

**Appendix 1**

**DATED**

**2022**

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAMMERSMITH &  
FULHAM**

**AND**

**ALTERNATIVE THEATRE COMPANY LTD**

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**COMMUNITY USE AGREEMENT**

**FOR ALTERNATIVE THEATRE COMPANY LTD, TRADING AS BUSH THEATRE, 7 UXBRIDGE ROAD,  
LONDON, W12 8LJ**

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## COMMUNITY USE AGREEMENT FOR ALTERNATIVE THEATRE COMPANY LTD

This Agreement is made on 2022

### BETWEEN

(1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAMMERSMITH AND FULHAM of the Town Hall, King Street, Hammersmith, London, W6 9JU ("the Council")

and

(2) ALTERNATIVE THEATRE COMPANY LTD, TRADING AS BUSH THEATRE (a company limited by guarantee with registered company number 1221968, whose registered office address is 7 Uxbridge Road, London, W12 8LJ ("the Organisation" which term shall include any assignees or successors to it)

Together "the Parties"

### WHEREAS

- (a) The Organisation is proposing to carry out refurbishment works in relation to the premises it occupies at 7 Uxbridge Road, London, W12 8LJ ("the Project") under the terms of the lease dated 26 September 2011.
- (b) The Council has agreed to provide part funding for the Project.
- (c) This Agreement sets out the terms and conditions agreed between the Parties that apply to the Council's funding for the Project.

### Definitions and Interpretation

"Agreement" means this Agreement and any document incorporated by express reference or by necessary implication

"Agreement Period" means the Period starting on the Commencement Date and ending 5 years from the Commencement Date.

"Authorised Officer" means the person nominated in writing by the Council, or any substitute nomination, to administer this Agreement on the Council's behalf and who will be the main contact for the Organisation in all matters pertaining to this Agreement.

"Commencement Date" means the date of signing of this Agreement.

"Council's Contribution" means £70,949.

"Funded Organisations" means not-for-profit community organisations within the Borough that are in receipt of a current grant from the Council.

"Premises" means Bush Theatre, 7 Uxbridge Road, London, W12 8LJ.

"Prohibited Act" means the following actions:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- (c) committing any offence:
  - (i) under the Bribery Act;

- (ii) under legislation creating offences concerning fraudulent acts;
  - (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or
- (b) defrauding, attempting to defraud or conspiring to defraud the Council.

**“Statutory Requirements”** means all statutory requirements to be complied with in relation to the Works, including building control and planning permission.

**“Works”** means the works that the Organisation intends to carry out at the Premises in accordance with the agreed tender proposal documentation (“Tender Proposal”), submitted by the Organisation to the Council on 4 March 2022.

**The Council and the Organisation hereby covenant as follows:**

**1 PAYMENT OF AND CONDITIONS ATTACHING TO THE COUNCIL’S CONTRIBUTION**

- 1.1 The Council will pay **£70,949** to the Organisation immediately after the signing of this Agreement by the Parties.
- 1.2 The Organisation will provide evidence to the Council, at their request, of its expenditure on the Works as required under 1.13 and 2.1.3 below.
- 1.3 The Council shall be entitled to require the repayment of the Council’s Contribution in the event that, during the Agreement Period, the Organisation is in material breach of this Agreement and, if such breach is capable of remedy, fails to remedy such breach within a period of 28 days after being notified in writing to do so.
- 1.4 The Council shall be entitled to require the repayment of the Council’s Contribution in the event that the Organisation has not spent any of the Council’s Contribution on the Works within 12 months following the Commencement Date. For the purposes of this and clause 1.5, a portion of the Council's Contribution shall be deemed to be unspent if the total amount spent on the Works by the Organisation is below the combined total of the Council's Contribution and the funding received from Arts Council England, all such amounts to be exclusive of VAT.
- 1.5 If the Organisation has not spent all of the Council’s Contribution on the Works within 24 months following the Commencement Date, the Council shall be entitled to require the repayment of such part of the Council’s Contribution as remains unspent on the date falling 24 months following the Commencement Date.
- 1.6 The periods of 12 months and 24 months following the Commencement Date referred to in clauses 1.4 and 1.5 shall be extended by any period during which the Organisation is unable to proceed with the Works due to a circumstance not within the Organisation's reasonable control, including without limitation act of God, flood, drought, earthquake, pandemic, terrorist attack, collapsed building, fire, explosion, accident or interruption of utility service.
- 1.7 The Council may ask the Organisation to repay the Council’s Contribution in whole or in part, in the following circumstances:
  - 1.7.1 if the Organisation fails to comply with this contract in any way;
  - 1.7.2 if the Organisation fails to complete the project within 24 months of the commencement of the Works (or such other reasonable time as agreed between the Parties)
- 1.8 If a request is made by the Council under 1.7 above for the repayment of sums then the parties will agree between themselves a reasonable timescale for repayment, such repayment plan to be agreed within one calendar month of the date of the request being made by the Council.

