

## **The Agreement between The Federation of Scottish Theatre and the Scottish Society of Playwrights for the Commissioning of a Play.**

### **A) SCOPE OF AGREEMENT**

Set out in a form of contract attached to this Agreement are the Minimum Terms and Conditions for a new Play. These minimum terms and conditions will be applicable in every case when a contract is entered into by, on the one part, any theatre which has membership of the Federation of Scottish Theatre and, on the other part, any Writer whatsoever.

In no case should a play be staged without a contract being signed by both Writer and Producer in advance of the production. No contract should be offered or shown to a Writer by a Producer which varies in any way from the form of contract attached to this Agreement, and the contract should in every case be accompanied by a copy of this Agreement.

### **B) DEFINITIONS**

For the purposes of this Agreement and contract attached, the following definitions shall apply:

- i) **WRITER** - This shall mean and include the writer of a commissioned play, writer of a non-commissioned play, translator (but not a literal translator whose work is not contracted for performance), a writer whose work is created wholly or partly from improvisations, lyricist, writer of the book of a musical, writer of a play adapted from another form such as a novel or poem or story of any other kind of adaptation. All terms and conditions of contract apply to a writer-in-residence or writer in receipt of an award.
- ii) **PLAY** - This shall mean a text (whether expressed in words or music or other notation) together with stage directions.
- iii) **PRODUCER** - This shall mean the manager of any theatre company which has membership of the Federation of Scottish Theatre.
- iv) **TREATMENT** - This shall mean a brief synopsis which will suggest the idea for the play which the Writer has in mind eg storyline, character descriptions, setting, examples of dialogue. It is intended as an aid to clarify for the Producer and Writer whether or not they wish to proceed with the idea as outlined.

### **C) RIGHTS & COPYRIGHT**

The writer is not selling ownership but only certain rights regarding production and subsequent exploitation of the play. The Writer licenses the Producer certain rights to produce the play in consideration of payment made by the producer and of royalties to be received from the production. There may be, however, circumstances where more than one copyright has force within the same Play. The form of the contract attached assumes that the writer has copyright of the play.

i) **TRANSLATIONS & ADAPTATIONS** - Where the Writer translates or adapts the work of another person and where that work is in copyright, it shall be the responsibility of the Writer to agree with that person or his/her heir, executor or agent the proportional division due to each in terms of royalties and option payments as well as other relevant matters such as credits, so that the rights to be licensed are unencumbered and the several interests may act together as joint Licensor of the rights. The Writer will be regarded as sole Writer in respect of commissioning fees due under this Agreement and Contract but as co-writer with the other person in all other respects except where otherwise negotiated between the Writer and the other person. The same arrangement applies where the Producer has secured the unencumbered rights to a work which is to be translated and adapted.

In the case of a translation and/or adaptation of a work in the public domain the translator and/or adaptor shall be considered for the purposes of the Agreement as the Writer except in the matter of credit.

ii) **COLLABORATIONS**

Where the Play is the work of more than one person, as for example when there is more than one literary contributor, or where the Play contains a strong musical contribution, or significant choreography, the interests of the contributors shall be aggregated and the terms of this contract (in respect of fees and royalties) shall be applied pro rata in proportions to be mutually agreed between the several interested parties. The nature of the collaboration and the credit due to the contributors should be agreed upon the signature of contract.

iii) **MUSIC**

The Producer shall be responsible for clearing at his/her expense the rights and licenses for any incidental music used in the Play whether or not requested in the stage directions of the Play.

#### **D) MULTIPLE PLAY PERFORMANCES**

Where three or more plays are presented in one programme, the fees and royalties shall be apportioned between the writers pro rata in proportions to be mutually agreed in advance. In any case the aggregated fees and royalties shall not be less than the minimums laid out in this contract for a full length play.

#### **E) DISCONTINUED COMMISSIONS**

Where the Producer and Writer agree to discontinue a commission, all rights revert to the Writer. The Writer is free to enter unencumbered into a new contract with a new Producer.

#### **F) MONITORING GROUP**

To monitor the practise of this Agreement and Contract, a group comprising of three representatives each from the Scottish Society of Playwrights and Federation of Scottish Theatre will meet quarterly.

## **G) EXCEPTIONAL CIRCUMSTANCES**

We emphasise that this Agreement and Contract should be seen as comprehensive.

This Agreement assumes that there will be virtually no circumstances where the minimum terms set out in the Contract attached will be inapplicable. Before waiving any part of this Agreement or Contract, an individual Producer or Writer should seek advice from the Standing FST/SSP Committee set up to monitor the practice of the Agreement.

