

Contract Rider for Professional Productions at Non-Profit Theaters

If a Dramatists Guild member is contracting with a theater for a professional premiere production on the Theater's main stage, Author may request that Theater execute and attach this RIDER to the contract, and a copy of the fully executed contract and RIDER shall be filed with the Guild by Author. When executed by Theater and Author, this RIDER will amend the contract between Author and Theater (contract to be attached hereto), and where RIDER conflicts with the contract, or any other prior or contemporaneous agreement between the parties, RIDER shall be controlling.

1. **Grant of Rights / Initial Option to Present Play** – Author retains all rights and interests in the Play, including all copyrights, subject only to a grant to Theater of the right to present a professional production of specified duration on the Theater's main stage, with allied rights granted to develop and promote the Play, along with such limited merchandising and cast album rights as Theater may customarily be granted (subject to the applicable standard royalties to Author related thereto).
 - a. The "Initial Option Period" may be no longer than 1 year or 1 season. A "Second Option" may not carry the total option period beyond 2 seasons, and is contingent upon Theater at least "announcing" the production during the "Initial Option Period." The Theater may also present readings during the option period, but any "2nd stage" production or developmental production shall require separate compensation to Author, and in no event may any such developmental activities extend the total option beyond the duration of such productions, nor may they place any encumbrances on the play or on the Author's future proceeds therefrom.
 - b. For purposes of this RIDER, a "*Professional Production*" is defined as a fully-staged, royalty-paying production presented by professional artistic personnel (i.e., director, choreographer, designers, cast) under their applicable union contracts, or at no less than the equivalent union minimum rate, with tickets sold to the general public (including subscribers). A "*Professional Premiere*" is the first Professional Production in the Territory, presented on a theater's main stage for no less than 12 performances, with an official press opening.
2. **Compensation** - Author's compensation and billing terms may be negotiated between the parties in their sole discretion. However, in order to qualify as an Originating Theater under Section 6 of this RIDER, those terms may be no less than as follows:
 - a. **Commission** – A Commission fee (if applicable) may be negotiated to compensate Author for the time and labor invested in writing a play at Theater's request. A commission does not entitle Theater to any share of Author's copyright or revenues. No portion of the commission can be payable to Author later than the Author's delivery to Theater of no more than two drafts of the play, nor shall any portion of the fee be deemed returnable or recoupable from Author's royalties by Theater. However, if the commission is paid for a LORT mainstage premiere production, then the parties may agree that any option or advance payments that would otherwise be due Author for such a production may be reduced by an amount not to exceed 50% of the commission fee.
 - b. **Options / Advances** – Options and Advances may be no less than what Theater has previously paid to Author for prior productions, or what Theater had paid to any other author for a Professional Premiere in the current or prior season but, if the production is to be a LORT mainstage premiere production, the Option may be no less than 50% of the equivalent of one week of Author's royalties payable at 90% of gross capacity paid upon the commencement of the initial option period. The remaining 50% shall be paid no later than the Theater's first rehearsal. The Option and Advance are non-returnable and deductible only from Author's royalties in excess of at least 33% of Author's royalties earned in any week.
 - c. **Royalty** – Author's royalty may be no less than the royalty that Theater has previously paid to Author for prior productions, or paid to any other author for a professional premiere in the current or prior season. If Theater is a member of LORT, then the royalty may be no less than as

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required for a LORT production under the Guild's "Approved Production Contract" [APC] then pertaining (currently, 5% of gross weekly box office receipts).

