**Co-Production Agreement**

**By and Between THEATRE 1 and THEATRE 2**

The purpose of this document dated DATE is to set forth the terms and conditions of the Agreement between NAME OF THEATRE (hereinafter referred to as “XXX”) and NAME OF THEATRE 2 (hereinafter referred to as “YYY”), relating to the collaboration (hereinafter referred to as the “Co-Production”) of the Play entitled NAME OF PLAY (hereinafter referred to as “the Production” or "the Play") by PLAYWRIGHT (hereinafter referred to as “the Author”) and being performed in LOCATION and LOCATION 2 .

The Co-Production recognizes the significant contribution made by (ORIGINATING THEATRE) in assembling the creative elements involved in the Production and/or in bringing to realization the major physical elements (sets, props, costumes, sound, special equipment) of the Production.

In consideration of the foregoing and the mutual covenants contained herein, XXX and YYY hereby agree as follows:

1. **Scheduled Performances of the Play.** The Play will rehearse in LOCATION. The Rehearsal Period will be from DATE OF FIRST REHEARSAL through DATE OF LAST REHEARSAL. The Play is scheduled for its first preview performance in LOCATION on FIRST PREVIEW DATE at XXX and is scheduled to close no later than CLOSING. The Play, including applicable personnel, property, and effects will then transfer to YYY in LOCATION 2 with the first preview performance scheduled to be FIRST PREVIEW and the closing scheduled to be no later than CLOSING at YYY.
2. **Schedule**.

The Production schedule for the engagement is currently as follows:

First Rehearsal

First Technical Rehearsal

First Public Performance

Press Opening

Final Performance

First Technical Rehearsal

First Public Performance

Press Opening

Scheduled Closing

XXX and YYY shall not have the right to alter such schedule in any way, which might impact or affect the other Company without written approval of the other Company’s designated signatory, whose signature is attached hereto.

1. **Artistic Approvals.** It is the essence of the Agreement that XXX and YYY as original co-producers of the Play, shall collaborate as equal partners in the development of all artistic elements. The directors, designers, and the cast for the Play shall be selected with the mutual approval of XXX and YYY. It is hereby acknowledged and confirmed that Nataki Garrett will be the director. Replacement of any of the above artistic personnel will be made only upon the mutual approval of XXX and YYY.
2. YYY will be primary as the party who will produce creative elements for the Play. Scenery, costumes and properties for the Play (the “Physical Production”) will largely be constructed by YYY for use in both engagements of the Play. YYY and XXX will consult on all technical matters that may arise during the rehearsal period and construction of the Physical Production, either with representatives of XXX who may be in residence at YYY during rehearsal and construction or by telephone, email and/or fax. However, it is acknowledged that the final determination with respect to all technical matters that may arise during rehearsals and construction in LOCATION will be made by YYY and final determination of technical matters that may arise during mounting of the Play in LOCATION will be made by XXX.
3. **Production Arrangements.** It is mutually understood that YYY and XXX will each contract artists and staff for their respective production following the guidelines as outlined in this agreement and Schedule A Budget. In addition, each theatre is responsible for securing all necessary production rights from the Author’s licensing agent to perform the Play. Each theatre shall be responsible for the individual execution of contracts and the appropriate and applicable transfer riders of and to Directors and/or Designers and the arrangements of travel and housing for same. In cooperation, each theatre agrees to provide staffing consistent with union requirements and the requirements of the Production as mutually agreed.
4. The Director will make all attempts to cast actors who can commit to the XXX Production and the YYY Production. Contingent contracts for the actors will be used between YYY and XXX. Both companies will issue Transfer Riders for AEA actors. USA transfer contracts for set, costume, light and sound designers will be offered for both venues at the same time including all residency dates at each venue defined herein.
5. Each Theatre shall be responsible for compensating Artists and/or paying fees or costs for services due Designers. In addition, each Theatre will be responsible for the housing and transportation of all Artists and Designers who participate in the Production.
6. **Production Elements.** YYY will provide to XXX all Scenery, Props, Costumes, Wigs, Make-up, Sound Tapes/Programs and Special Equipment to be used for the XXX and YYY Productions, except as otherwise stated herein or through Addendum to the Co-Production Agreement attached heretofore, according to the following conditions:

A. All designs for the respective production are subject to the approval of XXX and YYY for their individual Production including but not limited to the mutual approval of all technical specifications of scenic elements prior to their construction by YYY as well as light and sound plots. In consideration of the foregoing, XXX and YYY shall each be individually responsible for any and all expenses incurred for the rental of specialized physical Production elements and/or technical support systems required specifically in each Theatre’s respective venue(s) and/or any and all additional lighting and/or audio equipment as may be identified and required for the Production at each Theatre.

