

**Melbourne Theatre Company  
2021 PROVISIONAL FILMING AND LICENCE AGREEMENT**

**MTC Digital Theatre**

This Agreement is dated DAY, MONTH, YEAR

Between

Melbourne Theatre Company, a department of the University of Melbourne  
252 Sturt Street, SOUTHBANK VIC 3006  
("the Producer")

And

<b>Performer ("the performer")</b>	
Care of	
<b>Agent</b>	
<b>Agency</b>	
<b>Agent Address</b>	

WHEREAS:

The Performer is playing the role of NAME OF ROLE for the MTC Production of the play title set out below ("the Play").

Subsequent to the contract (Performers' Collective Agreement) dated DAY MONTH YEAR between the Producer and Performer, the Producer intends to produce a filmed recording of the Play for future exploitation ("the Recording").

The Producer and Performer agree to the following terms for the Recording:

<b>Play</b>	Play Name
<b>Performer</b>	
<b>Role</b>	
<b>Billing</b>	<p>The following shall appear on all credits where the Cast are listed.</p> <p>"[insert credit]"</p> <p>The Performer shall receive an on-screen credit in any broadcast of the Recording in the following manner:</p> <p>"[insert on screen credit]"</p>

<b>Recording</b>	The performance for the recording of the production will occur within normal hours of work.
<b>Territory</b>	<p>Australia</p> <p>The Producer may wish to explore licencing Worldwide in future, subject to addendum of this agreement and relevant additional payment per SVOD rights.</p>
<b>Term</b>	<p>3 year initial licence period from first date of upload to platform</p> <p>Extension to this licence will be by mutual agreement between Producer and Artist in consultation with MEAA.</p>
<b>Distribution</b>	<p>The Performer grants the Producer a licence to distribute the Recording during the Term via:</p> <ul style="list-style-type: none"> <li>Streaming video on demand. The recording to be hosted on MTC Website through a dedicated 'MTC Digital Theatre' portal</li> <li>"As live" Free to Air and Pay television</li> </ul> <p>Usage for other mediums to be negotiated in good faith by the parties. Option to pursue additional 3rd party broadcasting in future will be subject to negotiation in good faith by the parties.</p> <p>Should MTC wish to live stream the Play for Schools audience an additional fee of \$329.41 (being the Australian Feature Film Collective Agreement 2012 current daily rate (the "AFFCA Daily Rate")) + 10% superannuation; will be paid to Performers.</p>
<b>Recording Fee</b>	<p>In consideration of the above uses in connection distribution:</p> <p>MEAA recording Fee      Daily Rate                      <b>\$329.41 per recording day</b></p> <p>(being the Australian Feature Film Collective Agreement 2012 current daily rate (the "AFFCA Daily Rate")) + 10% superannuation</p>
<b>SVOD rights</b>	<p>3yr Licence including 2 Australian Plays -Free or PayTV - 70% of Weekly Fee <b>\$XXX</b></p> <p>MTC retains the option to negotiate an Extended Licence towards the end of the Term in consultation with Performer and MEAA. Should MTC wish to pursue Worldwide rights, 30% of Weekly Fee will be payable to Performer.</p>
<b>Ancillary Use</b>	2.5% of weekly fee per 6 months payable over the term for Australian Ancillary usage.
<b>Royalty</b>	For any recording released where payment is required, or where the purpose of the release is a commercial one, equal share of 8.33% profit pool of net receipts payable to Melbourne Theatre Company (Producer Net Profits less distribution and marketing costs)
<b>Payment</b>	<p>Payment will be made to the Artist for the <b>Recording Fee</b> and <b>SVOD Rights</b> on receipt of a valid tax invoice on signature of this agreement.</p> <p>Any and all amounts and other consideration referred to in this agreement are exclusive of GST.</p>
<b>Other</b>	The standard Performer Warranties and Indemnities agreed at licensing agreement dated DAY MONTH YEAR apply to this agreement.
<b>Agreement length, review and audit</b>	This Agreement shall be construed according to the laws of the State in which the Recording was filmed from DAY, MONTH, YEAR subject to review no less frequently than once per 6 months (or once per 12 months if the net receipts are

	below an agreed threshold). The Producer shall provide the Artist with a report detailing all gross and net receipts relating to the Recording within 14-days of periods ending 30 June and 31 December; and pay the Artist the Royalty.
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## **PRINCIPLES OF AGREEMENT**

