

DATE: \_\_\_\_\_

PARTIES:

THEATER: \_\_\_\_\_

PRODUCER: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

**WHEREAS:**

A. \_\_\_\_\_ (Author) has written a play entitled \_\_\_\_\_ (the "Play") and \_\_\_\_\_ (Producer) has acquired from Author the exclusive rights to exploit the Play as a commercial production.

B. Theater wishes to be involved in the development of the Play and to obtain the right to present the first fully staged non-commercial presentation of the Play \_\_\_\_\_ ("Theater's Production") at the venue owned and operated by \_\_\_\_\_ (the "Facility").

C. Producer wishes to develop the Play and has agreed (i) to permit Author to license the right to present Theater's Production and (ii) to provide certain enhancement funds to Theater in support of Theater's Production all subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, it is agreed as follows:

1. **INCORPORATION:** The foregoing "WHEREAS" clauses are incorporated herein as if fully set forth and made a part of this Agreement

2. **GRANT OF RIGHTS:** Producer has executed or will execute an agreement with the Author which will grant Producer the right to produce first-class and second-class productions of the Play in the United States and Canada, with further options for the British Isles and Australia/New Zealand, including, without limitation, the right to produce or authorize developmental and not for-profit productions ("Grant of Rights"). The Grant of Rights shall include Theater's Production (as hereafter defined) and permits Theater to contract directly with the Author for the not-for-profit production at Theater necessary for Theater to produce the Play as set forth herein. The Grant of Rights shall include without limitation the right to advertise, promote and publicize the Play at the Theater in all media.

3. **TERM OF LICENSE:** The term \_\_\_\_\_ (the “Term”) shall commence on the date of this Agreement and shall continue through the last public performance of the Play at Theater's Facility after which, subject to the terms of this Agreement (including without limitation, Theater’s rights in respect of Subsequent Productions (as that term is hereafter defined)), all rights herein granted to Theater in and to the Play shall revert to Producer and Author, as their interests may appear. The rehearsal, preview and performance schedule for the production of the Play at Theater's Facility shall be as set forth in Schedule A attached hereto.

4. **TERMS OF THEATER’S PRODUCTION:** The following shall apply to the Theater’s Production:

4.1 **Compensation, Travel and Accommodations for Author.** Theater shall provide the following terms for Author in respect of Theater’s Production. Producer warrants and represents either (i) that Author shall accept such terms or (ii) if Author does not accept such terms, any additional payments or consideration in respect of Theater’s Production shall be solely the Producers’ responsibility including but not limited to: (a) the royalty payable shall equal five percent (5%) of gross weekly box office receipts (“GWBOR”) as is customarily defined and calculated by Theater, and which Theater confirms is or will be on a most favored nations basis with all authors of non-musical plays presented by Theater in the same season; (b) Author shall be provided ground transport via (Locations) for auditions and for the rehearsal and preview period; and (c) Theater will provide Author with company housing for the tech/preview period including opening night in Sag Harbor.

4.2 **Production Budget.** Theater shall present the Theater’s Production substantially in accordance with the proposed production budget attached hereto as Schedule C, subject to Theater’s receipt of the Enhancement Funds, and subject further to the terms of this Agreement.

4.2.1 Theater shall have sole authority and responsibility for the production budget including, without limitation, determining salaries, fees, materials, costs and publicity costs in accordance with Theater’s customary practices. Theater and Producer acknowledge and agree that the production budget attached hereto and incorporated herein as Schedule C (the “Budget”) is based on mutual consultation and approvals of Theater and Producer. In any event and notwithstanding anything contained in this Agreement, Producer shall not be obligated to provide funds in excess of the Enhancement without its further written approval to such increased amount.

