

Pro Bono Students Canada

Arts and Cultural Industries Manitoba

Disclaimer: This document does not contain legal advice. Pro Bono Students Canada (PBSC) is a student organization. This document was prepared with the assistance of PBSC law student volunteers. PBSC students are not lawyers and they are not authorized to provide legal advice. This document contains general discussion of certain legal and related issues only. If you require legal advice, please consult with a lawyer.

Table of Contents

INTRODUCTION 3

GENERAL CONTRACT TERMS 4

ADDITIONAL CONSIDERATIONS..... 11

APPENDIX 1 – MUSIC..... 12

APPENDIX 2 – PERFORMING ARTS 15

APPENDIX 3 – VISUAL ARTS 18

APPENDIX 4 – WRITING 20

APPENDIX 5 – FILMMAKING 23

APPENDIX 6 – FREQUENTLY ASKED QUESTIONS 25

INTRODUCTION

A contract is an agreement between parties giving rise to a legally-enforceable obligation. Without a written contract explicitly laying out the terms of the agreement between the parties, misunderstandings between the parties may arise.

At its most basic, a contract should include: 1) identification of the parties entering into the contract, 2) the terms of the agreement between the parties, and 3) an affirmation (ex: signatures of the parties and a date). More complex contracts might include other clauses, including but not limited to: what should be done in the event of a dispute of terms between the parties, what action can be taken in the event of a breach of contract, etc. However, these may not be necessary in all contracts.

There is no definitive “right way” to write a contract, but the bottom line is that it should cover all the terms of agreement between the parties as clearly as possible.

The main body of the following guide outlines what general contract terms one should turn their mind to when entering into a contract. The appendices will provide more detail as to what someone practicing in a particular area may want consider when entering into a contract.

GENERAL CONTRACT TERMS

This “General Contract Terms” section is by no means a finalized contract, despite the use of section headings and specific clause headings and numbers. The use of headings and numbers is for organizational purposes only. This section is meant only to inform as to what general clauses one might wish to include in a contract, regardless of discipline, but is by no means determinative. To that end, this guide also includes annotations, which provide additional background information. It is important to keep in mind that a contract may be less than a page in length, or it may be necessary to include multiple pages with much more detail – it is completely dependent on the particular case and what is being contracted for.

This section contains basic information such as identity of the parties and the date at which the contract comes into effect.

This agreement (the "Agreement") is made on _____, ____ between _____ (referred to as the “Artist”) – and - _____ (referred to as the “Other Party”)

This Agreement supersedes all previous agreements between the parties relating to any part of this Agreement. The Artist and The Other Party agree to the following:

If the parties wish to create an employment relationship, that might be reflected under the following heading.

Relationship of the Parties

This Agreement is not intended to, and does not, create or recognize any type of relationship between the parties other than the obligations that make up the terms of this Agreement.

Governing Law and Forum

This Agreement is subject to the laws of the Province of Manitoba and the laws of Canada which apply in the Province of Manitoba. Unless otherwise set out in this Agreement, any and all disputes arising under this Agreement, whether as to interpretation, performance or otherwise, will be subject to the exclusive jurisdiction of the courts of the Province of Manitoba and each of the parties hereto hereby irrevocably attorns to the exclusive jurisdiction of the courts of such Province.

Currency

Unless otherwise indicated, all dollar amounts referred to in this Agreement are in Canadian funds.

Intellectual Property

Unless otherwise indicated, the Artist retains all of the Artist's intellectual property and copyright in and to all goods, services and works which are create or used in this Agreement.

There are different frameworks that may be used for intellectual property. The above is an example of a clause whereby the Artist retains all their intellectual property, however, a contract may also contemplate for the following:

- a) the Artist keeps all intellectual property, but provides a license to the Other Party to use the intellectual property for defined purposes.
- b) The Artist assigns all intellectual property to the Other Party.

Moral Rights

The Other Party must obtain special authorization in writing by the artist for any alteration of a work as represented (changes of color, proportions, cropping, over-printing of text, etc.)

The above sample clause is an example of a clause that contemplates the Artist maintaining moral rights for something in particular. It is also possible to have a moral rights waiver clause, which would allow the Other Party to, for example, make some changes to the Artist's work. See the Visual Arts and Writing appendices for more information on moral rights.

SECTION 1 – SERVICES

This section is essentially the heart of the contract—it lays out exactly what the agreement between the parties is, in as much detail as necessary. It should include things such as what service will be provided and when it will be provided. You should provide as much detail as possible.

1.1 The Services

_____ hereby agrees to _____ (design, produce, deliver, perform, etc.), referred to as "The Service", for _____.

1.2 Timetable

If timetables are a matter of concern to you (ex. for the creation of a commissioned work, writing deadlines, filming schedules, etc.), you may want to include them in the agreement. These terms may not be relevant to you in every case, but as a general rule it is better to err on the side of caution and make sure all parties are going to be on the same page about everything.

