

# Co-Production Agreement

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This is a Co-Production Agreement (“Agreement”), dated as of \_\_\_\_\_, 20 \_\_, between \_\_\_\_\_, a \_\_\_\_\_ nonprofit corporation (“Blue”), and \_\_\_\_\_, a \_\_\_\_\_ nonprofit corporation (“Red”).

## Background

Blue is a ballet company based in \_\_\_\_\_. Red is a ballet company based in \_\_\_\_\_. Blue and Red wish to produce and fund together the creation and physical production (“Production”) of a ballet titled \_\_\_\_\_ (“Ballet”), with choreography by \_\_\_\_\_ (“Choreographer”). The Ballet is currently scheduled to premiere in \_\_\_\_\_ on \_\_\_\_\_, 20\_\_ and in \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_. This Agreement describes how Blue and Red will work together.

## 1. This Document

### 1.1 Organization

This Agreement is organized as follows:

- Sections 2-8 focus on core Production activities. Section 2 covers the creative team. Sections 3-4 address the Production budget and other financial matters. Section 5 is about performance scheduling and territories. Section 6 covers Production administration. Sections 7 and 8 relate to use, care, and advancement of the Production Inventory (as defined in Section 1.2).
- Detailed Production information is set out in the production plan (“Plan”) attached as **Exhibit A** and the production budget (“Budget”) attached as **Exhibit B**.
- The balance of the Agreement addresses film and photography (Section 9), marketing and promotion (Section 10), third party producers (Section 11), dispute resolution (Sections 12), force majeure (Section 13), insurance and liability (Section 14), and general legal matters (Section 15).

### 1.2 Definitions

Each of Blue and Red is referred to individually as a “Co-Producer” and collectively as “Co-Producers.” The theatrical scenery, costumes, wigs and other physical elements of the Production are referred to as the “Production Inventory.” As set out in Section 6, Blue will serve as the administrative lead and coordinator of the work and, in that capacity, is referred to as “Administrative Co-Producer.” Other terms have the meanings given them in this Agreement.

## 2. Creation

### 2.1 Production

Co-Producers will produce and fund the choreography, musical arrangement, and design, manufacture, shipping, and assembly of one set of the Production Inventory of the Ballet on the basis set out in this Agreement.

### 2.2 Choreographer

Choreographer will choreograph and direct the Ballet. Copies of Choreographer’s licensing agreements with Red and Blue are attached as **Exhibits C** and **D**, respectively.

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*Note: This document does not reflect or constitute legal advice. This is a sample made available by the Organizations and Transactions Clinic at Stanford Law School on the basis set out at [nonprofitdocuments.law.stanford.edu](http://nonprofitdocuments.law.stanford.edu). The Clinic created it in connection with a project for Dance/USA; it is intended as a resource and source of ideas only, and is not designed for a Dance/USA member’s or any other party’s particular situation. Your use of this document does not create an attorney-client relationship with the Clinic or any of its lawyers or students.*

### 2.3 Music Arranger and Designers

The music arranger and designers for the Production are set out below:

| Role              | Name | Contract attached |
|-------------------|------|-------------------|
| Music Arranger    |      | Exhibit E         |
| Costume Designer  |      | Exhibit F         |
| Scene Designer    |      | Exhibit G         |
| Lighting Designer |      | Exhibit H         |

### 2.4 Designer Alternates

If any of the music arranger (“Music Arranger”) or costume, scenery, or lighting Designers (collectively, “Designers”) are unable to carry out their obligations, then Co-Producers will consult with Choreographer for the selection of an alternate, and Administrative Co-Producer will work to put in place, as promptly as possible, a contract with such alternate.

### 2.5 Creative and Relationship Leads

Co-Producers will each appoint individual to act as the creative and relationship leads and to coordinate activities in connection with the Production. Initial appointees are set out in the Plan. Such leads will have primary responsibility for the Production and working relationship. Co-Producers agree that each party may rely on decisions by, and information and instructions provided by, the other party’s appointees. Co-Producers may each change either of its leads at any time and will so advise the other.

## 3. Production Budget and Ownership

### 3.1 Budget

The Budget covers costs for the creation and development of the Production. Such items include, without limitation:

- fees payable to the Choreographer
- scene, lighting, and costume design conception and original creation fees payable to Designers
- as applicable, dimensional color scenery model
- as applicable, all reprographic expenses for plans
- as applicable, color sketches for all costumes
- costume construction
- wig purchases and styling
- scene construction
- props
- music and music parts

The Budget also includes allowance for travel and meal expenses, shipping, copying, and other expenses relating to Choreographer, Designer, and Music Arranger activities.

