

# CREATIVE WRITING COMMISSION AGREEMENT

For .....

THIS AGREEMENT IS MADE ON .....

Between  
..... (**"The Commissioner"**)

And  
*NAME AND ADDRESS* (**"The Writer"**)

**The Commissioner has agreed to commission the Writer to create**  
.....

The designs follow Health and Safety and design criteria Guidelines stated in the draft subject to the following terms.

## **1. The Commission**

- 1.1 The Commissioner agrees to commission the Writer to undertake and complete the work as described in the Brief ("the Work") on the following terms.
- 1.2 The Brief may only be changed by agreement in writing signed by both parties.

## **2. Acceptance and Completion of Work**

- 2.1 The Writer agrees to complete the commissioned Work by .....
- 2.2 The Writer will permit the Commissioner (or its authorised agent) to view the Work throughout the development at reasonable times and on reasonable notice.
- 2.3 The Writer shall use their professional judgement to create the Work and to determine when the Work is completed. The Commissioner agrees that it will accept the completed Work unless the Commissioner can show that the Work was not executed substantially in accordance with the description given in the Brief.
- 2.4 The Writer will be responsible for carrying out or subcontracting agreed works, in accordance with the requirements and time-schedule described in the attached Brief or otherwise agreed in writing between Writer and Commissioner.

## **3. Obligations of the Writer**

- 3.1 The Writer will conduct the workshops, discussions and community liaison specified in the Brief.
- 3.2 The Writer will conduct all aspects of the Brief in an orderly manner and will endeavour to take all reasonable care and consideration when dealing with members of the public.
- 3.3 During the Agreement period the Writer shall undertake the Brief in a proper, safe, skilful and effective manner, to the Agreement standard and to the entire satisfaction of the Authorised Officer and in accordance with any instructions or notices issued by the Authorised Officer.
- 3.4 Where the Writer liaises directly with the Commissioner's appointed contractor, the Writer shall keep the Commissioner informed of all agreements and negotiations between the Writer and the appointed contractor.

## **4. Delivery of Work**

- 4.1 The Writer shall arrange for delivery of the completed Work to the site on or before the agreed completion date.
- 4.2 The costs of delivery (including packaging, transport and insurance) shall be paid by the Writer as outlined in the Brief and Budget.

## **5. Publishing**

- 5.1 The Writer shall deliver the Work on such date(s) as is agreed with the Commissioner following completion of the Work.
- 5.2 The cost of publishing shall be borne by the Writer as per Brief.

## 6. **Warranties and Repairs**

- 6.1 The Writer undertakes to the Commissioner that the Work will be original and will not infringe the copyright or other rights belonging to any third party.
- 6.2 The Writer shall exercise all reasonable skill, care and diligence in undertaking and carrying out the Work.

## 7. **Fees and Payments**

- 7.1 The Commissioner agrees to pay the Writer a fee, which shall be paid in the following instalments. This fee includes the cost of workshop materials, all community liaison costs and writer travel expenses.

Stage 1 of £.....	25 % upon agreement of and signing of contract.
Stage 2 of £.....	25% upon completion delivery of workshops and generation of stories by local people
Stage 3 of £.....	40% upon awarding printing contract (that can be paid directly to printer, if required)
Final Stage 4.....	10% on completion

- 7.2 The Writer shall invoice .....for the above payments on or before the date when the instalment is due for payment and payment shall be made within 30 days of the due date.
- 7.3 The Writer shall manage the budget for the materials, development and publishing costs.
- 7.4 The Writer shall agree invoicing arrangements for relevant subagreed works with the Commissioner on agreement of the proposed designs.
- 7.5 The Writer will be reimbursed those costs and expenses (if any) specified in the Brief and Budget as part of and included within the fee payment in 7.1 above. However if the Writer incurs any reasonable additional costs or expenses which are caused as a direct result of amendments to agreed designs or other additional requirements or conditions requested by the Commissioner, or of any delay in completion of the site works to be carried out by the Commissioners, the Commissioner will reimburse these on production by the Writer of receipts or other evidence of the costs or expenses reasonably incurred.
- 8.6 The above fees and expenses are exclusive of VAT. which will be added where the Artist is registered for VAT. It is the Writer's responsibility to inform ..... if the Writer is registered for VAT purposes and to supply a VAT invoice.

## 8. **Insurance**

- 8.1 The Writer is responsible for acquiring adequate Public Liability Insurance (up to five million pounds) for the duration of the agreement.
- 8.2 The Writer shall supply to the Commissioner forthwith and upon each renewal date of any relevant policy, a copy of the certificate from its insurers or brokers confirming that the Writer's insurance policies comply with this Condition and the Writer shall supply to the Commissioner on request copies of all of its insurance policies, cover rates, premium receipts and other documents necessary to establish compliance with this Condition.
- 8.3 The Writer will be responsible for their own equipment, which they use or leave on the Commissioner's premises unless otherwise agreed in writing.
- 8.4 The Commissioner shall indemnify and keep indemnified the Writer against injury to, or death of, any person, or loss of, or damage to, any property including property belonging to the Writer to the extent that it may arise out of the act, default or negligence of the commissioner, its employees or agents and against all actions, claims, demands, proceedings, damages, costs, charges and expenses in respect of them, or in relation to them so arising.