## **ADDITIONAL COVEANANTS ON BEHALF OF THE ORGANISATION**

The Organisation covenants as follows:

- 1.9 Within 7 working days of the completion of this agreement the Organisation shall provide (and keep updated) the names of suitable lead parties from the Organisation who will act as the main contact for the Council ("the Lead Parties")
- 1.10 Within 7 working days of the completion of this agreement the Organisation shall, upon the Council's request, provide to the Council (and keep updated) the Trust's Memorandum of Articles and Association
- 1.11 That it will ensure any conflicts of interest are declared forthwith to the Council by the Lead Parties on behalf of the Organisation and should a conflict arise both parties agree that there will be a suitable agreement in place about how any such conflicts may be managed
- 1.12 That it will provide to the Council reports at six monthly intervals documenting the progress of the project in accordance with the tender proposal documentation ("Tender Proposal"), submitted by the Organisation to the Council on 4 March 2022
- 1.13 That upon request it will provide evidence demonstrating proper accounting for, and use of, the Council's Contribution, including, access to the accounts and to supporting information, documents and evidence

### **2 THE ORGANISATION'S WARRANTIES**

- 2.1 The Organisation shall:
  - 2.1.1 be responsible for the financial organisation and administration of the Council's Contribution once received from the Council;
  - 2.1.2 take all necessary steps to secure the health, safety and welfare of all persons involved in delivering the Project. In particular, but without limitation, the Organisation shall comply with the provisions of the Health and Safety at Work Etc Act 1974 in relation to all such persons even if they are not its employees, as well as the Construction Design and Management Regulations 2015;
  - 2.1.3 apply the Council's Contribution solely for the delivery of the Works;
  - 2.1.4 ensure that in carrying out the Works it, and any person acting on its behalf, complies with all laws in force from time to time related to the carrying out of the Works and ensures that no Prohibited Act is committed by any employee of it, or any person delivering the Works on its behalf.

### **3 WORKS**

- 3.1 The Organisation will be wholly responsible for procuring a contractor and consultants for the Works, for monitoring the contractor and consultants, and for complying with all Statutory Requirements. In particular, the giving of the Council's Contribution must not be relied upon by the Organisation in any respect as meaning that the legislation relating to building control and planning permission has been complied with.
- 3.2 The Organisation shall appoint a contractor and consultants for the Works which are competent and experienced in relation to the tasks for which they are appointed. The contractor for the Works shall have public liability insurance in the sum of £5m. Any consultants appointed shall have a minimum of £2m professional indemnity insurance to cover the period of the Works and for 6 years after their completion.

#### **4 MANAGEMENT OF THE PREMISES**

4.1 The Organisation agrees and undertakes with the Council that after completion of the Works, it shall for the remainder of the Agreement Period and subject to the Organisation continuing to be a party to the lease dated 26 September 2011:-

- 4.1.1 Be responsible for the Premises and will resource, manage and routinely maintain it.
- 4.1.2 Provide heat light water and such other amenities as required for the Premises and its intended use.
- 4.1.3 Will account to the appropriate undertaking in respect of the cost of gas fuel oil electricity water rates and taxes which may be attributable to such use of the Premises.
- 4.1.4 Will insure and keep insured the Premises against all usual commercial risks.
- 4.1.5 Will use a written hire agreement in relation to all hires of the Premises, taking a deposit against damage to the Premises as appropriate.
- 4.1.6 Make no future financial requests to the Council for property costs

