

WHISTLE DOWN THE WIND – AMATEUR GROUP UK & EIRE

TERMS & CONDITIONS

Agreement between The Really Useful Group Limited, 6 Catherine Street, London, WC2B 5JY, UNITED KINGDOM (the “Licensor”) and the “Licensee”

1. DEFINITIONS

In this licence agreement (“**Agreement**”) unless the context otherwise requires, capitalised words and expressions shall have the meanings set out within the Licence Details or as set out below:

1. “**Box Office Receipts**” shall mean the gross sums received by the Licensee and/or respective agents, employees, and affiliates of the Licensee from all sources whatsoever in respect of the sale of tickets of admission to any performances of the Play actually given pursuant to the terms of this Agreement after the deduction only of customary taxes and commissions.
2. “**Event of Force Majeure**” shall mean the occurrence of fire, flood, casualty, government lockdown, war, civil commotion, act of God, pandemic (including but not limited to the COVID-19 pandemic) epidemic, public health emergency or any other cause beyond the control of the parties.
3. “**Internet Rights**” shall mean the right to digitally or by other new media transmission means now known or hereinafter devised (including via Internet, wired, wireless and mobile transmission) share or display any form of digital content.
4. “**Licensor**” shall mean The Really Useful Group Limited, 6 Catherine Street, London, WC2B 5JY, United Kingdom.
5. “**Logo**” shall mean the artwork provided by the Licensor to the Licensee for the production of the Play licensed hereunder.
6. the “**Material**” shall mean the vocal score and libretto of the Play and the orchestration/backing track of the Play.
7. “**Non-Replica**” shall mean not reproducing any of the directions, designs, choreography, costumes or other creative elements from any previous production of the Play.
8. the “**Play**” shall mean the dramatico-musical work entitled “**WHISTLE DOWN THE WIND**” by Andrew Lloyd Webber and Jim Steinman (together the “**Authors**”).
9. the “**Stage Rights**” shall mean the non-exclusive right to produce a Non-Replica amateur production of the Play during the Term at authorised venue for the authorised number of performances.
10. the “**Term**” shall mean from the authorised start date to the authorised end date.

2. GRANT OF RIGHTS

1. In consideration of the Fees provided for in Clause 3 below, the Licensor hereby grants to the Licensee the right to exercise the Stage Rights during the Term.
2. The Play will be performed in accordance with the material supplied by the Licensor or the Licensor’s agent. No alterations may be made to the storyline, text or the music without the express written consent of the Licensor, which may be given or withheld at the Licensor’s absolute discretion. The interpolation of any other or additional dialogue, music or lyrics is expressly prohibited. Unless otherwise expressly agreed, the Play should be performed by a mixed-gender cast.
3. The Licensor grants to the Licensee the non-exclusive right to use the names, likenesses and biographies of the Authors but only subject to the approval of the Licensor and only in connection with the Production.
4. Unless specifically granted herein, all other rights are strictly reserved to the Licensor, including, but not limited to:
 - a. the use of any existing stage or lighting designs or choreography;
 - b. merchandising rights;
 - c. Internet Rights;
 - d. the right to produce or make use of any logos belonging to the Licensor (save as set out in Clause 7 below);
 - e. the right to make a cast recording of the Play; and
 - f. the right to broadcast, televise, film or otherwise record the Play by any means whether audio or video either in rehearsal or performance.