- (a) The Artist shall use every reasonable effort to fulfill the Service in accordance with the following timetable (the "Timetable"):

[INSERT DESIRED TIMETABLE]

- (b) The parties may, by mutual agreement, decide to amend the existing Timetable for completion of the Service. In such a case, the party requesting the amendment must provide notice, in

writing, of their request at a time not less than _____ (specify number of days, weeks, etc.) before the completion of the existing Timetable.

- (c) Neither party is obligated to accept the request for the amendment of the Timetable.
- (d) Any delay or non-performance of any provision of this Agreement caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, provided that the delayed party has taken reasonable measures to notify the other of the delay in writing. The delayed party's time for performance shall be deemed to be extended for a period equal to the duration of the conditions beyond its control.
- (e) Conditions beyond a party's reasonable control include, but are not limited to, natural disasters, acts of government after the date of the Agreement, communication line or power failure, fire, flood, acts of God, labour disputes, riots, acts of war and epidemics. Failure of subcontractors and inability to obtain materials shall not be considered a condition beyond a party's reasonable control.

1.3 Changes

This Agreement may only be amended or altered in any of its provisions by the mutual written agreement of the contracting parties, such amendments or alterations to become effective when reduced to writing and signed by all the parties hereto.

Any such changes will be considered to be "new work" and will be billed in accordance with **Section 2**.

- (a) if either party wishes to materially alter the specifications of the Service that is set out in Section 1.1, that party shall submit to the other contracting party a written proposal specifying the desired changes at a time not less than _____ (specify number of days, weeks, etc.) before the completion of the Timetable.

Material → any change that is more than trivial; you may want to take steps to define what, in your particular situation, may qualify as a material change.

- (b) The other contracting party will evaluate the proposal and submit a written response within _____ days following receipt of the proposal.

The written response should consider such things as: the availability of personnel and resources, impact the proposed change will have on Fees, impact of the change on the Timetable, etc.

- (c) The other contracting party is not obligated to accept the proposal for change.

SECTION 2 – FEES

As with the rest of this “General Contract Terms” section, this fee section is very general and not intended to be directly applied to any particular case. Fee structures for various industries will vary widely and any contract should take industry norms into account. Refer to the appendices for either a more industry-specific discussion of fee structures, or a list of industry associations which may cover this topic in more detail.

2.1 Payment of the Fee

In consideration of the Service, the Other Party hereby agrees to pay a fee (the “Fee”) to the Artist, in the following amount: \$_____.

2.2 Schedule of Payment

The Fee shall be payable as follows:

[INSERT DESIRED FEE PAYMENT SCHEDULE]

Example of Fee Payment Schedule:

- (a) On the date on which this Agreement is signed by both the Artist and the Other Party, the sum of \$_____; and
 (b) As to the balance of the Fee in accordance with Section 2.1, upon completion of the Service.

2.3 Non-Payment or Late Payment

In the event of any non-payment or late payment by the Other Party of any amounts payable to the Artist, the Artist shall, at the Artist's own discretion, and in addition to any other available remedies, be entitled to:

- (a) without terminating such Agreement, cease to provide the Service without being deemed in violation of its obligations under this Agreement, until such payment is made; or
- (b) terminate this Agreement.

SECTION 3 – DISPUTE RESOLUTION

3.1 Disputes Resolved pursuant to this Article

The parties agree that any dispute or controversy arising out of, relating to, or in connection with this Agreement, or the interpretation, validity, construction, performance, breach or termination of this Agreement that cannot be resolved by the parties (a “Dispute”), shall be dealt with in accordance with the remainder of this section. The procedures for the resolution of Disputes set out in this section do not preclude recourse to any other legal or equitable remedy.

3.2 Initial Meeting

An initial meeting shall be held between the parties promptly after a Dispute has arisen. At the meeting, the parties will attempt in good faith to negotiate a commercially reasonable resolution of the Dispute. No Dispute will be considered resolved until the parties have agreed to the resolution in writing. The parties will mutually agree on the methods by which they attempt to resolve any Dispute following the initial meeting, such as, for example, telephone, e-mail and fax communications, and/or face to face meetings.

3.3 Performance of “the Service” during Dispute

Except where clearly prevented by the nature of the Dispute, the parties shall continue performing their respective obligations under this Agreement while the Dispute is being resolved in accordance with the obligations which the parties have set out pursuant to **Section 3.2**, unless and until such obligations expire or are lawfully terminated in accordance with the provisions of this Agreement.

