

THE NATIONAL **OPERA** CENTER
AMERICA

CO-PRODUCTION HANDBOOK

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CO-PRODUCTION HANDBOOK

Preface

In North America, virtually every company has had to adjust to reductions in grants from public funding agencies and to increased competition for contributions from private donors. Similar conditions are taking shape, to varying degrees, in European countries. Because of this, opera companies are constantly seeking to become more efficient in the utilization of their resources. Increased co-production, involving both standard repertoire and new operas, is becoming more interesting to opera professionals around the world. In light of this interest, OPERA America has made the encouragement of co-productions among companies a top priority.

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The *Co-Production Handbook* came into existence at the suggestion of Professional and International Company Member general directors. They asked for a guidebook — an *aide memoire*, as one general director called it — to help ensure the consideration of as many of the details involved in co-production as possible.

At the summer 1996 meeting of the Technical/Production Committee, Committee members participated in a brain-storming session during which they enumerated issues and concerns related to co-production. The OPERA America staff organized the resulting list into broad categories. Staff then gathered numerous co-production contracts from member companies. Excerpts from each of these contracts were re-organized to address each of the issues and concerns named by the members of the Technical/Production Committee. In most instances, several contractual excerpts address each point in order to provide the user with a range of reference points.

Since then, the *Handbook* has been reviewed and updated by many opera professionals, including a second review by the Technical/Production Committee during the 2014-2015 season. Their suggestions have been incorporated and additional co-production contracts have been collected to make the *Handbook* as complete as possible.

Keep in mind that the examples in this handbook are meant to be illustrative only. This is not a complete or exhaustive list of contractual provisions, and parties interested in co-producing should seek the advice of qualified legal professionals.

CO-PRODUCTION HANDBOOK

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1. DEFINITION OF SCOPE OF ACTIVITY

- 1.1 Define the objective of the co-production. Is this endeavor conceived to save money, to pool resources for an unusually large project or to expand artistic boundaries?
- 1.2 Define the “degree” of co-production. Is this endeavor truly a collaborative artistic project, a project with a Lead Producer in which several other companies are ‘investing,’ a confirmed advance rental or part of an agreement to exchange productions?

Note: Not every partnership is a co-production. Imprecise use of language can lead to confusion from the start.

2. ADVANCE CONSIDERATIONS

- 2.1 Consider the potential for artistic compatibility between/among partners.
- 2.2 Consider the technical compatibility between/among partners, i.e., theater size, chorus size, crew requirements, time constraints, technical equipment — especially lighting equipment, etc.

(Reference: OPERA America’s *Production Directory*)

Example A

The staging of this co-production has been approved by the two parties and declared compatible with their respective stages.

- 2.3 Determine responsibility for construction. Who is building the production? To what standard is it being constructed? How long is the production expected to last?

Example A

Lead producer will supervise and execute all construction of the production’s scenery in its shops in accordance with the co-production budget. Second Producer will supervise and execute all construction of the production’s props in its shops in accordance with the co-production budget.

Example B

After approval of all sketches and plots for the scenery by (Lead producer and/or all producers), Lead Producer’s technical department will produce the technical specifications book. A bidding session will be organized by the Lead Producer. After a mutual agreement among the co-producers, the construction of the set will start.

- 2.4 Determine who owns the production and in what proportion to other co-producers.

Example A

The producers shall retain ownership interests in the production proportionate to their final contributions to the total capital cost of the production. The capital cost of the production (estimated to be XXX) shall be borne by the producers in amounts as described in the schedule of capital contributions attached hereto. The other producers shall make payments to Lead Producer as specified in Appendix X.

Example B

Each co-producer’s financial obligation shall be a percentage of the total co-production budget as negotiated and described in Attachment X. Each co-producer agrees to pay its obligation to the Administering Producer according to the schedule outlined in Attachment X.

Example C

Co-producer's share in the co-production, whose sets, costumes and properties will have been created by the Lead Producer, has been fixed at the total amount of \$XXX.

2.5 What does ownership include?

Example A

The co-producers shall fund and produce the design, manufacture, shopping and assembly of theatrical scenery, props and non-stock properties, herein referred to as the "Production."

Example B

The total budget of the Production is XXX. Said cost reflects expenses paid by the Lead Producer for advancing work on the production prior to presentation in (city) and the capital materials and labor costs of the production. Shared costs shall be limited to the scenery and costumes.

2.6 Define what scenic elements are being built and what elements are being pulled from stock. Define utilization of co-producer's individual stock resources devoted to the co-production, and establish appropriate fees for the use of this material.

Example A

Specifically excluded from the "scenery" are stock properties, fire-arms and stock scenic elements such as house masking, unpainted scrim and the like.

Example B

Each producer shall provide its own stock materials, including but not limited to monochromatic scrim, black velours, etc.

Example C

Scenery includes all designed stage settings, set dressing and properties. Scenery does not include stock electrics and/or scenery, including without limitation, rake system platforms, unpainted scrim, house masking, chain motors and rigging hardware.

See Appendix A.

2.7 Define responsibility for securing additional equipment and materials.

Example A

Each producer shall pay entirely for any additional equipment required for its own presentation.

Example B

Any stock properties belonging to Lead Producer shall remain in (city), and each co-producer shall provide their own for use during the presentation of the opera.

2.8 Define Technical Supervision.

Example A

Lead producer agrees to provide a technical staff person to be present for load-in, load-out, packing and inventory assessment of production materials at each producer's presentation. Each producer shall assume all transportation and lodging costs for such supervision, and the producer at each presentation shall reimburse Lead Producer for the costs of the technical supervisor's salary and expenses, at the following rates...

Example B

The technical director associated with the Lead Producer will supervise all load-in and strikes for each co-producer. His costs are included in the Administrative and Overhead costs.

Example C

Co-producers will engage a qualified scenery and a qualified costume representative of Lead Producer's choosing to be in attendance in their presenting cities, their purpose being to attest to the condition of and to support proper handling of the production during load-in, set-up, unpack, fittings, alterations, packing and load-out of the production. Local fees (not to exceed XXX per day), per diems, housing and round-trip airfare from (city) to the presenting city shall be arranged and paid by the co-producers. In no way shall the representatives be expected to replace a regular employee.

2.8.1 Specify exceptions to technical supervision policies.

Example A

The requirement to engage a scenery representative for load-in may be waived if Co-Producer's technical representatives are able to observe the load in and set-up at Lead Producer's theater. The requirement to engage a costume representative for unpacking, fittings and alterations may be waived if the costume designer is present. Should such requirements be waived, scenery and costume representatives will still be required for load-out.

2.9 Determine the prop list.

2.10 Address the status of costumes.

Example A

Costumes include all designed clothing, specialty footwear and jewelry specifically built for this production. Costumes do not include stock undergarments, footwear, jewelry or hair goods.

2.11 Determine who administers the co-production. What is the scope of this administrative responsibility?

Example A

Lead Producer shall serve as the administering producer for the production and will supervise and execute all construction of the production's scenery in its shops in accordance with the co-production budget. Lead producer will provide a full final account of all co-production expenditures by (date). Lead Producer will then prepare a final combined co-production accounting and shall administer all future rental, sale or any other exploitation of the production. Lead producer will also thereafter provide annual statements of revenue and expense for the production's ongoing storage, insurance, maintenance and usage, and on or about June 30 of each year any net proceeds shall be distributed among the Producers in accordance with the provisions of this agreement.

Example B

The co-producers agree that the Administrating Co-Producer of the set will be the company that is going to build the scenery. As such, the Administrating Co-Producer shall:

- a. Administer the co-production agreement and the co-production budget, collecting and dispersing funds as required according to the terms of this agreement and the budget;
- b. Serve as the contact for future rental inquiries of the sets and properties;
- c. Supervise the logistics of co-production meetings, making sure that all co-producers are informed of important co-production activity in a timely fashion;
- d. Oversee the creation and manufacture of the production, including facilitating communication among the co-producers, the directors and the designer(s), and overseeing the scheduling of design presentations;
- e. Be sure that the production will work within the technical physical limitations of each co-producer's theater;

- f. Establish a separate account into which all funds received for this project shall be placed.

Example C

(Company name) shall be the Administrator of the co-production. As such, the Administrator shall:

- a. Assemble all budget funds and administer the payment of the production costs;
- b. Contract the Stage Director and Production Designer to conceive/create the production;
- c. Supervise the translation and execution of the production, including overseeing the artistic aspects of the production and administering the construction of scenery, costumes and properties;
- d. Provide a copy of floor plans, hanging plot, stage manager's book and costume inventory with original measurements to the co-producers;
- e. Administer the storage, maintenance and rental usage of the production upon its return to (city) after the final presentation by co-producers.

2.12 Define procedures to accommodate budget overruns.

Example A

If the actual capital costs of the Production are greater than the budget, Lead Producer will bear all additional costs. If additional co-producers agree to participate in the production, the capital contributions from the additional co-producer(s) will be paid to Lead Producer until additional costs are covered.

Example B

If the actual capital costs are less than the co-production budget, the co-producers shall receive reimbursement or reduction of their contribution (proportionate to their ownership share).

2.13 Define process for administration succession.

Example A

After the completion of the co-producer's presentations of the opera, those co-producers agreeing to keep the production intact will be the new (co-) owner(s) of the production, sharing or assuming the costs of subsequent storage and insurance, as well as the revenue (net of direct expenses) from future rentals or other exploiting.

Example B

Lead Producer will store and maintain the co-production scenery and props until at least (date). At that time, or at any time after that date, in the event that Lead Producer decides to dismantle and dispose of the production, it will notify each of the producers of its intent, in writing, at least 90 days prior to the date of disposal. Any producer who so chooses may at that time elect to move the production, at its own expense, to its own facilities and continue then to store the production in accordance with the terms and conditions of this agreement.

Example C

On or about (date), lead producer shall contact co-producers to determine the extent of continued interest in the production. Continued interest would be under the same terms and conditions outlined in the original agreement. Should any co-producer notify the others of its intent to abandon its interest, the remaining co-producers will assume a new agreement in which costs, revenues and use will be reapportioned equally.