### 3.2 Items Not Included in Production Budget

For clarity, the Budget covers sets, costumes, and properties manufactured specifically for the Production. It does not include:

- standard pink, white, or black performance tights
- standard undergarment leotards
- footwear (including stock footwear, boots, character shoes, and pointe shoes)
- stock scenic maskings
- bounce drops
- house curtains

- lighting equipment
- non-specific hardware and rigging equipment
- counterweight bags
- other stock materials that are not specific to the Production

### **3.3 Funding Contributions**

Each Co-Producer will contribute to funding the Budget by making payments as set out in the Plan. It will make those payments to the Administrative Co-Producer. [Co-Producers may agree to adjust the Budget or contribution obligations if Co-Producers secure a principal sponsor or sponsors of the Production as contemplated by Section 10.3.]

### **3.4 Ownership**

Upon full payment by each Co-Producer of the amounts contemplated by Section 3.3, such Co-Producer will have an ownership interest in the Production as set out in the Plan. Co-Producers will own the Production Inventory as tenants in common.

### **3.5 Restaging**

Since the original choreography will be set in \_\_\_\_\_ on Blue dancers, Red will either:

- send, at Red's expense, an artistic representative from Red to \_\_\_\_\_ to learn the choreography during the setting rehearsals, for the purpose of restaging the choreography on Red dancers; or
- bring, at Red's expense, a representative of Choreographer to \_\_\_\_\_ to restage the choreography. Choreographer will be available for part of the Red restaging period at no additional fee, but Red will be responsible for Choreographer's travel, housing, and per diem expenses.

Red will advise Administrative Co-Producer of its choice promptly after the date of this Agreement.

### **3.6 Musical Parts**

Co-Producers will commission and produce print piano and conductor scores and orchestra parts in sufficient copies for each Co-Producer to have its own copy. Each Co-Producer will be responsible for other work it needs to use such materials.

## **4. Other Financial Matters**

### **4.1 No Revenue Sharing or Other Payments**

For clarity: (a) revenues generated by a Co-Producer from performance of the Production in its home theater or on tour are not shared but instead belong exclusively to such Co-Producer; (b) neither Co-Producer has any other obligation to pay royalties or similar amounts to the other in respect of performances of the Production; and (c) neither Co-Producer will be responsible for any financial loss or deficit incurred by the other Co-Producer in connection with the Production or the other Co-Producer's performances of the Ballet.

### **4.2 Post-Premiere Staging**

Each Co-Producer will be responsible for paying Choreographer or Choreographer's designated assistant for services and expenses relating to re-creation and rehearsal of the staging of the Ballet for all performances in its respective home city after the premiere run of performances.

### **4.3 Royalty Payments**

Each Co-Producer will be responsible for paying performance royalties as required under the relevant agreements with Choreographer, Music Arranger, and Designers.

#### **4.4 Local Rehearsal and Performance Expenses**

Each Co-Producer will be responsible for paying all rehearsal and performance costs normally paid by and associated with a producing entity's presentation in its respective home city or while touring the Production. Such costs include, without limitation, all footwear required by the Production, local and road crew stagehands, local truck loaders, trucking expenses, lighting equipment and consumables, local musicians and music performing rights, ushers and ticket takers, all publicity and ticket revenue expenses, dancer and administrative salaries, and similar expenses.

#### **4.5 Production Inventory**

Expense payment responsibilities in respect of Production Inventory cleaning, storage, packing, shipping, and unloading are set out in Sections 7 and 8.

#### **[4.6 Refurbishment Fund**

Co-Producers will each establish a "refurbishment fund" as provided in Section 7.9.]

#### **4.7 Marketing and Promotion**

As provided in Section 10, each Co-Producer will be responsible for its own marketing and promotional expenses.

#### **4.8 Additional Expenses due to Delayed or Changed Decisions**

Expenses incurred in creative development of the Production or otherwise due to delays in providing responses or changing prior decisions will be the sole responsibility of the Co-Producer responsible for the delay or change.

#### **4.9 Lease Fees**

Section 11 provides that Co-Producers may decide to lease the Production to one or more third party producers. If they do so, they will allocate lease fees received as provided in the Plan.

#### **4.10 Taxes**

Each Co-Producer will be responsible for any income, property, sales, or other taxes it incurs relating to the Production.

### **5. Schedule and Territories**

#### **5.1 Premiere**

The currently scheduled dates for premiere performances by each Co-Producer are set out in the Plan.

#### **5.2 Schedule After Premiere**

After all the premiere performance runs are completed, Co-Producers will determine the schedule for later performances. The Co-Producer whose last performance occurred earliest will have priority over the other Co-Producer. A Co-Producer will give the other Co-Producer notice of intention to perform the Ballet no later than 12 months before the first contemplated performance.