SECTION 4 – TERM and TERMINATION

4.1 Term

The term of this Agreement will commence on the date of execution of this Agreement and, subject to the provisions of this Agreement, shall continue until the earlier to occur of one of the following events (the “Term”):

- (a) if any party fails to meet its obligations under this Agreement without justification, the non-offending party shall have the right to immediately terminate this Agreement;

Note: this is a very general term, and can easily be modified to suit a contract’s particular needs. For example, one might include the following:

“If any party fails to meet its obligations under this Agreement without justification, and such failure continues for a period of thirty (30) days after receipt by that party of notice from the other party specifying such failure...”

- (b) the dissolution or the liquidation of the assets of either party, or the filing of a petition in bankruptcy or insolvency or for an arrangement or reorganization by, for or against either party,
- (c) the mutual agreement of the parties, such determination to be evidenced by a written resolution of the parties hereto.

4.2 Effect of Termination

- (a) Termination of this Agreement under any circumstances will not abrogate, impair, release or extinguish any debt, obligation or liability of any party to the other which may have occurred hereunder, including without limitation, any such debt, obligation or liability which was the cause of termination or arose out of such cause.

- (b) If this Agreement is terminated by the Other Party, the Artist shall be paid by the Other Party for all of its work in progress up to and including the date of such termination.
- (c) The Artist shall be entitled to retain or be paid, as the case may be, any and all amounts which have already been paid, or are payable, by the Other Party to the Artist, as at the date of such termination.
- (d) Termination of this Agreement by either party shall be in addition and without prejudice to the exercise of any other right or remedy available to that party at law or in equity.

SECTION 5 – MISCELLANEOUS

5.1 Assignment

Neither this Agreement, nor any rights or obligations hereunder, will be assignable by either party without the prior written consent of the other, which consent shall not be unreasonably withheld. Subject thereto, this Agreement will enure to the benefit of and be binding on the parties and their respective successors and permitted assigns.

5.2 Disclosure and Publicity

Neither party will make any public disclosure of this Agreement or any of the contents of this Agreement without the prior written consent of the other party.

5.3 Waiver

No condoning, excusing or overlooking by either party of any breach of any provision contained within this Agreement will take effect or be binding upon that party unless it is expressed in writing by that party; and, any waiver given will extend only to the particular breach waived and will not limit or affect any rights with respect to any other past, present or future breach.

5.4 Amendment

This Agreement may only be amended or altered in any of its provisions by the mutual agreement of the parties, such amendments or alterations to become effective when reduced to writing and signed by all the parties.

5.5 Survival

Under this section you may add provisions about sections of this contract that you want to survive the termination of the contract (that is, continue to be in force and effect despite the contract's termination).

Such considerations may include confidentiality (such as trade secrets, terms of the contract itself, etc.), and continuation of payments for works already completed.

5.6 Counterparts

This Agreement may be executed by the parties in separate counterparts each of which may be an electronically scanned (PDF) or fax, and when so executed and delivered, physically or electronically, shall be deemed to constitute an original, but all of which together shall constitute one and the same Agreement.

5.7 Mutual Representations and Warranties

Each party to the contract represents and warrants to the other party that it has all necessary corporate power, capacity and authority to enter into this Agreement and perform its obligations.

SECTION 6 – SIGNATURES

Once a contract is executed and delivered, it constitutes a legal, valid and binding obligation on such party, enforceable against such party in accordance with its terms. It is important that both parties to the contract have signed the contract.

IN WITNESS WHEREOF this Agreement has been executed by the Artist and the Other Party.

“The Artist”

Name:
Address:
City, Prov. Postal:
Phone:
Email:

“The Other Party”

Name:
Address:
City, Prov. Postal:
Phone:
Email:

Signature

Signature

Date

Date

ADDITIONAL CONSIDERATIONS

The following clauses are examples of clauses that either party may wish to include, and are often found in pre-made contracts:

Out-of-Pocket Costs

The Artist hereby agrees to indemnify and hold harmless the Other Party in respect of any out of pocket or unanticipated costs incurred by the Artist in performance of the Service, including but not limited to copywriting, printing, paper, messenger services, shipping, postage and long distance telephone calls.

To *indemnify and hold harmless* insures that one party will take responsibility in the event that loss occurs.

Arbitration

If the parties to this Agreement cannot resolve the Dispute within _____ days, or such longer period of time as they may mutually agree, then either party may submit the Dispute to arbitration by a single arbitrator in accordance with *The Arbitration Act* (Manitoba), except that there shall be no right of appeal of the arbitrator's decision. The party wishing to commence the arbitration must give the other party a written notice describing the Dispute to be arbitrated. If the parties do not agree to a single arbitrator, then either party may apply to a judge of the Manitoba Court of Queen's Bench to appoint an arbitrator.