4.2.2 Any additional costs or expenditures in connection with Theater’s Production (collectively, “Additional Costs”), including without limitation in connection with

materials, labor, costumes, lights, props, sound, musicians, actors' salaries, designers and rehearsal space that are specifically requested and approved by the Producer which cause the Actual Budget or load-out expenses to increase whether such costs are requested by creators, Producer or otherwise, shall be the sole responsibility of Producer. In that regard, if during pre-production development work, as well as rehearsals, previews or performances of the Theater's Production, changes in the script, designs or execution of the physical production of the Play or in the number or composition of performers, musicians or technical personnel required for Theater's Production are so requested, Theater shall not implement such change if such change creates an Additional Cost without Producer's approval. All Additional Costs requested and approved by Producer shall be paid immediately upon Producer's receipt of an invoice from Theater. Except as aforesaid, all Additional Costs shall be the sole responsibility of Theater.

4.2.3 Both parties recognize and acknowledge that Theater is under no requirement or agreement to construct any part of the physical production for purchase by the Producer and/or travel to another physical space. Notwithstanding the foregoing, Theater agrees to consult with Producer as to the set design of Theater's Production.

#### 4.3 Enhancement Funds.

4.3.1 Producer agrees to contribute and pay to Theater the amount of One Hundred Thousand Dollars (\$100,000) (hereinafter referred to as "Enhancement Funds") towards the Production Budget, payable on the following schedule:

One-third upon mutual execution hereof, but in no event later than \_\_\_\_\_  
(Date);

One-third no less than ninety (90) days prior to the first rehearsal date (scheduled to occur in spring 2020 (Theater to provide at least 30 days prior notice of first rehearsal date to Producer); and

One-third no later than one (1) week prior the first rehearsal date.

Producer acknowledges that TIME IS OF THE ESSENCE with regard to Producer's delivery of each of the payments hereunder. All Enhancement Funds shall be made by bank wire to the bank designated by Theater. In the event of Producer's abandonment of its activity with respect to the Play (including Theater's Production) at any time for any reason, or in the event of failure by Producer to provide the full amount of the Enhancement Funds required under this Agreement, Theater will have the right to abandon its production of the Play, or at its sole election to, continue to produce its production of the Play, and in any event shall be entitled to retain or recover as liquidated damages all Enhancement Funds contributed as of the date of such abandonment and shall have no further obligation to Producer hereunder. Theater agrees to accept and Producer agrees to pay the Enhancement Funds that are due and

payable up until the date of such abandonment as full and final damages in the event of Producer's abandonment.

4.3.2 Theater shall not be obligated to pay to any actor or other creative personnel, out of either the Enhancement Funds or Theater's own funds, any sum above Theater's customary rates or payments for similar services, per diems, housing or other costs of retaining personnel.

#### 4.4 Approvals.

4.4.1 Theater shall have complete control of all creative, artistic and business matters regarding Theater's Production including, without limitation, selection of cast, sound, lighting and costume designers, director and choreographer, and all advertising, publicity and marketing (including artwork and logo). Notwithstanding the foregoing, Theater shall

fully and regularly consult with Producer and endeavor in good faith to address Producer's comments regarding such matters.

4.4.2 Producer and Theater hereby mutually pre-approve, and Theater agrees to use commercially reasonable efforts to engage (subject to Theater being able to reach a mutually acceptable agreement on terms consistent with its customary practices), the personnel listed on Schedule B attached hereto. In the event Theater is unable despite Theater's commercially reasonable efforts to reach agreement for the engagement of any of the personnel listed on Schedule B, Producer shall have the right to approve any replacement(s) to be hired by Theater for such position(s), such approval not to be unreasonably withheld. Without limiting the generality of the foregoing, Theater shall use its regular staff (and third party vendors, as customarily used by Theater) to perform all of the services that are customarily performed by Theater's staff (or by such third party vendors) for Theater's productions. The cost or expenditure for any staff or vendor requested by Producer and approved by Theater other than the foregoing shall be an Additional Cost and such cost and expenditure will be borne solely by Producer.

