Standard Clauses
And Contracts
2009-2012

Additional copies of these Standard Clauses and/or Contracts can be obtained from:

Playwrights Guild of Canada (PGC)
215 Spadina Avenue, Suite 210
Toronto, Ontario, M5T 2C7
416-703-0201 fax 416-703-0059
www.playwrightsguild.ca

Professional Association of Canadian Theatres (PACT)
215 Spadina Avenue, Suite 555
Toronto, ON M5T 2C7
416-595-6455 fax 416-595-6450
www.pact.ca
Introduction

This constitutes the operating document that lays out a series of Standard Clauses applicable to all contracts between members of the Playwrights Guild of Canada and the members of the Professional Association of Canadian Theatres.

This will define standards that will allow the best work possible to reach our stages in the best productions that our combined skills as Theatres and Playwrights can achieve.

Both the Theatre and the Playwright agree that each and every clause contained in these Standard Clauses is and becomes part of an individual Contract. When signed by both parties, a contract with all modifications, together with these Standard Clauses, constitutes a legal binding agreement.

Definitions

**Agreement:** The general provisions and definitions contained within the Standard Clauses and the Contract forms as provided herein.

**Commission:** A contractual relationship entered into by a Theatre with a Playwright, for a predetermined fee, to cause a Play to be written.

**Contract:** The form which includes the negotiable clauses pertinent to this Agreement to be completed and signed by the Playwright and Theatre. The three types of Contracts are Stock, Premiere and Commission. Refer to these definitions contained herein for each type of Contract.

**Final Draft:** The copy of the Playwright's script that shall be agreed by the Theatre and the Playwright as fulfilling the terms of the Commission Contract. While it is understood that acceptance of the final draft shall be considered binding in terms of the commission, the Playwright may make further revisions to the script in consultation with the Theatre and in accordance with standard working practice.

**First Draft:** The first complete submitted version of a commissioned play.

**Option:** A written Agreement which grants the Theatre the exclusive right, within a specified period and in a specified territory, to acquire a licence to produce a stage production of the Play. An option does not convey this licence in and of itself.

**Participation Rights:** The Theatre's right to receive a share of the Playwright's future earnings from royalties for a specified length of time.

**Point of Origin:** The municipality in which the Theatre has its headquarters.

**Premiere:** First production of a work not commissioned by the Theatre.

**Right of First Refusal:** Right of First Refusal allows the Theatre the opportunity to match or better any or all other offers relating to the production of the Play, for a specified period of time and in a specific territory.

**Royalty:** A percentage payment for the use of the Playwright's copyright literary material, based on the Theatre's receipts for the performance of the Play.

**Stock:** Second or subsequent productions.
**Theatre for Young Audiences Definition**

Theatre for Young Audiences Definition: A theatre presenting productions primarily for presentation to preschool, primary and/or secondary school age audiences either by means of travelling to the place of performance or at the regular place of performance at the point of origin.

School or Flat Fee Performance: The theatre company receives a flat fee per performance regardless of audience size.

Single Ticket Performance: The theatre derives its revenue from ticket sales.

**Standard Clauses**

1. **Bargaining Agents and Applications**
   The Professional Association of Canadian Theatres and the Playwrights Guild of Canada recognize each other as bargaining agents on behalf of their members with regards to the negotiation of this Agreement. The terms of this Agreement are the result of negotiations between representatives of the Professional Association of Canadian Theatres and the Playwrights Guild of Canada.

   This Agreement shall apply to all members of the Playwrights Guild of Canada whose work is contracted for by members of Professional Association of Canadian Theatres.

2. **Agreement Administration**
   This Agreement shall be jointly administered by the Playwrights Guild of Canada and the Professional Association of Canadian Theatres in all of its facets on a principle of equality between the Playwrights Guild of Canada and the Professional Association of Canadian Theatres in all matters pertaining to the administration of the Agreements provisions. Questions regarding the administration of this Agreement may be directed to the offices of either organization. Neither of the organizations may make an interpretation binding on the other without the written consent of the other.