#### **5.3 Performance Frequency**

Each Co-Producer may present the Production as many times as it wishes during the periods in which the relevant Co-Producer is scheduled to perform the Ballet.

#### **5.4 Exclusive Territories**

Blue will have the exclusive right to perform the Ballet in the territories so designated in the Plan. Red will have the exclusive right to perform the Ballet in the territories so designated in the Plan. Co-Producers will discuss and agree on touring opportunities outside of such exclusive territories, it being understood that no Co-Producer will perform the Ballet outside its territory except as agreed by the other Co-Producer.

### **5.5 Co-Production Credit**

Each Co-Producer will include, in all programs, printed and digital press releases, posters, and other promotional materials relating to the Ballet, a prominent credit for the other Co-Producer in the form stated in the Plan.

### **5.6 Tickets**

Each Co-Producer will provide the other with \_\_\_ tickets to a performance of the Ballet in its home theater.

## **6. Administration**

### **6.1 Administrative Co-Producer**

Blue will serve as the administrative lead and coordinator of the Production and, in that capacity, is referred to in this Agreement as the "Administrative Co-Producer." This Section 6 sets out its responsibilities in that role.

### **6.2 Budget and Payment**

Administrative Co-Producer will administer the Budget, collect payments from the Co-Producers, and disburse funds as contemplated by this Agreement.

### **6.3 Designer Oversight**

Administrative Co-Producer will manage the relationships with and among the Designers and will coordinate their participation as appropriate in Production activities. Such activities include, without limitation:

- scheduling and hosting initial budget meetings
- scheduling and hosting scenery model exhibition and approval meetings with Choreographer and Co-Producers' respective artistic directors and production staffs
- reviewing costume sketches
- attending construction shop bid presentations
- providing on-site shop construction approvals for scenery, properties, and wardrobe elements
- scheduling and hosting initial rehearsals, final dancer fittings, and stage rehearsals in Administrative Co-Producer's home theatre

### **6.4 Meeting Coordination**

Administrative Co-Producer will coordinate the logistics of and manage co-production meetings. This role includes, without limitation, working to ensure that the relevant staff members of each Co-Producer are promptly informed of important developments and decisions, and making materials available to participants in advance of planning sessions and other meetings.

### **6.5 Production Management**

Administrative Co-Producer will oversee the creation and manufacture of the Production. Such activities include, without limitation:

- facilitating communication among the Co-Producers, Choreographer, Musical Arranger, and Designers
- scheduling design presentations
- including each Co-Producer's repertory lighting and scenery placement requirements in the planning
- awarding and monitoring of construction contracts

### **6.6 Technical Oversight**

Administrative Co-Producer will strive to ensure that (a) physical and technical requirements of each Co-Producer are incorporated into set design and construction and (b) the Production may be executed practically within the physical constraints of the home theaters of the Co-Producers. The other Co-Producer will provide relevant

information to Administrative Co-Producer and will make technical personnel available to consult with Administrative Co-Producer about such requirements and constraints.

#### **6.7 Rehearsal Management**

Administrative Co-Producer will supervise initial rehearsal and technical installation and implementation periods in Administrative Co-Producer's home theatre, including paying from the Budget rehearsal and any "first time" technical labor expenses, such as final costume construction and set alterations, and as requested will participate and advise on initial rehearsals by Co-Producer in the latter's home theater.

#### **6.8 Production Documentation**

Administrative Co-Producer will provide to the Co-Producers archive copies of all invoices paid from the co-production fund and an archive copy of material production documentation including, without limitation, the documents identified in the Plan.

#### **6.9 Technician**

Administrative Co-Producer, at the other Co-Producer's request, will make available a technician familiar with the Product to:

- attend the other Co-Producer's initial load-in, build and set-up of physical elements of the Production
- provide guidance about the handling of the Production
- otherwise assist such Co-Producer with preparation of the premier performances

Administrative Co-Producer will make such technician available for up to five days or for a longer period upon agreement. Co-Producer will reimburse Administrative Co-Producer and pay travel, accommodation, and per diem expenses for the technician as provided in the Plan. In addition, Co-Producer may send a technical representative, at its expense, to observe Administrative Co-Producer's activities in preparation for the latter's premiere.

#### **6.10 Cooperation**

Co-Producers agree that the arrangements and understandings set out in this Agreement reflect a shared commitment to a productive working relationship and timely Production execution, and that collaboration and communication are essential to successful completion. To that end, Co-Producers will: (a) cooperate in carrying out Production activities, including responding promptly to the other party, keeping each other advised about potential issues, working through health, government order, and other scheduling issues, and making timely decisions, and (b) appoint qualified individuals to serve as creative and relationship leads as provided in Section 2.5, authorize them to act on behalf of and commit the respective party, and ensure their active engagement.

