

Musical theatre

Model collaboration agreement

www.writersguild.org.uk

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

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 ofmonths ("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 ofmonths 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

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,
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.
- (a) 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 above), 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 1(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.

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.

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)]

Checklist for agreements

Have you considered all of the following?

1. Collaboration agreement – is this applicable?
2. Music publisher – is this applicable?
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

DISCLAIMER

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Published in January 2021 by The Writers' Guild of Great Britain

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