

Scene Design Agreement

This is a Scene Design Agreement (“Agreement”) dated as of _____, 20__, between _____ (“Company”), a _____ nonprofit corporation, and _____ (“Designer”), an individual.

Background

Company is a [dance] company based in _____. Company has commissioned _____ for a new work [tentatively] titled _____ (“Work”). Company desires that Designer create scene designs for the Work on the basis set out in this Agreement.

1. Design

1.1 Design

Designer will create all scene designs for the Work (collectively, “Design”) in a manner consistent with professional standards, applicable law, and this Agreement. **Exhibit A** sets out the timeline for delivery of the Design.

1.2 Use for Live Performances; Duration

Designer grants Company the right to use the Design in performances of the Work before live audiences worldwide and in perpetuity.

1.3 Exclusivity

Company will have exclusive rights to use the Design during the period beginning on the premiere date and ending on _____, 20__. Company will have non-exclusive rights from and after _____, 20__.

1.4 No Other Use of Design

For clarity, Company may not use the Design for other works or projects without first obtaining Designer’s consent.

1.5 Cost

Designer understands and acknowledges that the total cost of all sets and props, including all materials and labor, may not exceed \$_____. Designer will prepare the designs accordingly and will consult with Company prior to any submission of bids for new scenery construction.

1.6 Information, Documentation, and Consultation

Designer will provide all information and documentation, in content and form acceptable to Company, necessary to enable Company to review and evaluate the designs and construct, or procure construction, of the scenery. Such information includes, without limitation:

- sketches
- material and construction specifications
- cost estimates
- final designs

Company may provide such documents and information to the choreographer and to the construction firms, if any, retained by Company to construct the scenes. Designer will consult with Company and any such construction firms, and will take such other actions as

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Company may reasonably request to ensure that Company and such firms have the information and documents needed for accurate execution of the Design.

1.7 Limited Scope and Modifications

It is understood that (a) Designer will be responsible for the visual aspects of the designs only and (b) as between Designer and Company, Company will be responsible for the construction, safety, and care of the scenery. As such, Designer will, and for no additional compensation, promptly make appropriate modifications to the design if Company communicates concerns to Designer regarding constructability, safety, usability, or care of the sets and props.

2. Compensation and Expenses

2.1 Designer Fee

Company will pay Designer a fee in the amount of \$_____ (“Designer Fee”). Company will pay the fee in two installments. It will pay \$_____ no later than ten days after receipt by Company of a signed copy of this Agreement and tax and similar forms requested by Company. It will pay the remaining \$_____ no later than the premiere date of the Work.

2.2 Royalties

Company will pay Designer a royalty of \$ _____ in respect of each full performance of the Work by Company. Company will make such payments in a lump sum by _____ of each year in which Company performs the Work.

2.3 Travel

Company will provide Designer, in respect of Designer’s travel to Company as contemplated by Section 3, with the following:

Air travel	for each trip, ___ round-trip, economy class tickets between Designer’s city of origin and _____
Accommodations	accommodations in _____ for each night Designer is required to be in _____
Ground transportation	reimbursement for ground transportation expenses between Designer’s lodgings in _____ and the city of origin and the respective airports

Company will reimburse travel, accommodation, and transportation expenses no later than ___ days after delivery by Designer to Company of receipts and other documents reasonably requested by Company to substantiate the expense.

2.4 Per Diem

Company will pay a per diem amount of \$ _____ for each day Designer is required to be in _____ and for each travel day between cities. For each rehearsal period, Company will pay the per diem amount on the first day of rehearsal.

2.5 Reimbursement for Materials

Company will reimburse Designer for materials for models, prototypes, and similar matters, up to a maximum of \$_____. Company will reimburse Designer for such expenses no later than ___ days after delivery by Designer to Company of receipts and other documents reasonably requested by Company to substantiate the expense.

2.6 Payment Mechanics

Company will make all fee, royalty, per diem, and expense reimbursement payments to Designer in U.S. dollars by check or by wire transfer in immediately available funds to the account specified in **Exhibit A**.

3. Preparation and Performances

3.1 Schedule

The Work is scheduled to premiere on _____. The schedule for planning, artistic, and production meetings (collectively, "Production Meetings") and rehearsals is set out in **Exhibit A**. Company will advise Designer of any changes in the schedule, it being understood that Company may adjust these dates in its discretion.

