



DANCE IRELAND

Producer Toolkits

Outside the Studio





TOOL KIT

Contracts

The what, why, who
and how of contracts

About

- The Outside the Studio programmes are part of Dance Ireland's support for artists to further develop skills and knowledge to build and enhance their career, beyond the creation of work.
- In Autumn 2020 Dance Ireland appointed international dance and theatre producer [Gwen Van Spÿk](#) as our Producer in Residence. This three-year initiative started at a timely moment for the dance sector, and our Members, as we worked collectively to recover from the impact of Covid-19, future proof and evolve our practice.
- From Autumn 2020 to 2023, Gwen led a programme of masterclasses, exchanges, support sessions and the Evolve producing programme for the dance sector in dialogue with Dance Ireland. This activity provided an opportunity to explore producing culture within the dance ecology in Ireland while connecting dance artists and producers and provide opportunities to develop skills in practical aspects of self-producing for artists. These [toolkits were developed](#) as part of this programme.

Please Note

- As we deal with the continuing changes in our sector, we recommend approaching these toolkits as flexible guidelines and principles to inform your work.

How to use this Tool Kit

- This Tool Kit is designed to guide you through the process of drafting, issuing and responding to contracts.
- It aims to answer key questions that come up when artists and producers receive a contract or need to issue a contract.
- The contents of the Tool Kit are not legal advice and cannot replace legal advice about particular contractual issues that you may encounter in your work.
- Contracts should be unique and specific to each set of contracting parties and the arrangements that they document and support.
- The contents of this Tool Kit are not fixed in concrete; it is a guide not a bible, and as the operating context changes, what needs to be included in contracts and how you respond to a contract may change.
- You can read from beginning to end or dip into particular sections.

What is a contract?

A contract is

- the conclusion of discussions between two parties regarding how they are going to work together
- a legally binding promise between the parties on the arrangements between them
 - Legally binding means that if the promise is broken i.e. the terms of the contract are breached, the injured party can take the other party to court to enforce the terms of the contract and/or seek remedial action.
- Typically in the dance/performance sector, contracts are between an organisation or individual who is engaging another to deliver a service for/to them, for example:
 - A company/artist engaging a dance artist or collaborator to make/perform work
 - A festival or venue engaging a company/artist to present a performance
 - An academic institution engaging an artist to deliver an educational activity or event
- A contract is not a template document into which names and numbers are inserted
- A contract can be expressed verbally; it doesn't have to be a written document.
 - Verbal contracts can be harder to enforce as there is a lot of scope for misunderstandings.

Why issue a contract?

- To avoid misunderstandings by *recording* and *confirming* what the parties to the contract have *committed to*:
 - Dates
 - Resources
 - Places
 - Outcomes/outputs
 - Rights
 - Obligations
 - Compensations/remedial actions for breach of contract
- Contracts have other wider, significant benefits as part of a collaborative process :
 - [This is an interesting link](#)

Who prepares, and/or signs a contract?

- A contract is typically issued by the party who is paying the other party
- The people who prepare the contract must
 - have a thorough understanding of what has been agreed between the parties to the contract
 - Have a thorough understanding of the implications of the contract on them/the organisation they represent and be able to accept responsibility for those
- Both parties entering into a contract must be legally able to do so:
 - Adult
 - Solvent
- The person signing the contract must be in a position to take responsibility for the implications of the contract
 - Or have been agreed as the representative of that person

What does one need to have in place to issue a contract?

- **Agreement**
 - one party accepts the offer of another
- **Consideration**
 - each party promises to give or do something for the other; this must involve money even if it is only a €1
- **Intention**
 - each party must intend that the agreement has legal consequences.
- **Form**
 - usually in the form of a written document but not always: a verbal contract is equally legal binding
- **Capacity**
 - both parties must be legally capable of entering into the contract.
- **Consent**
 - must be entered into freely.
- **Legality**
 - the purpose of the contract must not be illegal or contrary to public policy.