2.14 Define producers' rights for future revivals.

Example A

Any producer may, at any time, elect to revive the production after its initial presentation, provided such subsequent presentation does not conflict with any other producer's initial presentation, as scheduled in Appendix B. In the case of any revival presentation, the producer presenting the revival will be responsible for all round trip transportation costs and technical supervisor fees and costs as described in this agreement. The producer presenting the revival also agrees to pay design fees to (name) according to the terms of agreements with these artists.

Example B

Should the Lead Producer or any of the co-producers decide to produce the opera after its initial presentations, that company shall notify the others in writing of its plans to do so at least 12 months in advance. The company shall pay all costs for refurbishing, handling and shipment of the production.

2.15 Define procedures for future rentals, rights to negotiate rental fees and division of rental income. Define what is deducted from rental income.

Example A

All producers will retain ownership interests in the production and will share all net income, including that which may result from rentals, electronic exploitation, etc., in proportion to each producer's final contribution to the final cost of the production. All costs incurred by Lead Producer in storing, insuring and maintaining the production after the final co-production presentation may be reimbursed from subsequent revenues before any net income is disbursed among the producers.

Example B

As long as the production is kept intact, each co-producer shall be a co-owner of the production and will participate in revenue (net of deduction of applicable direct costs) resulting from any exploitation of the production. Each co-producer's portion of such net revenue will be the percentage of its total contribution to the total production budget. Fees for rental of the production's scenery and properties will be XXX.

Example C

Any income derived from rentals shall be shared proportionately, net of deductions of applicable direct costs and pre-approved refurbishment as necessary. Approval shall not be unreasonably withheld.

Income derived from rentals shall be payable as a credit to the payment fees owed by the co-producers until they are fully invested in the production at which point income shall be paid on a cash basis.

Example D

Lead producer shall provide annual statements of revenue and expense for the Production's ongoing storage, insurance, maintenance and usage, and on or about July 1 of each year, any net profits shall be distributed among the Producers.

Example E

Fee for rental of the scenery and properties of the production will be \$XX,XXX.

2.16 Clarify the timing of rentals in relation to the co-producers' presentation of the production.

Example A

While this agreement is in effect, the production shall not be rented to a separate company without first obtaining consent from all co-producers.

2.17 Define procedures for terminating the co-production at all phases, from pre-construction to years later.

Example A

In the event that a producer either fails to meet its financial obligations under this agreement or terminates its operations for any reason, its ownership interest in the production shall automatically pass to the remaining producers in shares proportionate to each producer's contribution to the capital cost of the production.

Example B

Co-producers shall have the right to cancel and/or terminate this agreement due to the suspension of its operations in case of fire, war, strike, epidemic, act of God, public mourning or for any circumstances of the same general class, beyond its control or without its fault, which make the fulfillment of this agreement impossible or unfeasible. In such case, the defaulting co-producer shall be liable to the others for its pro-rata share of expenses already incurred (or contracted for and which must be paid) for those items contained in the budget.

2.18 Define arbitration procedures.

2.19 Develop procedures to accommodate additional co-producers.

Example A

If additional co-producers agree to participate in the production, the net revenue will be divided among the co-producers in proportion to each producer's final contribution to the capital cost of the production.

Example B

Should an additional co-producer be added to this agreement subsequent to its signing, such co-producer will be subject to the terms of this agreement and the financial obligation of each co-producer shall be adjusted accordingly.

2.20 Define procedures for disposing of the production.

Example A

Lead Producer will store and maintain the co-production scenery and props until at least June 30, 1999. At that time, or at any time after that date, in the event that Lead producer decides to dismantle and dispose of the production, it will notify each of the producers of its intent, in writing, at least 90 days prior to the date of disposal. Any producer who so chooses may at that time elect to move the production at its own expense to its own facilities, and to continue then to store the Production in accordance with the terms and conditions of this agreement.

3. ARTISTIC DECISIONS

3.1 Specify who has the right to approve aspects of the production.

Example A

The staging of this co-production has been approved by the two parties and declared compatible with their respective stages.

Example B

The right of final approval of the scenery and construction is jointly held by the General Director of the Lead producer and the General Director of the Co-producer.

3.2 Define who hires the production team. Who makes these decisions? Is there an approval process?

Example A

Each producer shall make its own arrangements for the engagement of a stage director, costume designer and lighting designer. Lead Producer shall make all arrangements for the engagement of the set designer for the design of the scenery and props and the supervision of its premiere. All fees and royalties payable to the designer and associated with the producers' presentations will be paid by Lead Producer and are included in the capital cost of the production. Each producer will be individually responsible for transportation, accommodation and a per diem allowance of XXX for the scenic designer's residency supervising the production installation at each opening venue.

Example B

1. Lead Producer has contracted (name) as Stage Director for presentation of the opera in (city). Similarly, co-producers shall contract (name) for their presentations. All local fees, per diem, airfare and housing shall be negotiated directly with (name) and are the financial responsibility of the particular contracting co-producer.
2. Lead Producer has contracted (name) as the Production Designer and he/she shall be paid directly by Lead Producer for the design of the scenery and costumes. Co-producers agree to each pay a royalty of XXX for their presentations.
3. Lead Producer has contracted (name) as Lighting Designer for the initial presentation of the opera in (city) and shall be paid directly by the Lead Producer. Co-producers shall offer (name) the right of first refusal for their presentations. All local fees, per diem, airfare and housing shall be negotiated directly with (name) and are the financial responsibility of the particular contracting co-producer.

3.3 Clarify procedures to resolve artistic conflicts.

3.4 Clarify who issues contracts.

3.5 Coordinate provisions in individual artist's contracts with provisions in the co-production agreement.

3.6 Will casting remain the same or change from city to city?

Example A

Each co-producer will exercise a free hand in the hiring of the soloists and conductor for the performances organized by its house and will pay for all the outstanding musical rights, especially those of the publisher.

3.7 Involve/invest the creative artists in the concept and spirit of the co-production.

3.8 Clarify the responsibility of the creative artists to remain involved in the production over time and to make adjustments for cast changes.

3.9 Clarify designers' responsibility to design a production that works in all co-producer's venues. Make certain these expenses are reflected in the co-production budget.

Example A

The Administering Co-Producer shall be sure that the production will work within the technical physical limitations of each co-producer's theater provided.

3.10 Clarify the residual rights of the creative artists -- directors, assistant directors, designers.

Example A

The Co-producer's stage director will be (name). It is agreed that (name) has a first refusal right on directing the production for all eventual rentals. If the rental company decides to use its own director, (name) will receive compensation in the amount of XXX.

Example B

Designer's royalties for an amount of XXX payable to (name), and XXX payable to (name) at the date of the first performance must be paid by all eventual rental companies.

Example C

In the event that the production were to be later rented or sold to another company, each of the co-producers agrees to require this additional party to renegotiate rights with each of the members of the original production team.

3.11 Define broadcast rights.

Example A

Each co-producer agrees that it shall not visually duplicate the production by film, tape or other similar processes except for minimal publicity, in-house archival purposes, advertisement and fundraising (not to exceed two minutes).

Example B

The distribution of income derived from the filming or broadcasting of the production is to be jointly agreed upon by the co-producers, at least 60 days prior to such recording or filming taking place.

Example C

The television, video, and movie rights of the production are not covered by this contract. In the event of a subsequent recording, they will require a separate negotiate and contract.

3.11.1 Separate archival recordings from broadcasts.

Example A

On the other hand, it is understood that recording for purposes of the work, the archives, and advertising are expressly authorized.

3.12 Make realistic timetables.

4. COST CONSIDERATIONS

4.1 Separate co-production from overhead and running costs.

Example A

This agreement covers only the capital costs of the production, which are defined as the costs for design, performance rights, and production of the scenery and stage properties. All other costs, including costs of transportation, installation, and running in each producer's theater are to be borne separately by each individual producer.

Example B

All expenses normally associated with a producing company, including without limitation, local warehouse handling, packing, shipping, storage, costume alterations, rehearsal and performance costs, shall be the sole responsibility of each co-producer.

4.2 Accommodate cast changes in the costume budget. Purchase enough fabric for new costumes. Determine if fabric alone is a co-production expense or whether new costume construction is covered by the co-production agreement. Define procedures for altering and caring for costumes.

Example A

Lead Producer shall build costumes for the principal artists, chorus and supers engaged for the original performances. Costumes shall be constructed in such a manner to allow for limited size changes. Replacement costumes and alterations to fit new cast members shall be the sole responsibility of each co-producer.

All alterations of costumes shall be of temporary nature; no garments may be cut or otherwise permanently altered without the written permission of lead producer.

Costumes shall be dry cleaned by each co-producer immediately after their presentations and prior to shipment. Each co-producer shall bear this expense.

4.3 Who pays for production storage?

Example A

Lead Producer will store and maintain the co-production scenery and props until at least June 30, 1999.

Example B

All co-producers agreed to equally share the costs of storing and/or dissolving the production after last presentation of the production.

Example C

Co-producers shall share proportionate financial responsibility for storage and insurance of the production upon its return to storage after the final presentation by a co-producer. Such costs will be billed by the lead producer to co-producers on a quarterly basis.

4.4 Who pays for production maintenance and refurbishment?

Example A

Each co-producer shall be responsible for maintaining the production in good condition while the materials are in its care.

Example B

Each producer shall be responsible for maintaining the production in good condition while it is in their possession, and agrees to be financially responsible for the cost of repairs or replacements required as a result of damage during their possession or during shipment.

Example C

Co-producers agree to responsibly store and maintain production in good condition while such materials are in its care. Co-producers agree to accept responsibility for physical damage or loss to production beyond normal wear and tear while the production is in its care.

Major refurbishment, if needed, shall be by prior mutual consent of the co-producers. Lead producer makes no representation as to the safety of the production materials as installed, handled, or used while under the direct supervision of the co-producer's personnel.

4.5 Limit co-producers right(s) to make alterations.

Example A

Major alterations to the production may not be done without the prior written consent of all co-producers and designers.

Example B

Major alteration of the production may not be done without the prior written consent of the Lead Producer.

Example C

Each of the parties will assume responsibility for the alterations, additions or transformations that the sets may possibly require to fit on each of the respective stages.