3.2 Attendance

Designer will attend Production Meetings and rehearsals in _____ as agreed by Company and Designer.

3.3 Artistic Decisions

Designer understands that final scene design and other artistic matters will be subject to the approval of Company's Artistic Director.

3.4 Credit

Company will credit Designer, in its programs, advertising and publicity materials, and other outreach materials or vehicles related to the Work on a separate line as follows:

"Set Designs by _____".

Such credit will be in the same size and prominence of that of the other designers associated with the program.

3.5 Fidelity

Company in performing the Work will execute the Design in all material respects as originally created by Designer. Company will undertake to recreate the Work's scene design at each performance, it being understood that conditions at some venues or equipment malfunction may mean exact recreations are not possible.

3.6 Excerpts

Company may in its discretion perform excerpts from the Work. It will use the same scenery as for full performances except as otherwise approved in advance by Designer.

3.7 Tickets

Company will provide Designer with ___ complimentary tickets to the premiere performance of the Work. Designer may request the tickets by contacting Company no later than two business days before the performance.

4. Photography and Recording

4.1 Digital, Film, or Related Distribution

Except for the limited archival or promotional recordings contemplated by this Section 4, Company may not record and distribute a performance of the Work through digital, television, film, or other media unless Company and Designer first enter into a separate agreement to that effect.

4.2 Archival Recordings

Company may photograph, videotape, or otherwise record rehearsals and performances of the Work for internal archival and study purposes and to assist Company in staging and rehearsing the Work. Company, upon request by Designer, will provide Designer with one copy of the archival recording.

4.3 Use of Photographs and Video Recordings

Company may take and use still photos and video segments of rehearsals and performances of the Work for purposes of promoting the Work or Company. Company may use them in such manner as it may determine, including, without limitation, on its

website, social media, or other digital platforms, in television advertisements, through news media sources, and on merchandise.

4.4 Publicity

Company may create and carry out promotional activities in respect of the Work, including, without limitation, digital, broadcast, and print advertising, as Company may determine in its discretion. Company may use Designer's name, likeness, image, voice, biography, and interviews in such promotional materials and for program, archival, fundraising, and other purposes. Designer will provide Company with a current biography and head shot.

5. Ownership, Transfer, and Originality

5.1 Ownership and License

Designer owns and will own all right, title, and interest, including copyright, in the final Design and related documentation. Designer is licensing the Design to Company; Company has no rights to the design other than the license rights set out in this Agreement.

5.2 No Sale or Transfer of Design

Company will not sell or, except as contemplated by Section 1.6, provide the Design or documents reflecting the Design and Designer's concepts to any third party without first obtaining Designer's approval. Company may use Designer's materials in discussing with other companies a possible sale or lease of the Work as contemplated by Section 5.3.

5.3 Sale or Other Transfer of Scenes

If Company sells or licenses the scenes to a third party, Company will communicate to the other party Company's limited rights to use the Design and the need for the third party to obtain permission from Designer. It is understood that Company will have no liability to Designer for any failure of a third party transferee or licensee of the scenes to obtain permission from Designer as contemplated by this Section 5.3 or otherwise in respect of such third party use of the Design or its scenes generally.

5.4 Original Work; No Conflicts

Designer confirms, represents, and warrants to Company that (a) the Design is original to Designer and does not infringe or otherwise violate the copyright or other intellectual property or other rights of any third party and (b) Designer's execution and performance of this Agreement will not conflict with or result in a breach of any contract by which Designer is bound, including, without limitation, agreements with collaborators or other companies.

6. Relationship

6.1 Cooperation

Company and Designer will cooperate in connection with the production of the Work, including carrying out their respective obligations on a timely basis, keeping each other advised about potential problems, working through health or other scheduling issues, and promptly responding to e-mail, text, and phone messages from one another.

6.2 Independent Contractor

Designer is and will be an independent contractor. Designer will have control and sole responsibility for the planning, management, and implementation of Designer's activities under this Agreement, including, without limitation, selecting and managing Designer's employees and, except as otherwise provided in this Agreement, paying Designer's own expenses.

