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This is provided for informational purposes only. Please do consult with an attorney familiar with your specific circumstances, challenges, and quirks before drawing any conclusions or doing anything rash!

BASIC CONTRACT CONCEPTS

1. A contract, legally speaking, is an enforceable agreement between two or more parties.

2 **A contract does not need to be in writing to be enforceable.** However, there are some exceptions:

   a. Assignments of rights or exclusive licenses **MUST** be in writing to be enforceable.

   b. For a work to be considered to be a "work-for-hire" it must either be created by an employee for an employer or be confirmed as a "work-for-hire" by a written agreement.

   c. In some states, an agreement to pay an agent to negotiate a single business deal must be in writing to be enforceable. Similarly, in some states, any agreement which will not or cannot be performed within one year, including an ongoing management or agency arrangement, must be in writing to be enforceable.

3. An oral contract is just as valid as a written one, only more difficult to prove. ("An oral contract is not worth the paper it isn't printed on.") MORAL: get in the habit of confirming important communications in writing.

4. A contract does not require money to change hands for it to be enforceable.

5. You may be able to enforce a contract (or have one enforced against you) whether or not it was signed and returned. MORAL: Don't be cute and think that the lack of a paper trail will protect you or allow you to hedge your options.

6. Parties may enter into an enforceable contract based on their actions alone.

7. You may be a party to an enforceable oral agreement if:

   a. You are relying on something the other party told you or represented to you, the other party knows you are relying on this, and the other party does nothing to dissuade or disclaim your reliance; or

   b. Another party is relying on something you told them or represented to them, you know they are relying, and you do nothing to dissuade or disclaim their reliance.

   "Reliance" can include doing something you would not have otherwise done (or not doing something you would have otherwise done) "but for" the other party's representation.

8. Even if signed by one party, a written contract may be unenforceable (yes, **UN**enforceable), if:

   a. The other party never signs it and never otherwise agrees to its terms orally or by action; or

   b. You were presented with a contract, signed it, but responded with a counter-offer (including technical riders, various and sundry amendments, boilerplate terms, or handwritten changes) which the other party never signed, initialed, or otherwise agreed to orally or by action. When you receive a written contract, you cannot unilaterally change or amend the other party's written contract terms unless the other party has agreed to your changes or amendments. If you do, you may void the entire agreement.

9. "Boilerplate" is always negotiable.

10. There's no such thing as a "standard" agreement. Contracts are like dentures: you want one a pair that fits your mouth, not one you borrowed from someone else!

11. Agreements which leave issues open for further discussion or agreement are not enforceable. They are called "agreements to agree" and have no legal validity.

12. If you signed a contract, you must abide by its terms whether or not you read them, understood them, or subsequently determine them to be an impediment to your success as a viable arts organization. MORAL: Don't sign anything unless you have read it, understood it, and can live with it.

13. If you have a corporation (Inc or LLC—regardless of profit or non-profit), then the contract must be in the name of the corporation and the person signing must sign on behalf of the corporation. Otherwise, the signer may become personally liable.

14. Do not cut and paste provisions from other contracts (even my own) unless you are certain that it will not conflict with other provisions in the agreement.

15. Contracts do not need to be in legalese—just English.

16. The value of a well-written contract is not judged by its length—or lack thereof. A longer contract that is comprehensive, easily readable, and clearly written is far more valuable that a one-page contract with ambiguous terms, tiny font, and a lack of specificity.

17. The point of a written contract—or any contract—is not enforceability. The point of a contract is to facilitate communication. If you are merely using a "once size fits all approach" to avoid language that fits your specific circumstances, you're wasting your time

18. <u>Specific Contract Provisions</u>

    Regardless of whether a contract is written or oral, the following terms are almost always at issue in the performing arts and should be discussed and agreed upon as part of your agreement:

    a. SERVICES AND DUTIES: What are your expectations? What is expected of you?

    b. FEES AND PAYMENT: Not just how much is being paid, but when? Where? What if the paying party fails to pay or pays late? Will there be interest or late fees owed?

    c. TECHNICAL REQUIREMENTS: What do you need to do what you need to do? Lighting? Sound? Staff? Viagra? Use as much specificity as possible.

    d. CANCELLATION TERMS: Under what conditions can the contract be cancelled? Death? Illness? Angst? If one party has the option to cancel, must they pay a fee?

    e. INTELLECTUAL PROPERTY: Does either party need to get performance licenses or permission to use artwork, music, choreography, etc? Who is response for these things? If one party makes a recording, will the other be entitled to a copy? If so, what can the copy be used for?

    f. RIGHTS OF PUBLICITY: What can one party do with the other's image, publicity materials, name, etc? Does there have to be approval?

    g. EXCLUSIVITY: Does one party need to restrict the other party's ability to do similar services for others?

    h. INDEMNIFICATION/LIABITY: Who is responsible for injuries to audience? Crew? Staff? Is one party being required to obtain insurance? (NOTE: Anything involving children, by their very nature, is a pit of liability.)

i. DISPUTE RESOLUTION: If there is a dispute you cannot resolve between the parties, will you take each other to court or require mediation or arbitration?

j. ATTORNEYS FEES: Except for a few narrow exceptions, each party is responsible for its own attorney's fees unless there is a written agreement providing for the loser in a lawsuit to pay the winner's attorneys fees. (This goes for arbitration, too.)