If such a clause is included, parties should also contract as to who pays the costs of the arbitrator. Parties should also consider, and include in the contract, whether the dispute clauses set out above in **Section 3** must be gone through before becoming involved in arbitration.

APPENDIX 1 – MUSIC

Ticket sales

For a music performance, it may be necessary to clarify the range of dates for ticket sales, who will be responsible for the sales, and how tickets will be sold.

“All tickets will be sold by *[the venue]* and will go on sale online on *[date]* at *[time]*. Available tickets will also be sold at the door by the venue on the day of the performance.”

Marketing/announcement

It may be necessary to clarify who is responsible for advertising a performance, how much advertisement is required, and when and how this will occur.

It may also be relevant to include an announcement date.

“The performance is not to be publicly announced by either party to this contract until *[date]* at *[time]*.”

[The venue] will advertise and promote the performance on their Facebook page at least once a week from the date of announcement, as well as daily posts on the day of the performance and the two preceding days.”

Exclusivity clause

To increase sales for the contracted performance, the venue or artist may wish to impose certain conditions on the other regarding other performances. (This is more likely something the venue would wish to put into a contract.)

Venue: “*[The artist]* is not to undertake any other performances within the city of Winnipeg for 30 days before and 30 days after the contracted performance.”

Artist: “*[the venue]* is not to hold any performances by *[other artist]* for 30 days preceding and 30 days following the contracted performance.”

****Note****: care must be exercised with clauses that have the effect of restraining others' abilities to contract into performances. This can be a complicated area of the law and specific legal advice may be prudent.

Licensing: “***[The artist]* shall not license the contracted work to any other party for the term of this contract.**”

Merchandise

It's unlikely a venue would not allow the artist's merchandise to be sold at a show, but the details of this might need to be clarified (ex: if sales are up to the artist or the venue has staff available for this).

"[The venue] will provide [the artist] with one table for merchandise sales. [The venue] will provide one staff member to sell merchandise. All merchandise proceeds are to go to the artist."

Technical specifications

A performance or recording session may require certain equipment. This may need to be clarified with the venue or recording studio.

"[The venue] will provide for [the artist]'s use in the contracted performance the following: one grand piano and one Shure SM58 microphone."

"No green lighting shall be used during the performance."

Recording

An artist or venue may have their own policies about audience documentation of a performance that should be made clear.

"No photography of any kind shall be allowed during the performance, unless authorized by [the artist]."

Hospitality/Miscellaneous

An artist may require or desire accommodations peripheral to the performance. These should be put into the contract as well.

"[The venue] will provide [the artist] with a private room backstage, made available to [the artist] three hours before the performance. The room shall be stocked with 24 bottles of Perrier and a single yellow rose in a white vase."

"[The venue] shall provide [the artist] with 8 complementary passes to the performance."

Copyright

Any contract will still need to comply with Canada's copyright laws. However, this issue may not arise for music performance contracts. You may wish to seek legal advice on this issue.

Industry Associations:

General:

ACI Manitoba (creativemanitoba.ca)

Canadian Association for the Advancement of Music & the Arts (caama.org)

Canadian Independent Music Association (cimamusic.ca)

Manitoba Music (manitobamusic.com)

Songwriters Association of Canada (songwriters.ca)

Licensing:

Canadian Musical Reproduction Rights Agency (cmrra.ca)

Society of Composers, Authors and Music Publishers of Canada [SOCAN] (socan.ca)

APPENDIX 2 – PERFORMING ARTS

A performer will likely fall under the class of people that the Canadian Actors' Equity Association (CAEA) represents:

- This is composed of independent contractors engaged to perform the function of:
 - o **Actor** (including principal, chorus, journeyman, apprentice actor, mime, narrator, local jobber, swing/understudy, or extra)
 - o **Singer** (including soloist, performer, ensemble studio artist, chorus member, apprentice, understudy/cover or extra)
 - o **Dancer** (including guest artist, apprentice dancer or understudy/sharer)
 - o **Production stage manager, stage manager, assistant stage manager, stage management apprentice**
 - o **Stage director, assistant stage director, fight director, fight captain**
 - o **Choreographer, assistant choreographer, dance captain, ballet master or mistress, resident choreologist**
 - o **Coach or repetiteur**

In a live performance in theatre, opera, ballet, dance, industrial show, cabaret show or concert performance

- Canadian Actors' Equity Association (CAEA) has an agreement with the Professional Association of Canadian Theatres (PACT) called the Canadian Theatre Agreement (CTA) which governs many of the basic contract requirements between performers and theatres
 - o Amateur performers are not obligated to join CAEA, and non-members don't benefit from their agreements or other member services. However, CAEA and the CTA are still good resources to compare how contract terms are negotiated at the professional level, and are good resources as indicators of industry norms for amateur engagements
- Areas covered in the CTA include (but not limited to):
 - o Auditions code (compensation, replacements and recording)
 - o Minimum fees, per diem for extra travel, and overnight rest infringement
 - o Extended rehearsals and emergency rehearsals
 - o Costume fittings
 - o Run-of-the-play engagement, and minimum time commitments

Applications and Auditions

An **application** (ex: to perform in a festival) or an **audition form** (filled out together with audition to perform in a specific production) constitutes part or all of your contract. It is important to pay attention not only to what you sign, but also the electronic forms that you submit.