3. **Rates and Conditions**
   All members of the Professional Association of Canadian Theatres and the Playwrights Guild of Canada shall adhere to the rates and conditions of this Agreement provided herein. However nothing shall prevent any Playwright from negotiating better terms. The agreed upon minimum royalty for Premiere and Commission Contracts is 10% of gross box office receipts. Not included in the calculation of gross box office receipts are credit card charges, group sales commissions and all sales tax, goods and services or similar government taxes. Other exceptional surcharges may be submitted to the Joint Standing Committee for consideration.

   The agreed upon minimum period of exclusivity for Premiere and Commission Contracts is fifty-two weeks.

4. **Fees and Conditions for Theatre for Young Audiences**
   On a Theatre for Young Audience tour the agreed fee per school or flat fee performance shall be as follows:
   - From June 30, 2009 to June 29, 2010, the agreed fee per school or flat fee performance shall be not less than $45.00
   - From June 30, 2010 to June 29, 2011, the agreed fee per school or flat fee performance shall be not less than $50.00
From June 30, 2011 to June 29, 2012, the agreed fee per school or flat fee performance shall be not less than $55.00

5. **RRSP**
   For each contract, the Theatre will contribute a minimum of $150, or 3% of the fees and/or royalties, whichever is greater, to a group RRSP on behalf of the Playwright. The Theatre will deduct a matching amount from the Playwright's fees and/or royalties. The maximum contribution by each party will be $450 per contract.

The Theatre will remit to PGC the minimum RRSP contribution of $300.00 (Playwright's $150.00 deduction plus Theatre’s $150.00 contribution) upon signing the contract with the Playwright. Within 30 days after the closing of the production, the Theatre will remit the balance of RRSP contributions to PGC, along with a final box office report. In the case of a commission contract, the Theatre will remit the balance of RRSP contributions to PGC upon final payment to the Playwright.

6. **Copyright**
   No clause in any section of this Agreement or individual Contract contained herein shall be deemed to override the conditions of copyright as laid down by current Canadian law.

7. **Ratification**
   This Agreement shall become effective upon ratification by the Playwrights Guild of Canada and the Professional Association of Canadian Theatres and terminate on a mutually agreed upon date no later than June 30, 2012.

8. **Renewal**
   The parties to this Agreement shall meet at least 90 days prior to the expiry of this Agreement, for the purpose of renewal or renegotiation.

9. **Renegotiation**
   During the period of re-negotiation of this Agreement the provisions of this Agreement shall remain in full force and effect until negotiations are concluded or broken off. At such time all signed contracts are and will remain in full force.

10. **Conflict in Terms**
    In the event of any conflict in the terms of a Contract and the terms set forth in the Standard Clauses, the terms in the Standard Clauses will prevail. In such an event, provisions of the Contract shall be modified only to the extent necessary to bring it within such terms and conditions of the Standard Clauses and, as modified, the Contract shall continue in full force and effect.

11. **Joint Standing Committee**
    There will be a standing committee comprised of 3 members each of PACT and PGC, and staff representatives with voice but no vote. The committee will meet as required from time to time to:

    1. discuss issues of mutual concern
    2. review disputes which are referred to it through the Dispute Procedure
    3. receive and consider requests for exceptions to the standard clauses due to special circumstances. In such cases, exceptions may be granted by majority vote of the committee.

12. **Additional Roles for the Playwrights**
    In the event that the Playwright performs in the Play, or directs the Play, or does any tasks other than that of playwright in connection with the production of the Play, then all rights and obligations in connection with any of those shall be dealt with by way of separate contract
without prejudice to any of the rights and obligations under this Agreement. Any such additional obligations will be performed by the Playwright concurrently with his obligations contained herein.

Notwithstanding the above, it is understood and agreed that the Theatre shall not be liable for duplicate payment of travel, accommodation, per diems and other related expenses.