B. XXX and YYY will combined spend approximately SHARED EXPENSE toward pre-production as set forth in Schedule A of the Co-Production Agreement as attached hereto with each Theatre directly compensating Artists and/or paying fees or costs for services rendered at each respective Theatre. Toward the sum total, XXX will provide YYY with the aggregate sum total of MONEY DUE TO YYY on the following schedule for said use of the physical production:

Upon signing of this Agreement

Upon first Rehearsal,

Upon the opening performance at XXX

The remainder of monies due to any Theatre in the Co-Production will be remitted following the completion of a final accounting of expenses incurred by each Theatre on behalf of the Co-Production. Said final accounting shall occur no later than 30 days following the close of the Production in LOCATION 2 on or before CLOSING.

Under no circumstances shall the total pre-production costs expended by YYY on behalf of the Co-Production incurred in association with the production in LOCATION 2 exceed THEATRE 1 EXPENSE without prior written approval from XXX’s designated agent and/or representative, whose signature is attached hereto, or is as otherwise noted herein, for those individual pre-production expenses that would create any overage.

Under no circumstances shall the total transfer costs expended by XXX on behalf of the Co-Production exceed THEATRE 2 EXPENSE without prior written approval from YYY’S designated agent and/or representative, whose signature is attached hereto, or is as otherwise noted herein, for those individual transfer expenses that would create any overage.

It is understood that YYY has created Schedule A based on past experience and based upon information provided by YYY and XXX, and that all expenses are approximations. However, XXX and YYY each enter into this Agreement based on those expenses detailed in Schedule A of the Co-Production Agreement as attached hereto and hereby agree that any overages anticipated by either individual Theatre must be discussed by and between and approved by the designated agent and/or representative for each Theatre, whose signature is attached hereto, or is as otherwise noted herein, and whose acceptance thereof shall be granted through written approval.

Additionally, if there is a savings in any singular budget line, said savings resulting thereof cannot be transferred to cover an overage in another budget line without approval in writing by both Theatres. However, if XXX or YYY must replace, repair, or alter any set, prop, or costume element because of an independent and specific decision made by the other co-producer, that additional cost will be subtracted from the final payment due. Said charges shall be limited to those associated with material expense and for the engagement of additional personnel or personnel hours by the Theatre and shall not be inclusive of any previously scheduled staff time. In the case of a prop or costume element that must be replaced due to ordinary wear during the performance run, it is agreed that both producers shall share equally the charges for such replacement. Each co-producer agrees to discuss any such replacement, repair, or alteration with its partner whenever possible.

Furthermore, either Theatre’s prior stated approval of a technical drawing shall be sufficient to absolve XXX of charges by the other Theatre due to construction errors, provided that YYY has fulfilled the construction of said element according to the specifications as set forth on the approved drawings as provided by the Scenic or Costume Designer.

Each Theatre shall make its best effort to prepare the scenery for transport to the subsequent Theatre in such a manner that will support the long-term well-being of the physical Production and will ensure safe arrival at the subsequent Theatre with minimal wear and tear resulting from shipping during transfer. Both parties acknowledge that customary adjustments and touch-ups will be required to the scenic elements and properties and such adjustments will not be charged against the final reconciliation of the Co-Production as set forth in this Agreement. It is expected that these adjustments can be accomplished within the period provided for the load-in of the Production. The expense of any adjustments or repairs that extend beyond “customary” shall be shared equally.

C. Each Theatre will maintain the physical Production during its run in a manner that will support the long-term well-being of the physical Production and will repair or replace any physical Production elements damaged or lost while the Production is in the possession of each individual Theatre and prior to its transfer to the subsequent Theatre.

D. All scenery, properties and costumes shall be considered the property of YYY except for those elements provided specifically for the production by XXX. XXX and YYY agree to share the total round-trip shipping costs for the production elements, with the understanding that in all likelihood much of the production elements will be disposed of in STATE OF THEATRE 1 and only those items, if any, pulled from XXX’s stock will be returned to STATE OF THEATRE 2, and that total transportation costs will reflect the reduction in costs for the reduced return shipping cost. If a third party indicates interest in a reuse of the production elements for a future production, XXX and YYY agree to negotiate mutually agreeable terms for the rental or sale of elements. All revenue from the rental or sale will be shared between the theatres.

E. In addition to the distribution of expenses set forth above, both Theatres agree to share equally and fully any and all savings from their budgets of “shared expenses” for the Play unless such savings are needed to offset mutually approved over-budget shared expenditures by the other Theatre.

F. YYY shall have reasonable access to all publicity media taken of the Production at XXX (for the purpose of marketing the Play both before and during the run of the Production at XXX). YYY shall be responsible for fees, charges, and or royalties associated with such publicity media by Photographers, studios, etc. of XXX’s choosing and credit photographer as per XXX’s agreement with Photographer.

