

Commission Agreement

THIS AGREEMENT dated this _____ day of _____, 20____, by and between _____ (“Producer”) and _____ [and _____] (the “Playwright”) [(collectively the “Playwright”)].

1. (A) The Producer hereby engages the Playwright to create an original stage play, presently entitled _____ (the “Play”).
(B) In consideration of the mutual covenants and agreements set forth herein, the Playwright hereby grants to the Producer the right to purchase an exclusive option to present the play on the live stage, in a “world premiere” engagement, [upon the terms and conditions the Parties agree to negotiate in good faith upon the acceptance of the completed work for production by the Producer] [upon the terms and conditions contained in the Production Agreement attached hereto and incorporated herein]. Provided the Producer is not otherwise in default in his obligations under this Agreement and will have made all payments as set forth herein, said exclusive right will continue during the First Draft and Second Draft review periods, as set forth in paragraphs 4(a), (b), (c); and 5 (a) and (b) below.
2. The parties understand and agree that the present title of _____ is for identification purposes only. Said title may be changed by mutual consent of the parties at a subsequent time. In the event the parties cannot agree upon a final title for the play, the author’s decision will be final.
3. [Said play will consist of a minimum of _____ typewritten pages.] The play will be:
 - (A) Based on an original idea of the _____ [Producer] [Playwright].
 - (B) Based on an underlying _____ [novel, short story, screenplay, etc.], written by _____; the copyright to which is owned by _____; and the rights to adapt same for the live stage are owned by _____.
4. (A) On or before _____, the Playwright will deliver to the Producer a first draft of the script. After said delivery the Producer will have the right to read the script for a period of _____ days (the “First Review”). During the period permitted for said first review, the Producer may, at his option, and at his sole expense, arrange as many table and/or staged readings of the script as he deems necessary, utilizing such actors and directors as he may deem desirable. Playwright will have the right of approval of actors and the director. Playwright will at all times be permitted to attend same. Admission will not be charged and the readings will not be open, advertised, or publicized to the general public. Only persons directly connected with the theater company and/or such industry professionals as the producer and playwright may invite will be permitted to attend. Within the said first review period, the Producer must advise the Playwright in writing that:
 - (i) The first draft, in its present form, is suitable and acceptable for his needs and expectations; and the Producer now wishes to present the play on the live stage, under the terms and conditions of the option referred to paragraph 1(B) above.Or

(ii) The Producer desires revisions or modifications in the script to be prepared by the Playwright in a second draft. The Producer will give the Playwright detailed notes and guidance as to his requirements for same. Upon said notice, the Playwright will have an additional period of _____ days thereafter, in which to write the second draft and deliver same to the Producer. Upon delivery of the second draft, the Producer will have _____ days thereafter (the Second Draft Review period). During said Second Draft Review period, the Producer will have the right in his sole discretion, and, at his expense, to arrange table and/or staged readings of the second draft, on the same terms as paragraph 4 (a) above.

5. On or before the expiration of the Producer's second draft review period, he will notify the playwright in writing as follows:

(A) He intends to present the play on the live stage, under the terms and conditions of an option he wishes to purchase from the author;

Or

(B) The Producer elects not to produce the play. If he fails to give timely notice under paragraph 5(A) above of his intentions to produce the play, said failure will be the same as an election not to produce the play. In either event, the Producer will have no further rights or interest in the Play. The Playwright will have no further obligations hereunder to the Producer. The Play will become the sole property of the playwright, free and clear of any claims or encumbrances by the Producer. The Playwright may then offer it to other, even competing producers and/or publishers without restriction or limitation. Upon said election or failure to give timely notice, as aforesaid, all sums unpaid hereunder will immediately become due and owing. The Producer will pay said sums to the Playwright immediately. It is expressly understood and agreed that said election and termination of the Producer's rights will not relieve or excuse him from his obligation to pay all sums required hereunder.