4.6 Define limits on utilization of co-production elements for other productions.

Example A

No company shall use the set, or any part of it, for any other production.

4.7 Who pays for shipping from city to city? Is shipping by truck, train, air, ship?

Example A

The production shall be shipped between the producers according to the schedule of shipments and productions, Appendix X. Each producer shall arrange and pay separately for round-trip shipment to and from (city). All shipments will be by truck only. Rail shipment is not permitted.

Example B

The Co-producers shall equally share the costs of shipment of the production to the various sites of presentation of each co-producer. It is understood that the method and cost must be agreed upon by all co-producers and that they shall make payment of their share of transportation, to the Administrating co-producer.

Example C

Co-producer #1 shall arrange for transportation of the production to (co-producer's city) immediately following Lead Producer's presentation and shall store the production until their presentation of the opera. Similarly, co-producer #2 shall arrange and pay for transportation of the production to their city immediately following co-producer #1's presentation and shall store the production until their presentation of the opera. After the final presentation, the Lead Producer shall arrange and pay for the transportation of the production to (city).

4.8 Include insurance costs.

Example A

Each producer shall obtain and carry in full force commercial comprehensive general liability insurance and fire and extended coverage insurance on all property of the production in the amount of XX, from the time it receives shipment of the production until the time the production is safely delivered to the next producer.

Lead producer agrees to insure the scenery at all times during construction until the time that the production is received by the first co-producing partner, and to insure the co-production scenery and props at all times while the production is permanently stored by the Lead Producer.

Example B

Each co-producer agrees that it shall obtain "all risk property insurance" to cover the production's sets, costumes and props at a value of no less than XXX.

Example C

Co-producers shall, at their sole expense, insure the production in the amount of XXX against all risks of direct physical loss or damage beyond that which is normal and customary as a result of any peril, natural element, vandalism, collision, or other source of harm to the production and further shall provide comprehensive general liability insurance.

Coverage shall be during the term of transportation to, and usage by the presenting co-producer; secured through a reputable nationally recognized insurance company, and shall name the co-producers as co-insured and loss payee(s).

4.9 Specify notification procedures in the event of damage.

Example A

All damages, losses or injuries observed at the arrival or at the return of the production must be immediately pointed out to the transporter and at the same time to the Lead Producer. Non apparent damages, losses or injuries must be reported within seven working days from their receipt. Failure to act within the prescribed deadlines will result in forfeiture of any claim by the defaulting party toward the other.

Example B

In the event of a loss or claim after the production is returned to Lead producer for permanent storage, Lead producer will decide, in consultation with the other Producers, whether or not to restore the production. In the event that a decision is made not to restore the production, the deductible paid and the proceeds resulting from any loss or claim shall be shared by the Producers in shares equal to their respective interests.

4.10 Determine specific payment dates.

Example A

Co-Producer shall pay \$XXX to Lead producer in the following manner:

- * 50% upon the signing of the contract by both parties
- * 50% upon delivery of the production to the co-producer

Example B

Co-Producer shall pay \$XXX to Lead producer in the following manner:

- * 33% upon the signing of the contract by both parties
- * 33% at an interim date, to be determined
- * 34% upon deliver of the production to the co-producer

5. ADMINISTRATIVE CONSIDERATIONS

5.1 Within each company, who negotiates the co-production agreement? Who signs it? Who reviews it from a legal perspective? Who administers the agreement internally?

5.2 Determine who within the company administration should review the agreement before it is signed. Make certain appropriate personnel review the logistical implications of the co-production provisions.

5.3 Determine procedures for continued staff communication.

Example a

The technical departments of both theaters will be in direct communication, and will agree mutually on the final dates of delivery of the production and on its modes of transportation.

Example B

The Lead producer's Director of Production will communicate on a regular basis with the other Technical Directors throughout the construction period to update them on methods of construction and choice of construction materials.

5.4 Clarify the rights and responsibilities, individual and collectively, for fundraising in relation to the co-production.

5.5 Clarify sponsor/program credit for the co-production as well as for the local presentations.

Example A

The following shall appear on the title page of all house programs, and in all promotional materials where the scenery or costumes are mentioned:

Scenery and props designed by:

Scenery and props for this production are jointly owned by:

Example B

On the title page of the in-house programs, in all publicity and advertising where appropriate, the co-producers agree that the production shall receive billing as follows:

For Lead Producer:

New production by (Lead Producer) and (Co-Producers)

For Co-Producers:

New production by (Co-Producer) and (Lead Producer)

Set Designers:

Costume Designers:

Scenic Shop:

Costume Shop:

Example C

In the co-producers house programs, credit shall be given to:

- a. The co-producers, with each company having the right to list itself first in its own city.
- b. The stage director, scenic and costume designer, and scenic and costume shops.
- c. Sponsors contributing an amount equal to or greater than \$50,000.

5.6 Clarify who co-ordinates publicity for the co-production.

6. STANDARD CONTRACTUAL PROVISIONS

6.1 Force Majeure

6.2 Indemnification

6.3 Obligation, Assignment, Counterparts, Severability.

6.4 Disputes

7. INTERNATIONAL CONSIDERATIONS

7.1 Specify currency in which agreement is being defined.

8. TERMINOLOGY

The following terms are often used interchangeably among co-production contracts throughout the field. Though these synonymous terms exist, attempt to use one term only within a single contract.

| <u>North American Term</u> | <u>Alternative Term</u> |
|----------------------------|-------------------------|
| Rent [a production] | Lease [a production] |
| Opera Company/Company | Theater |
| Load-in | Get-in |

9. APPENDICES

- 9.1 Sample Co-Production Agreement 1 (General with budget and production lists)**
- 9.2 Sample Co-Production Agreement 2 (International, Multi-producer)**
- 9.3 Sample Co-Production Agreement 3 (Time-to-Time)**
- 9.4 Sample Co-Production Agreement 4 (General)**

**SAMPLE CO-PRODUCTION AGREEMENT 1
(General)**

When executed, this is a binding agreement between PRODUCER 1, Company Name (“Company’s Initials”) and other parties such as may wish to participate (collectively, “PRODUCERS”) for the production of *Opera Name* as follows:

| | |
|----------------------------------|----------------------------------|
| Stage Director: | Director’s Name |
| Scenic Designer: | Designer’s Name |
| Costume Designer: | Designer’s Name |
| Lighting Designer: | Designer’s Name |
| Scenery: | Described in attached Appendix A |
| Costumes: | Described in attached Appendix B |
| Co-Production Budget & Payments: | Described in attached Appendix C |
| Presentations: | Described in attached Appendix D |

1. Construction, Administration and Ownership Interests

PRODUCER 1 shall serve as the administering producer for this production of *Opera Name*. PRODUCER 1 will supervise and/or execute all construction of scenery, properties and costumes (“PRODUCTION MATERIALS”) and will authorize all expenditures in accordance with the co-production budget. PRODUCER 1 will provide a full final accounting of all expenditures by date and shall administer all future rentals, sales or any other exploitations (collectively, “USAGE”) of PRODUCTION MATERIALS. PRODUCER 1 shall thereafter provide annual statements of revenue and expenses for PRODUCTION MATERIALS’ ongoing storage, insurance, maintenance and USAGE, and on or about date of each year and any net profits shall be distributed between PRODUCERS, in accordance with paragraph three below. PRODUCERS shall retain ownership interests in PRODUCTION MATERIALS proportionate to their contribution to the co-production budget.

2. Capital Costs

This agreement covers only the capital costs included in the co-production budget (Appendix C). All costs not included in the co-production budget, including but not limited to the costs of transportation, installation and running in PRODUCERS’ theaters, are to be borne separately by each individual producer. The total cost covered by this agreement is estimated to be Dollars (\$) and shall be borne by PRODUCERS according to the schedule of contributions included in Appendix C attached hereto. PRODUCERS shall make progress payments to PRODUCER 1 according to the schedule outlined on Appendix C.

3. Adjustments to the Capital Contributions and Distribution of Future Revenues

If the actual costs of the items included in the co-production budget exceed the budget, the additional costs shall be borne by PRODUCER 1. Such costs or overages borne by PRODUCER 1 will be deducted from future revenue payouts before disbursements are made. If the actual cost of PRODUCTION MATERIALS is less than the co-production budget, the savings will go to reduce each PRODUCERS’ contribution to the co-production budget. Contributions to the co-production budget from additional PRODUCERS will go to reduce both Company’s Initials and PRODUCER 1’S contribution to the co-production budget.

4. Engagement of Artistic Staff

PRODUCER 1 shall make all arrangements for the engagement of a director, scenery designer, costume designer and lighting designer for the design of the production and the supervision of its premiere. In addition to the terms and payments stipulated herein, PRODUCERS agree to make the following arrangements with the director and designers of the production:

FOR THE DIRECTOR: Company’s Initials agree to engage the director to re-mount this production on terms to be negotiated and paid separately from this agreement. If the director is unavailable to direct, he will be paid a royalty of Dollars (\$) and an assistant director from the

initial presentation or another director mutually agreed upon by the presenting producer will be engaged.

FOR THE SET DESIGNER: This agreement includes all original design fees and all fees for performance rights and royalties for the set designer for the premiere presentation by **PRODUCER 1. Company's Initials** agrees to pay to the set designer a royalty of Dollars (\$) if they are a North American company in OPERA America level 2 or below or Dollars (\$) if they are a North American company in OPERA America level 1 or a company outside of North America. The royalty payment is for performance rights only. Any services provided by the set designer are to be negotiated and paid for separately from this agreement.

FOR THE COSTUME DESIGNER: This agreement includes all original design fees and all fees for performance rights and royalties for the costume designer for the premiere presentation by **PRODUCER 1. Company's Initials** agrees to pay to the costume designer a royalty of Dollars (\$) if they are a North American company in OPERA America level 2 or below, or Dollars (\$) if they are a North American company in OPERA America level 1 or a company outside of North America. The royalty payment is for performance rights only. Any services provided by the costume designer are to be negotiated and paid for separately from this agreement.

FOR THE LIGHTING DESIGNER: This agreement does not include lighting designer fees or rights to the original lighting design. In the event that **Company's Initials** chooses to engage the original lighting designer for their presentation, they will negotiate and pay for those services separately from this agreement. **Company's Initials** may also choose to engage another lighting designer for their presentation.