1. All cast have the right to view any recording prior to its use for streaming or for any agreed broadcast and Producer will employ their best efforts to provide cast that opportunity. Producer will provide MEAA with a cast list prior to release of the recording.
2. All employee/performer entitlements arising from their contracts for the live production being recorded or streamed/broadcast must be paid prior to the exercising of this Agreement.
3. A recording will only be used by the Parties for its intended use. It is the intention of the Parties to do their best to limit the use of any recorded material (or any related still images) to only that which is intended by the Agreement. This includes limiting the viewer's ability to record, download or share the footage and being responsible for removing it from all websites.
4. The footage used in a Recording is not intended to be used for promotion, unless promoting or advertising the Recording itself.
  - a. If a segment or segments are to be transmitted for marketing or publicity purposes, the transmission time shall not exceed five minutes of footage from the Recording.
  - b. Should the Producer exercise its rights pursuant to this clause, no additional remuneration will be due.
  - c. Any material to be used for promotion of any activity other than the Recording itself, would need to be outlined and agreed by the relevant parties in a separate agreement.
  - d. For the avoidance of doubt, the Producer shall be entitled to engage in reasonable promotional and marketing activity in regard to the use of the Recording of the Performance on social media and relevant promotional platforms.

## **INTRODUCTION**

1. The Performers and the Company acknowledge acceptance of the terms of the Agreement by signing this Agreement below.
2. The Agreement will commence from the date it is agreed by all the Performers and signed by all parties to the Agreement.

## **AGREEMENT**

It is agreed that the following provisions will govern the recording of the Performance for audience sharing purposes only:

1. The recording of the Performance will take place within the performance season. The Producer will provide a minimum of one-month notice, in writing, of the date/s of recording, except in the case of an emergency and with the agreement of the cast.
2. The broadcast or transmission of the Performance will be password or paywall protected, geo-blocked (or, in the event that geo-blocking is not available on the relevant platform, geo-targeted) to the relevant Territory or Territories, per the terms of this agreement. The Recording will not be available for download, and will be only available through a dedicated Company branded website.
3. Performers will be engaged pursuant to the Performers' Collective Agreement 2017 (as amended from time to time).
  - a. Any disputes arising under this Agreement will be dealt with under the applicable modern award or enterprise agreement, being either clause 15, Dispute Resolution of the Performers' Collective Agreement 2017 (as amended from time to time) or clause 9, Dispute resolution of the Live Performance Award 2010.
  - b. Any use by any party of the Recording of the Performance, other than as expressed in this Agreement must be negotiated with the MEAA and the Performers and approved by the Performers in writing.

## **REMUNERATION**

1. Subject to the provisions of this Agreement, the Producer will as consideration for all permissions and rights granted by the Performer under this Agreement, pay the Performer, within seven days of the recording, per the terms of this Agreement.
2. For the purposes of this Agreement only, The Producer may require the Performers to undertake camera rehearsals, extra rehearsals and/or microphone checks within the Performers' ordinary hours of work, provided that if, on any day, the total number of hours worked on that day exceed eight, then all time worked in excess of eight hours on that day will be paid for as overtime pursuant to the Performers Collective Agreement 2017.
3. If any of the time undertaken for the Recording, or rehearsal of the Recording is not within the ordinary hours of the contract, then the Producer will be required to pay the Performers the correct hourly rate pursuant to the PCA for their time – including any casual loadings, annual leave and allowances.
4. Payment of any remuneration to the Performers will be the sole responsibility of the Producer.