4.4.3 Theater agrees that in entering into agreements with the Author, director, choreographer, designers, cast and any other personnel or suppliers in connection with Theater's Production, Theater shall not make a commitment to any such personnel for any other production or use of the Play subsequent to Theater's Production, except as required under the then-current minimum terms of any collective bargaining agreement of applicable unions (e.g., Actors' Equity, the Society of Stage Directors and Choreographers, the United Scenic Artists, American Federation of Musicians Local 802) or with Producer's prior written consent.

4.5 Billing for Theater's Production. Theater shall provide credit to Producer on the title page of all programs for the presentation of the Theater's Production on a separate line at the bottom of the Theater's Production program substantially as follows (typographical elements and form to be in Theater's discretion but shall substantially appear in the following form):

“by special arrangement with \_\_\_\_\_ (Author) and \_\_\_\_\_ (Producer)” No casual or inadvertent failure to comply with the provisions of this paragraph shall be deemed a breach of contract unless same can be rectified and shall not be rectified, prospectively, promptly after written notice from Producer to Theater.

4.6 House Seats/Opening Night Seats for Producer for Theater's Production. For each paid public performance of the Theater's Production, Theater shall cause two (2) pairs of house seats in good orchestra locations to be held for purchase by Producer at regular box office prices at any time up to seventy-two (72) hours prior to such performance. In addition to the foregoing, during preview performances one (1) pair will be held on a complimentary basis for the use of Producer, with additional complimentary seats during previews for Producer upon request and subject to availability. Preview performance tickets will be held until 48 hours prior to such performance. Twelve (12) pairs of seats shall be made available for the official opening until 96 hours prior to such performance, of which six (6) pairs shall be complimentary, and Theater shall provide Producer with accompanying opening night party passes (if any) for all opening night seats on a complimentary basis. Theater will exert all good faith efforts to accommodate Producer's additional requests for opening night seats.

4.7 Box Office. As between Theater and Producer, all monies collected by Theater by reason of the Theater's Production shall belong to Theater. The price of the tickets for Theater's Production shall be determined solely by Theater.

4.8 Physical Production. Provided Producer is not in material breach of Producer's obligations hereunder, Producer shall have the right to elect to own, at no additional cost to Producer, the non-stock physical production elements of the Theater's Production, including without limitation sets, costumes, props, artwork and logo and any other elements of the physical production of the Play owned by Theater (collectively, the "Production Elements") on the following terms:

4.8.1 It is understood and agreed that the Production Elements shall not include any electrical equipment, hardware, costumes, furniture, props, drapes or other physical production elements either rented or taken from Theater's standing stock and not purchased specifically for the Theater's Production from the Actual Budget, which standing stock shall remain the property of Theater.

4.8.2 Producer shall notify Theater not later than ten (10) business days prior to the close of the Theater's Production of its intentions regarding the Production Elements. If

Producer elects to own the Production Elements, it shall make arrangements to take possession of the Production Elements, at Producer's sole expense, within twenty-four (24) hours of the close of the Theater's Production. If Producer elects to own the Production Elements, Producer shall be responsible for all costs associated with packing, loading out, transporting or storing any of the Production Elements. If Producer fails to notify Theater or take possession as and when set forth herein, then Producer's right thereto shall be terminated and Theater may take such action with respect to the Physical Production as it deems appropriate in its sole discretion with no obligation to Producer.

4.8.3 Producer acknowledges and agrees that Theater's transfer of the Production Elements hereunder neither confers nor grants any rights whatsoever to Producer in the designs and/or intellectual property contained in such Production Elements and that the use by Producer of any Production Elements in any production of the Play shall be subject to the requirements of copyright or other laws, or applicable collective bargaining agreements, with respect to the rights of the creator(s) and/or designer(s) of such Production Elements, and that Producer shall be solely responsible for entering into any additional agreements with, and/or making any and all additional payments to, the creators and/or designers of such Production Elements as may be required in connection with such use.