13. Agreement Binding
This Agreement shall be binding upon, and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

14. Assignment
Neither the Theatre nor the Playwright shall assign this Agreement or any part thereof to any third party without the prior written consent of the other.

15. Billing
The Theatre shall cause the Playwright to receive billing as the author of the Play on a separate line immediately preceding, or following the title of the Play in all programs, houseboards, billboards, advertising, throwaways and paid announcements of the Play. No names except the title of the Play and the name of the Theatre may be larger or more prominent than the Playwright's name. There shall be no exceptions to the foregoing without the Playwright's consent.

When biographies are present in the program, the Theatre shall include a biography of the Playwright. Such biography shall have been approved by the Playwright, and it is the Playwright's responsibility to provide such information to the Theatre, including their membership in PGC.

16. Promotion Without Permission
The Theatre will obtain permission from the Playwright prior to announcing in promotional or marketing materials under its control that it intends to produce or is considering producing a specific Play by the Playwright.

17. Clause Headings
The clause headings in this Agreement shall not affect, qualify or amplify the content of the clauses.

18. Interpretation
This Agreement shall be subject to and interpreted according to the laws of the Province in which the Theatre's offices are located.

19. Copies of the Manuscript
If the Playwright's (authorized) script exists in an appropriate and available published form, the Theatre must purchase sufficient copies of this publication for the cast and the appropriate production staff. If no authorized script has been published, the Theatre shall have the right, during the period the Theatre holds the stage performance rights, to have the manuscript reproduced in any manner or form for performances contemplated herein, at the Theatre's expense, which copies shall not be offered for sale.

In the case of a Premiere or Commission Contract, within twenty-eight days of closing, the Theatre shall provide to the Playwright one copy of the Stage Manager's prompt script. This shall contain at least the complete text, including all text changes, of the first production of the Play.
20. Credits
In the case of a Premiere or Commission Contract, the Playwright agrees to include in any future contract that:

(a) in any publication, production, or electronic reproduction of the Play, the Commissioning Theatre and Theatre of the Premiere production shall be credited appropriately;

and

(b) in any publication of the Play, the Premiere Theatre, its director, designer, and cast, shall be credited, provided that such production has taken place prior to the publication of the Play; The Playwright may, with reasonable justification, request the Commissioning Theatre and the Theatre of the Premiere production to waive this clause

(c) When the Theatre prints a house program, the Theatre shall include the following credit: "_________________" (the Playwright) is a member of the Playwrights Guild of Canada.

In the case of a Stock Contract, when requested, the Theatre of subsequent productions shall acknowledge, in the house program, the Theatre of the Premiere production.

21. Filing
This Agreement shall be executed in quintuplicate. Two copies shall be retained by the Playwright; one copy of which shall be filed with Playwrights Guild of Canada, 215 Spadina Ave, Suite 210, Toronto, ON M5T 2C7. The Theatre will retain three copies, one copy of which shall be filed with Professional Association of Canadian Theatres, 215 Spadina Avenue, Suite 555, Toronto, ON, M5T 2C7, and one of which shall be filed with PGC along with the initial RRSP remittance.

22. Force Majeure
If the performance of the obligation of either party is delayed or interrupted or prevented by reason of an act of God, fire, flood, war, public disaster, strikes or labour difficulties, governmental enactment, regulation or order, illness of a principal performer in the Play (certified by a doctor), or any other cause beyond either party's control, such party shall not be liable to the other therefor. Notwithstanding the above it is understood and agreed that whenever possible liability for the performance of any obligation herein shall not be terminated but merely suspended for a period of time based on the duration of the event that caused the delay, interruption, or prevention and the effects thereof, following which time the provisions of this Agreement shall continue.

23. Not a Partnership
This Agreement shall not in any way constitute or be deemed to constitute a partnership between the parties hereto. Neither party shall incur any debts or make any commitments for the other.

24. Audio and Video Recording

Archival: The Playwright agrees that the Theatre may record the production of the Play for archival purposes. The resulting recording may only be played in private, for reference purposes such as, but not limited to, private screening for promotion of future productions.