#### **6.11 Changes**

If either Co-Producer believes the Plan or Budget should be adjusted in any respect, it will so advise the other of the proposed changes. Co-Producers will discuss the proposed adjustment and, if they agree on an adjustment, confirm and document the adjustment in the form provided as **Exhibit I**.

#### **6.12 Records**

Administrative Co-Producer will maintain records relating to Production activities, including, without limitation, meeting minutes, contracts, photographs, and invoices, and will make those records available for review by the other Co-Producer on reasonable notice for a period of three years after the date of this Agreement.

#### **6.13 Fiscal Agent**

If Co-Producers mutually decide to seek principal or other lead sponsorship of the Production, Administrative Co-Producer will submit proposals to potential funders, enter into grant or sponsorship agreements with funders, receive and disburse funds as appropriate, prepare reports to funders, and serve as the point person and liaison with funders.

#### **6.14 Confidentiality**

In working together on the Production, Co-Producers may share Confidential Information (as defined below) with one another. Each party will use the other party's Confidential Information only in connection with activities under this Agreement and will keep it confidential. "Confidential Information" means information furnished by one party to the other in the course of the Production relationship that is expressly marked or otherwise designated by the disclosing party as "Confidential." It does not include information that is generally available to the public, information already known by the receiving party before receiving such information, or information independently developed. All Confidential Information furnished under this Agreement is and will remain the property of the furnishing party.

### **7. Production Inventory**

#### **7.1 Design and Construction**

Co-Producers agree that Production Inventory items are to be made to a standard and using materials appropriate to the expectations of the United States theater industry and in a manner consistent with legal requirements.

#### **7.2 Use**

Each Co-Producer will use the Production Inventory solely for the purpose of the Production and in accordance with the contracts with the Choreographer and relevant Designers.

#### **7.3 Maintenance**

Each Co-Producer will maintain the Production Inventory in "show" condition, and in any case will maintain the Production Inventory with at least the same level of care as it maintains its own costumes, scenes, and other assets.

#### **7.4 Damage**

Each Co-Producer will be responsible for theft, loss, or damage (normal wear and tear excepted) of or to Production Inventory items while such items are in its possession. If such theft, loss, or damage occurs, the relevant Co-Producer will notify the other Co-Producer and, at its expense, replace or repair the item promptly.

#### **7.5 Alterations Generally**

Neither Co-Producer will remove any part, or significantly alter the scenic or costume design or construction, of any scene or costume, without first securing the approval of the other Co-Producer and, if required by contract with the relevant Designer, such Designer.

#### **7.6 Minor Costume Alterations**

Each Co-Producer understands that minor alterations, such as the letting out or the taking in of costume bodices will be necessary. Each Co-Producer will use in such costume alterations a basting stitch only and will undo all alterations prior to the advancement of the Production to the other Co-Producer.

#### **7.7 Alternate Costumes**

A Co-Producer who requires alternate costumes for an alternate cast will bear the entire expense for such costumes and will coordinate design and construction with the Costume Designer and manufacturer.

#### **7.8 Storage**

The Co-Producer who most recently performed the Production will be responsible for arranging and paying for appropriate storage of the Production until it is next advanced to the other Co-Producer or to a third party.

### **[7.9 Refurbishment Fund**

Co-Producers may each establish a “refurbishment fund.” Such funds are intended to pay for Production refurbishments beyond normal maintenance. The funds will operate as follows:

- [Each Co-Producer will pay into its fund the amount set out in the Plan in respect of each performance of the Ballet given by such Co-Producer after its first \_\_\_\_ performances of the Ballet.]
- [Co-Producers will make such payments to the Administrative Co-Producer.]
- Co-Producers will jointly determine needed refurbishments, timing, [and source of funds,] and release funds accordingly. [Unless otherwise agreed, Administrative Co-Producers will arrange for the needed work or purchases.]

[In addition, Co-Producers may, by mutual agreement, decide to distribute all or a portion of this refurbishment fund to Co-Producers as set out in the Plan.]

### **7.10 No Sale or Liens**

Neither Co-Producer will (a) grant any security interest in or otherwise pledge or mortgage any Production asset without first obtaining the consent of the other Co-Producer or (b) sell, assign, or otherwise transfer ownership or possession of any Production asset to any person other than the other Co-Producer or a third party as contemplated by Section 11, without first obtaining the consent of the other Co-Producer. That said, a Co-Producer may enter into a credit or other agreement requiring such Co-Producer to grant a blanket security interest in all of its assets; the other Co-Producer will cooperate in such a case.