3. FEES

1. Where an advance fee is being charged the Licensee shall pay to the Licensor a non-returnable advance payment plus value added tax (the "Advance") upon agreement of terms & conditions, recoupable against a royalty of an agreed percentage of the Box Office Receipts generated by the performances presented hereunder plus value added tax.
2. Where a flat fee is charged the Licensee shall pay to the Licensor an agreed flat royalty fee plus value added tax (the "Flat Fee") upon acceptance of terms & conditions. All other fees or royalties payable to any contributing personnel shall be borne by the Licensee.
3. Where a logo fee is set out in the licence offer, the Licensee shall pay to the Licensor an agreed logo fee plus value added tax (the "Logo Fee") upon acceptance of terms & conditions, for the loan of the show logo to the Licensee, pursuant to Clause 7.
4. Where a rental fee is set out in the licence offer, the Licensee shall pay to the Licensor an agreed rental fee plus value added tax (the "Rental Fee") (listed together on the invoice with the Logo Fee) upon acceptance of terms & conditions, for the loan of the Material to the Licensee, pursuant to Clause 8.
5. Statements of account of royalties payable shall be made up and sent to the Licensor together with payment to the account of The Really Useful Group Limited by way of direct credit transfer to a bank account nominated by the Licensor no later than 30 (thirty) days following the end of the Term. The Licensor shall have the right to audit the books of the Licensee, inasmuch as such relate to the Play, at any time and for a period of 2 (two) years following the end of the Term.
6. Without prejudice to any other right or remedy of the Licensor any amounts outstanding after the due date for payment hereunder to the Licensor shall accrue interest at the annual rate of 2% (two per cent) over the base rate of Bank of Scotland plc from time to time in force calculated on a daily basis from the date that payment was due.
7. In the event that the Fees are subject to any form of withholding tax deduction the Licensee shall supply the Licensor with an appropriate certificate enabling the Licensor to claim credit for such withholding tax deduction in the United Kingdom.
8. All other fees or royalties payable to any contributing personnel shall be borne by the Licensee.
9. All sums payable under this agreement shall be paid together with the addition of such value added tax and other taxes as are legally payable on those sums.

4. APPROVALS

1. The Licensor and the Authors shall have the right of approval of the manner in which the Play is performed.
2. Without prejudice to the generality of the foregoing, the Licensee shall seek and obtain the prior written consent of the Licensor in respect of:
 - a. advertising materials, artwork, credits, logos and designs relating to the Production;
 - b. the identity of any sponsors and the terms of any sponsorship agreements/arrangements therewith; and
 - c. all costumes to be used in relation to the production,

and in each case such approval may be given or withheld at the Licensor's absolute discretion.

3. The Licensee shall procure that any translations of the book and/or lyrics (if applicable) made in connection with the presentation of the Production hereunder are subject to an assignment of copyright directly in favour of the Licensor in the form provided by the Licensor.

5. CREDITS & MARKETING

1. The Licensee shall undertake to include the Author Credits on all programmes, houseboards, billboards, posters (both digital and printed) and in all paid advertising and publicity relating to the Play (except in small advertising where the names only of the Play and the theatre are shown without naming any other individual or the Licensee):

AUTHOR CREDITS:

*Music by
Andrew Lloyd Webber*

*Lyrics by
Jim Steinman*

to be announced on a single line next to each other, as set out above, in letters no less than 50% (fifty per centum) of the size of the title of the Play, but in no event smaller than that used for credit to any other individual or the Licensee.

2. The Licensee shall further undertake that the following credits shall be given on all Production Material including programmes, posters and paid advertising issued in connection with its presentation of the Play:

*Based on the original novel by Mary Hayley Bell and the film produced by Richard Attenborough, directed by
Bryan Forbes from a screenplay by Keith Waterhouse and Willis Hall.
With book by Patricia Knop, Gale Edwards and Andrew Lloyd Webber.
Orchestrations by David Cullen & Andrew Lloyd Webber.*

3. The Licensee shall further undertake that the following credits shall be given on all Production Material including programmes, posters and paid advertising issued in connection with its presentation of the Play: **Original production by The Really Useful Theatre Company Limited**

4. The Licensee shall further undertake that the following credits shall be given all programmes, posters (both digital and printed) and advertising relating to the Play: **An Amateur production by arrangement with The Really Useful Group Limited**, such credits to appear above the title unless otherwise agreed by the Licensor.

5. All advertising, promotional material and programmes must clearly state that the Production is an amateur production and is presented solely in the name of the Licensee. The Production may not be presented as a co-production or collaboration with any third party.

6. The Licensee shall send to the Licensor one copy of each piece of advertising material (digital or in printed form) in respect of the Production and shall not display or disseminate such material to the public until the Licensor has provided its written approval of such material in accordance with Clause 4.

6. WEBSITE/INTERNET RIGHTS

1. Notwithstanding anything to the contrary herein all Internet Rights in the Play and the Production and any materials supplied by the Licensor relating to the Play and the Production are expressly reserved to the Licensor (including without limitation all rights relating to websites, social media channels (including but not limited to Facebook, Twitter and Instagram), domain names, and mobile and tablet applications).

2. The parties hereto agree that Licensee may use its own website and social media pages to promote the Production, and Licensee agrees that it shall not, and shall not permit any third parties to, create any other website(s) or internet domains or social media pages in connection with the Production without Licensor's prior written consent.