Festival Terms (found in your application) may include:

- Application fee, deadlines for application and payment of fee
- Division of labor (front of house duty, advertising, securing a venue)
- Withdrawal and refunds
- Ticket prices and comp tickets
- Number of performances
 - o May also include terms prescribing mandatory minimum performances
- Terms on which an application may be denied, cancelled, revoked
- No guarantee for venue suitability

Audition Form terms may include:

- Terms governing rehearsal periods and time commitments
- Terms governing the process/timeliness of call backs
- Terms covering what/where the theatre facility is, the seating capacity and ticket prices
- Since amateur productions may not be governed by CAEA or their agreements, there may be limits/concerns around CAEA members participating in amateur productions

Media Waivers

A waiver of any kind is giving up a right of some sort; usually done as a way of limiting exposure to risks.

Waivers can release either contracting party from current or (potential) future obligations and liabilities (ex: release for future claims that the person signing the waiver might have against the party they are signing with; may include infringement of privacy, copyright infringement etc.).

A media waiver can take the form of positively authorizing one party to do something (ex: collect and use various media of the performer).

Sample media waiver:

The Artist authorizes _____ (individual, company, theatre, representatives thereof, etc.) to photograph and/or film and/or voice record the Artist.

The Artist further authorizes _____ to use, duplicate, license, sell, and otherwise dispose of, any photographs or images taken by _____ pursuant to this Consent and Waiver, and including without limitation, the signing person's name and/or likeness and/or voice, in any publication, multimedia production, display, advertisement or online publication.

The Artist releases and forever discharges _____ from and against any and all claims and demands flowing from the use of the said collected media, including but not limited to, any claims for infringement of privacy, defamation, appropriation of personality, or copyright infringement.

The Artist further waives all copyright interest, including moral rights, and any rights to claim royalties, or any other form of compensation or interest arising from _____ use of the photographs, images, the undersigned's name and/or likeness and/or voice.

Riders

A rider is a set of requests or demands that a performer sets as criteria for performance. It may be used in addition to the signed contract (ex: where there is a standard form). The hospitality rider is a list of requests for the comfort of the artist on the day of the show.

Common requests may include:

- Specific foods and beverages
- Transportation and hotels
- A number of complimentary tickets or guest lists (free tickets for friends and family)
- Security and/or locking rooms

The technical rider is a document which specifies the types of equipment to be used, the staff to be provided, and various business arrangements.

Typical requests are:

- Specific make of instrument and a standard of tuning for the instrument
- Sound system, frequency response and power
- Sound desk—it is normal for engineers to specify a list of preferred desks and also minimum requirements (such as number of channels) from other desks as a backup requests for recording equipment, feeds for recording are sometimes included here
- Outboard—the number and quality of gates, compressors and effects units required
- Channel/input list—a list of the instruments being used, including preferred microphones and inserts
- Power requirements are likely to be stated here
- The number and type of spotlights to be used

Industry Associations:

Associated Designers of Canada - set, costume, lighting, projection and sound designers
(<http://www.designers.ca>)

Professional Association of Canadian Theatres (PACT) (<http://www.pact.ca/Home.aspx>)

Canadian Actors Equity Association (CAEA) - actors, directors, choreographers, fight directors and stage managers (<http://www.caea.com/equityweb/default.aspx>)

Canadian Theatre Agreement (CTA) - applies to all CAEA Artists engaged by members of PACT. The CTA is a comprehensive agreement that includes the contracts used to hire artists as well as the minimum fees paid (<http://www.caea.com/Equityweb/EquityLibrary/Agreements/Theatre/CTA/2015-2018CTA-MaterialTerms-FINAL.pdf>)

APPENDIX 3 – VISUAL ARTS

Common Agreements:

Agreement with Gallery for Exhibition and Sale

Some of the things you may wish to include are:

- Venue, dates, title, solo or group show, list of works
- Who will bear the cost of installation, framing, invitations and other costs incidental to the exhibition
- Transportation of work – costs and when will works be returned to artist
- Publicity – what type of publicity will be produced by the gallery or artist
- Selling prices – may want to give gallery the ability to reduce price by a certain percentage if a potential buyer makes an offer
- Gallery commission