## **8. Production Advancement**

### **8.1 Definitions**

For purposes of this Section 8, a Co-Producer who is advancing the Production Inventory to another Co-Producer is referred to as a “Sender,” and a Co-Producer who is receiving the Production Inventory is referred to as a “Recipient.”

### **8.2 Condition Report**

A Sender will at the time of shipment give the Recipient a written report about the condition of the Production Inventory as set out in the Plan.

### **8.3 Packing and Loading; Shipping Containers**

A Sender will pay packing and loading expenses. It will advance the Production Inventory, to the extent possible, in the original shipping container, wrapper, or hamper and packed in the same manner as they were received.

### **8.4 Costume Cleaning**

A Sender will, at its expense, launder and dry-clean all costumes and maintain wigs before advancing the Production Inventory to a Recipient. A Sender will ensure that all costume items are fully dry before packing and shipping them.

### **8.5 Logistics**

A Recipient will (a) engage, at its expense, a private carrier for pick-up and transport from a Sender, and will require the carrier to ship the Production Inventory in waterproof trailers or container; and (b) inspect the Production Inventory upon delivery and prepare a report about its condition.

### **8.6 Responsibility**

A Recipient will be responsible for the Production Inventory from the time of load-out at the Sender to the time of load-out to the next Recipient including, without limitation, proper load-in, installation, security, and maintenance.

### **8.7 Third Party Lessees**

Administrative Co-Producer will coordinate the advancement of the Production Inventory to third party lessees, if any, as contemplated by Section 11. If Administrative Co-Producer is not in possession of the Production Inventory, the other Co-Producer will cooperate with the Administrative Co-Producer and the third party in carrying out the transfer.

## **9. Film and Photography**

### **9.1 Limited Recording**

No Co-Producer may photograph, film, video tape, or otherwise record performances or rehearsals of the Production, except for (a) in-house rehearsal, restaging, or archival purposes; or (b) limited promotional use.

### **9.2 Contractual Restrictions**

Each Co-Producer will comply with any and all limitations on recording set out in the contracts with the Choreographer, Designers, and Music Arranger.

### **9.3 Commercial Opportunities**

If either Co-Producer receives inquiries or sees credible opportunities for commercial or non-commercial use of visual recordings of the Production, such Co-Producer will notify the other, and the parties will discuss and review the opportunity. They will negotiate and document any such arrangement through a separate contract and appropriate agreements with Choreographer, Designers, and Music Arranger.

### **9.4 Production History**

Administrative Co-Producer may make film, video, photographic, or audio recordings (collectively, "History Recordings") of Production activities including, without limitation, planning sessions, model and prototype review, and rehearsals. Administrative Co-Producer will use such History Recordings for Production-related and internal archival, research, and educational purposes only unless it obtains (a) Co-Producer's prior written approval for a specific external use and (b) approvals from Choreographer, Designers, Music Arrangers, and other third parties as may be appropriate.

## **10. Marketing and Promotion**

### **10.1 Local Responsibility**

Each Co-Producer is responsible for its own marketing and promotional activities and expenses.

### **10.2 Branding**

Co-Producers will decide whether to create, for use in promoting the Ballet: (a) a logo or other branding elements; (b) dedicated social media vehicles; or (c) other marketing tools and platforms. If so, they will assign one Co-Producer with lead responsibility for such development, and will develop a protocol for shared and consistent use of such branding elements and other assets.

### **10.3 Principal Sponsorships**

Co-Producers may decide to seek funding from one or more sponsors who would be identified by all Co-Producers as "principal sponsors" or otherwise as sponsors of the Production. If Co-Producers secure such a sponsor or sponsors, they will so identify them in all programs, printed and digital press releases, posters, and other promotional materials relating to the Ballet.

### **10.4 Individual Co-Producer Fundraising**

Each Co-Producer is free to raise contributions or to solicit grants to finance its portion of the Production investment and ongoing Production-related expenses. A Co-Producer may identify a donor or other third party as a "Sole Sponsor," "Principal Sponsor" or the like with respect to performances of the Production by such Co-Producer only. Except as

contemplated by Section 10.3, no Co-Producer may identify a donor or other third party as "Sole Sponsor," "Principal Sponsor" or the like for (a) the entire Production or (b) performances by the other Co-Producer.

### **10.5 Funding Support**

For clarity, and subject to Sections 10.3 and 10.4, each Co-Producer may acknowledge funding support it received for the Ballet in the manner in which it ordinarily acknowledges such support.

### **10.6 External Communication; Press Releases**

The Plan sets out the external communication plan for the Production. For consistency of communication, except as set out in the Plan, as expressly agreed, or as may be required by law, no Co-Producer will issue any press release or comparable communication concerning the Production or this Agreement without obtaining the other's prior written approval.