- d. **Author's Billing** –Author's billing may be no less favorable to Author than as follows: (i) on a line by itself immediately after the title, (ii) no one shall receive larger billing, other than stars above the title and the Theater's institutional logo, (iii) Author is billed in all materials where producer and/or director is billed, (iv) If Theater uses a "billing box" or "run-on billing", then the billing of all parties (except stars above the title) must be treated similarly, and (v) Author receives an approved biography in any program that contains a biography of any other person or entity, placed in 1st position after cast biographies.
 - e. **Breach** - Any breach of this Section 2 will be deemed a material breach of the contract, unless it is cured as soon as is practicable upon written notice to Theater.
- 3. Script Approval** – No addition, omission or alteration in the manuscript of the Play (including the text, title, and stage directions) may be made without the prior written consent of the Author. Any changes to which the Author consents shall be the sole property of the Author without necessity of payment, and free and clear of all liens, claims and encumbrances.
- a. **Breach** - Any breach of this Section 3 will be deemed a material breach of the contract, unless it is cured as soon as is practicable upon written notice. The Theater's failure to cure such breach within a reasonable period will permit the Author to terminate this contract ten (10) business days after written notice to Theater. Any performances of the Play presented by Theater after such termination shall constitute a willful infringement of Author's copyright, unless Author has given Theater written permission to present such subsequent performances, or if Theater regains its production rights as a result of a settlement or other legal proceeding.
- 4. Artistic Approvals** – The cast, director and designers (and with regard to musicals, the orchestrators, arrangers, copyists, and musical directors), and all replacements thereof, shall be mutually agreeable to Theater and Author. If the Theater has a pre-existing resident "stock company" from which it draws its artistic personnel, Author agrees that approvals may be limited to such stock company. If Author does not disapprove such personnel within at least 48 hours, approval will be deemed granted.
- a. If Theater uses dramaturgs, or other similar employees or consultants, it is understood that (i) such employees are employees of the Theater; (ii) any and all contributions of such employees shall be made on a "work-for-hire" basis and shall be deemed assigned to Author without lien or encumbrance; (iii) any and all compensation payable to such employees for their contributions shall be the sole responsibility of the Theater; and (iv) the Author is in no way obligated to make any use whatsoever of such employees' services as a condition for production by the Theater.
- 5. Right to be Present / House Seats / Other Materials / Expenses.**
- a. Author has a right to be present during all readings, casting sessions, rehearsals, previews and performances.
 - b. Author shall receive a final "stage manager's script" of the production, at the conclusion of the initial run at the Theater, and shall be provided with copies of all marketing materials and press coverage (including reviews) related to the Play.
 - c. Author shall be entitled to purchase at least one (1) pair of house seats for each performance of the Play and shall be provided with at least one (1) additional pair of complimentary seats for the official Opening Night (including invitations to the opening night party, if any).

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- d. Theater shall reimburse Author for reasonable travel, accommodations and per diem living expenses during (i) any period when Theater requests Author's presence, and (ii) for any other period that Theater has customarily provided such reimbursement to an author. The per diem shall be negotiated between the parties, but in no event shall it be less than what Theater has previously paid to Author for prior productions, or what Theater had paid to any other author in the current or prior season.
6. **Originating Theater** – If the Theater presents the Professional Premiere of the Play for no less than 21 consecutive paid public performances (including an official press opening, but counting no more than 8 previews), and if the Theater has paid Author commissions (if applicable), options, advances and royalties, and has provided Author with billing, all on terms no less than as provided in this RIDER, and if Theater is not otherwise in material breach of the contract, then Theater may be deemed an “Originating Theater,” entitled to no more than the following:
- a. **Future Options** – Originating Theater may be granted the right to extend or transfer its initial production, or to thereafter produce or co-produce 1st Class or 2nd Class productions in the US/Canada (the “Territory”), under such terms as may be negotiated with the Author, consistent with industry standards and, with regard to 1st Class rights, subject to the APC then pertaining.
 - b. **Theater Billing** – Author may agree to contractually require that Originating Theater receive billing in future publications and productions of the play (e.g., “originally presented by”) with such billing to include no more than the name of the Theater and up to two individuals. Author may only ever be obligated to use best efforts with regard to (1) Theater’s “size and placement” billing parameters, and (2) billing for audio-visual adaptations. If Theater is a Commissioning Theater, Author may agree to contractually require that Theater receive “commissioned by” billing. If Theater conducts readings, workshops and/or 2nd stage productions of the Play, Theater may receive “developed by” billing.
 - i. If the “*Originating Theater’s production*” is subsequently presented by a third-party commercial producer, Originating Theater may also contractually require a possessory billing (“Producer presents the [Theater]’s production of...”). The “*Originating Theater’s Production*” shall be defined as a subsequent commercial production using the same director, at least one of the same designers, and at least 50% of the same cast that were originally engaged for the Originating Theater’s production.
 - c. **Theater’s Royalty** – If “*Originating Theater’s production*” is subsequently presented by a third-party commercial producer in a 1st class or 2nd class production in the Territory, OR, if a third-party commercial producer presents a production that is not “*the Originating Theater’s production*” but is nonetheless a 1st class or 2nd class production in the Territory which commences performances within two years of the Theater’s last performance (without any intervening non-profit productions prior to the commercial production, except for productions presented under the NNPN Rolling World Premieres program), then the Originating Theater can request that Author contractually require the subsequent commercial producer to pay Originating Theater the following:
 - i. A royalty in an amount equivalent to no more than 20% of Author’s royalty from such production (e.g. a 1% royalty, when Author is paid a 5% royalty), paid on the same terms and conditions as apply to Author for such productions. The Originating Theater’s royalty may not be deducted from Author’s royalties, and shall be paid by the commercial producer to Theater in lieu of any share of Subsidiary Rights revenues that the Originating Theater might otherwise have received from Author; and