Advertising: The Theatre shall have the right to authorize one or more radio and/or television presentation of excerpts not to exceed two minutes, from the production of the Play.

Promotion: The Theatre shall have the right to make a finished, edited recording of excerpts of the production of the Play for purposes such as, but not limited to, demonstrating the
nature of the work, and promoting it to potential sponsors, donors, investors and performance sponsors. The Theatre will guarantee that the recording will remain under its control, and may not be broadcast commercially.

**Other Uses:** The use or preparation of recorded material by the Theatre in a format different from those contemplated in this clause is prohibited without the permission of the Playwright.

In any instance where a third party wishes to record the production, the Theatre shall:

(a) inform the Playwright; and  
(b) inform the third party that the Playwright is the copyright owner of the Play, and inform them of how to contact the Playwright.  
(c) not permit such a recording without written agreement from the playwright.

### 25. Rehearsals

The Playwright shall be notified of the time and place of all rehearsals of the production of the Play, and shall have the right to attend all rehearsals of the said Play. It is understood and agreed that if the Theatre can show reasonable cause for asking the Playwright not to attend a particular rehearsal, the Playwright shall comply.

The Theatre may request the Playwright to make personal appearances and give personal interviews for purposes of publicity. Any direct and reasonable expenses incurred by the Playwright in making such appearances and giving such interviews shall be reimbursed by the Theatre upon presentation of suitable receipts.

### 26. Workshops and Readings

When it is agreed by the Theatre and the Playwright that the Playwright will attend a Workshop or Reading, the following fees shall apply:

a) For a half day Workshop, the Playwright shall receive a fee of not less than $50.00;  
b) For a full day Workshop, the Playwright shall receive a fee of not less than $80.00;  
c) When the Playwright attends four or more days of Workshops in one week, a weekly fee of not less than $400.00 shall apply.

When the Playwright must leave their ordinary place of residence to attend a Workshop or Reading, the Theatre will provide accommodation and roundtrip air or other available and appropriate transportation. It is understood between the parties that the use of the most economical and mutually convenient reasonable accommodation and transportation (especially as regards air travel) is the spirit and intention of this clause. If either party subsequently changes the accommodation or travel arrangements for any reason, that party shall be responsible for any additional costs.

### 27. Representations and Warranties

The Playwright represents and warrants:

(a) that the Playwright is the sole owner of the copyright of the Play;  
(b) that the Playwright retains the copyright to the Play and all other rights of any nature whatsoever therein except those specifically granted to the Theatre in this Agreement.  
(c) the Playwright is free to and has the authority to enter into this Agreement, and has the exclusive right to grant the rights granted hereunder, and has not entered into any other agreement granting to any other party rights in conflict with those dealt with herein;  
(d) that in the event that any claim or action for infringement of copyright is brought against the Theatre in connection with the production and performance rights granted hereunder, the Playwright undertakes to indemnify the Theatre and hold it harmless against such
claim or action, provided that any such claim or action does not arise from a change made in the Play by or at the direction of an agent or servant of the Theatre without the consent of the Playwright.

The Theatre shall notify the Playwright forthwith in writing of the receipt by the Theatre of notice of the commencement of any claim or action together with the particulars thereof and no claim or action shall be compromised or settled without the Playwright's concurrence.

28. Right to Extend
The Playwright grants to the Theatre the exclusive option to extend the run of the Play beyond the closing date, as long as the run is continuous. The royalty percentage for this extension shall be the same as for the original run.

29. Tickets
The Playwright shall receive upon request two complimentary tickets for opening performance, and an additional two complimentary tickets per week during the premiere run, subject to availability of seats.

30. Time is of the Essence
Time is of the essence in this Agreement.

31. Power to Act on Behalf of Members
The Playwrights Guild of Canada shall have the right to act on behalf of its members to:
Interpret this agreement, and any contracts between PACT Theatres and PGC Members, and;
Represent its members in any dispute arising from this agreement and any contracts between PACT Theatres and PGC members pursuant to Clause 11 and Clause 31 of this agreement.