When do I issue a contract?

Contracts should be issued

- at the point when an offer has been accepted
- leaving sufficient time for clarification of details, negotiation and for any misunderstandings to be ironed out
- allowing sufficient time to make alternative arrangements before the services are required to be delivered, in the event that terms of the contract can't be agreed.

What are the typical contents of a contract for a dance project?

Typical structure and flow of a written contract:

- Who the contract is between including legal name and place of business/business address
- What the contract is for
 - the services/the activity
 - any specific targets or objectives
- The 'compensation' i.e. the payment that is being made in respect of the services/activity being delivered
 - How much
 - When it will be paid
 - How it will be paid
 - Any conditions that have to be met for payment to be made
 - Details of whom invoices should be made out to
- The time-period across which the contract is applicable and any deadlines that have to be met
- The rights either or both parties have in regard to any outcomes of the services that have Intellectual Property Rights implications.
- Any relevant legal and statutory obligations that either or both parties might have to meet
 - Insurance, disclosure and barring checks
- Action that will be taken when things go wrong, or the terms of the contract are breached

What is copyright?

- The creator of a brand new **original** artistic work/ owns the **intellectual property** in that work
 - The IP is in the ‘intangible’ e.g. it is in the story not in the book; it is in the music not in the recording or the sheet music
- The intellectual property owner has the rights to make copies of and distribute the work i.e. to publish a book of the story: they are the **copyright owner**
- The copyright owner can **license** other parties to make copies of and/or distribute the work/idea.
- In Irish law there is no registration procedure for copyright works. Copyright protection is automatic and arises upon the creation of an original work. In general, the term of protection for copyright is 70 years after the death of the creator/author but the term of protection varies depending on the type of work
- [This is a useful link](#)

Who owns the copyright in a dance work?

Typically, a dance work or production is created through a collaborative process involving any or all of the following elements:

- Choreography
 - Music and /or sound design
 - Lighting
 - Costume design
 - Set Design
 - Film/Projection
-
- IP exists separately in each of these elements; each element is a creative work/idea in its own right
 - The choreographer/director/producer owns the IP and copyright to the overall idea that assimilates all of these elements but does not own IP in each individual element
 - To realise the overall idea as a ***theatrical work*** they are required to get permission to use / secure the rights to each of the elements
 - The rights will be licensed to the choreographer/director/producer by each contributing artist for an agreed length of time or number of performances

What rights do dancers have in a dance work?

- Dancers have 'related' performers rights:
- Related rights are not 'copyright'; but they protect the interests of particular individuals who have a hand in the realisation of copyright works in the public space, these include but are not limited to those individuals who have added creativity to the original work
- Dancers have rights in their performances of choreography and can
 - control the recording (i.e. photography, film/video) and dissemination of their performances
 - control the commercial exploitation of the recordings

What about the rights of photographers & film-makers?

- Photographers and film-makers own the copyright to any photos or film they produce
- They do not own the rights to the subject of the photo/film.

What to do when you receive a contract.

- **Read** it
- **Understand** it; ask for clarification if anything is unclear to you or does not fall in with what you understand has been discussed
- If you don't agree with something because it is different to how you believe it should be, make this known to the other party and **negotiate**
- **Key things to check for:**
 - When does the contract apply from
 - When can you escape obligations under the contract
 - What is required of you and in what form
 - What is the remedy to be given for breach of contract?
 - Return the money?
 - Make good?
- **Only sign a contract when you are happy and agree** with its contents: you are not obliged to sign a contract if it does not accord with your understanding of what has been agreed.
- **Do not ignore** a contract and hope it will go away:
 - not signing a contract does not mean you do not accept it
 - the longer you take to respond the more difficult it can be to request/negotiate alterations.

What can go wrong?

