ownership of the musical.

(1) A bookwriter is the writer of the script of a musical

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# Collaboration and development

**A collaboration agreement should involve the creators of all three creative elements of the musical – book, music and lyrics – regardless of the numbers of people involved.**

Refer to appendix (a) on pages 17-27 for a model agreement and notes.

The agreement need not be a complex document.

The main points to be covered in a collaboration agreement are:

- Copyright ownership, including whether there is to be a merged copyright ownership of the musical, with all creators owning a proportional share of the whole.
- Further use and copyright ownership of separate elements of the material outside the use of the musical as a whole, eg songs, novel etc.
- Division of royalties/advances between the collaborators.
- Credit provisions for billing/publicity/publication.
- Approval of key creatives and lead cast members
- Who is to handle licensing of rights, or whether literary agents are to collaborate and, if so, on what basis, and how agent's commission is allocated.

Note: licensing of rights will be affected by the category of musical and which rights are controlled (or not) by the Writers, plus whether there is a music publisher or PRS (Performing Rights Society) involvement.

- Textual alterations and omissions clause, eg no changes can be made without the Writers' permission.
- Timescales – deadlines for specific stages of development eg an outline of book, music and lyrics.
- Arrangements as to what the procedure is if there is disagreement between the Writers, including the option to separate work at the termination of the collaboration agreement.

If a music publisher is involved, the composer may have a pre-arrangement with a publisher for all of the composer's body of work. This will also involve PRS, and arrangements must be clearly specified.

In commercial musicals it may not be possible to have a collaboration agreement if each writer has been contracted separately by the producer.

**Don't be afraid to make a simple collaboration agreement –  
where possible always make one**

The development stage of a non-commercial musical is where the writing takes place, and can involve workshops, readings etc.

At the end of the development process there should be a show ready for production. Writers should be asking for 75% of the total writing fee for development, as this is the equivalent in non-musical theatre of writing drafts of the play up to and including delivery stage. The remaining 25% should be paid upon acceptance/first day of rehearsal.

With a musical, every writer retains his or her individual copyright, but once the piece has been commercially produced, it is usually common practice to create a joint copyright, for the piece as a whole. This does not weaken or threaten individual copyright, but means potential producers do not have to negotiate with each individual writer in order to mount a further production.

The main consideration is that writers retain copyright, and are comfortable with the working arrangements, the collaborative process and the remuneration. Have a full and frank discussion, secure a written agreement at the start of the process and seek advice from your agent or WGGB if you are unsure how to progress.

**For more information on collaborative development  
see section 12 of the WGGB guidelines *Engaging with Theatres***

# Categories of Musicals

## COMMERCIAL MUSICALS

Commercial musicals in the main relate to West End musicals.

**Musicals based on underlying rights** – relevant to adaptations where the producer has acquired the rights from the original writer.

Writers should be aware of the following:

- Assignment of copyright should be resisted, in favour of a licence.
- Assignment of your copyright to a large-scale producer may be a requirement if the producer owns underlying rights. There may also be an assignment of copyright to a merged entity which owns the whole musical, in which the Writers have a proportional share of ownership.

(NB refer to section Merged copyright on page 16)

- Royalty splits must be specified. The splits will be constrained by the producer's deal with the underlying rights holder.
- If the producer acquires worldwide rights in all languages, then ideally the bookwriter and lyricist should approve the translators and the translations.
- Cast album (see section Miscellaneous, page 16).
- Short excerpts of the musical may be used for publicity/press kits and also for documentaries. Payment for excerpt use is generally on a most favoured nations basis (the same basis for all).

**Musicals without underlying rights** – based on an original idea from the producer.

Writers should be aware of the following:

- Resist assignment of copyright (except to an entity part owned by the Writers).
- Royalties should apply to the Writers only, and in specified shares.
- If the producer acquires worldwide rights in all languages, then ideally the bookwriter and lyricist should approve the translators and the translations.
- Cast album (see section Miscellaneous, page 16).
- Short excerpts of the musical may be used for publicity/press kits and also for documentaries. Payment for excerpt use is generally on a most favoured nations basis.

**Commercial compilation musicals** – where the producers have acquired the rights

These use existing songs from either the repertoire of a successful artist who is the subject of the musical (eg *Jersey Boys*), probably with songs in separate ownership from several sources; or a composer's catalogue of songs (eg *Mamma Mia!*). In either case there is usually a special book written to link the material.

The bookwriter should expect a minimum of a third of the total royalty.

Individual songs may share pro rata on time, on a most favoured nations basis (the same basis for all) for example, if one minute of song = 0.001% of the royalty then this rate per minute would apply to all songs, with the amount paid in royalty being dependant on the length of each song. Alternatively, there may be a fee per song per performance (or per week of 8 performances) instead of a royalty on gross box office. It is also possible for a catalogue of music to simply fall under the performance venue's PRS licence. However it works, this will affect your royalty.