## **H) LEGAL OBLICATIONS OF WRITERS AND PRODUCERS**

While it is hoped that most relationships between writers and producers will be constructive and fruitful, the contract, code of practice and commissioning brief exist to outline the parameters within which the commissioning takes place. In signing the contract for a commission, the writer and producer are undertaking legal responsibilities therefore it is important that the Producer and Writer discuss the commissioning brief, schedule of deadlines and the working process and understand their obligations in advance of signing the contract. Writers and Producers should be honest with each other about their ability to deliver by certain dates. Changing of the commissioning brief by the Producer or late delivery of a draft script or script, without prior agreement, constitutes a breach of the agreement and gives the affected party rights of redress. Any change in the terms of the agreement requested by the Producer must allow adequate time for delivery and be mutually agreed. Either party may serve formal notice on the other indicating that he/she is in breach of the agreement and requiring him to remedy the breach within a specified period of time. Failure to remedy the breach within such period of time may give rise to the other party terminating the agreement and also giving the other party grounds to claim damages in respect of breach.

The FST/SSP standing committee operates a conciliation procedure which any member of the FST or SSP can use when a disagreement arises. The committee can also provide advice on the agreement and agree variations in special circumstances.

**THE MINIMUM TERMS CONTRACT FOR THE PRODUCTION OF NEW PLAYS AGREED BY THE SCOTTISH SOCIETY OF PLAYWRIGHTS AND THE FEDERATION OF SCOTTISH THEATRE LTD**

**This contract details the minimum terms and conditions agreed by the above parties. While the writer may obtain terms more favourable than those in this contract, the writer may not waive any part of the contract or accept terms and conditions less favourable than those contained herein.**

**A joint committee composed of SSP and FST members will agree to monitor the operation of this contract by meeting quarterly.**

A contract made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

BETWEEN \_\_\_\_\_

of \_\_\_\_\_  
(hereinafter called “the Producer”) of the one part

AND \_\_\_\_\_  
(hereinafter called “the Writer) of the other part

**1. CONSIDERATION AND RIGHTS**

a) Consideration

In Consideration of payment by the Producer to the Writer (as provided in clauses 2 and 3) for a work at present entitled

\_\_\_\_\_  
(hereinafter called “the Play”)

the Writer grants to the Producer, the rights set out in Clause 1b below.

b) Rights

The exclusive right to present on tour to \_\_\_\_\_ and /or at \_\_\_\_\_ a first production of the play, provided that this right will expire \_\_\_\_\_ weeks (not more than 39 weeks) after the play’s first performance. This right may be extended by a further \_\_\_\_\_ weeks (not more than 13) on payment of £ \_\_\_\_\_.  
*Touring productions should name territories being toured during first production.*

The play’s first performance shall be given not later than

i) 12 months from the date of delivery of the completed script  
or (one sub-clause must be deleted and initialled by both parties)

ii) the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

## 2. PAYMENT

The payment referred to in Clause 1 hereof shall be made to the Writers as follows

### A) Commissioned Play

i) £\_\_\_\_(not less than £554) on commission of treatment.

The Writer shall deliver the treatment by \_\_\_\_\_(to be mutually agreed)

The Producer shall have \_\_\_\_days (not more than 30) to decide whether to proceed further.

ii) £\_\_\_\_(Not less than £3634 minus any fee paid at (i) above on commission first draft). The writer shall deliver this first draft by \_\_\_\_\_(to be mutually agreed). The Producer shall then have \_\_\_\_ days (not more than 30) to decide whether to proceed.

iii) £\_\_\_\_ (Not less than £3634) on agreement to proceed

The writer shall deliver a final draft by \_\_\_\_\_

iv) £\_\_\_\_ (Not less than £1817) on delivery of completed script.

### B) Non Commissioned Plays

i) £\_\_\_\_ (Not less than £5540) on signature of this contract

The Writer shall deliver a final script by \_\_\_\_\_(To be mutually agreed)

ii) £\_\_\_\_ (Not less than £3545) on delivery of final draft

### C) Short Play

(Based on a minimum commission fee for a full length play of £9,085)

A minimum commissioning fee for a play of

up to 30 minutes	£3634
up to 60 minutes	£5451
60 minutes to under 90 minutes	£7268
over 90 minutes	£9085

## 3. ROYALTIES

a) The Producer agrees to pay the Writer a royalty of \_\_\_\_% (not less than 10%) of gross box office receipts (exclusive of VAT, credit card commissions, selling agents, commissions and library discounts).