### **10.7 Name and Logo**

Co-Producers may use the other's name, logo, and other marks (collectively, "marks") for purposes of communicating about the Production on their websites and in other digital and print outreach materials. For clarity, no Co-Producer will obtain rights to any of the other Co-Producer's marks except as contemplated by this Section 10.7, and each will follow instructions by the other about use of the marks.

## **11. Third Party Producers**

### **11.1 Third Party Leases**

Co-Producers may lease the Production to third party producers, it being understood that no such third party may perform the production in an exclusive territory of one of the Co-Producers without such Co-Producer's prior written consent.

### **11.2 Lease Management**

Administrative Co-Producer will be responsible for reviewing requests from and approving third party producers, preparing and negotiating appropriate contracts and other documents, and managing the relationships. For clarity, it is understood that Administrative Co-Producer has no obligation to affirmatively seek out such third parties, enter into a minimum number of leases, generate a required amount of lease fees or other revenues from such relationships, and/or guarantee the performance by any such third party lessee.

### **11.3 Lease Fees**

Co-Producers will allocate lease fees as provided in the Plan.

## **12. Dispute Resolution**

### **12.1 Dispute Resolution: Discussions**

If there is any dispute between Co-Producers relating to interpretation and application of this Agreement, the Co-Producers will follow this process:

- First, the respective Production leads will meet informally and make a good faith attempt to resolve the dispute.
- If the leads are unable to resolve the dispute within 30 days of their initial discussion, then the chief executive officers, general managers, or comparable senior executive of each Co-Producer will meet in person or by call and attempt to resolve the dispute.
- If such individuals are unable to resolve the dispute within 30 days of their initial discussion, then Co-Producers may initiate arbitration under Section 12.2.

### **12.2 Dispute Resolution: Arbitration**

Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity of this Agreement (including, without limitation, the determination of the scope or applicability of this agreement to arbitrate) that is not resolved under Section 12.1 will be determined by arbitration. Unless otherwise agreed by Co-Producers, JAMS will serve as arbitrator, there will be one arbitrator, and the arbitration will take place in a city located roughly midway between Co-Producers' home cities. The arbitration will be administered under JAMS' Comprehensive Arbitration Rules and Procedures [and in accordance with the Expedited Procedures in those Rules] [or under JAMS' Streamlined Arbitration Rules and Procedures]. Judgment on the Award may be entered in any court having jurisdiction. Neither party will start arbitration proceedings without first giving the other party a written notice, at least \_\_\_\_ days before it initiates the process, of its intention to do so. The notice must specify in reasonable detail the matter giving rise to the claim, the nature of the claim, and the amount or relief claimed.

### **12.3 Injunctive Relief**

Nothing in this Section 12 limits the ability of Co-Producers individually seek and obtain injunctive, equitable, interim, or provisional relief involving their respective intellectual property or other rights in any court of competent jurisdiction.

## **13. Force Majeure**

### **13.1 Force Majeure**

Neither Co-Producer will be liable to the other or be considered in breach of this Agreement for any failure or delay in performing its obligations under this Agreement due to any act of God, flood, earthquake, natural disaster, severe weather, fire, unhealthy air quality, war, terrorist act, riot or other civil disorder, strike or other labor dispute, pandemic, epidemic, government-designated health threat, government action, interruption of public utilities, internet or telecommunication services, or air travel, or any other similar event in each case beyond the party's reasonable control (each, a "Force Majeure Event"). For clarity, Force Majeure Events do not include financial insolvency or distress, changes in a party's financial condition or performance, or changes in general economic conditions, whether or not resulting from a Force Majeure Event.

### **13.2 Consequences of Force Majeure Event**

A Force Majeure Event will have the following consequences:

- A Force Majeure Event will excuse contract performance by the affected party only for the duration of, and to the extent performance is actually prevented or delayed by, the Force Majeure Event, it being understood that a Force Majeure Event will not (a) automatically entitle either party to immediately terminate this Agreement or (b) excuse payment of amounts owing as of the commencement of the Force Majeure Event.
- A Force Majeure Event will entitle the non-affected party to suspend its performance for so long as the affected party is not performing.
- Should a Force Majeure Event occur, the affected party will give prompt written notice of such event to the other party. The notice should describe the nature of the event, the expected impact on the affected party's activities and key events under this Agreement, and the steps the affected party is taking or will take to address the problem. The affected party will use diligent efforts to work around the Force Majeure Event and resume contract performance as soon as reasonably possible.
- Co-Producers will stay in close communication during the pendency of the Force Majeure Event and will discuss in good faith possible work-arounds and alternative arrangements.