## **USAGE RIGHTS AND FEES**

1. The Licence Period shall be for the period as defined in the Term.
2. The Recording of the Performance will only be available to ticket or access fee holders on the Producer's website. Once purchased the ticket-holder may be permitted a grace period before which they need to commence watching the purchased Recording. Upon commencing to watch the Recording the ticket-holder will be required to complete their viewing within a pre-determined time period (to be determined by the Producer, but no more than 48-hours), before their access to the Recording expires.
3. The Recording will be available for viewing without the payment of any additional fees beyond the initial ticket or access fee cost for digital viewing, and may not generate any revenue, including from the sale of advertising space or sponsorships. For the avoidance of doubt, the parties acknowledge that the Recording will be hosted or communicated on the Producer's website, the Producer's website may generate revenue as per usual, including, without limitation, by way of merchandise sales, ticket and subscription sales, educational tools and other commercial revenue streams.
4. Any paid link or paywall used by the Producer for access to the Recording must be agreed by all parties prior to its release. With the appropriate share of profits provided to the Performers as defined under Royalty.
5. The Recording of the Performance will not be made available for use in any other medium and will not be sold or used in any form whatsoever without the prior consent of the Performers.
6. Any additional use of the Recording of the Performance other than as set out in this Agreement must be negotiated in good faith with the Performers.
7. If the Producer wishes to continue to use the Recording of the Performance after the expiration of the Licence Period, the Performers and the Producer and MEAA shall negotiate in good faith an appropriate fee to extend the term of the Licence Period.
8. Any use of the Recording by any party other than as expressed in the Agreement must be negotiated with the Performer and MEAA and approved by the Performer and MEAA in writing.
9. The Producer will use best endeavours to ensure the Recording is protected as outlined within this agreement from download, copying or other misuse. However, MTC does not warrant that the technical means it uses will not be able to be circumvented. Subject to the obligation to use best endeavours, MTC will not be liable for any loss or damage in the event a person is capable of circumventing the technical means used.

## **WORK IN ONE PRODUCTION ONLY**

All work performed for the Producer in the Recording of the Performance, shall only be used for work which the Performers have agreed pursuant to this Agreement. No footage featuring the Performers may be used in any other production without the written consent of the Performer.

### **NO DUBBING**

The voice of a Performer will not be dubbed in the English language without the written consent of the Performer and consent will not be unreasonably withheld. Consent may not be sought as a condition of engagement, unless the written consent of the MEAA has been obtained prior to the engagement of the Performer.

### **NO COMMERCIAL TIE-UPS**

The Performers' names or images shall not be used under this Agreement in commercial tie-ups for commercial goods or services or in connection with commercial advertising without her/his written consent and the payment of appropriate remuneration.

### **FILMING PROTOCOLS**

1. Filming will not occur in the wings during performances nor during the warm-up for the Performance, without prior express approval from Performer/s.
2. The Production personnel will not enter into change areas, or film any costume changes without prior approval of the Performer/s then present in the costume change area.
3. The Producer may engage an Intimacy Coordinator for the Play who will also be consulted regarding elements of the recording as applicable.
4. Director to work with Video Production Company if there are elements of the production that are not appropriate for filming (e.g. approach to intimacy onstage, in consultation with Director/Intimacy Coordinator and cast.)
5. Filming will only occur during the prescribed working hours of Performers and not during breaks on or after or before such prescribed working hours, except with the express approval of the Performer/s.
6. Filming will not occur behind the scenes on the opening night of the Performance after 6 pm until before the final curtain call.
7. Each Performer will receive reasonable advance notice of not less than two (2) days of any request to film an interview of the Performer (unless the Performer genuinely consents to a lesser period of notice) and a Performer may refuse any such request.
8. A Performer may approach the Producer regarding reasonably held concerns about the use of any filmed material under this Agreement and the Producer will not unreasonably refuse to comply with a Performer's request in regard to that concern.

## **AGREEMENT REVIEW**

1. It is accepted by all parties that this Agreement is for Melbourne Theatre Company productions presented within 2021 and is made on a non-precedential basis. Agreement to be reviewed and renegotiated by end of 2021.

SIGNED BY THE PERFORMER

.....  
PERFORMER NAME

In the presence of:

.....  
(Name of Witness)

.....  
(Witness signature)

SIGNED FOR AND ON BEHALF OF THE PRODUCER

.....  
Virginia Lovett

In the presence of:

.....  
(Name of Witness)

.....  
(Witness signature)