### PROVIDED THAT

i) If there is more than one contributor to the work, the Writer's royalty may be less than 10% (To be mutually agreed by the Contributors and the Producer).

ii) Where the Play is performed before a non-paying audience (eg in the case of schools, community venues or roadshows) the Writer will receive a payment in lieu of royalties. This payment will be mutually agreed on by the Writer and the producer in advance of any such performance.

iii) If more than one play is included in any performance, the royalty (including the agreed minimum royalty) shall be apportioned between the Writers of the Plays.

b) The said royalty shall be payable to the Writer (or the writer's agent) in the following way:

Either:

i) Within ten days of the first performance of the play and on a weekly basis thereafter

or

ii) Within fourteen days of the last performance of the Play's run  
*(one sub-clause must be deleted and initialled by both parties.)*

Royalty payments shall be accompanied by a statement of the said box office receipts, certified by the venue manager and where relevant, under the terms of 3a ii, a statement of attendance figures certified by the Producer.

#### **4. OPTIONS**

a) Subject to the Producer having presented at least 15 performances of the Play within the period stipulated in clause 1(b) or as allowed for under clauses 13 (a) or (b) then the Producer may at any time on or before the expiry of 13 weeks after the Producer's last performance of the initial production of the Play acquire the sole and exclusive right to enter into a contract with the Writer to present the play or authorise its performance in the English Language (with the approval of the Writer not to be unreasonably withheld) within 12 months of the date of payment in the following territories on terms and conditions to be negotiated in good faith. Each of the following options is separate and must be bought separately by payment of sums not less than those quoted below, these sums being non exclusive advances against royalties. The contract must be executed within 4 weeks following the date of payment and no performances of the play shall be given until an agreement has been signed by both parties. If the Producer fails to enter into a written agreement within the said period and such failure is not attributable to any default or delay on the part of the Writer then the Producer's rights shall lapse and all right of presentation of the Play in the said territories shall remain with the Writer with full rights of use. Where the production is offered to any geographical area for less than 15 performances, the Producer and Writer can enter negotiations for an agreed fee per performance of not less than £75 per performance. Should any of these Options be taken up by the Producer and performances staged, the Writer hereby grants the producer the exclusive rights to continue to exercise the following Options for a further 39 weeks.

Option 1	Scotland (only pertinent if a tour of Scotland is not built into the original contract)	£750
Option 2	England & Wales (excluding London West End)	£750
Option 3	Northern Ireland and Eire	£750
Option 4	London West End (including a pre-London tour not exceeding 8 weeks for a straight play nor 12 weeks for a musical)	£3750
Option 5	Europe (excluding above territories)	£2250
Option 6	USA	£1800
Option 6a	Broadway	£3750
Option 7	Canada	£1800
Option 8	Rest of the World	£3000

## 5. PRODUCER'S PARTICIPATION

a) If the producer shall have presented the play for at least 15 performances and in accordance with Clause 1b of this Agreement then the Producer shall for a period of (not more than 4 years) from the last performance of the play, provided that the production is not mounted directly by, or in association with, the Producer

EITHER

i) receive royalties of % (not more than 1.5%) of box office receipts (exclusive of VAT, credit card commissions, selling agents' commissions and library discounts) from any subsequent worldwide production of the play

OR

ii) receive % (not more than 12.5%) of the gross amount of the Writer's income (excluding re-write fees) from any subsequent worldwide production of the play (including foreign language productions)

FOR FOREIGN LANGUAGE PRODUCTIONS ONLY CLAUSE ii) IS APPLICABLE.

b) Should the film, television, radio or video rights to the Play be sold within \_\_\_\_\_months (not more than 4 years) from the first performance of the Play and provided that the Play has been presented in accordance with Clause 1b of this Agreement, the Producer shall receive \_\_\_\_\_% (not more than 12.5%) of the gross amount of the Writer's proceeds from such sale.

c) The Producer shall have no share of the proceeds from rewriting the Play for television, film radio or video or any other media.

d) Agents fees not exceeding 10% may be deducted before calculating payments due under (b) above to the Producer. All sums due to the Producer shall be paid not later than 60 days after their receipt by the Writer (or the writer's agent) and shall be accompanied by a certified statement of accounts.

e) The Writer (or the Writer's agent) shall make every effort to inform the Producer of the Producer's liability to enter into negotiations for management royalties.

## **6. WRITER'S APPROVAL**

a) The choice of director, designer and actors for the Play shall be subject to prior agreement between the Producer and the Writer provided that:

- i) The Writer shall be aware of the Producer's artistic policy and financial resources
- ii) The Producer and Director shall have due regard to the integrity of the writer's work.
- iii) Neither party shall unreasonably delay or obstruct agreement.

b) No changes to the text or the title of the Play may be made except with the Writer's permission. Any such changes no matter at whose suggestion shall automatically become the sole property of the writer.

## **7. REHEARSALS**

a) The writer shall have the right to attend rehearsals at all times.

b) The writer shall at all times pay due consideration to the Producer's authority at the place of rehearsal.

c) In return for the attendance of the writer at rehearsals and/or rewriting during the rehearsal period, the Producer will pay the writer £\_\_\_per week (Not less than the weekly minimum wage being paid to performers and in any case not less than the current existing Equity minimum for actors or £\_\_\_per day pro rata). These payments shall be made on a weekly basis at the end of each week of the rehearsal period.