6. In full consideration of the covenants herein, the Producer will pay to the Playwright the sum of _____ dollars (the "Commission Fee"), according to the following payment schedule:

[Alternate Number One]

[(A) Not less than _____ Dollars upon the date wherein the parties have first entered into this Agreement; and

(B) The balance of _____ Dollars when the author delivers the first draft of the play.]

[Alternate Number Two]

[(A) Upon the execution of this agreement, not less than _____; and

(B) Upon delivery of the Playwright's First Draft, not less than _____ Dollars of the total sum; and (c) Upon the first to occur of the acceptance by the Producer of the Playwright's First Draft; or the delivery of the second draft by the Playwright, not less than the remaining _____ Dollars of the total amount.]

7. The sums as set forth in paragraph six above are intended as payment for work performed by the playwright in creating the script. They are not intended as, nor should they be construed, as advances against the royalties or option payments as set forth in any

option or production agreements contemporaneously or subsequently negotiated and entered into by the parties. Therefore, they are not recoupable against advances, royalties, or other payments due under said option or production agreement. All sums paid hereunder are considered earned by the playwright when she creates the play and are therefore nonrefundable. In the event the Producer deems the play unsuitable or unacceptable to his needs and expectations, the Producer will have no recourse against the Playwright for sums paid, except to abandon the project. Said abandonment, however, will not relieve him from his obligations to complete all payments due hereunder, as per paragraph 5 (b) above.

8. In the event the Producer shall fail to timely make all payments and reimbursements required hereunder, all of its rights and interest in the play will immediately and automatically terminate, without further notice or action by the Playwright.

9. [This Commission Agreement will entitle the Producer to the exclusive right to present the play on a one time basis only. In the event the Producer will desire to present subsequent productions of the Play, he must negotiate additional options and/or production agreements with the Playwright at such subsequent times. Said options and/or agreements will be on a nonexclusive basis, unless otherwise agreed to at that time by the parties. Playwright will have no obligation by reason of this Commission to negotiate and/or authorize subsequent productions of the play.]

[This Commission Agreement will entitle the Producer to the exclusive right to present the play in its world premiere on a one time basis only. However, upon twelve months notice, the Producer may exercise the right to present _____additional productions, on a nonexclusive basis, for a period of _____years, from the date of execution of this agreement. For each additional production, the parties agree in good faith to negotiate terms and conditions of a production agreement.]

10. (A) Copyright to the play will belong solely to the Playwright, and the Producer will not, by virtue of this agreement, be entitled to or claim any interest or right therein. This Agreement does not create, bestow, or otherwise give the Producer any claim right, or interest in any subsidiary rights to the play, all of which are strictly reserved by the Playwright.

(B) All other rights not specifically and expressly granted herein to the Producer are reserved by the Playwright.

11. The Producer acknowledges, first, that the Playwright is the exclusive author of the Play. Second, in the normal course of this agreement and any subsequent production he or any of his employees or persons under his control, may offer suggestions, ideas, dialog, and other material, which the author at [his] [her] sole discretion may incorporate into her script for use in the contemplated production, subsequent productions (whether or not produced by the Producer), and in publication of the script. All such material which the Playwright chooses to retain in her script will become the exclusive property of the Playwright to use as [he] [she] sees fit. In such event, the Producer, his employees and persons under his control, will have no rights or claims thereto. The Producer will notify, in writing (and provide a copy thereof to the Playwright), all of its employees and others within his control of the author's rights and the Producer's obligations under this paragraph. Further the Producer will not, of its own, or permit other persons under his control, to, privately or publicly, represent that anyone other than the Playwright created or wrote any part of, or the whole, of the Play. The Producer will indemnify and hold the

Playwright harmless against any claims, encumbrances, judgments, costs, or attorney's fees incurred in violation of this paragraph.

12. Although the Producer may offer guidance, suggestions, and requests for changes, additions, deletions, or modifications to any part of, or all of, the Play, the Playwright will not be obligated to make or incorporate such alterations. No such changes, additions, deletions, or modifications may be made without the consent of the Playwright. In the event the Playwright refuses to make any requested changes, the Producer may deem the material unacceptable and refuse to exercise his right to option the Play.