## **ORIGINAL MUSICALS**

**Original musicals created solely by the Writers**, with no underlying rights involved, and musical adaptations of out of copyright works.

Writers should be aware of the following:

- Copyright should be owned by the Writers in agreed percentages.
- A collaboration agreement is essential.

**Original musicals based on underlying rights in copyright**, where the Writers (not the producer) have acquired the underlying rights of adaptations or compilations.

Writers should be aware of the following:

- Copyright should be retained by the Writers in agreed percentages, but subject to an arrangement they have entered into for underlying rights.
- This could result in a merger of copyright ownership (see section Merged copyright on page 16) between the Writers and the underlying rights holder.
- A collaboration agreement is essential.

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**Original musical conceived by a ‘third party’,** eg a director, choreographer.

- Copyright of the book, music and lyrics should remain with the Writers.
- It is essential to have a written agreement with the third party that affirms the Writers’ ownership of copyright; and the parameters and extent of the third party’s creative involvement in the project.

### **Original musical devised by a collective**

It is essential to have a collaboration agreement between all parties of the collective. The agreement should include clear definitions of the roles, eg where the group is working as a whole, and where there are individual roles, as well as clarity on the ownership of copyright between the collective, and a division of fees and royalties.

## **SUBSIDISED THEATRE**

It is essential to have a collaboration agreement which relates to the terms contained in the national WGGB theatre agreements.

There are three categories of WGGB subsidised theatre minimum terms agreements:

- TNC (the three national companies: National Theatre, Royal Shakespeare Company, Royal Court Theatre).
- UK Theatre – excludes West End (SOLT) theatres.
- ITC (Independent Theatre Council) – predominantly small theatres or touring companies. The ITC/WGGB agreement applies to ITC members with Ethical Manager status.

The theatre management organisations listed above expect subsidised theatres who are members of their organisations to abide by the negotiated WGGB agreements. Where a theatre is a member of one of the above organisations but is not a subsidised theatre; eg charity, the relevant agreement should be used as a guideline.

In subsidised theatre the following should apply:

- Copyright is retained by the Writers.
- A collaboration agreement may need to involve underlying rights owners.
- Writers’ approval of any commercial producer is required if the musical moves out of the subsidised sector into the West End.

**OTHER PRODUCERS** – unaffiliated small producers, amateurs, developers, community groups, schools and youth theatre. The Writers should be aware of the following:

- The Writers should retain full copyright.
- Any funding applications should include fees for the Writers.
- Writing fees should always be agreed and paid upfront.
- An agreement must be entered into with the producer with a limited licence eg that only gives the rights to a limited number of performances for a limited time. A perpetual licence should not be agreed.
- Do not enter into an agreement that entitles the producer to a percentage of royalties.
- Contracts should not include clauses that entitle the producer the right to exploit the work in other formats, eg publishing. If the producer is also a publisher, a separate publishing agreement should be made.

**For original musicals, subsidised theatre or other producers writers are advised to enter into a collaboration agreement prior to making any arrangement with a producer/theatre.**

**Writers should always seek advice from the WGGB, an agent or a media lawyer before entering into an agreement.**

## Commissioning fees and royalties

### COMMERCIAL MUSICALS

#### Splits

In commercial musicals it is highly likely that the three elements (book, music lyrics) will be contracted separately by a producer, so it is rare to have a collaboration agreement. The fee paid will be a third of the total fee for the Writer group. If there is an underlying rights holder the fee may be split four ways. It is more likely that the underlying rights holder will take a share of the royalty rather than the writing fee, but bear in mind that the underlying rights holder may take a larger proportion than 25%.

Suggested splits are 33.33% each for books, music, lyrics. Royalties should generally be 33.33% per element, even if the bookwriter/lyricist or composer/lyricist is the same person.

## Payment structure

Writers should aim for the following payment instalments (in percentages to be agreed of the total amount)

- Signature (50%)
- Delivery of first draft (25%)
- Acceptance for production/first day of rehearsal (25%)

There should be a maximum of three drafts prior to acceptance for production. All fees are non-refundable and are for the writing of the work. Generally all payments apart from the signature payment, which is normally 50% of the total fee, can be set against royalties, although some producers may aim to get 100% of fees set against royalties.

For example, if you have a £10,000 payment that is recoupable against royalties, and there were £15,000 in royalties, you would receive £5,000 in royalties.

Because of the number of collaborators, the development process is often lengthy compared with a straight play.

## Size of fees

Fees in commercial theatre vary a great deal. The writing fee is often less in commercial musicals compared with subsidised theatre. We advise you to aim for a minimum of;

£15,000 per element (book, music, lyrics)

*plus*

Workshop(s) should be paid for separately – a minimum fee of £600 per week, with a fee that is non-refundable and non-recoupable against royalties.