Agreement with Gallery for Long Term Representation

Some of the things you may wish to include are:

- May include many of the same terms listed above in “Agreement with Gallery for Exhibition and Sale”
- Exclusivity
 - o Ex: does the agreement prevent the artist from being represented by another dealer?
- Geographical scope could be limited to province, country, etc.
- Consider your ability to sell works online
- Responsibilities of the gallery
 - o Ex: regular solo shows, promotion of work, etc.
- Duration (when and how can the agreement end)
 - o May include a termination clause
 - Ex: “Agreement will be terminated if either party gives 60 days’ written notice”

Performance or Artist Talk

- Will include many of the above listed terms, such as venue, date, time, promotion etc.

Other Considerations:

Exhibition right

- Applies when work is included in public exhibition not for sale (applies to all artwork created after June 8, 1988)
- Each time the work is exhibited, the artist is entitled to a royalty
- CARFAC (Canadian Artists Representation/Le Front Des Artists Canadiens) has a minimum fee schedule that you can consult when negotiating
 - o May want to join the Manitoba branch of CARFAC to help ensure you receive adequate compensation

Copyright

- May want to give a gallery a license to use images of your work
- This can be limited to displays involved in the promotion of the exhibition (lower rate)
- Can also include use of images in catalogue (higher rate)

Moral Rights

- Any user wishing to associate a work of art with a social or political cause, a product, a service or an institution must obtain special authorization in writing by the artist
- A license should require that the user obtain special authorization in writing by the artist for any alteration of a work as represented (changes of color, proportions, cropping, over-printing of text, and so on)
- Artist also has the right to be given credit/associated with the work
- Can waive your moral rights but cannot assign them

Video and audio recording

- You may want to include a clause that the venue will not record or let people record your performance

Insurance

- You may want a clause stating that the venue or purchaser is responsible for all insurance

Travel

- Venue will pay for accommodation and travel expenses

Industry Associations:

Canadian Artists Representation/Le Front Des Artists Canadiens – Canadian organization that sets minimum rates for the visual arts. Organizations operating with Federal Funding (Canada Council for the Arts) are supposed to follow these guidelines (carfac.ca)

APPENDIX 4 – WRITING

License to publish

In order to have a work published, a writer is licensing some of the writer's intellectual property rights to the publisher (ex: the right to publish), be that a book publishing house, a director/producer who is licensing a script, a periodical etc. Be sure to take into account the format in which the writer is licensing the publisher to present the work (ex: with a book, could be in print, ebook, or audio). An artist may wish to use a clause such as the one below to ensure that only the specific rights set out are to be granted, and the author retains all others.

The Artist grants the Other Party an exclusive license to publish the work on a global basis (or within whichever specific jurisdictions you specify here) in the following formats:

(Note: consider the following formats, but the list is non-exhaustive; some may require further definition, e.g. “audio book”. You may also consider granting different publishing rights, for different formats, in different jurisdictions)

1. Print
 - a. Print book; Printed periodical (a magazine, journal, newspaper, or other)
2. Electronic
 - a. Electronic or “E-book” format; publishing on a website (in part or in whole—also consider the purpose, e.g. promotion/marketing); publishing in the electronic edition of a periodical (in part or in whole); inclusion in an electronic database
3. Audio
 - a. Audio book rights

All rights in the work not specifically granted by the Artist to the Other Party are reserved by the Artist. For greater clarity, the Artist and Other party confirm and agree as follows:

- A. If a jurisdiction for which the Artist has granted rights differs with regard to any of the above formats, the Artist’s reserved rights for each form of publishing will reflect these differences.
- B. The Artist does not grant to the Other Party any rights that do not exist at the time of signing this agreement or to any reproduction by means not then known or by means developed in the future.

The work shall not be abridged or otherwise adapted by the Other Party or by any licensee thereof without the Artist’s written consent. If the Artist consents to an abridgment or other adaption, the Artist retains the right to approve the text.

Intellectual Property

Because an Author and a Publisher (many different kinds) each have a financial stake in the integrity of the work, you may want to negotiate who will take legal steps ahead of time, or provide terms for doing so, in case the work is infringed upon.

Make clear that all changes (even copy-edits) must be approved by the author

Publish

Be sure to include an obligation to publish on the publisher's part, depending on what you are publishing; possible specifics include a timeframe, number of copies of your work to be circulated, free copies to be provided, format, and so forth.

Additional Materials

Include provisions stating who is responsible for obtaining additional resources for publication (ex: pictures, maps).

Advertising and Marketing

Make clear which party is responsible for marketing the work. Ensure that "best efforts" will be made to promote and sell as many copies as possible.