5. Shipment of Production Materials

Company's Initials shall be responsible for all costs associated with round-trip shipment of PRODUCTION MATERIALS (between **Company's Initials'** facilities and **PRODUCER 1's** storage facility in city, state). Costs will include but are not limited to: costs of loading and unloading in city, state, all trucking fees, brokerage costs and insurance while in transit. All shipments will be by truck only. Rail shipment is not permitted.

6. Repairs, Cleaning and Replacement

Company's Initials shall be responsible for maintaining PRODUCTION MATERIALS in good condition while they are in its possession. **Company's Initials** agrees to bear all costs of repairs or replacements required as a result of loss or damage during its possession or during shipment to and from its facilities. Costumes shall be cleaned after each use upon return to **PRODUCER 1. Company's Initials** agrees to reimburse **PRODUCER 1** upon invoicing for all costs of repairs, replacement and costume cleaning.

7. Insurance

Company's Initials shall obtain and carry in full force commercial comprehensive general liability insurance and fire and extended coverage insurance on all PRODUCTION MATERIALS in the amount of Dollars (\$) from the time they receive shipment of PRODUCTION MATERIALS until the time they are safely returned to **PRODUCER 1. PRODUCER 1** agrees to insure PRODUCTION MATERIALS at all times during construction and throughout the time PRODUCTION MATERIALS are in its possession. In the event of a loss or claim after PRODUCTION MATERIALS have been used by all PRODUCERS, **PRODUCER 1** will decide, in consultation with PRODUCERS, whether or not to restore the production. In the event that a decision is made not to restore the production, the deductible paid and the proceeds resulting from any loss or claim shall be shared by PRODUCERS in shares equal to their respective interests.

8. Technical & Wardrobe Supervision

PRODUCER 1 agrees to provide a Technical Supervisor to be present for load-in, load-out, packing and inventory assessment of PRODUCTION MATERIALS at **Company's Initials'** venue. **PRODUCER 1** will provide a Wardrobe Supervisor to be present for initial fittings, load-in, final strike and packing of PRODUCTION MATERIALS after **Company's Initials'** final presentation. **Company's Initials** agrees to

assume all transportation and lodging arrangements and costs for such supervision and to reimburse PRODUCER 1 for the costs of both supervisors' salaries, per diems and travel expenses, at rates contained in state's IATSE Local # contract (Appendix E).

9. Revivals

Company's Initials may, at any time, elect to revive the production after its initial presentation provided such subsequent presentation does not conflict with any other PRODUCERS' initial presentation, as scheduled in Appendix B, and subject to the provisions for long-term storage and maintenance described in paragraph 10. In the case of a revival presentation, the company presenting the revival will be responsible for all costs, fees, royalties and expenses for the production, in accordance with the terms of this agreement and of the terms of PRODUCER 1's agreements with the director and designers.

10. Storage and Maintenance

All costs incurred by PRODUCER 1 in storing, insuring and maintaining PRODUCTION MATERIALS beyond the costs included in the co-production budget may be reimbursed from subsequent revenues before any net income is disbursed among PRODUCERS. PRODUCER 1 agrees that the costs for storage and insurance will not exceed Dollars (\$) a year. PRODUCER 1 will store and maintain PRODUCTION MATERIALS until at least date. At that time, or at any time after that date, PRODUCER 1 may, at its own discretion, elect to dismantle and/or dispose of PRODUCTION MATERIALS by any means. In the event that PRODUCER 1 decides to dismantle and/or dispose of PRODUCTION MATERIALS, it will notify PRODUCERS of its intent, in writing, at least 60 days prior to the date of disposal. PRODUCERS will then have the option of moving PRODUCTION MATERIALS, at their own expense, to their own storage facility, and continue to store the production in accordance with the terms and provisions of this agreement. In the event that it is agreed to dispose of PRODUCTION MATERIALS, any net proceeds from the disposal of them will be distributed between PRODUCERS in accordance with the provisions of paragraphs 1 and 3 above.

11. Program Credits

The following shall appear on the title page of all house programs and in all promotional materials where the scenery or costumes are mentioned:

| | |
|----------------------|-----------------|
| Production by | Director's Name |
| Scenery designed by | Designer's Name |
| Costumes designed by | Designer's Name |
| Lighting designed by | Designer's Name |

Scenery and costumes for this production were constructed at Scene Shop and are jointly owned by PRODUCER 1, Company's Initials and "each Producing Opera listed by company name".

12. Force Majeure

If Company's Initials cannot perform the obligation(s) under this agreement because of fire, accident, strikes, war, riot, labor disputes, acts of God or any other reason beyond its control, and provided it has made every reasonable effort to inform the other PRODUCERS at the time any such *force majeure* becomes apparent, then upon giving PRODUCERS written notice, the affected PRODUCERS shall be excused from further performance of this agreement during the time such events render performance impossible. Under no circumstances will capital contribution payments made towards this production be refunded. No PRODUCERS will be responsible for any loss caused by its failure to perform due to strikes, lock-outs, acts of God or other reasons beyond its control.

13. Indemnification

Company's Initials shall be liable only for penalties, costs, judgments and expenses arising from their own negligent acts, to the extent established by law.

14. Obligation, Assignment, Counterparts, Severability

Except as described herein, no PRODUCERS is an agent for any other PRODUCERS in any way, and has no authority to commit or bind the others. Any PRODUCERS' interest in the production may be assigned only with the prior written consent of the other PRODUCERS, who may withhold such consent for any reason. No change may be made to this agreement except by written addendum accepted and signed by all parties or by modification to this agreement initialed by all parties. This agreement may be

executed in any number of counterparts with the same effect as if parties hereto had signed the same counterpart, and all counterparts shall be construed together and shall constitute one agreement. All parts of this agreement are severable, and if any part of this agreement is found or should be found or judged invalid, all other parts shall remain effective.

15. Failure to Perform

In the event that Company's Initials fails to meet its financial obligations under this agreement, it shall automatically relinquish its ownership interest in the production, and its ownership interest shall automatically pass to the remaining PRODUCERS.

16. Disputes, Currency

Any disputes arising from the performance of this agreement shall be governed by the laws of the United States and of the state of PRODUCER 1's home state. All currency amounts specified are in U.S. dollars.

For PRODUCER 1:

For Company's Name:

Name, Title

Name, Title

Date

Date

APPENDIX A

SCENERY LIST

| <u>Qty</u> | <u>Description</u> |
|------------|--------------------|
|------------|--------------------|

APPENDIX B

COSTUME LIST

| <u>Qty</u> | <u>Description</u> |
|------------|--------------------|
|------------|--------------------|

APPENDIX C

CO-PRODUCTION BUDGET

EXPENSES

Scenery

| | |
|-------------------------------------|----|
| Designer's fees, benefits, expenses | \$ |
| Payroll | \$ |
| Materials/Rentals | \$ |
| Other Scenery | \$ |

Costumes

| | |
|-------------------------------------|-----------|
| Designer's fees, benefits, expenses | \$ |
| Payroll | \$ |
| Materials/Rentals | \$ |
| Other Costumes | \$ |
| Total Expenses: | \$ |

| | |
|--------------------|-----------|
| Contingency | \$ |
|--------------------|-----------|

| | |
|---------------------|-----------|
| Grand Total: | \$ |
|---------------------|-----------|

CO-PRODUCER REVENUES

| | |
|--------------|----|
| PRODUCER 1 | \$ |
| Company Name | \$ |
| | \$ |

Total Co-producer Revenues: \$

SCHEDULE OF PAYMENTS

\$
\$
\$

APPENDIX D

PRODUCTION SCHEDULES

| <u>COMPANY</u> | <u>DATES</u> |
|----------------|--------------|
|----------------|--------------|

| | |
|------------|--|
| PRODUCER 1 | |
|------------|--|

| | |
|--------------|--|
| Company Name | |
|--------------|--|

SAMPLE AGREEMENT 2
(International, Multi-producer)

PRODUCER 1, PRODUCER 2, PRODUCER 3
and
PRODUCER 4

Title of Work

This document, when signed, shall serve as a binding agreement (“Agreement”) between PRODUCER 1,Address; PRODUCER 2,Address; PRODUCER 3, Address; and PRODUCER 4, Address hereinafter individually referred to as the “Co-Producer” and collectively as the “Co-Producers,” for the joint financing of the design and manufacture of theatrical scenery and properties (the “Production Materials”) for the opera entitled title (the “Opera”), and joint financing of the various costs relating to the presentation of the Opera by each company (the “Co-Production”). The Co-Producers hereby agree as follows:

I. Agreement to Co-Produce

The Co-Producers agree to jointly finance and manage (“Co-Produce”) the design and manufacture of theatrical scenery and properties for the Opera, title composed by composer as outlined in attached Schedules A and B. The Co-Producers also agree to jointly pay various other costs related to the Co-Production as outlined in the attached Schedule C.

II. Extent of the Co-Production

This Agreement covers only the specific costs outlined in Schedules A, B and C (the “Costs”). All other costs will be the responsibility of the individual Co-Producer that incurs them. Costs included in the Co-Production are listed in the following schedules:

Schedule A: Designer Fees, Royalties, Per Diem, Travel and Housing Expenses

Schedule B: Production Materials, Scenic and Property

Schedule C: Other Co-Production Costs

Schedule D: Expense Reporting

The following items are specifically excluded from the Production Materials outlined in Schedule B: masking legs and borders not designed for the Co-Production; unpainted cycloramas, scrims and blackout drops; lighting design; execution and lighting equipment; wig and makeup design; equipment and execution; costumes; and music or theatrical rights and royalties.

Also specifically excluded from the Production Materials are: any scenery, properties, costumes, accessories, film, projection, lighting, video, pyrotechnic effects or any other materials with respect to the Opera, which are added by any of the Co-Producers solely for their own presentation of the Co-Production or which are added by any Co-Producer without the prior written consent of all other Co-Producers.

III. Co-Production Budget

Expense Budget (in US Dollars)

Schedule A: Designer Fees, \$

Schedule B: Production Materials, Scenic and Property, Orchestra Parts,
and English language supertitles, \$

TOTAL EXPENSE BUDGET: \$

The Expense Budget may not be substantially altered, except by express written consent of the Co-Producers.