4.9 Final Accounting. As soon as practicable after the close of Theater's Production, Theater shall present to Producer a final reconciliation of the Actual Budget supported by financial statements showing actual expenses.

## **5. THEATER'S PARTICIPATION IN SUBSEQUENT PRODUCTIONS OF THE**

**PLAY**: Provided Theater has produced Theater's Production for its full scheduled run, or unless terminated with Producer's consent or due to a force majeure event after at least sixteen (16) paid public performances including an official press opening, the following will apply in the event Producer (or any entity which it controls, which controls it or with which it is in common control) produces, co produces or licenses one or more productions of the Play (each, a "Subsequent Production"):

5.1 Assumption of Obligations. Producer will assume and pay all of Theater's obligations in respect of each Subsequent Production, if any, arising out of any agreement with the actors, directors, choreographers, designers and other creative personnel engaged for the Theater Production subject to 4.4.3 hereof;

5.2 Producer's Indemnity. Producer will fully indemnify and hold Theater harmless from any claims arising out of (i) any exploitation of the Play by Producer and/or its licensees, including without limitation any Subsequent Production, including, but not limited to, any and all compensation, penalties, conversion payments and/or obligations that arise under any collective bargaining agreement(s) (as such agreement(s) relate to future productions of the

Play produced by Producer, subject to 4.4.3 hereof) or, (ii) under Theater's contract(s) with third parties rendering creative services to the Theater's Production, by reason of any such third party's failure to receive from Producer and/or the producing entity under Producer's license or control an offer to render such services for such Subsequent Production;

5.3 Theater's Financial Participation. Theater will be entitled to receive the following in connection with each Subsequent Production:

5.3.1 A royalty ("Royalty") equal to one and one-half percent (1.5%) of GWBOR, subject to any pool, modification, or waiver agreed to by all of the other royalty participants (excluding stars and/or the theater) on a pro rata and pari passu basis.

5.3.2 An amount equal to 5% of 100% of the net profits ("Net Profits") of the initial Subsequent Production, the Broadway production (to the extent not the initial Subsequent Production), the West End production and the initial US/Canada touring production, commencing at 110% of recoupment of the applicable company (provided that if any other profit participant, other than the initial Subsequent Production as "mother company" if it licenses rights to a later Subsequent Production, starts to participate at an earlier point in connection with any of the aforementioned companies of the Play, Theater's participation will likewise commence at such earlier point) which is produced, co-produced or licensed by Producer or its affiliates on a company-by-company basis. There shall be no deduction of any third-party share of net profits in calculating Theater's share of Net Profits. Net Profits shall be defined as defined in the offering documents of the applicable producing entity (and if not defined therein, then as defined in the U.S. commercial theater industry) and Theater's share of Net Profits shall not be accumulated or be subject to a right of recall regardless of whether the Net Profits of the investors in such productions may be accumulated or subject to recall. It is understood that with respect to additional companies of the Play, if any, formed subsequent to the initial first class company ("Initial Company"), Theater will receive a royalty and Net Profits share directly from such additional companies. Producer warrants and represents that all of their (and their affiliates) rights including without limitation their share of subsidiary rights revenue from Author will be assigned to the Initial Company and will be included in Net Profits payable to all Net Profits participants, including to Theater, as provided hereunder.

5.3.3 Payments of Royalty and Net Profits shall be paid to Theater in a manner as and when they are paid to all other recipients and shall be accompanied by copies of accounting statements prepared and signed by Producer's accountant that shall show weekly expenses and net weekly operating profits (or such other information applicable to the calculation of said royalties), and information in statements accompanying payments of royalties and/or net profits on will be a favored nations basis with other royalty (and Net Profit) participants.

5.3.4 To the extent, based on the run of Theater's Production, Theater vests in a portion of the Author's net proceeds from subsidiary rights dispositions in the Play, Theater agrees that any such participation, shall be automatically and without further action assigned to the Original Commercial Company (as defined in Paragraph 5.9.1 below) upon such date, if ever, that the Original Commercial Company vests in an additional percentage of Author's net proceeds as a result of the production of the Initial Company.

