

## **UK Theatre/WGGB Agreement for Writers working in Subsidised Theatres**

### **Appendix 2 – Digital Rights**

A2.1: Both UK Theatre and the WGGB confirm their commitment to live theatre and do not intend digital delivery of live performances to impact on the writing of new work specifically for the theatre. This clause A2.1 may be revised in twelve months' time if, in the opinion of the WGGB and or UK Theatre, its application in practice conflicts with its intention.

#### **A2.1.2: Timing.**

If the Manager wishes to acquire a licence to exploit certain digital rights in the play as more specifically set out in clause A2.2 below, the parties shall discuss the same no sooner than the day after the creative team for the play has been confirmed by the Manager (and, for the avoidance of doubt, subsequent to the acceptance payment for the play due in accordance with the Contract being paid to the Writer by the Manager) [and no later than [insert date]]. However, it is understood that there may be exceptional circumstances which require the Manager and the Writer to discuss the granting of a digital licence as part of initial discussions in relation to the commissioning of the play and that a digital licence may be put in place earlier or later by mutual agreement. In the event that the parties agree in writing that the Writer will grant a digital licence to the Manager, the licence set out in clause A2.2 below and the remaining provisions of this Appendix 2 will come into automatic effect without the need for any further documentation or formality.

#### **A2.2: Licence.**

Subject to the payment by the Manager to the Writer of the Licence Fee (as set out in clause A2.3 below), the Writer hereby grants to the Manager a licence (the "Licence") to make a recording of a live performance of the play (the "Recording") and to broadcast the Recording by way of a live stream contemporaneously with the presentation of the play or by way of subsequent "as live" broadcasts to an audience unlimited by territory, but limited by capacity to an equivalent to 100% of the capacity of each theatre in which the play is presented for the run of the play. Such licence shall be for a term of the play's entire run plus one week immediately thereafter (the "Term"). It shall be open to the Manager to expand the maximum capacity by mutual consent with the Writer. The Manager will charge a fee to its audience for access to the Recording. In the case of broadcast to vulnerable audiences and audiences in care and/or educational settings (excluding universities, and educational institutions not funded or maintained by central government or local authorities), the Writer confirms that such broadcasts of the Recording may be made available free of charge at the Manager's discretion.

#### **A2.3: Fees and royalties.**

In consideration of the Licence, the Manager shall pay the Writer a licence fee of 5% of the aggregate of the commission, delivery, and acceptance fee appropriate to the theatre's MRSL level (the "Licence Fee"). The Manager will also pay to the Writer a royalty of 8% of the Net Sales of the Recordings (the "Royalty"). 50% of the Licence Fee shall be recoupable from the Royalty. If the Recording is marketed to audiences in international territories with the intention of a deliberate broadcast for sale in those territories in addition to domestic audiences, then the Licence Fee shall be increased to 10% of the aggregate of the commission, delivery, and acceptance fee appropriate

to the theatre's MRSL level. "Net Sales" in this clause means the actual receipts of the Manager arising from the exploitation of the Recording hereunder less an amount equivalent to the current rate of VAT and any other tax levied thereon, discounts, credit card, charge card and sales commissions.

#### **A2.4: Extension.**

Subject to mutual agreement, and by payment on or before the expiry of the Term of an additional 5% of the aggregate commission, delivery, and acceptance fee appropriate to the theatre's MRSL level, or 10% if the Recording is marketed to audiences in international territories with the intention of a deliberate broadcast for sale in those territories in addition to domestic audiences (the "Additional Licence Fee"), the Writer will grant the Manager an extension of the Licence for a further period of 3 months from the expiry of the Term. For the avoidance of doubt, the Royalty shall be payable during any such extension to the Term and 50% of the Additional Licence Fee will be recoupable from the Royalty.

#### **A2.5: Subsequent usage and film and television rights.**

The Writer and the Manager acknowledge that all intellectual property rights in the Recording (but not for the avoidance of doubt in the underlying play) are owned by the Manager. However, for the avoidance of doubt, it is confirmed that, following the expiry of the Licence, there should be no subsequent usage of the Recording by the Manager, another entity, or a combination, without the express agreement of the Writer, save that the Manager may retain and use the Recording for archive purposes in perpetuity. Such archive recording may be made available to organisations involved in the provision of an assisted performance of the play. It is further confirmed that the Licence granted under this Appendix 2 is specifically for the Manager's Recording of its production of the play and does not include the granting of film or television rights in the original play to the Manager or any associated party as such rights are strictly reserved to the Writer.

#### **A2.6: Further exploitation of the Recording.**

In the event that the Manager wishes to further exploit its Recording with or without a third party, it is understood and agreed that the Writer shall be under no obligation to enter into any such agreements, which shall be dependent on the Writer granting their permission. The Writer shall be party to any such negotiations and shall be signatory to any agreements for same as these relate to the acquisition of a licence of the Writer's rights in and to the play. In the event that such negotiations occur, the Writer shall seriously consider in good faith any proposals that may be put to the Writer. No use may be made of the Recording (except as specified in these minimum terms) without a signed licence in place with the Writer including terms relating to the remuneration for same, in advance of any such use.

#### **A2.7: Consultation:**

When a Manager decides to proceed with a Recording, they will take reasonable steps to creatively consult with the Writer in a timely way. If a significant editing process is to take place before the Recording is distributed, the Writer will be entitled to review and provide to the Manager notes in respect of an edit of the Recording within 48 hours of the Writer's receipt of such edit. In any situation in which editing the Recording will materially alter the play, notwithstanding that the recording is a capture of a live performance where unplanned alterations may have occurred during the live show, then the Manager will consult and agree such changes with the Writer

within an agreed timeframe. Provided that the Manager consults with the Writer in the event that the Manager edits the Recording in a way which materially alters the play, the Writer confirms that the recording of the play by the Manager and the use by the Manager of the Recording in accordance with the Licence shall not constitute an infringement of the Writer's moral rights in the play.

**A2.8: Credits:**

The Manager shall ensure that the play and the Writer shall be credited in the form: PLAY TITLE by WRITER in the opening and end credits of the Recording. In the event that the play is published, the end credits shall include reference to the published edition of the play in a form to be mutually agreed by the Writer and the Manager.

**A2.9: Illegal downloading:**

The Manager will take reasonable steps to prevent the illegal downloading or distribution of the Recording. Where the Manager is made aware of specific instances of piracy/illegal downloading and distribution, the Manager must inform the Writer as soon as reasonably practicable.

**A2.10: Ticketing.**

The Writer and the Writer's representative shall be sent a complimentary link to a streamed or on demand performance of the Recording of their choosing, with reasonable notice given.

**A2.11 Music clearances.**

In the event that the Writer wishes to include in the play any music the rights in which are owned by a third party, the Writer acknowledges that the Manager may be required to edit such music out of the Recording in the event that the cost of the clearances of such music for exploitation of the Recording as set out in this Appendix 2 is beyond the financial resources of the Manager.