7. THE LOGO

1. **Only where expressly permitted by the Licensor in the licence offer**, the Licensor hereby grants to the Licensee a non-exclusive licence to use the Logo solely in direct connection with the Licensee's performance and promotion of the Production licensed hereunder. For the avoidance of doubt, all other rights in relation to the exploitation of the Logo are reserved to the Licensor including, without limitation, the right to exploit the Logo in conjunction with any merchandise.

2. The Licensee may not sub-license, assign or otherwise transfer any rights in or to the Logo to any third party including without limitation any sponsors associated with the Production.

3. The Licensee shall include in the theatre programme (or similar) and on poster and handbills in respect of its Production wherever it has made use of the Logo the following trade mark and copyright notice: TM © 1998 RUG Ltd.

8. THE MATERIAL

Only where expressly provided by the Licensor as agreed in the licence offer, the Licensor shall provide a digital set of the Material to the Licensee by email. All Material supplied by the Licensor shall remain the property of the Licensor and shall not be used in any other way than for rehearsal and/or the performance of the Production. The Licensee may reproduce copies of the Material solely for use by the cast and crew of the production of the Play licensed hereunder. All such resulting copies of the Material must be destroyed by the Licensee at the end of the Term.

9. AUDIO VISUAL RECORDINGS

The Licensee shall not make any recording or filmed video or other audio-visual record of the Production or of any preparations, rehearsals, or performance thereof or of any part thereof without the Licensor's prior written consent.

If the Licensee wishes to create a radio advertisement or promotional film or commercial advertisement on film or video or any other form of audio-visual marketing tool for its Production of the Play (a "Commercial") it shall only do so provided that:

(1) the Licensor shall have approved the script and the actual extracts to be utilised, which shall be submitted to it for this purpose by the Licensee.

(2) extracts from the Production comprised within the Commercial shall not in respect of an individual song exceed 1 (one) minute in length nor in aggregate exceed 3 (three) minutes in length;

(3) the Licensee shall own or acquire and vest in and assign to the Licensor all of the rights and interest in the Commercial, subject only to the Licensee being able to exploit the Commercial during the Term in accordance with the terms hereof; and

(4) the Licensee does not receive any compensation therefore other than reimbursement for the out-of-pocket costs of creating or using the Commercial.

10. HOUSE SEATS

1. The Licensor may appoint up to 4 (four) representatives to attend the first performance of the Production. The Licensee will provide the Licensor's representatives with house seats in good stalls locations free of charge, for this purpose. The Licensor will confirm in advance the identity of such representative(s) in writing (email to suffice).

2. In addition, the Licensee shall make available to the Licensor 2 (two) pairs of house seats in a good location for all other performances of the Production subject to receiving reasonable advance notice from the Licensor prior to the relevant performance.

11. INTELLECTUAL PROPERTY RIGHTS

1. Subject to Clause 7 (if applicable), any trade marks or logos owned or controlled by the Licensor ("RUG Marks") shall not be used or reproduced by the Licensee or by anyone affiliated or associated with the Licensee or the Production, and nothing in this Agreement shall give the Licensee any right, title or interest in or to any of the RUG Marks.

2. The Licensee undertakes to assign, or to cause to be assigned, to the Licensor at no cost to the Licensor all intellectual property rights now or hereafter existing, including but not limited to the whole copyright, in any stage, lighting or costume designs, choreography, logos, artwork or other design elements created for or in connection with the Production, in each case for the entire period of copyright protection therein and all extensions thereof throughout the world, without reservation of any moral rights (which in all cases the Licensee undertakes to irrevocably and unconditionally waive or cause to be irrevocably and unconditionally waived), subject only to the right of the Licensee to exercise such rights therein as are granted by this Agreement and in accordance with Clause 4 above.

3. The Licensee undertakes to render such assistance, provide all such documents (including, without limitation, contractual arrangements with contributors to the Production), do all acts and execute such documents, and procure the execution of such documents, as may be necessary to give effect to the terms of Clause 11(2).

12. WARRANTIES

1. The Licensor hereby warrants that the Play is original to the Authors and is not defamatory and the Licensor is fully empowered to grant this licence.

2. The Licensor undertakes to indemnify the Licensee against any actions, costs, claims or damages arising from any breach of the warranty set out at Clause 12(1).