## Rate of royalty

The payment of the royalty will be controlled by the producer and at the following minimum rates;

Pre-recoupment:\* 6% net box office, rising to 8% post-recoupment\*

or

Pre-recoupment: 6%, rising to 7% at 110% recoupment, and to 8% at 150% recoupment.

\*Recoupment = recoupment of production costs. Royalty scales can be linked to different stages of recoupment.

**Producers of commercial musicals invariably require all royalty participants to enter into a royalty pool.**

**Royalty pools are a complex subject and professional advice should always be obtained.**

## **SUBSIDISED THEATRES**

### **TNC**

(Commissioning fee currently a minimum of £12,126 per play)

Writers should aim for a minimum of £10,000 per element (book, music, lyrics).

The payments are non-refundable and 100% is recoupable from royalties in the large venues and slightly less in the smaller ones, TNC theatres have an average royalty of 8.2% of net box office receipts.

### **UK Theatre (previously TMA)**

(Commissioning fee currently a minimum of £9,077 per play for MRSL 1)

Writers should aim for a minimum of £7,500 per element, non-refundable, 50% recoupable from royalties. There are three levels of fees depending on the type of theatre. UKT theatres have a minimum royalty of 8% of net box office receipts.

### **ITC**

(Commissioning fee currently a minimum of £8,350 per play)

Writers should aim for a minimum of £5,000 per element – non-refundable, ITC has a royalty threshold that means this figure has to be achieved in net income before royalties are paid; in 2016 the threshold was over £55,000. So it is a good idea to negotiate a royalty that is payable from the outset, with 50% of the fee being recoupable against royalty. ITC theatres have a minimum royalty of 8% of net box office receipts.

In all cases, the royalty should not be less than the minimum royalty in the relevant WGGB theatre agreement, (see <https://writersguild.org.uk/rates-agreements/>)

The fees for commercial and subsidised theatre outlined in the paragraphs above are for the initial grant of rights for full length plays. Additional fees are payable by the producer/theatre to secure additional rights, for example to exploit the work in another territory, eg USA.

**Be aware** the writers' royalty is shared between all elements within the Writers' group, with each receiving their proportionate share from the total royalty. The Writers' group may also include the underlying rights holder as well as book, music, lyrics.

### **Splits of fees/royalties between Writers**

It should be stressed that royalty splits and shares of fees are negotiable. In musicals, the bookwriter, composer and lyricist traditionally each receive a third of the fee and royalties, but each agreement is unique and may require amendment.

The figures quoted below are not standard but are those to try to achieve.

33.33% each for books, music, lyrics

*or*

50% for words / 50% for music (where two writers have equally contributed, eg book & lyrics and music & lyrics)

### **OTHER PRODUCERS**

For other producers not covered by WGGB agreements, the Writers will need to negotiate the overall fee and royalty, but they should always look to secure terms equal to or better than those outlined in the WGGB theatre agreements (see <https://writersguild.org.uk/rates-agreements/>).

**Check the WGGB website for theatre agreements for additional expenses such as rehearsal attendance fees, travel etc**

**Seek advice from WGGB / an agent / media lawyer for co-productions or moving to a commercial producer.**

## **Rights**

**All contracts will detail the fees and royalties payable for the granting of rights.**

**Grand rights** – copyright in the performance of a dramatic production. A grand rights licence is required for the performance or the recording of any dramatico-musical work such as opera, musical and musical play.

Grand rights must be negotiated between the producer of a production, the publishers and the copyright owners.

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**First class stage rights** – the right to present first-class live stage performances of a work. A first-class live stage performance is generally defined by the size, location and reputation of the theatre; the use of professional performers and an experienced professional creative team; and the length of the anticipated production run.

**Second class stage rights** – the right to present amateur, repertory, condensed or concert version performances of a work. This includes anything else not regarded as ‘first class’.

**If controlled by the Writers:**

A licence that grants second-class rights only should be for a short period of time with an agreed amount of performances, and include a fee per performance or royalty of 12.5%-15% of gross box office, subject to a guaranteed minimum fee per performance.

**If controlled by publishers:**

- The publisher should charge the theatre/producer a royalty of 12.5%-15% of gross box office subject to a guaranteed minimum fee per performance.
- Performance royalties/fees should be split 80/20 between the Writers/publisher.
- Hire fees for libretto and/or score should be split 50/50.

**Small rights** – the right to present short live performances of individual musical compositions from a dramatic-musical work, in a non-dramatic fashion, eg without dramatic staging or costume.

In the main small rights relate to royalties from music and lyrics. In order to maximise your income we recommend you register with PRS (Performing Right Society) and MCPS (Mechanical-Copyright Protection Society) who collect certain small rights royalties on behalf of their members. The total copyright may not be assigned to a producer/theatre by the composer and/or lyricist without first reserving the rights already assigned to PRS/MCPS.