5.4 Theater Billing, Bio:

5.4.1 Theater shall be entitled to receive the following: (i) If \_\_\_\_\_ (Name) is not the director of Theater's Production and if (a) two of the following three elements: the 1) director; 2) a member of the principal cast; or 3) at least 50% of the principal designers (set, costumes, light, sound) performing services for Theater's Production are the same for any Subsequent Production, then Theater shall receive credit as \_\_\_\_\_ (Theater Name)'s Production of" above the title and in last position immediately above the title in the same size and type accorded to any other producer, and elsewhere wherever the title of the Play is billed; (b) otherwise Theater will receive, "in association with" billing above the title and in last position immediately above title in the size, type, where and when, in addition to the title page, anytime the title of the Play is billed;

5.4.2 Theater shall receive (i) a biography in all Playbills or programs for the Play, subject to reasonable space limitations, but not less than 150 words, along with a listing of key staff members (up to 16 individuals) in the Playbill or program staff page; (ii) the foregoing credit on cast albums in the liner notes; (iii) the foregoing credit on Producer controlled internet web sites; and (iv) the foregoing credit, subject to commercially reasonable efforts on the part of Producer, on audiovisual productions of the Play on a shared card with Producer.

5.4.3 Theater shall also receive the following credit on the footer of the title page of all programs of each Subsequent Production, immediately below the footer credit to (Premiering Theater) for presenting the world premiere of the Play, and Producer will also insure that Author includes the following credit in all published editions of the Play, in size of type no less than the size of the designers' credit, as follows:

\_\_\_\_\_ [Title of Play] was produced on  
\_\_\_\_\_ [Date],

5.5 House Seats/Opening Night Seats for Theater for Subsequent Productions. Theater will be entitled to purchase two (2) pairs of house seats in center orchestra center aisle rows 5-10 for each performance of the Play under Producer's license or control (except that Theater party performances, group sales performances, press performances and during the voting period for the Antoinette Perry Awards, none shall be available for purchase, provided however that Producer will accommodate reasonable requests for house seats during such time). In addition to the foregoing, for the official opening night of the Play in New York City, Producer shall provide Theater, or its designees, with twenty (20) pairs of



complimentary house seats of which 10 (ten) pairs shall be in good center orchestra locations and five (5) pairs shall be in the good center mezzanine locations, with accompanying complimentary party passes if there is an opening night party following the official opening of the Play. For other official press openings elsewhere in the U.S. and Canada and in any other locations under the management, control and license of Producer, Producer shall make four (4) pairs of opening-night seats available on a complimentary basis in the center orchestra. House seats shall be set aside by Producer and be made available for purchase by the Theater or its designees up until ninety-eight (98) hours prior to each scheduled evening and matinee performance. Theater shall comply with and shall not violate the law of any jurisdiction (including New York) applicable to disposition of tickets with respect to the tickets allocated to Theater and to maintain and make available to Producer and the Attorney General of the State of New York such records as may be required to comply with New York law. All house seat requests from Theater shall be submitted to the Producer's general manager who will control and administer the assignment and disposition of same.

5.6 Ticket Buyer Information. Theater will be entitled to request the names, addresses and telephone numbers of all single ticket buyers of tickets to Producer's initial commercial production in New York City which shall be furnished to Theater only if the Theater owner and Telecharge or similar ticketing agency approves such request and if such information can be reasonably given by Theater owner or ticketing agency in conformity with their respective privacy policies, and provided Theater agrees in advance in writing to bear any associated costs. Producer shall likewise be entitled to request such information from Theater as to Theater's Production on the same terms.

5.7 Insurance. Theater will be added to Producer's errors and omissions and general liability policies obtained by Producer (or its affiliates) for each Subsequent Production.

5.8 [Intentionally omitted.]