Of the total Expense Budget of \$XXXX (in US dollars):

| | |
|-----------------------------|--------|
| PRODUCER 1 shall contribute | \$ XXX |
| PRODUCER 2 shall contribute | \$ XXX |
| PRODUCER 3 shall contribute | \$ XXX |
| PRODUCER 4 shall contribute | \$ XXX |

TOTAL: \$ XXXX

If total expenses are less than \$XXXX, then the cost savings shall be distributed in equal portions among the Co-Producers and each Co-Producer shall retain an equal ownership in the Co-Production. If total expenses exceed \$XXXX, then the cost overrun shall be paid by PRODUCER 1. PRODUCER 1 shall then be entitled to recoup the cost overrun from the initial rental fees, if any, collected from third parties, prior to disbursing the remaining rental income, if any, on an equal basis. PRODUCER 1 shall cover cost overruns up to 10% of the Total Expense Budget; these costs shall not require written consent of PRODUCER 2, PRODUCER 3 or PRODUCER 4 as stipulated above. Cost overruns of 10% or more shall require written consent of all Co-Producers.

Payment Schedule (in US Dollars)

All Co-Producers shall make Expense Budget payments to PRODUCER 1, in immediately available US funds, by check or by wire transfer to an account to be specified by PRODUCER 1. Full payment is to be made to PRODUCER 1 by the other Co-Producers within 30 days from the signing of this agreement. PRODUCER 1 shall manage the Expense Budget and provide PRODUCER 2, PRODUCER 3 and PRODUCER 4 documentation of all outlays of the Expense Budget as specified in Schedules A, B and C attached hereto.

IV. ADDITIONAL CO-PRODUCERS

To protect potential rental income, additional Co-Producers shall neither be sought nor accepted for this Co-Production.

V. OWNERSHIP OF CO-PRODUCTION

The Production Materials (Schedule B) shall be jointly owned property of the Co-Producers. Each Co-Producer shall retain an ownership interest in the Production Materials in proportion to its final financial contribution to the Expense Budget as specified above.

Any net revenue from future rentals or sale of the Production Materials shall be shared between the Co-Producers in proportion to their respective ownership interest in the Co-Production, subject to Section III, above.

Each Co-Producer shall retain its proportionate share of ownership unless and until these relative interests are modified in accordance with Section III above or Section XI below.

VI. SCHEDULE OF REHEARSALS AND PERFORMANCES

PRODUCER 1

| | |
|--------------------------|------|
| Staging rehearsals begin | date |
| Performances are | date |

PRODUCER 2

Staging rehearsals begin **date**
Performances are **date**

PRODUCER 3

Staging rehearsals begin in **date**
Performances are in **date**

PRODUCER 4

Staging rehearsals begin **date**
Performances are **date**

VII. ARTISTIC PERSONNEL

Each Co-Producer negotiates a contract for artistic personnel's time commitment and fees. The artistic personnel for the Co-Production shall be:

Conductor: To be determined and contracted by each company individually.

Stage Director: To be determined and contracted by each company individually. The original director retains right of first refusal for all theatres.

Stage Designer: *Name*

Lighting Designer: *Name* retains right of first refusal for lighting the production in all theatres concerned with this contract.

Costume Coordinator: *Name* (see schedule C).

English language supertitles are to be written for this production by *Name*.

VIII. ADMINISTRATION OF CO-PRODUCTION

PRODUCER 1 shall serve as Administering Company for the Co-Production. In this capacity, PRODUCER 1 shall:

Manage the Expense Budget and provide the other Co-Producers with timely and thorough documentation of all outlays of Expense Budget funds; PRODUCER 1 shall provide a report to each of the other Co-producers detailing all Co-Production expenses within 120 days of the opening performance at PRODUCER 1 on **date**; individual receipts for any expenses will be made available to PRODUCER 2, PRODUCER 3 or PRODUCER 4 upon request; PRODUCER 1 shall make annual expense/revenue reports complete with distributions of any rental incomes/expenses to each of the other Co-Producers on or before **date** of each year that this Agreement remains in effect beginning in **date**;

Engage the Scenic Designer for the design of the scenery and props;
Ensure the timely completion of designs and technical information for the Production Materials and disseminate this information in a timely fashion to the other Co-Producers;

Ensure that the other Co-Producers have sufficient time to verify that the Production Materials, as designed, presented and modified, will conform to each of the Co-Producers' physical, safety, scheduling and other requirements; the final approval of the Production Materials design will occur by mutual agreement based upon the presentation of designer's sketches, finished drawings and scale model (a virtual computer generated scale model will be acceptable), at a date no later than **date**.

Oversee, with the designer, the manufacture of the Production Materials at a third party's scene shop, ensuring adherence to generally accepted theatrical and safety standards; the Technical Director for **title**

from PRODUCER 1 shall communicate regularly with the Scenic Designer prior to and during the construction of the Production Materials in order to obtain agreement on the methods of construction and choice of construction materials.

Administer all rentals of the Production Materials to other production companies ("Rentals") including:

Assembling relevant visual and technical information with which to respond to Rental inquiries (the content and format of such information to be left up to the discretion of PRODUCER 1);

Providing a Rental contract (the format of the contract to be left to the discretion of PRODUCER 1) which outlines the rental terms and fees as approved in writing by each of the other Co-Producers;

Notifying each of the other Co-Producers and the Scenic Designer of all Rental inquiries upon receipt thereof;

Providing each of the other Co-Producers with copies of all Rental contracts upon receipt thereof;

Collecting fees and royalties related to all Rentals of the Production Materials and disbursing fees, royalties and expense reimbursements to each of the other Co-Producers, the Scenic Designer and to other personnel as required, upon receipt thereof.

PRODUCER 2, PRODUCER 3 and PRODUCER 4 shall serve as Partner Companies with PRODUCER 1. In this capacity they shall:

Respond in a timely fashion to all requests or deadlines for technical and scheduling information with respect to the Production Materials;

Make all payments specified herein in a timely fashion;

Pay all costs of loading, unloading and handling of the production materials to and from the storage area to their respective performance venues.

Engage the services of a PRODUCER 1 set supervisor or a set supervisor designated by PRODUCER 1 for the installation and disassembly of the Production Materials at their respective facility; such services shall be performed at a daily rate of \$XXX with an additional per diem of \$XXX, all fees payable for both work and travel days; airline and ground transportation and hotel accommodations to be provided by the respective Co-Producer.

PRODUCER 1, PRODUCER 2, and PRODUCER 3 and PRODUCER 4 agree to:

Provide insurance whenever the Production Materials are in their possession (including transport) and provide certificates of this insurance to the other Co-Producers:

Property insurance against "All Risks" perils for the full replacement value of the Production Materials in the amount of \$XXX, as specified in Schedules A, B, and C attached hereto;

Comprehensive general liability insurance, including third party risks to a limit of not less than \$XXX;

Workers' compensation insurance as required by applicable provincial or state law;

Maintain and be solely responsible for any damage, beyond the normal wear and tear, of the Production Materials while they are in each Co-Producer's respective possession. Each Co-Producer shall be deemed to have taken possession of the Production Materials once it is loaded into trailers or other containers for shipment to and from said Co-Producer;

Assume sole responsibility and liability for the safe installation and use of the Production Materials in their respective facility;

Make no alterations to the Production Materials without the written consent of the Scenic Designer and each of the other Co-Producers;

Not record or duplicate, by any means, the designs for or the actual Production Materials or the performance rehearsals in which the Production Materials are used, except for archival, marketing or public relations purposes without the written consent of each of the other Co-Producers; such consent cannot be unreasonably withheld. Video or audio excerpts from performances or rehearsals for marketing or public relations purposes may not exceed five minutes in length;

Provide prominent co-production credit to each of the other Co-Producers in all house programs as follows:

For PRODUCER 1: This production of title is a Co-Production with PRODUCER 2, PRODUCER 3 and PRODUCER 4 with PRODUCER 1.

For PRODUCER 2: This production of title is a Co-Production of PRODUCER 1, PRODUCER 3 and PRODUCER 4 with PRODUCER 2.

For PRODUCER 3: This production of title is a Co-Production of PRODUCER 1, PRODUCER 2 and PRODUCER 4 with PRODUCER 3.

For PRODUCER 4: This production of title is a Co-Production of PRODUCER 1, PRODUCER 2 and PRODUCER 3 with PRODUCER 4.

As Administering Company, PRODUCER 1 is authorized to act on behalf of PRODUCER 2, PRODUCER 3 and PRODUCER 4 only in matters relating to the administration of the Co-Production with the following provisions: no budget may be exceeded, except as otherwise noted herein in Section III; no designs may be altered; no deadlines changed; and no terms or conditions relating to the Rental or the disposition of the Production Materials may be modified without the written consent of PRODUCER 2, PRODUCER 3 and PRODUCER 4.

IX. FUTURE USE BY THE CO-PRODUCERS

PRODUCER 1, PRODUCER 2, PRODUCER 3 and PRODUCER 4 may revive the Co-Production at any time after the final performance by PRODUCER 4 (Date TBD), provided that no conflicting prior reservation for Rental or revival exists. Scheduling a reservation for a revival must be made in writing to each Co-Producer.

Such Co-Producer must pay the entire cost of presenting the revival of the Co-Production including, but not limited to, design royalties, loading costs at PRODUCER 1's storage facility, and all costs for shipping to and from the Co-Producer's facility.

Any Co-Producer that revives the Co-Production shall provide prominent credit in all house programs as specified in Section VIII.

Co-Producers are allowed to use all or parts of the Production Materials for the mounting of an opera other than title providing that credit is given to the other Co-Producers in an appropriate manner approved in writing by the other Co-Producers and that arrangements are made with the Scenic Designer regarding the use of his intellectual property and any royalties that may apply.

X. RENTALS

PRODUCER 1 will administer storage of the Production Materials as specified in Section VIII.

The Rental fee payable by any third party hirer for the complete Production Materials shall be a minimum of \$XXX or other currency amount per performance excluding freight charges, insurance premium,

technical fees and other costs which shall be borne by the hirer, whichever is greater. The Rental fee may only be altered by the written consent of all Co-Producers.