1. **Shared Expenses.**

A. The Theatres agree to share fully and equally the costs of transporting the Actors from each Actor’s city of origin to LOCATION 1 and to LOCATION 2 and return to each Actor’s city of origin after both the LOCATION 2 and LOCATION 1 engagements as required and necessary, except as otherwise noted herein and/or through Addendum to Co-Production Agreement attached hereto.

B. The Theatres agree to share fully and equally the cost of travel for Director, Designers, and Playwright from Director’s, Designers’, and Playwright’s city of origin to LOCATION 1 and LOCATION 2 and return thereto, after both the LOCATION 1 and LOCATION 2 engagements, except as otherwise noted herein and/or through Addendum to Co-Production Agreement and attached hereto.

C. Unless otherwise stipulated herein or attached heretofore, Theatres agree to share fully and equally any and all pre-production costs including, but not limited to: rehearsal salaries, Director and Designer fees, associated commissions, fees and union obligations, casting sessions and expenses for non-staff creatives (see budget: each theater will cover expenses for their own staff members, but co-pro budget will cover director and movement director and casting session, room rental, etc.), design conferences and associated expenses for travel and housing, storage, housing of personnel, and any other expenses which are mutually agreed upon by both XXX and YYY to be “shared”. Above expenses are to be shared until each Theatre’s first day of technical rehearsals. (Except for Director, Playwright and Designer expenses which are shared through opening.)

**10. Separate Expenses.** Except for the Production Elements which are to be shared and as stated in Section 8, XXX and YYY shall each individually and solely be responsible for all set installation and removal costs, light and sound equipment rentals, running costs, publicity expenses, and other costs related to the performances in their respective cities. Separate expenses include, without limitation, the following:

A. Royalties due the Authors pursuant to the Licensing Agreement(s) shall be paid by each individual Theatre which presents the Performances and thereby incurs such royalties, to be paid out of the Gross Weekly Box Office Receipts (GWBOR) received by said Company. For the purpose of this Agreement, GWBOR shall be defined as all sums received by the Theatre from all ticket sales of the Play, allocable to performances given in such week, less the following deductions: federal or other admission taxes; customary commissions and fees; benefits; telephone sales, automated ticket distribution, subscription fees and expenses or remote box office, if any; commissions or fees for group sales and credit card fees.

B. Reimbursements, additional fees and other fees and expenses paid to the Director, Actors, Designers, Stage Management personnel and other individuals on the creative team during the performances of the Play except as otherwise noted herein and/or through Addendum to Co-Production Agreement attached hereto, including but not limited to travel, design expenses, and per diems.

C. All operating expenses relating to the Theatre at which the performances are held.

D. All fees, compensation, stipends, etc. relating to the regular staff of each theatre, except as otherwise noted herein and/or through Addendum to Co-Production Agreement attached hereto.

**11. Shipping.** The Theatres shall share fully and equally the cost of the shipping of the Production throughout the duration of the Co-Production, except as otherwise noted herein or through attachment hereto. Each Theatre will guarantee the securing, proper storage and protection of the physical Production while it is in their possession.

**12. Rights to Box Office Receipts and Other Revenue.** XXX will retain all of the Box Office receipts and other revenue received by it relating to the performances of the Play in THEATRE 2 LOCATION. Similarly, YYY will retain all of the Box Office receipts and other revenue received by it relating to the performances of the Play in LOCATION 2. No Theatre shall have the right to receive or share in any Box Office receipts or any other revenue generated by the Performances at the other Theatres.

**13. Financial Accounting.** Any budget overages must be pre-approved in writing from a representative from each of the Theatres before the actual expense occurs.

The representatives from XXX are listed below:

Artistic Expenses Name of artistic producer

Production Expenses Name of production manager

The representatives from YYY are listed below:

Artistic Expenses: Name of artistic producer

Production Expenses Name of production manager

**14. Billing.**

A. Each Theatre shall cause the other in the Co-Production to receive billing in connection with the production of the Play at their respective Theatre in written programs, websites, and press releases under the Theatre’s authority or control. Billing for the Productions will be substantially in the following form:

At XXX:

Produced in Association with

NAME OF THEATRE 2

NAME, Artistic Director

NAME, Managing Director

At YYY:

Produced in association with

NAME OF THEATRE 1

NAME, Artistic Director

NAME, Managing Director

B. It is also agreed that the biographies of XXX and YYY will be featured in the other’s Playbill. Said bios shall be approximately 150 words. Each Theatre will provide its biography in a form as may be required by the publisher for inclusion in the program, and on such schedule as may be required by the publisher. Additionally, each Theatre will make best efforts to credit the other in print media (with the exception of newspaper advertisements), on each organization’s website, and in press releases.