## 9. **Ownership**

- 9.1 The Writer will retain legal title and ownership of the Work until payment of the final instalment of the fee referred to in Clause 6.1 above is made or until payment upon earlier termination in accordance with Clause 13.
- 9.2 Upon payment of the fee as referred to in 9.1 above, ownership and legal title of the Work shall transfer to the Commissioner.

## 10. **Copyright and Reproduction Rights**

- 10.1 Copyright of the Work (including in any preliminary designs) shall remain at all times with the Writer.
- 10.2 Once the work is complete it will be owned by The Commissioner. Although all ascribable rights to the book will reside with The Commissioner. It may be our intention that further print runs of the book could be produced under license by the Writer.
- 10.3 The Commissioner shall be entitled without payment to the Writer to make (or authorise others to make) any photograph, film or video of the Work and to include this in any advertising, brochures, or other publicity material or film, video or television broadcast provided that any such reproduction is intended to promote or record the making of the Work (or the project of which it forms part) and is used for non-commercial purposes.

## 11. **Credits and Moral Rights**

- 11.1 The Writer hereby asserts his or her moral right to be identified as the creator of the Work in accordance with Section 78 of the Copyright Designs and Patents Act 1988, on all occasions when the Work (including any preliminary designs, sketches or maquettes) or any photograph or other permitted reproduction is exhibited, published or issued to the public.
- 11.2 Without prejudice to the Writer's statutory moral rights, the Commissioner undertakes not intentionally to alter, damage or destroy the Work, or knowingly consent to others doing so, without the prior written approval of the Writer.

## 12. **Promotion and Publicity**

- 12.1 Promotion and publicity for the Commission and associated events will be the responsibility of the Commissioner in association with the Writer as indicated in the Brief.

## 13. **Termination of Agreement**

This Agreement can be terminated by notice in writing (setting forth in adequate detail the grounds of such termination) in any of the following circumstances:

By the Commissioner:

- 13.1 In the event that the Writer is in default of any obligation under this Agreement (save for a serious default which is dealt with under paragraph 18.4), the Commissioner shall give written notice to the Writer who shall first be allowed a reasonable period to remedy the default. If the default is not remedied within such period the Commissioner may terminate the Agreement by further written notice and the Writer shall not be entitled to receive any further fees.
- 13.2 If the project is cancelled or other circumstances arise beyond the control of the Commissioner which prevents the continuation of the Work, the Commissioner may terminate the Agreement by written notice to the Writer, who may receive and retain payment for all work up to until receipt of such notice.
- 13.3 If the Writer or any person employed by the Writer or acting on behalf of the Writer (with or without the Writer's knowledge of consent):
  - 13.3.1 Offered, or gave, or agreed to give to any person any gift, or consideration of any kind as an inducement or reward for doing, or forbearing to do, or having done or forborne to do any action in relation to the obtaining of the Agreement, or any other Agreement with the Commissioner, or for showing or forbearing to show

favour, or disfavour, to any person in relation to the Agreement, or any other Agreement with the Commissioner.

- 13.3.2 In relation to the Agreement, or any other agreement with the Commissioner, committed any offence under the Prevention of Corruption Act 1889 to 1916 or S117(2) of the Local Government Act 1972.
- 13.3.3 Given any fee or reward to any member or officers of the Commissioner, which shall have been extracted or accepted by such officer by virtue of office or employment and is otherwise than such officer's proper remuneration.

The Commissioner shall be entitled forthwith to terminate the Agreement and recover from the contractor the amount of any loss resulting from such termination.

#### 13.4 If the Writer

- 13.4.1 Commits a serious breach of any of their obligations under the Agreement.
- 13.4.2 Becomes bankrupt, insolvent, or involved with any arrangements, appointments or applications with its creditors or the court under the Insolvency Act 1986.

Then in any such circumstances the Commissioner may, without prejudice to any accrued rights or remedies under the Agreement, terminate the Agreement by notice in writing having immediate effect

#### 13.5 If the Agreement is terminated as provided in Condition 13.1, 13.2 and 13.3 or 13.4 and is not reinstated, the Commissioner shall:

- 13.5.1 Be entitled to possession of (a) the maquettes and preliminary drafts (b) any of its materials, clothing, equipment, or other goods loaned or hired to the Writer.
- 13.5.2 Be entitled to employ and pay other people to provide and complete the provision of the Work or any part of it.
- 13.5.3 be entitled to deduct from any sum or sums which would have been due from the Commissioner to the Writer under this Agreement or any other agreement any loss or damage to the Commissioner resulting from or arising out of the termination of the Writer's employment. Such loss or damage shall include the reasonable cost to the Commissioner of the time spent by its officers in terminating the Writer's employment and in making alternative arrangements for the provision of the Brief or any part of it;

By the Writer:

- 13.6 The Writer may terminate the Agreement by notice in writing if the Commissioner is more than 30 days late in making any payment or is in serious default of any other obligation under this Agreement, provided that in the latter case the Commissioner is first allowed a reasonable period to remedy the default. The Writer shall be entitled to receive and retain payment of all work done until receipt of the termination notice.
- 13.7 If this Agreement is terminated under the above provision the Writer shall retain ownership of the Work until payment for all work done until termination, ownership shall then transfer to the Commissioner. Paragraph 10 of this agreement will continue to apply for copyright.
- 13.8 This Agreement will terminate automatically on the death or incapacity of the Writer, whereupon the Writer (or his or her estate) will receive all payments due up to the date of death or incapacity and the Commissioner may keep the work in progress and any preliminary designs and may, if it wishes, complete the Work using an Writer acceptable to the Writer or his/her estate.
- 13.9 The Writer will not be treated as being in default under this Agreement if any delay in completing the Work is due to any cause beyond the Writer's reasonable control.

#### 14. **Authorised Officer**

- 14.1 The Authorised Officer shall be the person named in the Brief or in default of appointment the Manager of the relevant department of the Commissioner or such representative appointed by the Commissioner to act in the name of the Commissioner for the purposes of the Agreement.
- 14.2 The Commissioner shall give notice in writing to the Writer of the replacement of the Authorised Officer or if any person ceases to be the Authorised Officer.
- 14.3 From time to time the Authorised Officer may appoint one or more representative to act for the Authorised Officer generally or for specified purpose or periods. Immediately any such appointment is made, the Authorised Officer shall give written notice to the Writer.
- 14.4 The Writer shall address all communications regarding the Brief to the Authorised Officer.

## 15. **General**

- 15.1 Any notice given under this Agreement shall be in writing addressed to the other party at the address given above and either party shall notify the other of any change in, her or its address as soon as possible after that change occurs.
- 15.2 No variations or additions to this Agreement or the Brief may be made without the written consent of both parties.
- 15.3 This Agreement contains the entire agreement and understanding between the parties as to the commission and the Work.
- 15.4 The Writer may subcontract or delegate all or part of the fabrication or execution of the Work, subject to the written consent of the Commissioner, and if such subcontract or delegation is agreed to it shall be upon the basis that the Writer shall personally supervise the design and execution of the Work.
- 15.5 The parties agree that the Writer is an independent contractor and not an employee and that this agreement is not an agreement of service of any kind.
- 15.6 This Agreement is binding upon the parties, their assigns and all other successors in title.
- 15.7 This Agreement is governed by the law of England.

## 16. **Disputes**

- 16.1 Any disputes arising (other than a dispute over the legal interpretation of the Agreement) may be referred at the instance of either party for expert determination to an independent expert to be agreed between the parties (or if the parties cannot agree the independent expert shall be appointed by the President (or equivalent person) of the professional body chiefly relevant in England who shall act as expert and not as arbitrator and whose decision shall be final and binding on the parties.)

## 17. **Corruption Clause**

The Commissioner may cancel the agreement and recover any resulting losses from the Writer, if the Writer, its employees or agents, with or without its knowledge:

1. Improperly offers or gives anyone anything in order to influence the way in which any agreement with the Commissioner is given, completed or carried out; or
2. Commits any offence under the prevention of Corruption Acts 1889 to 1916 or section 117(2) of the Local Government Act 1972.

## 18. **Force Majeure**

The Agreement may be extended (and neither party shall be regarded as in breach of their respective obligations under this agreement) to cover delays caused by strikes, non-availability of materials, weather, injury or illness or other causes outside the reasonable control of either party, such extension to be agreed between the parties. Should however the cause create substantial delays the Termination provisions of paragraph 18.2 shall apply.

## 24. **Modifications**

- 18.1 The Authorised Officer shall be entitled to issue to the Writer instructions in writing in relation to all or any of the following:
- 18.1.1 to provide the brief/work or any part of it in such manner as the Authorised Officer may reasonably require provided that a requirement to provide the Brief/work to the Agreement Standard shall not be a modification
  - 18.1.2 To omit any part of the Brief or to cease to provide any part of the Brief as the Authorised Officer may determine.
  - 18.1.3 to provide such services additional to the Brief as the Authorised Officer may reasonably require, provided that such additional services shall be the same as or similar to the Brief.
  - 18.1.4 To vary permanently the Brief or any part thereof.
- 18.2 The valuation of modifications made pursuant to this Condition shall be ascertained by the Authorised Officer in accordance with the following provision:
- 18.2.1 Where the modification is of a similar character to and is executed under similar conditions to the Brief the rates and prices for the work which would be charged by alternative artists shall determine the valuation.
  - 18.2.2 Where the modification is not of a similar character to or is not executed under similar conditions to the Brief the valuation shall be made at fair rates and prices having due regard where applicable to the rates and prices charged by alternative Writers.

Attached are a Brief and Budget

**Signed by the Artist:**

**In the presence of:**

**Signed by the Commissioner:**

**In the presence of:**