5.9 Right to Invest. Theater will be entitled to the following in connection with each Subsequent Production:

5.9.1 Theater shall be entitled, at its election, to contribute and/or cause to be contributed up to twenty percent (20%) of the capitalization of the entity ("Original Commercial Company") formed by Commercial Producer to finance the Initial Company of the Play, as investors on a non-liability basis (e.g., limited partners of limited partnership or investing members of an limited liability company) and will be entitled to all entitlements in connection with such investment on a most favored nations basis with any investor of an equal or lesser sum (excluding the managing members or general partners, front money contributors or other contributors to the prior development of the Play, the Author, any underlying rights owner, and if applicable the owner of the Theater in which the initial commercial production is presented; the foregoing "Excluded

Investors”), it being understood that if Theater shall provide 15% or more of such capitalization and no other co-producer or investor is providing an equal or greater amount, that most favored nations treatment as to entitlements will not be sufficient and the parties will negotiate in good faith improved entitlement terms for Theater with respect to such investment. At all times Theater shall comply with all securities laws and regulations, and the instructions of Producer’s counsel, in respect of such investment rights. Theater’s (or its investors’) investment must be made within 20 business days after receipt of the applicable offering documents of the Original Commercial Company (including information reasonably disclosing the financial premiums to be awarded from the so-called “producers’ share” of adjusted net profits and other benefits to be extended by the Producer at various levels of investment/fundraising), with the amount committed authorized for immediate use and waiving right of refund (provided all investors are required to provide such authorization and waive such right). Producer shall have the right to reject any potential investor of Theater who is not “accredited” within the meaning of applicable securities laws or for such other reasons as Producer may determine in the exercise of its good faith judgement. To avoid overlap with Commercial Producer’s investors, Theater will not approach any potential investors with whom Commercial Producer is already in discussions or who have previously invested in one or more productions presented by Commercial Producer, and Theater will pre-clear anticipated investors with Commercial Producer to avoid conflicts (including providing a list of potential investors to Commercial Producer as soon as practicable after receipt of notice from Commercial Producer of its intention to capitalize the Original Commercial Company).

5.9.2 Theater shall have the right (but not the obligation) to invest (and/or cause to be invested by the same investors of Theater who invested in the Original Commercial Company, if applicable) up to a percentage amount of the aggregate portion of the capitalization, which the Producer, its principals, affiliates and/or the Original Commercial Company (collectively “Related Parties”) have the right to invest, of each additional commercial production of the Play equal to the actual percentage amount of the aggregate capitalization Theater caused to be invested in the Original Commercial Company, and such investment in any subsequent such company shall be on a most favored nations basis with any investor of the Related Parties of like or lesser sum with respect to each such additional production of the Play produced or co-produced by any of the Related Parties (other than the Excluded Investors), and on regular investor terms with respect to each such additional production of the Play licensed to an unrelated third party (in which the Commercial Producer and/or other Related Parties do not have a controlling interest) by any of the Related Parties. To the extent Theater elects to invest in a subsequent company less than its maximum percentage, such reduced percentage will become the percentage thereafter reserved for investment by Theater in connection with further additional commercial productions.

6. **REPRESENTATIONS, WARRANTIES AND INDEMNIFICATIONS:**

6.1 Producer. Producer hereby warrants and represents to Theater that:

6.1.1 Producer is fully empowered to enter into this agreement and to grant the rights provided for herein; that it will not assign, license or encumber the rights to the Play in any way that would derogate from the rights granted herein or the obligations to compensate Theater as provided herein;

6.1.2 To the best of Producer's knowledge, Author is the sole author of the Play, and its contributions to the Play, to the best of Producer's knowledge, are wholly original with Author or in the public domain, and that the Play has not been copied in whole or in part from any other work and, to the best of Producer's knowledge, the Play does not, and the use and presentation of the Play and the grant of rights as herein provided, will not conflict with, or infringe upon, any rights whatsoever of any person, firm, corporation or other entity; and Producer know of no claim or any legal proceeding alleging that the Play or use thereof or any rights therein violates, conflicts with or infringes upon the rights of any third person;