32. Payment Disputes

Royalties: In the event of any dispute as to box office receipts for any given period of time, the Playwright is entitled to have all the related books of account of the Theatre examined independently at his/her own expense, upon advance notice in writing to the Theatre. If the box office receipts as reported by the independent accountant exceed those reported by the Theatre by more than 5%, then the Theatre shall pay all the costs of the independent examination and pay the correct amount.

Participation: In the event of any dispute as to the Playwright's royalties for any given period of time, the Theatre is entitled to have all the related books of account of the Playwright examined independently at its own expense, upon advance notice in writing to the Playwright. If the Playwright's gross revenue as reported by the independent examination exceeds that reported by the Playwright by more than five per cent, then the Playwright shall pay all costs of the independent examination and pay to the Theatre the correct amount.

33. Dispute Resolution Process
When a Playwright and a Theatre are in disagreement concerning the interpretation or application of the Agreement, the parties are encouraged to attempt to resolve the issue between them. If the Playwright and the Theatre cannot reach a resolution, either of the parties may send the other party written notice describing the failure or breach and the actions necessary to resolve it. The Theatre or the Playwright in receipt of this letter will have ten (10) business days to resolve the matter or, if there continues to be a disagreement, give a written response explaining their position.
If the parties cannot reach a resolution, either party may approach its association with the details of the dispute. Within two (2) business days of receiving notification, the Executive Directors or their designates shall attempt, with the parties, to reach a resolution.

When the parties continue to be in disagreement, either of the parties may request of the other, in writing, a meeting to discuss this disagreement. Copies of such letters of notification shall be sent concurrently to both the Playwrights Guild of Canada and the Professional Association of Canadian Theatres offices. Both parties shall meet within fourteen (14) days of such a request being received, or a mutually agreed upon date. Such a meeting could occur by conference call, if travel is impossible.

At such a meeting, either party may have whomsoever they wish in attendance, provided that each party is represented by an equal number, such number to be mutually agreed upon by the parties. At such a meeting, both parties shall endeavor to settle the disagreement amicably.

Following this, if the matter is not resolved to the satisfaction of either party, either party shall within fourteen (14) days inform the Playwrights Guild of Canada and the Professional Association of Canadian Theatres, in writing, of its desire to present the matter to the Playwrights Guild of Canada/Professional Association of Canadian Theatres Joint Standing Committee.

A meeting of this Committee shall be arranged within fourteen (14) days of filing the request for the meeting. The Theatre and the Playwright shall submit their respective positions, in writing, to the Joint Standing Committee at least seven (7) days prior to the meeting. Every meeting of the Joint Standing Committee will begin with a review of the process.

The Committee shall hear the dispute and shall have the right to call such witnesses or obtain such evidence as it deems necessary. The Committee may only sit if an equal number of Playwrights Guild of Canada and Professional Association of Canadian Theatres representatives are present, a minimum of three (3) from each association, and if the same individual representatives are present throughout the deliberations. The Executive Directors of the Playwrights Guild of Canada and the Professional Association of Canadian Theatres, or their designated representatives, must attend each meeting of the Committee. They shall have voice but no vote.

Training of the Joint Standing Committee

PGC and PACT shall undertake a joint information session for all of the Joint Standing Committee members. The information session shall include presentations from PACT and PGC. PACT and PGC may mutually agree to include legal counsel or other individuals with appropriate expertise to help facilitate this joint training session. The session will focus on: the Joint Standing process; the intent and purpose of the Joint Standing Committee to resolve disputes in an appropriate and timely fashion; the relative value and importance of historical applications of the Agreement; the spirit and intent of past negotiations and the value of decisions and rulings from past disputes of a similar nature. Only PGC and PACT members who have participated in this or an equivalent information session shall participate in a dispute resolution.