PRODUCER 1 may deduct in proportion to the share of ownership, from any Rental revenues the cost of insurance and storage of the Production Materials at actual non-marked up cost based on storage in name parameters of storage facility. Current cost of storage in the PRODUCER 1's current storage facility is \$XXX per month, including insurance.

In any PRODUCER 1 fiscal year when Rental revenue is not available to cover insurance and storage costs, PRODUCER 1 shall invoice the other co-production partners in proportion to their share of the ownership thereof, as specified herein, for their proportionate share of insurance and storage costs for that fiscal year.

The Co-Producers shall share the net proceeds from any Rental of the Production Materials in proportion to their ownership thereof, as specified herein.

XI. DURATION OF THE CO-PRODUCTION

The production Materials shall be stored at PRODUCER 1's facility in title for a period of one year following the final performance of title by PRODUCER 4. PRODUCER 1 shall not be obligated to provide storage beyond this period. No later than 60 days prior to the ending of the storage period PRODUCER 1 shall notify the other Co-Producers of the impending end of the storage period, inquiring whether the storage period should be extended or not. If all the Co-Producers agree to extend storage at PRODUCER 1's facility at that time all Co-Producers share equally in the further expense and insurance costs of storage. The other Co-Producers shall respond in writing within 30 days of the aforementioned notice. If the other Co-Producers do not respond within 30 days the Production Materials will be deemed to have been abandoned and PRODUCER 1 will succeed to all rights, titles and interest of any kind pertaining to said Production Materials.

Should the Co-Producers decide, through the procedure outlined above, to retain their interests in and the rights to the Production Materials for an additional period, then the same procedures apply for renewal and abandonment as pertained to the original storage period and will apply to all subsequent additional periods.

At the end of the storage period or any additional period, any Co-Producer may exercise its option to abandon the Production Materials. At such time, the Production Materials shall become the property of the other Co-Producers who shall assume all the costs associated with maintaining and storing the Production Materials. If all the Co-Producers decide to abandon the Production Materials, then the Co-Producers shall share jointly all costs associated with the disposal of the Production Materials.

Amendments to any of the terms and conditions of this Section XI may be made only at the expiration of the storage period or at the end of an additional period. Should the Co-Producers be unable to agree on the terms for a subsequent additional period, the Production Materials may either:

Be purchased by one or more of the Co-Producer(s) from the other Co-Producer(s) for 50% of the selling Co-Producer(s) contribution to the Expense Budget, or

Be sold or salvaged, the proceeds of the sale/salvage being shared in proportion to the Co-Producers' respective ownership interests, or

Be destroyed, the disposal costs to be shared in proportion to the Co-Producers' respective ownership interests.

XII. NOTICE

All notices and any other communication provided for or permitted herein shall be in writing and shall be sent by registered mail to the party entitled or required to receive same at the addresses or facsimile

numbers specified below. Facsimile transmissions shall be considered received with proven facsimile transmission documentation.

All payments and notices shall be sent, respectively, to:

PRODUCER 1

Address
Phone
Fax

PRODUCER 2

Address
Phone
Fax

PRODUCER 3

Address
Phone
Fax

PRODUCER 4

Address
Phone
Fax

XIII. MODIFICATION OF THE AGREEMENT

This Agreement may not be altered, modified or amended, nor any of its provisions waived, except by the mutual written consent of all Co-Producers.

XIV. FORCE MAJEURE

If any Co-Producer should become unable to fulfill its obligation under this Agreement as a result of fire, flood, war, civil commotion, epidemic, public disaster, government enactment, regulation or order, strike, act of God or other reason beyond its control, then that Co-Producer shall not be liable for the terms and conditions of this Agreement except that said Co-Producer shall remain liable for one half (1/2) of the expenses already paid or contracted, up to the limit of that Co-Producer's contribution to the Expense Budget.

XV. DEFAULT

If, for any reason other than those specified in Section XIV, any Co-Producer should fail to fulfill its obligations under this Agreement, such Co-Producer shall remain liable for the entirety of its contribution to the Expense Budget as specified herein.

XVI. LIMITATION OF AGREEMENT

This Agreement represents the entire understanding between the Co-Producers. The Agreement does not create a joint venture or partnership between the Co-Producers. Except as provided herein, no Co-Producer may bind any other Co-Producer to third parties without the written consent of the Co-Producers to be so bound.

XVII. ASSIGNMENT

No Co-Producer may assign this Agreement or any portion of this Agreement without the prior written consent of each of the other Co-Producers and any other parties to this Agreement.

XVIII. INDEMNIFICATION

Each Co-Producer indemnifies and holds the other Co-Producer harmless from and against any and all actions, damages, losses and liabilities as a result of its participation in this Agreement.

Each Co-Producer shall be solely and entirely liable for any and all claims or damages against such Co-Producer for the bodily injury or property damage, which such Co-Producer causes to any third party as a result of its participation in this Agreement.

XIX. SEVERABILITY

All provisions, sections and paragraphs of this Agreement are severable. If any provision or portion of this Agreement is found to be illegal, invalid or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

XX. WARRANT OF AUTHORITY

The Co-Producers warrant that they each have the power and the legal authority to enter into and to execute the terms of this Agreement.

XXI. ENTIRE AGREEMENT

This Agreement shall supersede and replace any previous agreement or understanding, either written or verbal, between the Co-Producers.

XXII. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the Co-Producers and their respective heirs, executors, administrators, successors and permitted assigns.

XXIII. CURRENCY

All amounts expressed in this agreement are in United States Dollars.

XXIV. APPLICABLE LAW

This agreement shall be governed by and interpreted pursuant to the laws of the State and the laws of The United States of America applicable therein.

XXV. TERMINATION

This Agreement may be terminated only by the mutual written consent of all Co-Producers.

IN WITNESS WHEREOF, the parties have duly executed this Agreement, dated

Name (date)
For PRODUCER 1

Name (date)
For PRODUCER 2

Name (date)
For PRODUCER 3

Name

(date)

For PRODUCER 4

Schedule A: Design Costs

Set Design Fee: Designer Name \$XXXX

SHOULD NAME'S PRESENCE BE REQUIRED AT ANY ONE OF THE CO-PRODUCING THEATRES, EXCLUSIVE OF HIS/HER BEING HIRED AS THE LIGHTING DESIGNER FOR THAT SERIES OF PERFORMANCES, S/HE IS ENTITLED TO TRAVEL AND HOUSING FOR THAT PERIOD AS WELL AS A PER DIEM ALLOWANCE OF \$XX.

Schedule B: Production Materials – Scenery, Props, and Supertitles

| | |
|---------------------------------|---------|
| Set Construction and Painting*: | \$XXX |
| Props: | \$XXX |
| Supertitles: | \$XXX |
| Orchestra Parts: | \$XXX |
| <hr/> | |
| Total Production Materials: | \$XXXXX |

This is the estimated total cost according to bid.

* NOTE: This expense line includes the cost of additional masking to be built for the production.

Schedule C: Other Production Costs

SHIPMENT OF THE PRODUCTION MATERIALS BETWEEN THE SCENE SHOP AND PRODUCER 1

It is agreed between the other Co-Producers and PRODUCER 1 that it shall be the responsibility of PRODUCER 1 to pay either through cash or donated services, for all transportation costs of the Production Materials from the scene shop to address.

PRODUCER 1 will undertake to assist wherever possible with the shipping and transport of the Production Materials to the other Co-Producers. The financial responsibility for shipping from Bismarck to each co-producer's theater remains the responsibility of the Co-Producer mounting the next production of the Opera. That co-producer is also responsible for the return of the production materials to address after its production.

COSTUMES

The costume company of address has agreed to make its collection for title available to all Co-Producers mentioned in this contract. Each Co-Producer, assuming it is interested in using the costume company costumes shall make independent rental arrangements with the costume company.

PRODUCER 1's Resident Costumer is available to coordinate the detail (fittings to soloists, chorus, supers, etc.) of managing this collection for each theatre. S/he can be contracted to prepare the collection at the costume company facility in address, and additionally to be onsite during the production in each city to facilitate smooth operation of the costumes for the Co-Production. S/he is to be contracted individually by each Co-Producing company according to its needs.

**SAMPLE CO-PRODUCTION AGREEMENT 3
(TIME-to-TIME)**

AGREEMENT made this date, by and between PRODUCER 1 with offices located at address, and the PRODUCER 2 with offices located at date.

WHEREAS PRODUCER 1 and PRODUCER 2 agree from time-to-time to be co-producers of operas (hereinafter "co-productions"), the Parties agree as follows:

1. **Production Materials:** The Co-producers shall produce and fund the design and manufacture of the theatrical scenery, properties, costumes, sound cues/effects and titles (hereinafter, "Production Materials") for the co-productions.
 - a. Additional items included in the Production Materials are:
 - I. audio/visual design and execution, including but not limited to projections and slides;
 - II. right to use an English translation of a co-produced opera which shall be secured by PRODUCER 1 for both co-producers,
 - III. use of PRODUCER 1-owned non-traditional instruments specific to a particular opera
 - b. Items excluded from the Production Materials include:
 - I. masking leg and borders not designed as Production Materials;
 - II. unpainted cycloramas and scrim;
 - III. lighting design;
 - IV. hair and make-up design and execution;
 - V. scenery, props, costumes and/or accessories or rented equipment that are added solely for the PRODUCER 2 presentation of the co-production.
 - VI. payment of music, sound design and/or translation royalties shall be the responsibility of each Co-producer as the royalties pertain to each company's presentation.
2. **Ownership:** The Production Materials, when completed, will become the jointly-owned property of the co-producers. Each co-producer shall retain fifty percent (50%) ownership of the Production Materials until these interests are modified or this Agreement is terminated.
3. **Schedule:** PRODUCER 1 and PRODUCER 2 bear individual responsibility for scheduling the co-productions at their respective venues, though the co-productions will first appear at PRODUCER 1 and then subsequently may be scheduled at PRODUCER 2. The co-productions will be shipped to PRODUCER 2 on a mutually agreed date.
4. **Artistic Personnel:** PRODUCER 1 shall engage the stage director, choreographer, scenic designer(s) and costume designer(s) of the co-productions with the express approval of PRODUCER 2, to be separately contracted by each co-producer. Each co-producer shall make its own arrangements for the engagement of lighting designers. Each co-producer will exercise a free hand in the hiring of the singers (choral, principal or otherwise), stage managers and music staff, including but not limited to assistant conductors and conductors, for the performances organized by it. Each co-producer shall negotiate and pay for its own musical rights agreements.
5. **Co-production Administration:** PRODUCER 1 shall be the Administering Company during the design and manufacture of the Production Materials, until such time as they are delivered to PRODUCER 2. The Administering Company is empowered to act on behalf of both co-producers only in matters relating to the administration of the co-productions and with the provision that no designs may be altered, no deadlines may be changed and no terms or conditions relating to rental or other dispositions of the Production Materials may be modified without the written permission of the other co-producer. While acting as Administering Company, PRODUCER 1 will:

- a. insure the timely completion by the production designers of all Production Materials drawings, sketches, models and any and all other design documents, and will insure the timely dissemination of this material;
- b. insure that PRODUCER 2 has ample time to verify that the Production Materials, as designed and presented, will conform to PRODUCER 2's technical, safety, scheduling and any other requirements specific to PRODUCER 2;
- c. organize and administer, with the consent of PRODUCER 2 and in consultation with the designers, bid procedures for the manufacture of the Production Materials;
- d. oversee, with the designers, the manufacture of the Production Materials, insuring adherence to generally-accepted theatrical and safety standards;
- e. responsibly maintain and be solely responsible for any damage, beyond normal wear and tear, to the Production Materials while in its possession;
- f. assume sole responsibility and liability for the safe installation and use of the Production Materials in its theater;
- g. make no alterations to the Production Materials without the permission of PRODUCER 2 and the production designers, which permission shall not be unreasonably withheld;
- h. compile and provide a production book and installation drawings to include records and inventories of Production Materials for the load-in and running of each production;
- i. not visually, aurally or in any other way duplicate or record the designs, the actual Production Materials or performances in which the Production Materials are used, except for archival, marketing or public-relations purposes. Excerpts from performances that are used for marketing or public-relations purposes may not exceed two minutes in length;
- j. provide prominent co-production credit for PRODUCER 2 and for significant donors to the co-productions on the title page of its house program and in all promotional and press materials where the names of the Conductor and Stage Director appear, as follows: This production of title is a co-production of PRODUCER 1 and PRODUCER 2;

6. **Co-production Administration Assumed by PRODUCER 2:** PRODUCER 2 will become the Administering Company upon receiving the Production Materials from PRODUCER 1 and will remain so until such time as the Production Materials are returned to PRODUCER 1. The Administering Company is empowered to act on behalf of both Co-producers only in matters relating to the administration of the Co-productions. While serving as the Administering Company, PRODUCER 2 will:

- a. responsibly maintain and be solely responsible for any damage, beyond normal wear and tear, to the Production Materials while in its possession;
- b. assume sole responsibility and liability for the safe installation and use of the Production Materials in its theater;
- c. should PRODUCER 2 make significant changes such that the Co-production materials are substantially different from how they were presented at PRODUCER 1, PRODUCER 2 shall be responsible for restoring them to their original configuration;
- d. not visually, aurally or in any other way duplicate or record the designs, the actual Production Materials or performances materials that are used, except that PRODUCER 2 shall have the right to make archival recordings of the co-production;
- e. provide prominent co-production credit for PRODUCER 1 on the title page of its house program and in all promotional and press materials where the names of the Conductor and the Stage Director appear as follows: This production of title is a co-production of PRODUCER 2 and PRODUCER 1; and,
- f. provide credit to PRODUCER 1 on any photos taken at PRODUCER 1 which are used for marketing purposes by PRODUCER 2 (it shall be necessary for PRODUCER 1 to provide PRODUCER 2 with the proper credit).

7. **Payment:**

A. PRODUCER 2 shall make payment to PRODUCER 1 pursuant to the following schedule:

1. Ten (10%) percent of PRODUCER 2's contribution to be paid six (6) months prior to opening night of co-production at PRODUCER 1;
2. Forty (40%) percent of PRODUCER 2's contribution to be paid by opening night of the co-production at PRODUCER 1;
3. Fifty (50%) percent of PRODUCER 2's contribution to be paid upon shipment to PRODUCER 2, but in no event later than two (2) years after opening night of the co-production at PRODUCER 1;

B. PRODUCER 2's contribution shall be as follows:

1. for co-productions appearing in PRODUCER 1'S year season: \$XXX
2. for co-productions appearing in PRODUCER 1'S year season: \$XXX
3. for co-productions appearing in PRODUCER 1's year season: \$XXX

C: It is further understood that for each co-production PRODUCER 1 will spend at least the following amounts pursuant to union scenic shop contracts:

1. for the PRODUCER 1 year season: \$XXX
2. for the PRODUCER 1 year season: \$XXX
3. for the PRODUCER 1 year season: \$XXX

8. **Co-production Budget:** The following are specifically excluded from the co-production budget:

- a. labor and other costs associated with the installation, running and strike of the Production Materials at PRODUCER 1 and/or PRODUCER 2, except for on-site supervision by the various manufacturers as provided by contract;
- b. any director, lighting designer, set designer and costume designer expenses and/or fees;
- c. minor carpentry repairs, scenic touch-up, costume fittings, costume alterations, costume maintenance and cleaning;
- d. any additional costumes for PRODUCER 2 performances including additional materials;
- e. costs incurred by each co-producer for cast, crew, stage staff and orchestra for preparation, rehearsal, and performances of the co-productions.
- f. packing, loading, shipping and insurance of Production Materials from manufacturers to PRODUCER 1 and from PRODUCER 1 to PRODUCER 2. PRODUCER 1 shall be responsible for packing, loading, shipping and insurance to its theater and PRODUCER 2 shall arrange and pay for packing, loading, shipping and insurance from PRODUCER 1 to PRODUCER 2. However, the co-producers will share equally the cost of packing, loading, shipping and insurance of Production Materials from PRODUCER 2 to PRODUCER 1's warehouse.
- g. cost of sending PRODUCER 2 personnel to PRODUCER 1 to see performances and to view technical requirements; and,
- h. wigs, make-up and stock shoes.

9. **Construction and Transfer of Production Materials:**

- a. It is agreed that PRODUCER 1 will meet the design and construction specifications necessary for PRODUCER 2's subsequent use of each production at its theater. Such specifications shall be provided by PRODUCER 2's technical director and their implementation determined prior to construction or alteration. Any costs which must be incurred in having to rebuild or build anew scenery that has not met the requirements of performance at PRODUCER 2's theater as specified by PRODUCER 2's technical director will be the responsibility of PRODUCER 1. PRODUCER 1 will submit to PRODUCER 2's Technical Director, in writing, specifications concerning how sets are to be built after any and all meetings with the construction shop. Upon receipt of said written specifications, PRODUCER 2's Technical Director shall inform PRODUCER 1 in writing no later than the end of three business days whether or not the specifications are approved.
- b. Scenery will be manufactured in union-affiliated commercial shops. Smaller scenic elements and alterations/additions will be manufactured in the PRODUCER 1 shop.
- c. Costumes and accessories, when not purchased, will be manufactured in commercial shops which need not be union-affiliated and/or in the PRODUCER 1 shop. Costumes will be manufactured to "rental" standards, with wide seam allowances, full linings, cleanable and durable fabrics, as much as is allowed by the design. Costume measurements for the PRODUCER 2 cast, if available, will be forwarded to PRODUCER 1 in a timely fashion. Duplicate and/or additional costumes for the PRODUCER 2 productions will be the responsibility of PRODUCER 2.
- d. Bid procedures for, and the list of shops invited to bid on, the manufacture of the Production Materials will be determined by mutual consent of the co-producers, in consultation with the production designers.
- e. PRODUCER 2 agrees to provide a technical staff person to observe a load-in, performance and load-out, and to be present for packing and inventory assessment of Production Materials at PRODUCER 1. PRODUCER 2 may determine the extent of supervision required.
- f. The technical departments of each co-producer will be in direct communication and will mutually agree on the final dates of delivery of the production and on the mode of transportation.

10. **Future use by a Co-Producer:** Either Co-producer may revive a co-production at any time provided that:
- a. no prior rental or revival reservation exists; and
 - b. the Co-producer reviving the production pays the entire cost of loading the Production Materials out of and back into storage, shipping the Production Materials to and from its theater and any insurance of the materials, as well as any necessary refurbishing of the Production Materials.

11. **Rentals:**

- a. Each co-producer shall be the rental administrator of those co-productions stored in its respective storage facilities;
- b. when acting as rental administrator, each co-producer shall:
 - I. assemble relevant visual and technical information with which to respond to rental inquiries;
 - II. draw up a suitable rental agreement outlining the rentals' terms and fees;
 - III. notify the other co-producer of all rental inquiries, upon receipt;
 - IV. provide the other co-producer with copies of all rental contracts, upon receipt;
 - V. collect rental fees and re-use fees from renting companies and disburse them accordingly; and,
 - VI. arrange for and oversee storage and maintenance of Production Materials.
- c. the minimum rental fee for each co-production shall be Written Amount (\$XXX) Dollars;
- d. neither co-producer may negotiate a lower rental fee without the express written permission of the other co-producer;
- e. the co-producer acting as rental administrator shall take the first % off of the rental fee as reimbursement of its actual expenses of storing, insuring, and refurbishing the co-production, the remaining balance of the rental fee to be split evenly (50/50) between the Co-producers.

12. **Duration of the Agreement:** This agreement shall be in effect until date, and the Production Materials shall be stored, insured and rented by the co-producers for the duration of the agreement or until such time as the co-producers mutually agree that the storage, insurance and rental periods should cease, whichever is sooner. Such agreement between the co-producers shall be in writing. In the event of such mutually agreed upon disposal as above, the co-producers may elect to take all or part of the production to its own storage facilities at its own expense.