6.1.3 Producer will indemnify and hold harmless Theater, its officers, directors, employees, successors and assigns and any party claiming from or through Theater from and against any and all claims, liabilities, losses, costs, expenses, damages or recoveries (including payments made in settlement of any claim but only if the indemnifying party consents thereto in writing such consent not to be unreasonably withheld), which may be suffered or incurred by such indemnified party (including, without limitation, reasonable attorneys' fees, costs and disbursements incurred by such indemnified party) caused by or arising out of any claims relating to (i) a breach of any representations, warranties and/or agreements of Producer under this Agreement which are sustained by a court of competent jurisdiction or settled with Producer's approval (not to be unreasonably withheld) and (ii) Producer's (and its assigns or licensees) exercise of any of Producer's rights in the Play (including without limitation arising from any of Producer's (or its assigns or licensee's) productions of the Play) but excluding only any claims covered by Theater's indemnification hereunder.

6.2 Theater. Theater hereby warrants and represents to Producer that:

6.2.1 Theater is fully empowered to enter into this agreement and present Theater's Production of the Play as provided for herein.

6.2.2 Theater will indemnify and hold harmless Producer and Producer's officers, directors, employees, successors and assigns and any party claiming from or through

Producer from and against any and all claims, liabilities, losses, costs, expenses, damages or recoveries (including payments made in settlement of any claim but only if the indemnifying party consents thereto in writing such consent not to be unreasonably withheld), which may be suffered or incurred by such indemnified party (including, without limitation, reasonable attorneys' fees, costs and disbursements incurred by such indemnified party) caused by or arising out of any claims relating to (i) a breach of any representations, warranties and/or agreements of Theater under this Agreement which are sustained by a court of competent jurisdiction or settled with Theater's approval (not to be unreasonably withheld) and (ii) Theater's presentation of the Play but excluding only any claims covered by Producer's indemnification hereunder.

7. **NOTICES**: Any notice to be given hereunder shall be sent by personal delivery, by pre-paid overnight delivery service (e.g. Fed Ex), by confirmed facsimile delivery or confirmed electronic delivery. Any notice shall be deemed given when personally delivered or when actually delivered by such overnight delivery service, all charges prepaid, or when transmitted by facsimile or electronic mail. Copies of all notices shall be sent to the parties as hereto named above and, in addition copies of all notices to Theater shall be sent via email to (which shall not be deemed notice): (Theater Address)(Theater email) and copies of all notices to Producer shall be sent via email to (which shall not be deemed notice) to **(Producer Address and email)**
8. **AUDIT AND ACCOUNTING**: Producer agrees to keep and maintain complete true and accurate books and records of account in connection with the Play and agrees, as to all productions by Producer, to retain all such records for a period of not less than two (2) years after the payment to which the records apply or two (2) years after the close of each production of the Play hereunder, whichever is earlier. Producer shall furnish Theater copies of all contracts promptly upon their execution for any exploitation in which Theater has the right to any entitlement hereunder. Theater or its designee shall have the right, at its sole expense at the offices of Producer, at any time during regular business hours upon fourteen (14) days prior notice, to examine, inspect and audit such books and records and other material pertaining to the Play and the payments to the Theater hereunder and to make copies and extracts thereof. In the event of an underpayment of 5% or more, Producer shall bear the reasonable costs of such audit.
9. **ARBITRATION**:
  - 9.1 American Arbitration Association: Any dispute arising out of or in connection with this Agreement or any breach thereof shall be determined and settled by arbitration in New York City by a sole arbitrator with at least ten (10) years' active experience in the

entertainment industry pursuant to the rules and regulations then obtaining of the American Arbitration Association and any award rendered therein shall be final and conclusive upon the parties, and a judgment thereon may be entered in the highest court of the forum, state or federal, having jurisdiction.

