

Small Theater Contract – National Premiere

Dear Member:

Attached you will find The Dramatists Guild's new model contract entitled "**Small Theater Contract – National Premiere**", intended for premieres of your work at small non-profit theatres, and in limited production runs, outside of N.Y. and L.A.

In order for this agreement to be a complete document, you must (a) fill in blanks in the contract and (b) address choices signified by brackets ("[]"). Any text currently within brackets is intended as a guideline that is reflective of current industry standards. Nevertheless, you may feel that your own practice or circumstance dictates a change in terms. In any event, if you do not fill in the blanks or choose among bracketed alternatives, you will leave confusion about what you and the producer intended. Among the terms you will want to fill in or modify in this form of contract are:

- **Heading:** Insert the name & address of Author, the name & address of Producer, and the name of Play.
- **Section 1:** Insert the name of the theatre, and the opening and closing production dates (sometimes, a limited extension in the production period can be part of the agreement, provided additional compensation or some other consideration is given to author).
- **Section 2(a):** Insert amount of Advance, if any. An "**Advance**" is an upfront payment to the author, which is taken back by the producer (i.e., "recouped") out of the author's royalties. This payment gives the producer an exclusive period of time during which to present the play, and so is sometimes referred to as an "option" payment. The Advance is non-returnable, even if the producer does not present the play. The advance is often an amount equivalent to one week's royalty, based on no less than a 5% royalty at 90% of the theater's capacity.
- **Section 2(b):** Insert amount of Royalties, if any. A "**Royalty**" is an amount paid to an author as a licensing fee for presenting the author's play. It is often calculated as a percentage of the total box office receipts, which is called a royalty based on "Gross" (i.e., the Gross Weekly Box Office Receipts, or "GWBOR"). A gross royalty is generally in the range of 5% to 10%. Less often, a royalty will be based on a percentage of "Net" (i.e., Weekly Net Operating Profits, or "WNOP"). In these circumstances, there should be a certain guaranteed minimum fee per performance or per week paid to the author, regardless of profits. Also, a royalty could be in the form of a flat fee (either per performance, or for the entire run), or in a formula that combines some or all of these methods.
- **Section 2(c):** Insert amount of the Per Diem (if any). A "**Per Diem**" is an amount paid to the author as reimbursement for the author's living expenses (including travel, accommodations, food), if the author is required to travel to another locality to participate in the casting, rehearsals, previews, and official opening of the Play.

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Some small theaters do not customarily pay per diems or expenses (or advances or royalties, for that matter!) due to limited financial resources. But, in any event, an author should get no less than what any other author has gotten from that theater in the current or prior season, or, if the theater has not customarily paid authors, then no less than the amounts paid to the director working on the production, if any.

- **Section 3:** There are no blanks in Section 3.
- **Section 4(a):** Insert the name of Theatre.
- **Section 5:** A “**Warranty**” is a promise made by each of the parties to the other; generally, it involves an author’s promise that the play is original and a production of the play will not violate anybody else’s rights. The producer then warrants that the author will not be liable for anything else related to the production. An “**Indemnification**” is the promise made by the parties to protect the other party from any financial harm if the warranty is broken, or “breached.”
- **Section 6:** Insert the name of the State whose laws will control the interpretation of contract. Generally, this will be the state where the theater is located. Then, insert the name of the State that will provide the venue for resolving disputes. This can be either the State where the theater is located, or the State where the author lives, or both. An “**Arbitration**” is a method of dispute resolution that is quicker, easier, and more efficient than litigation; it uses an arbitrator and is conducted under the rules of the American Arbitration Association.

Read the contract form carefully, modify it as appropriate and do not sign it unless you are comfortable with and understand all of its provisions. In the meantime, we are available to answer your questions about business practices in connection with this and other contracts.

Sincerely,
The Dramatists Guild of America, Inc.

This form is not meant to be a complete document, and it is important that you read it carefully and, in considering your specific circumstances, add to, delete, or modify it as is appropriate for your specific situation. But, even with modification, this form may not meet all of your needs. In many instances, this may not be the appropriate contract for you, and you may wish to request other forms or background material from the Guild on contracts and authorial rights, or contact the Business Affairs department for further information.

The Guild provides its members with business advice, NOT legal advice or representation. Therefore, providing you with this and other form contracts is not a substitute for your obtaining independent legal representation. Thus, in using this form of contract, you should be aware that you should either obtain legal advice, or, if you wish, act as your own lawyer. In any case, you cannot rely on us for your legal advice and representation.

The copyright in this form of contract is owned by the Guild. Only members in good standing may use or modify the contract for their specific purposes. Purchase of this contract does not grant the right to make multiple copies of it, nor to use it for any but its intended purposes, nor to alter it to such a degree that it no longer represents the Guild’s standards, as reflected herein.

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THIS AGREEMENT, is made on _____ (the "Effective Date"), by _____ (the "Author") and _____ (the "Producer"), with respect to the Author's play currently entitled _____ (the "Play"). **WHEREAS** the Producer wishes to acquire the right to produce the Play and to acquire the Author's services in connection with the production, **THEREFORE** the parties agree as follows:

1. **GRANT OF RIGHTS:** The Author grants to the Producer the right to produce and present the Play at _____ (the "Theatre"), beginning _____ (the "Production Date") and closing _____ ("Closing").
 - a. The Author is the sole owner of the copyright in the Play, and all rights in the Play not expressly granted to the Producer in this Agreement are reserved to the Author for the Author's sole use; however, until termination of the Producer's right to present the Play, the Author shall not present or grant to any Person the right to present a live stage production of the Play within a [75] mile radius of the Producer's production. Furthermore, the Producer shall not allow the Play to be recorded or broadcast in any manner without the prior written consent of the Author.
2. **COMPENSATION:** In consideration for the right to produce the Play, the Producer agrees to pay the Author the following [*choose AT LEAST a or b; choose c only if applicable*]:
 - a. Advance: [\$ _____] due upon execution of this Agreement; [**and**][**or**]
 - b. Royalties: [*choose at least ONE of the following, or some combination thereof*]
 - i. _____ % of Gross Box Office, or
 - ii. \$ _____ per performance guarantee, applicable against _____ % of Net Profits, or
 - iii. \$ _____ flat fee, due within [30 days] after the last performance hereunder.
 - c. Expenses / per diem: Author shall be reimbursed for reasonable expenses of [**travel, housing, and/or per diems**] related to the production of the Play [**at the rate of \$ _____ per day**] but which, in any event, shall be no less than for the time period and at the rate customarily provided by the Producer to any other author produced by the Producer during the current or prior season, nor less than what is provided by the Producer to any other person providing services on the Play through the official press opening (if any).
3. **AUTHOR'S RIGHTS:** Any violation of this paragraph 3 will be sufficient cause for Author to immediately terminate all rights of the Producer hereunder without penalty or damages to Author.
 - a. Right To Be Present: Author shall have the right to attend all casting sessions and rehearsals, as well as all previews and the Official Opening of the Play.

- b. Script Approval: Producer agrees that it will not make or permit to be made any addition, omission and/or alteration to the Play (including the title, dialogue and stage directions) without the prior written consent of the Author. Any change of any kind whatsoever made by Producer or any third party and which is acceptable to the Author shall be the property of the Author, free and clear of all liens and encumbrances, and the Author shall not be obligated to make any payments to any Person who makes or suggests any changes in the Play.
 - c. Artistic Approvals: The cast, director, and designers, including their replacements and understudies, shall be subject to the mutual approval of the Author and the Producer.
 - d. Materials: Prior to the closing date of the Play, the Producer shall deliver to the Author a neat and legible script of the Play as presented, in the form of a "production book." Producer will also provide a copy of all marketing materials used in conjunction with the Play and any press clippings (including any reviews) regarding the Play.
4. **BILLING**: Author shall receive billing credit in all programs, advertising, and publicity for the Play under the control of the Producer. The Author's billing shall be on a line by itself, immediately following the title of the Play. No Person shall receive billing larger or more prominent than the Author. The Author shall also receive a biography in any program where any person receives such a biography. No casual or inadvertent failure to comply with the provisions of this paragraph shall be deemed a breach of this Agreement unless the Producer does not remedy the mistake promptly upon the Producer's receipt of notice from the Author.
- a. Producer's Billing: If Producer has presented the premiere of the play as specified, and has made all payments to Author and is not otherwise in material breach of this agreement, Author shall contractually require the Producer to receive billing credit during the period from the closing of the production hereunder [**for two years thereafter**] in all productions and presentations of the Play and in all programs and publications of the Play in book or magazine form, substantially as follows: "Originally produced by _____."

5. **WARRANTIES & INDEMNIFICATION**:

- a. **AUTHOR** warrants that (i) Author is the sole owner and author of the Play, all of which is wholly original with the Author (except to the extent that it contains material which is in the public domain or for which the Author has obtained or is not required to obtain permission to be used in the Play), and has not been otherwise copied in whole or part from any other work; (ii) Author has the sole and exclusive right to enter into this Agreement, and has the full authority to grant the rights granted by the Author herein; and (iii) neither the Play nor its use under this license violates, conflicts with or infringes upon any copyright or rights of privacy or publicity, nor does it defame any person or entity.

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- i. Author's Indemnity: The Author will indemnify the Producer against any losses (other than loss of profit), costs, expenses (including reasonable attorney's fees), damages and recoveries caused by any breach of the representations or warranties of the Author made herein. The foregoing indemnity shall apply only to matters finally judicially determined or, with the Author's prior written approval, settled, such approval not to be unreasonably withheld.

 - b. **PRODUCER** warrants that (i) Producer has all the requisite power and authority to enter into and perform the terms and conditions of this Agreement; (ii) the execution, delivery and performance by the Producer of this Agreement does not violate any of the terms or conditions of any contract or document to which the Producer is a party or to which the Producer or its assets are bound, and no agreement by any other Person is required to be obtained in connection with the execution, delivery or performance of this Agreement. Furthermore, Producer shall not permit any person under its direction or employ to represent, imply or agree (privately or publicly, directly or indirectly) that the Play is a Joint Work as defined in 17 U.S.C. Section 101, or that the authorship of the Play is held by any Person other than the Author.
 - i. Producer's Indemnity: The Producer will hold harmless and indemnify the Author against any and all losses (other than loss of profit), costs, expenses (including reasonable attorney's fees), damages and recoveries caused by any element of the Play or any production thereof authorized by the Producer in connection with this Agreement not expressly related to the Author's representations and warranties. The foregoing indemnity shall apply only to matters finally judicially determined or, with the Producer's prior written approval, settled, such approval not to be unreasonably withheld.
6. **GOVERNING LAW / DISPUTES**: This agreement shall be governed by, and construed in accordance with, the laws of the state of ____ [State] applicable to all contracts made and entirely performed within that state, and all disputes shall be resolved in an appropriate venue within that state [and/or in the State of ____ (another State)]. If a dispute arises out of or related to this Agreement, the dispute shall be settled by arbitration before a single arbitrator, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. In any arbitration or mediation brought for the nonpayment/collection of monies, the award of the arbitrator, as the case may be, shall require the party losing such dispute to pay the costs of such arbitration plus the prevailing party's reasonable attorney's fees.

If the parties have read and agreed to the terms of this contract, then sign below.

PRODUCER

AUTHOR

By: _____

By: _____

Address: _____

Address: _____