Prohibit the inclusion of marketing on or in the work (unless that's something you're willing to negotiate).

Moral rights

The contract may include a clause that contemplates the Artist maintaining moral rights for something in particular. It is also possible to have a moral rights waiver clause, which would allow the Other Party to, for example, make some changes to the Artist's work.

"The author has the right to have her or his name or pseudonym appear prominently on or in the work, along with a photograph and/or such biographical information as the author sees fit. The author retains a right of approval over the photograph and the biography."

Royalties

Including royalties in the contract obligates the publisher to pass along ongoing profits from the work on a regular, unsolicited basis.

Royalties will vary depending on the type of copy of the work (in the case of books: hardbacks vs. paperbacks vs. e-books vs. audio).

Subsidiary works/sub-licensing

- Delineate publishing rights for translations, abridgements etc.
- Require author approval for all subsidiary works including those mentioned above as well as film/television adaptations, theatrical productions, radio and digital broadcasts, etc.
- Term limits on sub-licenses, up-front payments as well as royalties
- Register the work with a copyright collective and authorize it to collect tariffs on the author's behalf irrespective of any other clause in the agreement

Revisions

The author may agree to make her or himself available for revisions in the event that the author and the publisher agree to one; specify a number of years after which the author is free to publish a revision whether or not the original publisher agrees; original publisher will likely want first refusal. In the case of books, there may be a competition clause

Competition

“During the term of this Agreement, the author shall not authorize the publishing of any book-length work that is written for the same market and uses the subject matter of the work in a manner that competes directly with the work and is likely to jeopardize the sale of the work.”

Overstock

Negotiate terms for sale of overstock or remainders, and for what time period books are to remain on the shelves before being pulled. Consider an option for the author to purchase overstock at the lowest price at which the publisher is offering to sell to any other party, with right of first refusal for the author

Industry Associations:

The Writers Guild of Canada (www.writersguildofcanada.com/)

The Writers Union of Canada (<https://www.writersunion.ca/>)

Professional Writers' Association of Canada (<https://www.pwac.ca/>)

Manitoba Writers' Guild (www.mbwriter.mb.ca/)

And many others: (<https://www.writersunion.ca/organizations>)

APPENDIX 5 – FILMMAKING**Area of Filmmaker Responsibility**

This clause is important because it will delineate the specific responsibilities of the artist. The Producer may set out what specific roles they wish the artist to fill here, such as assisting or revision when necessary. It will also make clear that the artist will not have certain incidental expenses covered by the Producer in fulfilling the contract.

Filmmaker Compensation

This payment clause is important because it puts in writing the guidelines that the employer must follow in payment methods, documentation and steps to take in the case of a failure to pay. It's important that payment clauses are not left to the discretion of the individual parties to the contract, and that the artist has bargained for the specific method of their payment.

Producer Responsibility

This clause is extremely important, and will highlight the specific responsibilities the producer will have to the artist under the contract. Production responsibilities may include such things as supplying talent, scheduling for the project and continued oversight of the budget.

In addition, this part should include health and safety as well as leave of absences and standard work day clauses.

Leaves of Absence

This clause is vital because it will cover specific times that an artist will not be able to supply their services. If the artist becomes injured or ill after the contract commences, these guidelines can allow the artist to be reasonably compensated for both their efforts and their inability to continue the contract.

Health and Safety

This clause will put into writing in the contract that the producer is responsible for providing information and supervising artists to ensure their safety.

Producer Approvals

These are important clauses because they will note the producer's certain creative control over the project. This may change on a case-by-case basis, but note that within some contracts the producer may look for final say on essential qualities of the project including the budget, casting of key roles, the screenplay and/or shooting schedule. The producer will also bargain for specific credit placement within the project (i.e. the credit roll and project posters/advertisements), as well as compensation payments. Again, these will differ for different filmmaking contracts, but it is important for the Artist to be aware that the Producer will seek to include certain clauses for control over the project. The artist may have to make certain concessions in this regard, depending on their expertise and reputation, and to ultimately project their creative control within the contract itself.

Industry Associations and Additional Resources

Get on Set Manitoba (getonsetmanitoba.ca)

Directors Guild of Canada Manitoba District Council (<https://www.dgc.ca/en/manitoba>)

Manitoba Film & Music (www.mbfilmmusic.ca)

On Screen Manitoba (www.onscreenmanitoba.com)

The Winnipeg Film Group (<https://www.winnipegfilmgroup.com>)

Video Pool (<http://www.videopool.org>)

National Screen Institute – Canada (NSI) (www.nsi-canada.ca)

Manitoba Film & Music (mbfilmmusic.ca)

The Manitoba Arts Council (artscouncil.mb.ca)

APPENDIX 6 – FREQUENTLY ASKED QUESTIONS

1. Will I scare people/customers away by insisting on using a contract?

Some people might be hesitant to sign contracts, but if this happens you can always just explain why having a contract is a good idea for both of you, and even walk through the terms of your contract with them so they know exactly what they're getting into.