C. No inadvertent failure to give billing credit shall be deemed a breach of this contract.

**15. Insurance.** Each Theatre will maintain insurance during the full period of time the Production is in pre-production, rehearsal, technical rehearsals, and performances. Both Theatres must carry the following types of insurance:

A. Workers’ Compensation and Employers Liability in amounts required by law covering its full liability under applicable laws of the STATE OF THEATRE 1 for all XXX employees and for the STATE OF THEATRE 2 for all YYY employees.

B. All Risk, Property and Fire Insurance for actual cash value of all physical Production elements.

1. General Liability Insurance with minimum liability limits of One Million Dollars ($1,000,000) in the aggregate and per occurrence, covering injuries to persons or damage to property during the course of the Production of the Play.
2. For the duration of the Production of the Play, the policies required by Sub-Paragraphs A, B and C shall name YYY as an Additional Insured on all XXX policies. Likewise XXX shall be named as Additional Insured on all YYY policies.
3. YYY shall be responsible for maintaining insurance coverage on the physical production whenever in transit.

**16. No Intent to Form a Joint Venture.** The relationship between XXX and YYY hereunder shall in no way be construed as intending to create a partnership or joint venture; or to constitute YYY as an agent or employee of XXX for any purpose, and neither party shall have a right or authority to bind the other.

**17.** **Conflicts**. To the extent that any provisions of the Licensing Agreements conflict with this Agreement, the terms and provisions of this Agreement shall govern.

**18. Arbitration of Disagreements.**  Any controversy of claim arising out of, or relating to, this Agreement, or any alleged breach thereof, shall be settled by arbitration before a single arbitrator. All arbitration hearings are to be conducted in the State of Maryland in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered into the highest court of the forum, state or federal, having jurisdiction thereof.

**19.** **Indemnification**. XXX agrees to fully indemnify and hold YYY harmless from and against any claims, judgments, liabilities or expenses (including reasonable attorney’s fees and costs) which arise out of or by reason of XXX’s performance of the Play, and expressly including any claims, judgments, liabilities or expenses which arise out of or by reason of YYY’s sole or concurrent negligence. Likewise, YYY agrees to fully indemnify and hold XXX harmless from and against any claims, judgments, liabilities or expenses (including reasonable attorney’s fees and costs) which arise out of or by reason of YYY’s performance of the Play, and expressly including any claims, judgments, liabilities or expenses which arise out of or by reason of XXX’s sole or concurrent negligence.

**20. Other Provisions.**

**A. Binding Effect of Agreement**. This Agreement shall be binding on the parties hereto and their respective successors and permitted assigns.

**B. Waiver of Modification of Assignment**. This Agreement may not be modified, amended, changed, or discharged unless the same is in writing and without written approval of the other Theatre’s designated agent and/or representative, whose signature is attached hereto.

**C. Entire Agreement**. This Agreement, along with the attached Schedule A attached hereto, embodies the entire Agreement and understanding of the parties hereto with respect to the subject matter herein contained, and there are no additional agreements, understandings or representations made or existing among the parties hereto, except for the Licensing Agreement(s).

**D. Effect of Waiver.** No waiver of a provision of this Agreement shall be deemed a waiver of any other provision(s) or shall a waiver of the Performance of a provision in one or more instance be deemed a waiver of a future performance thereof.

**E. Assignment.** Neither party may assign, pledge, mortgage, hypothecate or encumber its interest in this Agreement nor any rights hereunder without the prior written consent of the other party and without written approval of the other Theatre’s designated agent and/or representative, whose signature is attached hereto.

**F. Separability and Heading.** If any provision of this Agreement shall be determined by any court having jurisdiction to be invalid, illegal or unenforceable, the remainder of this Agreement shall not be affected thereby but shall continue in full force and effect as though such invalid, illegal or unenforceable provision were not originally a part hereof. Paragraph headings used herein are for convenience only and shall not be deemed part of this Agreement.

**G. Notices**. Any notice to be given hereunder shall be sent by registered or certified mail, return receipt requested, or telecopy to a facsimile number provided by the respective parties with a copy sent by regular mail, or telegraph or cable addressed to the parties’ respective addresses given herein, or by email transmission, return acknowledgement requested, with a copy sent by regular mail, or by delivering the same personally to the parties. Either party may designate a different address by notice so given. Any notice mailed shall be deemed to have been given on the third business day after the mailing, and any notice telecopied, emailed, sent by cable or telegraph, or personally delivered shall be deemed to have been given on the date so sent or delivered.

1. **Governing Law.** This Agreement shall be governed by, construed under, and enforced in accordance with the internal laws of the State of Maryland.

Please indicate your acceptance of the foregoing by signing and returning the enclosed copy(s) of this letter, which will constitute our Agreement.

AGREED and ACCEPTED

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NAME Date NAME Date

Signatory Signatory

THEATRE 1 THEATRE 2