13. Provided that the Producer has made all of his payments hereunder and provided that the Producer is not otherwise in default hereunder, the Playwright will use [his] [her] best efforts (but will not guarantee) to secure billing credit for the Producer in all subsequent productions and publications of the Play. The Producer's billing credit will appear in substantially the following form:

“Originally Produced by _____”

14. The Playwright represents and warrants that [he] [she] is the sole owner and creator of the play. Except as noted below, all material, characters, incidents, dialog, and stage directions are wholly original with [him] [her] and do not violate or infringe upon the copyrighted work of others and/or infringe upon, or violate, the rights of privacy or publicity of any persons, and except as noted in (D) below, does not depict any real life person.

(A)_____ The play contains or is based on certain material which is in the public domain.

(B)_____ The play contains or is based upon certain material created by others for which the author is not required to obtain permission.

(C)_____ The play contains or is based upon certain material created or owned by others for which the Playwright [Producer] has obtained permission, a copy of which is attached hereto as evidence thereof.

(D)_____ The play depicts real life persons and contains incidents and information occurring to them, for which the Playwright has obtained permission, a copy of which is attached hereto as evidence thereof.

The Playwright further represents and warrants that [he] [she] has the full right and authority to grant the rights herein conveyed to the Producer.

15. The laws of the State of _____ will govern this agreement.

16. All notices required hereunder will be addressed to the parties at the addresses printed below their names, until other notice of change of address is given in writing, and will be by certified mail, return receipt requested. Notices so given will be effective on the date of receipt thereof.

17. This document contains the entire Agreement between the parties. No changes, modifications, or alterations thereof will be effective unless contained in a writing signed by both parties.

18. This Agreement, and all written modifications, alterations, supplements, and amendments hereto contained in writing signed by the parties, will be binding on the parties, their executors, administrators, personal representatives, successors and assigns.

19. Notwithstanding anything contained in the foregoing paragraph, it is agreed and understood that neither party may assign this Agreement without the written consent of

the other party hereto, except that the Producer may assign this Agreement to a Joint Venture and/or Limited Partnership, of which he will continue to be a party, which will produce the Play. In addition hereto, the Playwright may assign this Agreement by will, trust, or other testamentary instrument, for the purposes of estate planning.

20. In the event of a claim or dispute between the parties, which cannot be settled by the parties themselves, either party may submit this dispute to arbitration in _____ County, in the State of _____ in accordance with the Commercial Arbitration Rules of the American Arbitration Association and conducted by a member thereof. Judgment upon the award so rendered by the arbitrator may be entered by any court of competent jurisdiction. The arbitrator will require the party losing such dispute to pay the reasonable costs and attorney's fees of the prevailing party.

21. Nothing contained herein is intended or should be construed as creating an employer-employee and/or work-for-hire relationship between the parties. At all times during the term of this agreement, the playwright will be an independent contractor, over whom the producer will not exercise any supervision or control. The parties expressly stipulate and agree that the producer's payment of any fees hereunder, writing guidelines, or requests for changes and modifications in the Play will not constitute such supervision or control as to create an employer-employee or work-for-hire relationship.

22. [As of the execution of this agreement, the Producer owns or holds the option on the live stage rights to adapt the underlying work _____, written by _____, copyrighted by _____, into the Play, which is the subject of this Agreement. Contemporaneous with the execution hereof, the Producer will assign all said options and/or rights to the Playwright to be [his] [her] sole property, now and forever, regardless of whether the Producer will ultimately choose to produce the subject Play. A copy of said assignment will be attached hereto.]

In Witness Whereof, the parties have this date affixed their hands and seals hereto.

_____(Playwright)

_____(Address)

_____[(Producer)] [(Theater Company)]

By: _____(Title)

_____(Address)

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Attorney, producer, and playwright Charles Grippo is the author of *Business and Legal Forms for Theater* and *The Stage Producer's Business and Legal Guide*.