### **13.3 Termination if Force Majeure Event Continues**

If the affected party remains unable to perform for a period exceeding 60 days after the commencement of the Force Majeure Event and the parties have not during that period made alternative arrangements, then either party may terminate this Agreement, without liability to the other party, by giving written notice to the other party. Such termination will be effective upon delivery of the notice by the terminating party.

## **14. Insurance, Liability, and Indemnification**

### **14.1 Insurance**

Each Co-Producer will carry or obtain the insurance specified in the Plan. Each party will furnish evidence of such coverage upon reasonable request of the other party.

### **14.2 Responsibility for Own Actions**

Each Co-Producer will have sole responsibility for the planning, management, and implementation of its own activities under this Agreement.

### **14.3 Responsibility for Own Contracts**

Each Co-Producer has entered into or may be required to enter into contracts with third parties in order to carry out their respective Production responsibilities. These contracts will be the sole responsibility of the party entering into the contract; neither Co-Producer will assume any liability for or guarantee the performance of the other in conjunction with any of these contracts.

### **14.4 Responsibility for Own Claims**

Each Co-Producer will be responsible for all claims relating to or arising from its operations or facilities, including, without limitation, any claims by Choreographer, Designers, Music Arranger, audience members, employees, contractors, landlords, vendors, creditors, donors, directors, or other third parties relating to its installation and use of the Production Inventory, rehearsal, promotion or performance of the Ballet, or other activities relating to the Production (collectively, "Internal Claims").

### **14.5 No Representations**

Each Co-Producer acknowledges that the other Co-Producer made no representations to such Co-Producer as to the safety of the Production as designed or as installed, handled, or used.

### **14.6 Indemnification**

Each Co-Producer will defend, indemnify, and hold harmless the other Co-Producer and the other Co-Producer's directors, officers, employees, agents, and assigns (collectively, "Indemnified Parties"), to the fullest extent under law, from and against all claims, liabilities, losses, damages, and expenses, including claims in respect of death, bodily injury, and property damage, and reasonable attorney's fees and expenses, arising or resulting from: (a) Internal Claims relating to such indemnifying Co-Producer; (b) performance or breach by such indemnifying Co-Producer of its obligations under this Agreement; or (c) claims by employees or agents of an Indemnified Party arising from interactions with, or presence in the facilities of, such indemnifying Co-Producer. For clarity, this Section 14.6 provides for indemnity, including payment of attorneys' fees, in respect of both first party and third party claims.

### **14.7 Limitation of Liability**

Neither Co-Producer will be liable to the other for any incidental, special, exemplary, punitive, or indirect damages arising out of or otherwise related to this Agreement, even if the other party has been apprised of the likelihood of such damages.

## **15. General Provisions**

### **15.1 Entire Agreement**

This Agreement, together with the Plan, expresses Co-Producers' final, complete, and exclusive agreement, and supersedes any and all prior or contemporaneous written and oral agreements, negotiations, communications, courses of dealing, or understandings between Co-Producers relating to its subject matter. If there are any inconsistencies between the Plan or other documents or communications and this Agreement, this Agreement will control.

### **15.2 Amendment**

This Agreement may be amended only as stated and by a writing signed by all Co-Producers which recites that it is an amendment to this Agreement.

### **15.3 Notices and Approvals in Writing**

This Agreement includes a number of provisions in which one Co-Producer must provide notice to the other Co-Producer, or obtain the other Co-Producer's approval or consent. Unless otherwise specified, a Co-Producer will communicate all such notices and requests in writing, and the other Co-Producer's approvals must be communicated in writing. Approvals communicated through e-mail will be considered as "in writing" for purposes of this Agreement.

### **15.4 Severability**

If any provision of this Agreement is held illegal, invalid, or unenforceable, all other provisions of this Agreement will nevertheless be effective, and the illegal, invalid, or unenforceable provision will be considered modified such that it is valid to the maximum extent permitted by law.

### **15.5 Waiver**

Any waiver of the provisions of this Agreement must be in writing and signed by the party granting the waiver. Waiver of any breach or provision of this Agreement will not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.

### **15.6 Independent Parties; No Partnership or Joint Venture**

Co-Producers are and will remain independent contracting parties. The arrangements contemplated by this Agreement do not create a partnership, joint venture, employment, fiduciary, or similar relationship for any purpose. Neither Co-Producer has the power or authority to bind or obligate the other to a third party or commitment in any manner. Any use of the term "partner" or comparable term in any communication is solely for convenience.

### **15.7 Assignment**

Neither party may, directly or indirectly, assign its rights or delegate its duties under this Agreement to anyone else without the prior written consent of the other party, except that either may assign all of its rights and obligations under this Agreement without the other's prior written consent in connection with a merger, acquisition, reorganization, sale, or transfer of substantially all of its assets, or other operation of law.