## **8. EXPENSES**

The producer shall reimburse the Writer for such expenses as the Writer may reasonably incur whilst engaged in other work related to the production such as contributing to the programme, doing interviews, attending production meetings or carrying out research for the Play at the Producer's request. These expenses are to be agreed in advance.



## **9. PUBLICITY**

- i) The Producer will consult with the Writer with regard to the promotion and publicity of the production.
- ii) With the possible exception of small newspaper adverts or “teasers”, the Producer shall cause the Play to be advertised as  
BY  
(To be mutually agreed)
- iii) The Producer shall accord the Writer credits of at least similar prominence to those accorded to the director or leading actors.
- iv) The Writer reserves the right to use a nom de plume provided that this is specified in advance of signing the contract.
- v) The Producer will remove the writer’s name from the publicity or will take all reasonable measures if the Writer disclaims the production.
- vi) The Producer shall make every effort to procure payments for the writer in line with TMA/Equity Agreements, from any broadcasting company where an excerpt from the production is transmitted.

## **10. PRODUCER’S CREDIT**

Where the Play develops further (including transfers, broadcasting, publication etc) the Writer will strive to ensure that the first production and the producers name is sufficiently accredited in the programme and publicity material with the words: “First performed” followed by the date of the first performance.

## **11. SCRIPTS**

The Writer will provide a fair typed final draft which will remain the property of the Writer. The Producer shall have the right to make as many copies of the script as are required which will remain the property of the Producer. The Producer will provide the writer with a copy of the final production script.

## **12. COMPLIMENTARY TICKETS**

The Writer shall be given at least four complimentary tickets for the production and may attend any performance of the play, seating accommodation being subject to availability.

### **13. FAILURE TO PRODUCE**

a) Should the Producer fail to produce the Play as agreed in Clause 1(b) of this contract and where this failure is due to matters outwith the Producer's control such as, but not in limitation of fire, flood, explosion, national mourning or stoppages in consequent of a trade dispute then Clause 1(b) may be amended to allow for such period as the producer has been precluded from presenting the play. After such a situation has continued for three months however, either party shall be entitled to give the other written notice terminating the contract without prejudice to any fees already paid.

b) Should the Producer fail to produce the Play as agreed in Clause 1(b) of this contract and where this failure is due to casting difficulties or the like, the Producer, on payment of £\_\_\_ (being a non returnable advance against royalties) shall have the option to extend the period of rights for a further \_\_\_\_\_ weeks.

c) Should the play not be performed in terms of Clause 1(b) or as allowed for a Clause 13(a) and (b), all rights shall revert to the writer.

### **14. COPYRIGHT**

The copyright of the Playscript shall remain vested in the Writer and no rights are granted to the Producer other than those specifically granted in this Agreement.

### **15. MORAL RIGHTS & WARRANTY**

The Writer asserts the moral right to be identified as the author of the Play. The Writer warrants that she/he is the sole author of the Play which to the best of the Writer's belief contains no defamatory matter or infringes the copyright (or any other rights) of any person.

### **16. VARIATIONS & ASSIGNS**

No clause of this contract may be altered or rights within it subleased or assigned unless agreed by both parties and expressed in writing.

### **17. SUCCESSORS**

The contract shall be binding on the executors, administrators, permitted assigns and successors of both parties.

**18. WRITER'S AGENT**

The firm of

\_\_\_\_\_ of \_\_\_\_\_ is hereby authorised as the Writer's agent.

**19. ARBITRATION**

a) Any dispute arising out of this Agreement shall in the first instance be referred to a Joint Committee composed of a minimum of three representatives each from the Scottish Society of Playwrights and the Federation of Scottish Theatre. Failing settlement, the dispute shall be referred to a single arbiter to be mutually agreed, or failing agreement, to be appointed by the Dean of Faculty of Advocates. Such arbitration shall not prevent either party from subsequently taking the dispute to law, where the issue will be decided according to the law of Scotland.

I, \_\_\_\_\_, being the author of the work at present entitled \_\_\_\_\_ hereby assert generally my moral right to be identified as its author.

AS WITNESS the hands of the parties aforementioned this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
(the Writer)

\_\_\_\_\_  
(the Producer)

WITNESSED BY:

WITNESSED BY:

1.  
\_\_\_\_\_

\_\_\_\_\_

of \_\_\_\_\_

of \_\_\_\_\_

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\_\_\_\_\_

2.  
\_\_\_\_\_

\_\_\_\_\_

of \_\_\_\_\_

of \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

for the Writer

for the Producer