#### **5 COMMUNITY PARTNERSHIPS**

5.1 For the remainder of the Agreement Period the Organisation agrees to continue to work with the Council to engage with local community groups to:

- Ensure that everyone has access to cultural opportunities regardless of their background, knowledge, skills or experience;
- Ensure that the cultural needs of existing and new communities are met;
- Support community outreach programmes; and
- Facilitate delivery of the aims and objectives of the Council's Arts Strategy 2016-22 and wherever possible the emerging Cultural Strategy

#### **6 VARIATION OF THE AGREEMENT**

6.1 Either party may from time to time request changes to the terms of the Agreement. Such a request should be submitted in writing to the other party. The other party will consider the request in good time and respond within 21 days of receipt of the request giving its decision and, if the request is refused, explanation of the decision. Neither party is bound to accept a request for variation of the Agreement.

6.2 No term or provision of this Agreement will be considered as waived by any party to this Agreement unless a waiver is given in writing by that party.

6.3 If an agreed change has cost or other implications for this Agreement, the parties will seek to agree appropriate changes to this Agreement.

#### **7 RIGHTS OF THIRD PARTIES**

7.1 Neither Party intends to confer any right or benefit upon a third party and, for the avoidance of doubt, the provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from this Agreement.

#### **8 LAW AND JURISDICTION**

8.1 This Agreement will be subject to, construed and interpreted in accordance with English Law.

8.2 The parties submit to the exclusive jurisdiction of the courts of England and Wales.

## 9 DISPUTE RESOLUTION

- 9.1 The Parties will attempt to resolve any dispute between them arising out of or in connection with this Agreement or the performance, validity or enforceability of it ("Dispute") in accordance with the remaining provisions of this clause 9.
- 9.2 If a Dispute arises, then the following will happen:
- 9.2.1 Either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"). The matter will be discussed at a meeting between the Authorised Officer and a representative of the Organisation within 7 working days of service of the Dispute Notice.
- 9.2.2 If the Authorised Officer and a representative of the Organisation are for any reason unable to resolve the Dispute within 7 days of service of the Dispute Notice, then, upon request of either party, the matter shall be referred to a member of senior management from the Council and the Organisation's chief executive officer or similar representative who shall in good faith attempt to resolve the matter.
- 9.2.3 If the member of senior management from the Council and the Organisation's chief executive officer or similar representative are for any reason unable to resolve the Dispute within 14 days of the matter being referred to them, the parties agree to enter into mediation in good faith to settle the dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 40 days of service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed between the parties, the mediation will start not later than 30 days after the date of the ADR notice.
- 9.3 No party may commence any court proceedings under 8 (*Law and Jurisdiction*) in relation to the whole or part of the Dispute until 90 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

## 10 SEVERANCE

- 10.1 If any term, condition or provision in this Agreement is held to be invalid unlawful or unenforceable to any extent such term condition or provision will not (save where it goes to the root of this Agreement) affect the validity, legality or enforceability of the remaining parts of this Agreement.

## 11 TERMINATION OF THE AGREEMENT

- 11.1 Once the Council has paid the Council's Contribution then neither party shall have the ability to terminate this Agreement.
- 11.2 The Agreement shall terminate at the end of the Agreement Period.
- 11.3 The Agreement shall terminate automatically on the Organisation's insolvency or winding-up.

## 12 REFUND OF THE COUNCIL'S CONTRIBUTION

- 12.1 If, during the Agreement Period, the Organisation materially breaches any of the conditions referred to in clauses 2 to 5 and, if such breach is capable of remedy, fails to remedy such breach within a period of 28 days after being notified in writing to do so, the Organisation undertakes to repay the Council's Contribution.

**13 ENTIRE AGREEMENT**

13.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, representations and undertakings between them, whether written or oral, relating to this subject matter.

**EXECUTION**

**IN WITNESS** of which the Parties have executed this Agreement BY SIGNING UNDER HAND the day and year first before written.

**THE ORGANISATION:**

**THE LONDON BOROUGH OF HAMMERSMITH  
AND FULHAM:**

Signature

Signature

Printed Name

Printed Name

Title

Title