For example, royalties from libretto sales are generally 12.5% of retail price, raising to 20-25% for e-scripts and the small rights royalty should be split equally between the bookwriter and lyricist. The proportionate share would alter if there is an additional underlying rights owner.

**WGGB does not negotiate music publishing deals, nor are we a collecting society, so writers are advised to join the following organisations and seek advice from them on music publishing fees and royalties:**

**Musicians Union (MU)**  
**BASCA**  
**PRS for Music (PRS)**  
**Mechanical-Copyright Protection Society (MCPS)**  
**Authors' Licensing and Collecting Society (ALCS)**

## Billing

**There should be comparative billing between each creative writer, the size of the credit on the billing should be the same for each writer and generally be in order of book, music and lyrics.**

If there are less than three contributors then the suggested order of credits is:

- Book & lyrics – Music (where the bookwriter and lyricist are the same person)
- Book – Music & lyrics (where the composer and lyricist are the same person)

Credits are negotiable and may depend on comparative public profile of contributors, especially with billing in relation to underlying rights (if any), eg the author of the original source material may request a larger credit than the adaptor Writers.

## Approvals

**Where possible the following applies:**

Writers (all of them) should have approval of:

- Director
- Choreographer
- Designers (set, costume, lighting, sound)
- Principal cast
- Third-party producer, eg a producer or co-producer sublicensed by the principal producer.

The composer should additionally have approval of:

- Musical arranger(s) (including dance plus vocal if applicable)
- Orchestrator
- Musical director

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## Later collaborators

**If producers (usually commercial) call in later writers to be involved in any book, music and lyrics, always seek professional advice.**

All agreements should provide for a default level for the original collaborators, who should be entitled to a minimum share of royalties, and a credit where applicable.

## Merged copyright

**Merged copyright can exist between collaborators and this can sometimes include owners of underlying rights. It can also exist between the Writers and producers. Essentially, rights holders assign their rights to an entity which then owns the copyright, and participants own a proportionate share of that entity.**

Professional advice is a prerequisite before any commitment is made to a merger arrangement.

## New technology

**As everyone is aware, new technology is transforming the ways in which musical works are distributed, exploited, monitored and regulated (or not).**

It is important to provide in agreements for exploitation by new technology which is not yet known but may hereafter be invented, and to cover any such unknown future uses by an agreed split of the income from such future sources.

## Miscellaneous

**Useful additional points to consider are:**

### **CAST ALBUMS**

Usual split would be producer 40% / Writers 60% with proceeds shared in perpetuity.

### **MUSICAL SCORES**

In any production the producer provides all necessary orchestral scores, conductor's scores, orchestra parts and vocal parts at their expense, and owns the physical scores. Copyright in the scores should remain with the composer and lyricist respectively.

## APPENDIX (A)

# Model collaboration agreement

THIS AGREEMENT is made the ..... day of ..... 20....

BETWEEN

(Name of Collaborator 1) of (address), (“the Composer”)

(Name of Collaborator 2) of (address) and (“the Lyricist”)

(Name of Collaborator 3) of (address) and (“the Bookwriter”)

and the Bookwriter, Composer and Lyricist are also jointly referred to in this agreement as “the Writers”

WHEREAS each of the parties to this agreement has collaborated in, or wishes to collaborate in, the writing of a musical play presently entitled ----- ( “the Musical Play”);

NOW IT IS HEREBY AGREED AS FOLLOWS:

### WARRANTY

- 1 Each of the parties to this agreement represents and warrants to the other parties, but only as to his or her own contribution, that:
  - a) Each shall, to the degree it has not been completed on the date of this agreement, undertake to write and complete the Musical Play;
  - b) In executing this agreement, each has the capacity and full authority to enter into this agreement, that all of the material each has provided and will provide for the Musical Play is and will be original with such party and has not been adapted or derived from any other source (except to the extent such material is adapted or derived from material which is in the public domain, or adapted from material which requires or may require the permission of any other person or entity). Each has not made and will not make any undertaking or agreement with any third person or entity in connection with any material which he or she is contributing to the Musical Play, other than as may be specifically permitted in this agreement; and
  - c) To the best of his or her knowledge, there is and will be no claim, lien or encumbrance by any third party on his or her contribution including, without limitation, any claim of joint authorship (subject to any rights required by membership of the Performing Rights Society).

## COPYRIGHT

- 2 Copyright in each separate element of the Musical Play shall be held by the writer who created it, unless or until a merger of rights takes place. Following a merger of rights, no rights shall be granted in the Musical Play except with the consent of all the parties to this agreement, but each agrees to exercise his/her right of approval in a reasonable and expeditious manner with due regard for the views of the other parties.