- Force Majeure: events, acts or circumstances beyond the control of the parties engaged in the contract e.g. natural disasters, the outbreak of hostilities etc....
 - Typically in a contract it will state that in the event of Force Majeure one or both parties will be excused from performance of the contract and there will be no penalties
- Breach of contract
 - Breach of contract is when one or other party does not fulfil their responsibilities and obligations. The contract may make provision for immediate termination, or for the defaulting party i.e. the one breaking the agreement, to make reparations and failing that there may be penalties and finally pursuit of legal action through the courts.
- Failure to produce
 - One or other party finds themselves unable to continue with the agreement due to unforeseen circumstances that are outside of force majeure e.g. illness of a key company member, closure of a building due to a burst pipe. Usually a contract will make provision for the responsible party to compensate the other for loss of earnings, refund of irrecoverable expenses etc.

Things to do & things not to do when handling contracts.

Do

- **Read a contract** if you receive it; especially the 'small print'.
- **Ask questions and/or get advice** if there are points in the contract you don't understand.
- Be **wary of using templates** or other people's contracts or your own old contracts when drawing up new contracts: a contract is always specific to situation and discussions that have taken place; templates can be misleading and lead you to overlook matters that are specific to your situation.
- Know your **rights!**
- Make sure all contracts that you issue are **fair** and operate with applicable law.
- **Use** your contracts: they contain useful information for both parties.
- If you are in a contract and **something goes wrong**; if the obligations are not fulfilled or something goes wrong in the relationship between the parties do speak out and **call it out** to the **right people**.

Don't

- Use complicated language that you don't understand when drawing up contracts.
- Be frightened to negotiate or ask for changes if there are points in a contract that you don't feel happy accepting.
- Sign if you are not happy with a contract.
- Assume that if you know someone or they are your friend that you don't need a contract.
- Forget to regularly refresh your memory of what is in a contract.
- Assume that the other party to the contract knows everything about your context and situation;
- Make contracts too restrictive: the world changes as time moves on so make sure that there is 'space' within a contract to allow for that: include the possibility for review or for details to be confirmed. At the same time don't be too vague especially when responsibilities attached to you may have financial or time implications.

Terminology (1)

Avoid using jargon if you can when drawing up your own contracts: unfamiliar words that sound like they come out of the Court Room don't make the contract any more meaningful or enforceable!

Here are some commonly used words that you make come across when reading contracts.... This list is not exhaustive!

- **Agreement:** an arrangement between two or more people, countries etc; contract
- **Appendix:** additional or supplementary material at end of contract, book etc
- **Arbitration:** settlement of a dispute by a person chosen by both parties
- **Article:** a particular statement or stipulation in a contract etc; clause
- **Clause:** a particular statement or stipulation in a contract etc; article

Terminology (2)

- **Condition:** anything necessary before the performance of something else
- ***Force Majeure:*** unforeseeable event excusing one party from fulfilling contract.
- **Fulfil:** to satisfy a condition; to complete the required task;
- **Herein:** in here; in this (document etc)
- **Hereinafter:** in the following part (of this document etc)
- **Hereto:** to this (document etc) [eg: attached hereto]
- **Heretofore:** up until now; until the present; before this
- **On behalf of:** in the interests of (person etc); for (person etc); on behalf of

Terminology (3)

- **Null and void:** invalid; without legal force; not binding
- **On the one hand,** on one side - **on the other hand** on the other side
- **Party:** the person or persons forming one side of an agreement
- **Stipulate/Stipulation:** to specify as an essential condition
- **Terms:** conditions or stipulations
- **Warrant:** to give formal assurance; to guarantee
- **Whereas:** it being the case that; in view of the fact that [often in the introduction to contracts]

Examples of Contracts

- Please note some of these examples are deliberately flawed and none should be used as a template for your own contracts! They are included for illustrative purposes only.
- https://www.dropbox.com/sh/7vco4gkzudopde8/AAANd_DSjeuWj1NB9t1PzdZ_a?dl=0



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Supporting the Development of Dance & Dance Artists in Ireland

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