A sufficient number of members (a minimum of six) from each organization will be trained to ensure that there are always members available to convene the Joint Standing Committee where and when required. All trainees will serve on the Joint Standing Committee for the full term of this Agreement.

Chairperson

The selection of the Chairperson shall be made by PGC and PACT on an alternating basis prior to each meeting. The first selection of each term of the Agreement shall be made by coin toss. The Chairperson shall be one of the members of the Joint Standing Committee in attendance.
After the commencement of the meeting, the Chairperson shall be responsible to ensure that all members present are familiar with and understand their duty to the Joint Standing Committee as established in this Agreement and through the joint information session. All speakers are to be recognized by the Chairperson. The Chairperson has the usual prerogatives for directing the proceedings.

Declaration of Conflict of Interest
All members of the Joint Standing Committee must declare any potential conflict of interest in a particular dispute and an alternate member must be appointed.

Location and scheduling of Meetings
Meetings of the Joint Standing Committee shall be scheduled so as to balance the need for a timely decision and to accommodate the schedules of the individual Committee members.
The location of the meeting shall be determined by the two associations in consultation with their members.

Attendance
The Committee and Executive Directors or designates must be present at all times. The Theatre and Playwright representatives may be present during the presentations, rebuttals, testimony by witnesses, questions and closing statements. Witnesses may be present for their testimony only.

Voting
The manner of voting shall be determined by consensus of the Committee, and in the absence of consensus, shall be conducted by secret ballot.

Presentation to the Joint Standing Committee
Each association may assist its member to prepare for the meeting in outlining the matter in dispute and the resolution sought. The order of presentations shall be decided by the Joint Standing Committee. After the presentation by the first party the Joint Standing Committee will hear the presentation of the second party and any rebuttal of the first presentation followed by a rebuttal by the first party of the second presentation. No new information, arguments or issues may be contained in the rebuttals.

Following the presentations as outlined above, there shall be an open discussion of the matter in dispute and during which the members of the Committee and the representatives from the Theatre, the Playwright, and the associations may ask questions of each other at the discretion of the Chairperson.

The meeting will be declared in camera by unanimous vote of the Committee once all witnesses have been heard and both parties have been given an opportunity to make a final argument if they so wish.

The Committee shall be empowered to attempt to reach a compromise between the parties, or to find for either party by majority decision. The Committee shall submit any compromise or decision, in writing, to the Professional Association of Canadian Theatres and the Playwrights Guild of Canada. Such compromise or decision shall be final and binding on both parties. The Committee shall try to resolve the issue at the original meeting; however the Committee may, by majority vote, decide to hold further meetings or hearings on a particular dispute.

Should the Joint Standing Committee find for either party it shall have authority to direct payment, including interest and costs where applicable to such party, retroactively if necessary, in the amount and to the extent that the Joint Standing Committee considers necessary in its decision to
render said party proper redress. Such payment will be made within 90 days of the publication of the decision.

The Joint Standing Committee shall not have the power or authority to amend, modify, add to or delete any provision of this Agreement or any part thereof.

Should the Joint Standing Committee be unable to reach a compromise or find for one party by majority decision, then either party may within fourteen (14) days of the final meeting proceed to arbitration.

The decision of the Joint Standing Committee shall be published in writing by PACT and PGC jointly within three (3) days of the decision being taken and sent to the parties in dispute.

This Board of Arbitration shall consist of three (3) persons. These three persons shall be the nominee of the Playwright, the nominee of the Theatre and a third person agreeable to both the Playwright and the Theatre, who will serve as Chair. The decision of the arbitrators, by a majority of the three persons, shall be final and binding upon all parties to this Agreement. If agreement on a Chair is not reached, the matter will be referred to a constituted arbitration institute.

No recourse shall be had to a court of law by either party unless and until the other party has failed to comply with these arbitration procedures.

Annual non-confrontational JSC
Either association may request an annual meeting made up of the Executive Directors (or designates) and three members of the Joint Standing Committee to discuss matter of interest regarding the Agreement and its effectiveness and to review the Joint Standing Committee process.