## COLLABORATION/DEVELOPMENT PERIOD

- 3 The parties to this agreement agree, from the date of signature of this agreement, to collaborate for a minimum period of ..... months up to a maximum period of .....months ("Collaboration Period") in order to complete the Musical Play to all the parties' mutual satisfaction.
- 3a Within .....months of the end of Collaboration Period all parties have the option to agree a Development Period of .....months to pursue the possibilities for production.
- 3b In the event that all parties have failed to agree a Development Period within the agreed time in clause 3a, this agreement shall be terminated automatically. If no production has been obtained within the agreed Development Period, then this agreement shall be terminated automatically on expiry of the Development Period. At the termination of this agreement all rights shall revert to the parties to this agreement in accordance with the terms of Clause 14.

## AGENCY

- 4 The parties to this agreement hereby appoint..... as the sole agent to act on their behalf to negotiate all contracts in connection with all exploitation of the Musical Play. .... shall be entitled to deduct .....% commission from all gross receipts accruing to the parties to this agreement from the exploitation of the Musical Play in all media now known or hereinafter to be devised.

## GRAND RIGHTS

- 5 All monies accruing in respect of stage performances of the Musical Play anywhere in the world in the English Language whether professional or amateur, or for the cast album, or from exploitation of theatrical film, terrestrial, satellite or cable television, video or radio shall be divided in the ratio .....% to the Bookwriter, .....% Lyricist, .....% Composer save that in respect of foreign language stage performances the Bookwriter's and Lyricist's shares may be subject to a sharing arrangement with the translator of the book and lyrics.

## SMALL RIGHTS

- 6 Any monies accruing from exploitation of the music and lyrics outside of the context of the musical play shall be divided as to 50% to the Composer and 50% to the Lyricist.

## PUBLICATION

7. Any monies accruing in respect of the following forms of publication shall be divided as described below:

- |                          |   |
|--------------------------|---|
| a) Book alone            | 100% Bookwriter                                     |
| b) Book & Lyrics         | 50% Bookwriter and 50% Lyricist                     |
| c) Music                 | 100% Composer                                       |
| d) Lyrics                | 100% Lyricist                                       |
| e) Music and lyrics      | 50% Composer and 50% Lyricist                       |
| f) Book music and lyrics | 33.3% Bookwriter, 33.3% Lyricist,<br>33.4% Composer |

Note: This list is not exhaustive, for example splits may be 50/50 for Bookwriter/Lyricist and Composer

#### CONSENTS - VOTING

8 Wherever the approval or consent of the Writers is required or permitted, the Bookwriter, Composer and Lyricist of the Musical Play shall vote as 3 separate units (regardless of the number of persons constituting each such unit), with each, and with unanimity required for all decisions but in no case shall one unit have more than one vote. All contracts for the production, presentation or publication of the Musical Play, or the disposition of all rights connected with the Musical Play, (other than for separate music and lyrics and for the book under clauses 6 and 7) shall require the signature of all the parties to this agreement.

#### TEXTUAL ALTERATIONS AND OMISSIONS

9. Notwithstanding the provisions of Clause 8, alterations in, omissions from and additions to the book, music and/or lyrics of the Musical Play shall be subject to the exclusive prior approval of the Bookwriter, Composer and Lyricist respectively and any such changes made with their approval shall be deemed to be their respective copyright as per Clause 2.

#### MUSICAL APPROVALS

10. This clause does not apply unless all writers agree in advance that any decisions concerning the musical elements such as conductor, orchestrator, pianist, and musical orchestration and arrangements shall be subject to the exclusive prior approval of the Composer.

#### CONSULTATION AND DECISIONS

11. Each party to this agreement shall be given equal opportunity to be consulted, informed and involved in all discussions and negotiations relating to the Musical Play, its development and exploitation, as well as with respect to any and all rights in the Musical Play. Each of the persons constituting the Writers agrees to use all reasonable efforts and to act in good faith, and in cooperation with each other, in order to exploit the Musical Play for all purposes.

#### ADDITIONAL COLLABORATORS

- 12(a) In the event all of the parties agree to add or replace another party as a collaborator, each such additional person shall be deemed a party to this agreement for all purposes upon signing an additional signature page to this agreement with the written consent of all the then current parties to this agreement. Such additional collaborator shall not be entitled to any monies received prior to such signature in connection with the Musical Play unless specifically set forth on such signature page.
- 12(b) The Writers will negotiate in good faith with any additional contributor the alteration of any relevant terms in this agreement including but not limited to billing and share of income. Arrangements agreed in respect of royalty splits and billing and any other relevant matters should be set out on the additional signature page referred to in 12(a) taking into account any agreements made with a rejected collaborator if applicable.