3. The Licensee warrants and undertakes that:

- a. the Production shall be in accordance with the approvals provided under Clause 4;
- b. it shall exercise the rights granted hereby in accordance with and pursuant to the terms of this Agreement;
- c. it shall not take any action or omit to take any action the failure of which will in any way endanger or impair any copyright in the Play;
- d. the respective contributions by all contributors engaged for the Production shall be original to those contributors and will not infringe the rights of any third parties;
- e. it will take all reasonable precautions to protect its own personnel and any relevant cast and crew against any Event of Force Majeure where reasonably possible, including but not limited to adhering to all applicable regulations, rules, and local and national government advice regarding the same; and
- f. it shall provide the Licensor with copies of all risk assessments relating to any such Event of Force Majeure, and any analysis that it has undertaken in respect of the same in advance of the Production.

4. The person signing this Agreement on behalf of the Licensee warrants and undertakes that he/she is authorised to enter into this Agreement on behalf of all the persons comprising the Licensee.

13. CANCELLATION

The Licensee will advise the Licensor in writing as soon as reasonably practicable in the event of cancellation of the Production. In the event that the Licensee advises the Licensor of such cancellation more than thirty (30) days following the date the licence is issued, the Flat Fee/Advance, Logo Fee and Rental Fee (where applicable) shall be retained by the Licensor.

14. TERMINATION

1. The Licensor shall be entitled to terminate this Agreement immediately by notice in writing if:

- a. The Licensee fails to make any payment hereunder by the due date
- b. The Licensee is in breach of any term or condition hereunder; or
- c. The Licensee has an administrator or receiver appointed over any part of its assets; or if the Licensee enters into compulsory or voluntary liquidation; or if the Licensee makes any arrangement for the benefit of its creditors or becomes subject or resorts to any laws or insolvency.

2. The Licensee acknowledges and agrees that the Licensor reserves the right to terminate this Agreement or postpone the Term of this Agreement to a mutually agreed time, should the Licensor deem in its sole discretion that it is not advisable for the Production to go ahead as envisaged under this Licence due to an Event of Force Majeure.

3. The termination of this Agreement pursuant to this Clause shall be without prejudice to any liabilities accrued prior to the date of termination.

4. For the avoidance of doubt, the return or reimbursement of any fees paid by the Licensee to the Licensor pursuant to this Agreement as a result of termination shall be entirely at the Licensor's discretion.

15. NO ASSIGNMENT

The Licensee shall not assign, license, transfer or charge or otherwise dispose of or subcontract any of its rights or obligations hereunder without the prior written consent of the Licensor.

16. LIABILITY

1. Licensee shall be fully responsible for the manner in which the Play is performed including ensuring that all health and safety legislation is complied with and complying with all other necessary regulations and requirements of local authorities or governmental bodies.
2. Licensor shall not be liable for any losses, damages, costs and/or expenses in connection with any third-party claims or actions relating to the performance of the Play. Further, in no event will Licensor be liable to Licensee for any indirect or consequential losses relating to the production of the Play or any cancellation of the production of the Play.
3. Licensee shall indemnify and hold harmless Licensor and its respective employees, affiliated entities, agents, directors, representatives, successors and assigns from and against any and all claims, demands, actions, damages, liabilities, costs, losses or expenses of any nature whatsoever including legal and other professional fees (collectively "Losses") arising from or out of (i) any breach by Licensee of its representations, warranties, covenants or obligations herein, (ii) Licensee's negligence or other unlawful conduct or (iii) bodily injury, death or loss of or damage to property which occurs in connection with or as a result of the Production and/or the performance thereof or the preparations therefore except to the extent such Losses arise from the negligence or wilful misconduct of the Licensor.

17. GENERAL

1. This Agreement contains the full agreement of the parties hereto concerning the subject matter hereof and may only be varied in writing by the Licensor.
2. Nothing agreed herein shall constitute a partnership or joint venture between the parties hereto.
3. In the event that the Licensee comprises more than one person (whether or not an unincorporated association) each such person shall be in all respects jointly and severally liable in respect of each and all of the obligations of the Licensee hereunder. References in this Agreement to the Licensee shall (where the context permits) be understood as including references to any and all such persons. Any agreement arising under this Agreement to the Licensor shall be an independent obligation.
4. The Headings of the Clauses of this Agreement are included only in the interests of ease of reference; they do not form part of the Agreement and should not be used either in its interpretation or its construction.
5. This Agreement shall be governed by and construed in accordance with English law, and the parties hereto hereby submit to the exclusive jurisdiction of the Courts of England and Wales.