2. Is a verbal contract just as good? How can I prove it?

Verbal contracts are enforceable, so long as they meet some other basic contract requirements (like being free from misrepresentation) and both parties actually intended to enter into the contract and no specific law requires them to be in writing. However, proof of the contract can be an issue when disputes arise, so it is generally best to get contracts in writing if you can.

While “handshake deals” may be the norm for many local music venues and smaller music festivals, in some cases it might actually be better to not insist on written contracts. But, you should still consider things like the reputation of the party you're contracting with, save any correspondence, and perhaps even bring along another person to witness any in-person discussions you have.

3. Are agreements through email or other written correspondence just as enforceable as a contract?

Yes—again, so long as it's clear that the correspondence was intended to enter the parties into a contract (provided no specific law requires the agreement to be in writing). A contract does not need to be especially formal, it just needs to show a “meeting of the minds.” It's a good idea to hang onto any correspondence surrounding business arrangements, as they might show how any unclear terms in a formal contract were interpreted by the parties, or they might show that both parties intended to alter the terms of a more formal contract.

4. Should I have different contracts for different things or events?

You may or may not need to. It is probably possible to get by with the same boilerplate contract for most performances, for example—though the exact terms (e.g., payment) will probably need to be changed each time. However, for substantially different types of events (like a performance vs. a song licensing, or potentially even a performance at a venue vs. performance at a festival), substantially different contracts might be needed.

5. Can I use a template or ready-made contract and customize it for myself?

Sure! Just make sure you're covering everything you need to cover for each particular arrangement, and double check it each time to make sure you haven't omitted anything or left in an irrelevant term from a previous contract. Be wary that contracts you find on the Internet may be based on laws and facts which don't apply to your situation.

6. When negotiating, how does presenting a new contract with changes work?

Make it clear that you are not accepting the proposed contract, and offer the altered contract for the other party to consider. You may also want to explain why the proposed terms were unacceptable to you, and why the new terms are more favourable. The contract will not be considered valid until both you and the other party accept the terms and make it clear you intend to be bound by them.

7. What are some useful things I might forget that contracts need?

Some concerns particular to music performance contracts might include:

- date/time of show announcement & ticket sales
- performance length/number of shows
- how ticket sales will work (e.g., online, at door only?), and pricing
- venue capacity
- what sound/lighting equipment will be provided by venue
- load in/out times
- merchandise sales (are they allowed? who is responsible for selling?)
- marketing (who is responsible for promoting the show, and how?)
- hospitality (i.e., any food or services provided for you before or after the performance)
- market blackout/exclusivity clause (e.g., saying that you can't perform in the same town within a month before and after the contracted performance)

However, these might not all always apply.

8. Do contracts need to be in legalese?

Absolutely not. The key thing is that all parties intend to create a binding contract, and that all parties correctly understand the terms. If legalese makes things more obscure—and it usually does—don't write in legalese! Keep in mind though, that some words have particular meanings, so they are (and should be) used for a particular purpose. The trick is finding a good balance between simplicity and absolute clarity.

9. Do I need a lawyer to create my contracts or be present when signing?

No. Although if you are signing a contract you have not created yourself and you find the language unclear, it may be a good idea to seek legal guidance, just so you know exactly what you're signing.

10. What happens if someone doesn't follow or breaks our contract? What legal options do I have?

Contracts often set out the consequences of some or all of the different ways it may be breached. Both the courses of action in response to a breach as well as the remedies will vary. The most common remedy would likely be damages (monetary compensation), although in some circumstances a court might order the breaching party to carry out the contract or grant an injunction.

11. What do I do if I want out of a contract? Can I put in ahead of time a clause where I can break the contract?

You cannot just withdraw from a contract without fulfilling your obligations under the contract—this would constitute a breach and may allow the other party or parties to take legal action against you. If you want out of a contract, and the contract does not give you that right, you will need the other party's assent to dissolve the contract, and you should formalize this in writing if possible to protect yourself.

You may also include a clause ahead of time in a contract outlining circumstances under which you may withdraw. Of course, as part of the contract, the other party will need to agree to it, and they would be unlikely to do so with a clause that allowed you to escape your obligations at any time for any reason. Drafting this type of clause may therefore require a bit of finessing—for example, giving an explicit list of circumstances under which you may withdraw (e.g., sickness, a death in the family), a date by which you must announce your intention to withdraw, and maybe even accounting for some type of penalty if you do withdraw.