#### REJECTION OF A COLLABORATOR

- 13 In the event no merger of rights has taken place, any two collaborative units may reject the third unit as a whole by written notice signed by each of the two remaining units and received by the rejected unit. It is agreed and understood that upon such rejection, all copyrightable material contributed by the rejected unit shall revert to him or her effective immediately upon rejection unless the rejected unit and the remaining units agree upon one of the following options:
  - a) If the remaining units and the rejected unit agree upon a payment amount (to be made by the remaining units to the rejected unit), the remaining units will not be able to use the copyrightable material of the rejected unit but the rejected unit will be entitled to use his or her own copyrightable material only insofar as such use does not in any way compete and/or interfere with the Musical Play. In no event shall the rejected unit receive billing credit, net proceeds, or any other benefit in connection with the Musical Play.
  - b) If the rejected and remaining units so agree, the rejected unit can assign or licence theatrical rights in their contribution to the remaining units. The remaining units will be entitled to use and make further changes, additions and deletions to the rejected unit's material, and the rejected unit shall make no further use of such material. In such event agreements relating to payment and billing will be amended by good faith negotiations. However the rejected unit shall not be a required party or signatory with respect to any approval or agreement for subsequent exploitation of the Musical Play.
  - (c) If no such agreement is reached, or if payment is not timely made, then the rejected

unit shall be entitled to the exclusive use of his or her own copyrightable material at will, and no such uses shall be deemed competitive with the Musical Play.

#### TERMINATION

- 14 The parties may terminate this agreement by the unanimous consent of all parties to this agreement. In the event of such unanimous termination, this agreement shall immediately terminate and shall be of no further force or effect whatsoever and all rights in the book, music and lyrics shall respectively revert in full to its respective copyright owner free and clear of any claims or rights of the others. Subject to the foregoing, each may deal with his or her own contribution without accounting to the other parties.

It is agreed and understood that the book of the Play shall be deemed a separate work, the copyright of which shall be owned by the Bookwriter, and the music of the Play shall be deemed a separate work, the copyright of which shall be owned by the Composer, and the lyrics of the Play shall be deemed a separate work, the copyright of which shall be owned by the Lyricist, as their respective interests may appear.

#### CREDIT

- 15 Authorship credit for the Play shall be as follows:

Book by:

Music by:

Lyrics by:

[or as applicable]

The names of each of the parties shall, in each instance, be in the same type size and prominence in all respects. In no event shall any contract dealing with the Musical Play [and/or the separate music and lyrics of the musical compositions contained in the Musical Play] provide that the name of any one of the relevant parties may appear without the name of the other.

#### NOTICES

- 16 All notices to any party shall be in writing and given by personal delivery, pre-paid registered or recorded delivery post, and shall be deemed given when so personally delivered or received, and shall be given in each case to all parties to this agreement. Notices by mail shall be addressed to each party's address as given above, or to such other address as such party may later specify by notice duly given.

#### ENTIRE AGREEMENT

- 17 This is the entire agreement between the parties. This agreement shall not be amended, modified or supplemented except by a written agreement signed by all the parties.

ASSIGNMENT

- 18 No party shall assign this agreement or its rights arising under this agreement [other than any rights to net receipts], without the prior written consent of the other parties.

BINDING AGREEMENT

- 19 This agreement shall be binding on the parties to this agreement and on their executors, administrators, personal representatives, successors and assigns.

NO PARTNERSHIP

- 20 It is expressly understood that the parties to this agreement do not form, nor shall this agreement be construed to constitute, a partnership or joint venture between them.

ENGLISH LAW

- 21 This agreement shall be governed by, interpreted and construed in accordance with the laws of England and Wales and the parties agree to submit to the jurisdiction of the English courts.

AGREED AND ACCEPTED

SIGNED BY:

Bookwriter

Composer

Lyricist

## Notes on the model collaboration agreement

**A collaboration agreement would normally be drawn up between the Writers wishing to contribute to a piece of musical theatre.**

**It is most commonly used when the writing is speculative rather than being commissioned, and in theory should be in place before the collaboration begins (although in practice this is not always the case). It could, however, be useful for a commissioned musical when the producer does not control all of the rights. The terms of any collaboration agreement may have to be subject to the terms of any agreement between the producer and the Writers.**

On the attached model agreement (see pages 17-22), square brackets denote an optional clause or phrase as appropriate.

The following notes have been designed to clarify any variations that might occur or encourage the potential collaborators to think carefully about how they might wish to deal with a given situation that differs from that envisaged by the document.

### **CONTRACTING PARTIES**

It might be the case that one party is contributing to more than one area, say music and lyrics, or book and lyrics. Also, there may be more than one individual providing any one of the elements. It is important that their responsibilities are clearly stated in the contract so that when the shares of income from the exploitation of the various elements are defined, they accurately reflect each individual's contribution.

### **CLAUSE I(B): WARRANTY**

Please note that if it is intended to adapt an existing work to create the musical play, such as a novel or a film, then it is incumbent upon the collaborators to check whether such work (usually called the Underlying Property) is still in copyright. If it is, then they must apply for permission to make the adaptation.