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- ii. A percentage of the commercial production’s net profits equivalent to no more than the royalty Author was paid by the Originating Theater (e.g., a 5% net profit share, where Originating Theater paid Author a 5% royalty).
- d. **Subsidiary Rights Revenues**– If Originating Theater has contractually required a share of subsidiary rights revenues from Author with regard to any prior productions, or with any authors produced in the current or prior season, then Originating Theater may be granted a percentage of Author’s Net Subsidiary Rights Revenues at a rate not to exceed the gross royalty rate payable to Author by Theater (e.g., Theater receives a 5% subsidiary rights share, based on paying Author a 5% royalty).
- i. “*Net Subsidiary Rights Revenues*” shall only include revenues earned from subsidiary rights (as defined in the APC then pertaining) that are disposed of by the Author in the Territory (except for motion pictures rights, which shall include worldwide dispositions), and that are made within five years of the last performance of the Play produced by Originating Theater, but only from such revenues payable to Author in excess of at least \$50,000 (\$75,000 for a LORT A or B+ theater), net of any agency commissions.
 - ii. Originating Theater’s participation in Author’s subsidiary rights must be subject to at least the following additional limitations: (1) Theater may not participate in Author’s proceeds from any disposition for which Theater receives a separate royalty, (2) the subsidiary rights provision shall terminate if Theater vests in a subsidiary rights share under a subsequent production agreement related to the Play, or if the contract is terminated by Author due to Theater’s material breach of this RIDER, and (3) Theater’s subsidiary rights share shall be reduced by up to 50% if there is another non-profit production thereafter, prior to a commercial production, for which the subsequent non-profit theater also requires a subsidiary rights participation (other than a NNPN Rolling World Premiere production).
7. **National New Play Network Rolling World Premieres Program** – While only one theater may be deemed the Originating Theater, if the Play is produced by Theater pursuant to the “National New Play Network Rolling World Premieres” agreement, and provided the Play is presented by at least two additional theaters in the Network within twelve months of its initial performance at Theater, and further provided that at least one of the Network theaters meets the standards of an “Originating Theater,” then the Theater’s Royalty and Subsidiary Rights Revenues participation periods may commence after the last performance produced by the last theater participating in the NNPN Rolling World Premiere, and the benefits accruing to the Originating Theater may be shared among the other theaters and NNPN in whatever manner the theaters and NNPN may agree.
8. **Disputes** - Any disputes under this RIDER may be resolved in a binding arbitration under the rules of the American Arbitration Association, and may be brought in the state of either party’s legal residence, under the laws of such state. Arbitrator may award reasonable legal expenses to the prevailing party. The parties may also elect to use an NNPN/DG dispute resolution mechanism, if one is applicable.

THEATER

AUTHOR

By: _____

By: _____

Print _____ Date _____

Print _____ Date _____