9.2 Submission to Jurisdiction: By execution and delivery of this Agreement, Producer and Theater each respectively accept, for itself and its property, generally and unconditionally, the jurisdiction of the aforesaid Arbitration Tribunal, Courts and any related Appellate Court, irrevocably agrees to be bound by any judgment rendered thereby and in connection with this Agreement, and irrevocably waive any objection either party may now or hereafter have as to such venue of any such action or proceeding.

## 10. MISCELLANEOUS:

10.1 Notwithstanding any other provision of this Agreement, Producer acknowledges that since Theater is a not-for-profit corporation and tax-exempt organization, Theater is obligated to act exclusively in furtherance of its not-for-profit and tax-exempt purposes and that any actions taken in good faith by Theater in furtherance of its not-for-profit and tax-exempt purposes shall not be deemed a breach of any of Theater's obligations hereunder. If Theater believes that taking any action in furtherance of its not-for-profit and tax-exempt purposes may cause it to be in breach of any of its agreements hereunder, Theater will not take such action without first notifying Producer in writing.

10.2 This Agreement contains the full and complete understanding among the parties hereto, supersedes all prior agreements and understandings, whether written or oral, pertaining thereto, and cannot be modified except by a written instrument signed by each party hereto.

10.3 Nothing contained herein shall be deemed to create any association, partnership or joint venture between the parties. Each party may engage in other activities, including other theatrical and entertainment ventures, whether or not competitive with the other party.

10.4 This Agreement shall be binding upon and inure to the benefit of the parties hereto and any permitted licensees and assigns. Neither party shall have the right to assign this agreement without the prior written consent of the other party.

10.5 This Agreement is to be governed by and construed in accordance with the law of the State of New York applicable to contracts entered into and to be fully performed therein.

10.6 Paragraph headings herein are inserted for convenience only and are not to be construed as part of this Agreement.

10.7 If Theater shall be prevented from exercising any option hereunder, or if any production hereunder shall be interrupted, due to strike, walkout, other work stoppage, or other labor dispute, illness of stars, epidemic, fire, action of the elements, governmental order, act of God or public enemy, war, or any other cause beyond Theater's reasonable control during the period of Theater's rights hereunder, then such interruption or prevention shall not be deemed a breach of this agreement or a cause for forfeiture of Theater's rights hereunder (and the time for exercise of such right or the resumption of such production shall be extended for the number of days exercise was so prevented), provided however that if a failure to exercise any option or any interruption or prevention of production due to any such cause shall continue for sixty (60) days in the aggregate, then Producer shall have the right to terminate the Theater's right to exercise such option or its right to resume production (as the case may be) by written notice received by Theater not later than fifteen (15) days prior to the effective date of the termination of the Theater's rights; provided that Theater shall have the right any time before such effective date of termination to exercise such option or recommence such production, in which case the Theater's rights and this agreement shall remain in full force and effect.

10.8 Other than as set forth above, neither party may assign, pledge, mortgage or encumber its interest in this Agreement, or any rights or obligations hereunder, without the prior written consent of the other party.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the day, month and year first above written.

\_\_\_\_\_ [THEATER]

\_\_\_\_\_ [PRODUCER]

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Schedule A  
Rehearsal, Preview and Performance Schedule

First Rehearsal:  
First Performance:  
Opening:  
Closing:  
Extension Terms (if any):

Schedule B  
Personnel  
(May be updated by parties from  
time to time only in writing  
signed by Theater and Producer)

Director – [TBD]

Choreographer [TBD]

Musical Supervisor – [TBD]

Orchestrator – [TBD]

Set Designer – [TBD]

Costume Designer – [TBD]

Lighting Designer – [TBD]

Sound Designer [TBD]

Production Stage Manager [TBD]

Casting Agent – [TBD]

Cast [TBD]

Musical Director – [TBD]

Copyist [TBD]

Schedule C Production  
Budget