**It is strongly advised not to embark on any adaptation without having first obtained the necessary rights.** Obtaining permission can be a lengthy process, especially if the author is deceased and the rights are controlled by an estate or trust or a film company.

The collaborators should also be clear as to which of them is responsible for this research and who will pay for any options that are relevant, unless they are being commissioned by a producer, who has acquired the underlying rights.

### **CLAUSE 3: COLLABORATION/DEVELOPMENT PERIOD**

The length of the collaboration period will be dictated by the writers' own assessment of how long it will take to work on the piece, depending on their other commitments, speed of writing etc. This period can of course be subsequently extended by mutual agreement (although there should always be a specific cut-off date in the event of any extension).

The length of the development period should take account of the time taken by producers to assess material, for workshops to be set up and rehearsed, for producers then to make decisions about whether they wish to commit to a full production. This could be anything from 2-5 years.

### **CLAUSE 4: AGENCY**

It may be the case that more than one of the contributors has an agent, in which case the choice of who acts for the musical will have to be by mutual agreement, or it may be that several agents work together on it. In this case, the Writers need to be clear as to what commission is being charged to whom. Also, if any of the writers already has a contract with a music publisher, this will need to be taken into account in the context of an agent representing the work, as the music publisher may already control certain rights.

### **CLAUSES 5,6 & 7: GRAND RIGHTS, SMALL RIGHTS, PUBLICATION**

#### **Grand rights**

Performances of dramatico-musical works, whose music is specially written for them, namely: opera, operetta, musical play, revue, pantomime.

#### **Small rights**

Small rights are all those other rights which are not classed as grand rights. The divisions envisaged here apply when there is only one individual writing book, music and lyrics respectively, but can be varied to apply to any situation with more or fewer contributors (although the total share for each element should remain constant). In the context of foreign language exploitation, a translator's share should not be more than 30% of the Writers' total advances/royalties.

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## **CLAUSE 8: CONSENTS – VOTING**

Whilst this clause might seem rather dull and theoretical, it is important to decide whether or not unanimity is essential for decision-making. Once you are in a production situation and important creative decisions are required, it is all the more important to be clear about the process by which you arrive at them.

## **CLAUSE 9: TEXTUAL ALTERATIONS AND OMISSIONS**

Once again it is important for the collaborators to be clear between themselves how they agree any changes which they make to the musical. This is most relevant once you are in a development or production situation and changes are being requested by third parties.

## **CLAUSE 10: MUSICAL APPROVALS**

This is similar to Clauses 8 and 9 and specifically applies to approvals of personnel engaged for a production. You might also want to add for completeness' sake how decisions are made about choice of director, choreographer, etc.

## **CLAUSE 13: REJECTION OF A COLLABORATOR**

This deals with the process by which one or more of the collaborators can be dropped from the project. Once again this is only a suggested structure and you may wish to put in alternative terms. Be aware here also of the implications that having an underlying property might have on the ability of a rejected collaborator to use their material elsewhere. You would need to agree very specifically what happens in that eventuality.

## **CLAUSE 14: TERMINATION**

Be aware of the implications of an underlying property on the provisions of this clause.

## **CLAUSE 15: CREDIT**

The credits obviously need to be varied according to who has written what. The book credit almost always comes first, whether the same writer has written the lyrics or not. So you might have Book and Lyrics by X, followed by Music by Y or Book by X, Music and Lyrics by Y etc.

## **DEATH/DISABILITY**

Whilst it may seem unpalatable to think about such gloomy subjects, it is worth bearing in mind how you might deal with the possibility of one of the collaborators dropping out due to severe illness, disability or indeed death.

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You will need to think about the extent to which the remaining collaborators wish to be able to include the ailing collaborator (or their successors in the case of a death) in future decisions about the work. Also issues relating to billing and share of income will come into play if you need to replace the ailing collaborator.

Here follows a sample clause which might be used for reference:

In the event of the death of any of the parties [or significant disability which makes practical future participation by such party impossible] during the term of this agreement, then the remaining parties shall have the sole right to change the Musical Play (including, without limitation, those elements of it created by the deceased [or by the disabled party] ) or to select others in accordance with clause 8 to make such changes, and to negotiate and contract with regard to the Musical Play, and all agreements with respect to the Musical Play shall require the signatures of the surviving parties, but shall not require the signature of the successor in title or legal representatives of the deceased party [or of the disabled party]. Notwithstanding the foregoing, the surviving parties shall not change or otherwise decrease the compensation due to such deceased [or disabled] person under this agreement, or the billing accorded to them, without the prior written consent of such deceased party's successor in title or legal representative. The surviving parties shall cause to be paid to the successor in title or legal representatives of the deceased [or disabled] all amounts provided for in this agreement, and shall furnish copies of all agreements or other documents pertaining to such exploitation of the Musical Play to the successor in title or legal representative of the deceased. In the event that all parties to this agreement are deceased [or disabled], all transactions with respect to the Musical Play may be entered into by the legal representatives or successors in title of the parties to this agreement to the same extent and as though they were the parties to this agreement.