### **15.8 Third-Party Beneficiaries**

Except as provided in Section 14.6, this Agreement is for the exclusive benefit of Co-Producers, and not for the benefit of any third party including, without limitation, Choreographer, any Designers or dancers involved in the Production, or any other Co-Producer employee, affiliate, subcontractor, or vendor.

### **15.9 Electronic Signature**

Co-Producers agree that this Agreement may be electronically signed and that the electronic signatures appearing on such documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

**15.10 Governing Law and Jurisdiction**

This Agreement is governed by \_\_\_\_\_ law. Each Co-Producer consents to the exclusive jurisdiction of the state and federal courts for \_\_\_\_\_, \_\_\_\_\_.

**15.11 Counterparts**

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument.

\* \* \* \* \*

Each Co-Producer signed this Agreement as of the date set out in its first paragraph.

**[Blue Name]**

**[Red Name]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibits**

- Exhibit A Production Plan
- Exhibit B Production Budget
- Exhibit C Choreographer License Agreement with Blue
- Exhibit D Choreographer License Agreement with Red
- Exhibit E Musical Arranger Agreement with Blue
- Exhibit F Costume Designer Agreement with Blue
- Exhibit G Scenery Designer Agreement with Blue
- Exhibit H Lighting Designer Agreement with Blue
- Exhibit I Form of Production Plan Modification

**Exhibit A**  
**Production Plan**

**Planned premiere dates**

|             |  |
|-------------|--|
| <b>Blue</b> |  |
| <b>Red</b>  |  |

**Economics**

|   |       |      |
|---|-------|------|
| <b>Contributions to Budget and payment schedule</b>                         | Blue: | Red: |
| <b>Ownership percentages after contribution payments</b>                    | Blue: | Red: |
| <b>Refurbishment fund contributions</b>                                     |       |      |
| <b>Lease fee allocations</b>  | Blue: | Red: |
| <b>Principal sponsor target amount and related contribution adjustments</b> |       |      |

**Exclusive territories**

|             |  |
|-------------|--|
| <b>Blue</b> |  |
| <b>Red</b>  |  |

**Preliminary production schedule**

|  |                      |
|--|----------------------|
|  |                      |
|  | [add rows as needed] |

## Records and reports

|   |  |
|---|--|
| <b>Production documents</b>   | Administrative Co-Producer will provide to Co-Producers copies of: <ul style="list-style-type: none"> <li>• hang sheet</li> <li>• carpenter's rail cue cards</li> <li>• stage manager's prompt script</li> <li>• properties list with presets and working staff assignments</li> <li>• lighting plot</li> <li>• hook-up</li> <li>• instrument schedule memory control board print out of actual cues</li> <li>• focus charts indicating all symbols used and scenic elements referred to within</li> <li>• wardrobe inventory including all parts and working staff assignments and notes</li> </ul> |
| <b>Condition reports at time of Production advancement</b>            | A Sender will at the time of shipment give Recipient a written report about the condition of the Production. Such report will include, without limitation, a detailed list of modifications and repairs made by Sender.  |
| [add production, financial, and other reports and records as desired] |  |

## Technician expense reimbursement

|                       |  |
|-----------------------|--|
| <b>Travel</b>         |  |
| <b>Accommodations</b> |  |
| <b>Per diem</b>       |  |

## Credit

|  |  |
|--|--|
| <b>Language for programs and promotional materials</b> |  |
|--|--|

## Insurance

|                                       |   |
|---------------------------------------|---|
| <b>While Production in possession</b> | <ul style="list-style-type: none"> <li>• each Co-Producer will insure the Production to the value of \$_____ (or the actual cash replacement value of the Production, whichever is higher) while the Production is in their respective possession</li> <li>• possession mean shipment to the Co-Producer, storage, transport while on tour, and while in Co-Producer's theater</li> <li>• coverage must include fire and theft insurance</li> </ul> |
|---------------------------------------|---|

**External communication**

|                               |  |
|-------------------------------|--|
| <b>Initial announcement</b>   |  |
| <b>Social media</b>           |  |
| [add other topics as desired] |  |

**Relationship leads**

|                  |  |
|------------------|--|
| <b>Blue lead</b> |  |
| <b>Red lead</b>  |  |

**Creative leads**

|                  |  |
|------------------|--|
| <b>Blue lead</b> |  |
| <b>Red lead</b>  |  |

**Technical leads**

|                  |  |
|------------------|--|
| <b>Blue lead</b> |  |
| <b>Red lead</b>  |  |

**Exhibit B**  
**Production Budget**

**Exhibit I**  
**Production Plan Modification**

**Changes in Production Plan:**

**Effective date of change:**

**Confirmed and agreed:**

**[Blue]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**[Red]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_