13. **Insurance:** Each co-producer hereby represents, warrants and agrees that, from the commencement of shipping from the prior co-producer's theater and while the Production Materials remain under each co-producer's respective control, it shall have in effect through an internationally recognized major insurance company:

- a. theatrical property insurance in amounts to be determined to cover the Production Materials of each co-production;
- b. the parties agree that in the event of complete destruction of the Production Materials, any insurance proceeds shall be divided equally between the co-producers;
- c. comprehensive general liability insurance in the amount of \$XXX; and
- d. the co-producers agree to provide the other with a certificate of insurance naming the other co-producer as an additional insured on its own policy.

14. **Contractual Obligations:**

- a. This Agreement and its attachments constitute the entire agreement between the co-producers and supersedes all prior understandings between them, whether written, oral, expressed or implied.
- b. This Agreement does not grant any rights or obligations other than those stated. Neither co-producer has the right, authority or power to bind the other to third parties without the prior written consent of the co-producer to be so bound, except as provided for in the Agreement.
- c. This Agreement may not be altered, renewed or terminated except by the mutual written consent of the co-producers. Neither co-producer may assign this Agreement or any right or obligation contained in it to another without the written consent of the other co-producer.
- d. The waiver of any breach of, or default on any of the terms of this Agreement, will not be construed as a waiver of any subsequent breach of, or default on the remaining terms of this Agreement.
- e. If any portion of this Agreement is found to be in violation of applicable laws and hence unenforceable, the invalidity of those portions will not render the remainder of this Agreement void or invalid. The remaining portions of the Agreement will remain in full force and effect.

- f. Each co-producer agrees to indemnify and hold the other harmless from any liability, financial or otherwise, arising out of any claim or action resulting from that co-producer's breach of this Agreement or use of the Production Materials.
- g. It is agreed that if either co-producer cannot fulfill its obligations under the terms of the Agreement because of any cause that could not be reasonably anticipated or prevented, other than lack of sufficient funds, that co-producer will not be held liable or responsible for carrying out the terms of this Agreement, except that the defaulting co-producer will be held liable for its pro-rata share of Agreement expenses already incurred.
- h. In the event of a dispute or controversy between the co-producers, arising under, out of or relative to this contract either of the co-producers may submit the dispute or controversy to final and binding arbitration before a single arbitrator before the American Arbitration Association and pursuant to its then existing Voluntary Labor Arbitration Rules. The fees and expenses of the Arbitrator and of the American Arbitration Association shall be borne equally by the parties. Arbitrations shall be decided in accordance with the laws of state.

For PRODUCER 1:

For PRODUCER 2:

AGREEMENT between PRODUCER 1 and PRODUCER 2

date

This document shall serve as an Addendum to the Agreement between PRODUCER 1 and PRODUCER 2 dated date8 (attached hereto as Exhibit A).

WHEREAS PRODUCER 1 and PRODUCER 2 agree that PRODUCER 1 shall assume responsibility for storing and insuring sets and props (hereinafter "Production Materials") from certain PRODUCER 1/PRODUCER 2 co-productions, the Parties agree as follows:

1. PRODUCER 1 and PRODUCER 2 shall agree in advance what Production Materials will be sent to PRODUCER 1 on a schedule mutually acceptable to both parties.
2. Pursuant to Exhibit A, PRODUCER 1 and PRODUCER 2 will share equally the cost of packing, loading, shipping and insuring of Production Materials from PRODUCER 2's warehouse to PRODUCER 1's warehouse.
3. PRODUCER 1 shall be solely responsible for paying for any and all costs associated with storing the Production Materials.
4. PRODUCER 1 shall be solely responsible for maintaining adequate insurance at levels to be agreed in writing by PRODUCER 1 and PRODUCER 2.
5. Production Materials for each production shall remain complete, and no part of Production Materials may be used by either PRODUCER 1 or PRODUCER 2 in the creation of another production without the express written permission of the other party.
6. PRODUCER 1 shall store soft goods inside the warehouse; soft goods may not be stored in trucks or trailers.
7. PRODUCER 1 shall store flats upright in bins and/or bays; if bins and/or bays are not available, flats shall be stored upright but under no circumstances will they be laid flat on the floor.
8. PRODUCER 1 shall to the best of its ability store all Production Materials from each co-production together.
9. PRODUCER 2 shall provide PRODUCER 1 with a current inventory of Production Materials that are being sent to PRODUCER 1; if PRODUCER 1 needs to update that inventory, such revision shall be provided to PRODUCER 2.

If the above meets with your approval, please sign in the space provided below.

For PRODUCER 1:

For PRODUCER 2:

SAMPLE CO-PRODCUTION AGREEMENT 4
(General)

AGREEMENT dated this ___ day of ___, 20___, between PRODUCER 1 and PRODUCER 2. It is hereby agreed as follows:

- I. PRODUCER 1 and PRODUCER 2 are herein referred to collectively as the “Co-Producers.”
- II. The Co-Producers shall produce and fund the design, manufacture and assembly of theatrical scenery, properties and costumes (herein referred to as “Production”) of OPERA by Composer. (Specifically excluded from the Production are wigs, footwear, firearms, stock properties and stock scenic elements including but not limited to escapes, house masking, unpainted cycloramas and scrims and the like.)
- III. The production stage director shall be *Name* (hereinafter referred to as “Director”), the set and costume designer shall be *Name* (hereinafter referred to as “Set and Costume Designer”) and the lighting designer shall be *Name* (hereinafter referred to as “Lighting Designer”). Collectively, these individuals shall herein be referred to as the “Production Creative Team.”
- IV. The Production is currently scheduled to premiere at PRODUCER 1 in (date). The Production is currently scheduled for presentation in PRODUCER 2 in (date).
- V. The Co-Producers agree that PRODUCER 1 shall be the “administering Co-Producer” of the project. As such, PRODUCER 1 shall:
 - A. administer the Co-Production Agreement and the Co-Production Budget, collecting and dispersing funds as required according to the terms of this Agreement and the Budget (Attachment A);
 - B. contract the Production Creative Team to conceive/create the Production and to be present as necessary during initial rehearsals and the initial presentation of the Production at PRODUCER 1;
 - C. oversee the creation and manufacture of the Production, including facilitating communication among the Co-Producers and the Production Creative Team and the scheduling of design presentations;
 - D. supervise the rehearsal and technical periods at PRODUCER 1, to include the rehearsal and “first-time” technical expenses which are incurred on behalf of the Co-Production;
 - E. provide to PRODUCER 2 a copy of the initial presentation’s hanging plot, floor plan and section, stage manager’s book, costume information, properties information, crew detail and other related production documentation;
 - F. supervise and administer all rentals of the Production.
- VI. PRODUCER 2 individually and separately agrees that it shall:
 - A. on or before date, inform PRODUCER 1 of its rehearsal and performance dates;
 - B. negotiate agreements with the Production Creative Team for their services for the PRODUCER 2 presentation of the Production;
 - C. pay for shipping of the Production from PRODUCER 1 to PRODUCER 2 and return.
 - D. insure the Production from the time of load-out from PRODUCER 1’s storage facilities until the time of return to PRODUCER 1’s storage facilities, against all risks of direct physical loss or damage as a result of any peril, natural element, vandalism, collision or other source of harm to the Production Materials.

- E. engage a technical representative of PRODUCER 1's choosing to observe the initial load-in and installation of sets at the theatre, and strike and packing of sets and properties.
- F. engage a costume representative of PRODUCER 1's choosing to oversee the fittings (dates to be mutually agreed), dress/technical rehearsals and the pack-out of the costumes.

VII. Each Co-Producer's financial obligation is as follows:

| | |
|------------|-------|
| PRODUCER 1 | \$XXX |
| PRODUCER 2 | \$XXX |

PRODUCER 2 agrees to pay its obligation to PRODUCER 1 without deduction of any sort whatsoever according to the following schedule:

- 50% upon signing of this agreement, but in no event later than date
- 50% on or before date

VIII. Each Co-Producer agrees:

- A. to responsibly maintain the Production in good condition, with minimal normal wear and tear, while such materials are in its care. Major alteration of or changes to the physical presentation of the Production may not be made without the prior written consent of the other Co-Producer. Costumes may be altered within reason to fit but fabric may not be cut, painted or otherwise permanently altered without the prior written permission of each Co-Producer.
- B. to accept responsibility for physical loss or damage to Production beyond normal wear and tear while the Production is under its care and to assume sole responsibility for the safe installation and use of the Production in its respective venue.
- C. to provide prominent credit to the other Co-Producer on the title page of its house program and in each press or media release related to the Production.
- D. that it will not visually duplicate or record the Production except for archival, marketing or public-relations purposes.

IX. Ownership of the Production:

- A. For as long as the Production is kept intact, each Co-Producer shall be a co-owner of the Production and will participate in any revenue resulting from any exploitation of the production (net of applicable direct costs including but not limited to storage, insurance and maintenance).
- B. The Production shall be kept intact at least through the presentation, following which the Co-Producers agree to communicate regarding the future of the Production.
- C. Should either Co-Producer revive the Production, Co-Producer shall be responsible for all costs associated with the revival, including but not limited to refurbishment, shipping, load-in/out costs, set and costume supervisors and insurance.

X.

- A. This Agreement is not assignable.
- B. Either of the parties may cancel this Agreement because of suspension of its operations, war, strike, epidemic, acts of God or for any circumstances which prove to be beyond its control occurring without the fault of it or of those for whom it is responsible at law which circumstances may make the carrying out of this Agreement impossible or unfeasible.
- C. This Agreement is for the creation and use of the Production and in no way creates a partnership or joint venture between the parties hereto. This agreement does not grant any production or usage rights other than those stated herein. Except as provided in this agreement, neither signatory has the authority or power to bind the other to any third parties.
- D. Each party to this Agreement agrees to indemnify and hold the other harmless from any and all charges, complaints, controversies, claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including all legal costs of any nature arising out of or in connection with the Production.

- E. This Agreement constitutes the entire understanding between the parties and shall not be modified except in writing signed by each of the parties.
- F. This agreement shall be governed by the Laws of *state/province and country*.

AGREED: For PRODUCER 1
BY: _____ DATE: _____

AGREED: For PRODUCER 2
BY: _____ DATE: _____