## **MERGERS**

Essentially a merger of rights entails all of the rights in the musical being fused in to one entity so that the constituent parts cannot ever be separated (excluding publishing rights, and small performing rights). The merger can include the producer in the ownership of the rights. It also means that the musical can only ever be performed in the form that it took at the point of merger, unless all parties agree to a change.

A merger of rights enables a producer to exercise greater control over the exploitation of the work and is far more appropriate to the United States where there is a much larger market for secondary exploitation and producers are eligible to participate in the rights from secondary exploitation for longer periods than in the UK.

We would advise that a merger with a producer is not really to be recommended. In the event that you wish to include provision for it, however, the following clauses might be useful.

1. As between the persons constituting the Writers, it is agreed that all rights of every kind and nature in the Musical Play shall be merged for all purposes upon the soonest of the following to occur: [Note: Pick one or two of the lines below and strike out the remainder]

First paid performance of a first-class production in the West End of London.

First paid performance of a production in a regional theatre.

----- number of performances in a fringe/showcase production.

----- of performances of a workshop.

2. Until said merger takes place or if it does not, or if this agreement otherwise terminates, each of the parties to this agreement hereby represents and warrants to each other party that such party shall not exploit or grant or allow to be assigned to any third party any rights (other than rights to payment) whatsoever in the music, lyrics or book without the prior written consent of the other parties. No merger shall apply to the music or lyrics or portions of the book which have been deleted from the Musical Play prior to the merger of the Musical Play. Such deleted material shall be controlled by and belong exclusively to the Bookwriter, Composer and/or Lyricist respectively, as the case may be, free and clear of rights of the other parties to this agreement or others claiming through them.

[This clause would need some amendment in the case of a musical based on underlying property, especially if the underlying property is in copyright. See the note on Clause 1 (b)]

## APPENDIX (B)

# Checklist for agreements

Have you considered all of the following?

1. Collaboration agreement – is this applicable?
2. Music publisher – is this applicable?  
(if so, refer to page 14 Small rights)
3. First class rights agreement with the producer – does it cover the following?
  - Fees (not on account of royalty)
  - Advances (on account of royalty)
  - Workshop(s) fee(s) paid in addition to writing fees
  - Royalties –
    - \* Shares between the Writers
    - \* Rate of royalty – pre and post recoupment
    - \* Royalty pool provisions if applicable
  - Grant of rights – licence or assignment
    - \* Copyright
    - \* Option period for first performance
    - \* Territory (territories)
    - \* Licence period
    - \* Other options on other territories (replica productions)
    - \* Subsidiary rights – producers' participation / define who controls the rights
    - \* Merchandising receipts – define what is included in merchandising receipts and the % split between the Writers, producers, etc
    - \* Cast album
    - \* Archival recording

- Audiovisual – producers’ participation / define who controls the rights
- Moral rights
- Approvals
- Billing
- Textual integrity (no changes without consent)
- Deleted music and lyrics
- Expenses
- First night seats / house seats
- Publicity excerpts
- Later collaborators (if any)
- Accounting (to cover royalties on box office receipts, and all other income controlled by the producer, eg merchandising, including inspection of accounts)
- Warranties - from the Writers and from the producer if applicable
- Assignment (of the agreement by the producer, subject to notification and the producer should remain liable for obligations)
- Default (by the producer)
- Notices (how to be served)
- No partnership (use a collaboration agreement rather than forming a legal partnership or joint venture)
- English law

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## Useful contacts

**ALCS** (Authors' Licensing and Collecting Society)

[www.alcs.co.uk](http://www.alcs.co.uk)

020 7264 5700

[alcs@alcs.co.uk](mailto:alcs@alcs.co.uk)

**BASCA** (British Academy of Songwriters, Composers and Authors)

[basca.org.uk](http://basca.org.uk)

020 7636 2929

[info@basca.org.uk](mailto:info@basca.org.uk)

**MCPS** (Mechanical-Copyright Protection Society)

Now part of the [PRS for Music](#) website

020 3741 3888

**Musicians' Union**

[www.musiciansunion.org.uk](http://www.musiciansunion.org.uk)

020 7582 5566

[info@theMU.org](mailto:info@theMU.org)

**PLR** (Public Lending Right)

[www.plr.uk.com](http://www.plr.uk.com)

01642 604699

**PRS for Music** (Performing Right Society)

[www.prsformusic.com](http://www.prsformusic.com)

020 7580 5544

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