6.3 Relationship

Nothing in this Agreement creates an employment, partnership, joint venture, fiduciary, or similar relationship between Designer and Company for any purpose. Neither Designer nor

Company has the power or authority to bind or obligate the other to a third party or commitment in any manner.

6.4 Recordkeeping

Company will maintain Company's records in a manner that provides Designer with sufficient detail to confirm performances of the Work by Company and related royalty computations. Company will make such records available for review by Designer on reasonable notice during the term of this Agreement and for a period of three years after its expiration or termination.

6.5 Full Compensation

The payments contemplated by Section 2 will be Designer's sole compensation in respect of all work to be performed under this Agreement and Company's staging of the Work.

6.6 Harassment and Discrimination

In carrying out its obligations under this Agreement, Designer will not harass, discriminate, retaliate, or be abusive toward any Company employee, any designer or other individual retained by Company in connection with the Work, or any other person at Company, including, without limitation, engaging in any verbal, physical, written, or visual harassment, discrimination, or retaliation on the basis of race, religious creed, color, national origin, disability, sex, gender identity, gender expression, age, sexual orientation, or other characteristic protected by law.

6.7 Taxes and Contributions

Designer will have sole responsibility for all tax returns and payments required by any federal, state, or local tax authority, and for paying all disability, unemployment insurance, workers' compensation contributions, and any other contributions and expenses that may be required in connection with Designer's activities under this Agreement. Designer understands that Company will not: (a) withhold income, social security, or Medicare taxes; (b) make unemployment or disability insurance contributions; or (c) obtain workers' compensation or other insurance on Designer's behalf. Designer understands that Company will withhold, from fee and royalty payments under Section 2, taxes, fees, or other amounts as may be required by state, city, or other local law.

6.8 No Entitlement to Employee Benefits

Designer will not be entitled to or eligible for any benefits that Company makes available to Company's employees, including, without limitation, coverage under any Company medical, dental, liability, automobile, or other insurance policies. Designer waives any rights or claims to those benefits.

7. Force Majeure

7.1 Force Majeure

Neither Designer nor Company 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 telecommunications 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.

7.2 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.
- Company and Designer 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.

7.3 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, under Section 9.3.

8. Indemnification and Liability

8.1 Indemnification by Designer

Designer will defend, indemnify, and hold harmless Company, and its directors, officers, employees, agents, and assigns (collectively, "Company Parties"), to the fullest extent under law, from and against all claims, liabilities, losses, damages, and expenses, including, without limitation, attorneys' fees, any Company Party may suffer and which arise from: (a) Designer's performance under or breach of this Agreement; (b) claims by third parties of infringement, misappropriation, or other violations of intellectual property rights arising out of or relating to the Design; or (c) claims by Company employees or any other third parties arising from their interaction(s) with Designer. For clarity, this Section 8.1 provides for indemnity, including payment of attorneys' fees, in respect of both first party and third party claims.

8.2 Indemnification by Company

Company will defend, indemnify, and hold harmless Designer and its directors, officers, employees, agents, and assigns (collectively, "Designer Parties"), to the fullest extent under law, from and against all claims, liabilities, losses, damages, and expenses, including, without limitation, attorneys' fees, any Designer Party may suffer and which arise from death or injuries to persons or physical property relating to Company's use of the Design under this Agreement, it being understood that the intent of this provision is to reflect Company's responsibility for scene use and safety as contemplated by Section 1.7 of this Agreement. For clarity, this Section 8.1 provides for indemnity, including payment of attorneys' fees, in respect of both first party and third party claims.

8.3 Limitation of Liability

Neither Designer nor Company 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. For clarity, this Section 8.1 provides for indemnity, including payment of attorneys' fees, in respect of both first party and third party claims.

9. Termination

9.1 Termination by Designer for Non-Payment of Designer Fee

Designer may terminate this Agreement by giving written notice to Company if Company fails to pay the entire Designer Fee within 15 days after the premiere of the Work. Such a termination will be effective upon delivery of a notice to that effect by Designer to Company.

9.2 Termination for Breach

If either party commits a material breach under this Agreement, the non-breaching party may provide the breaching party with written notice of the breach. If the breaching party fails to cure the breach within 15 days after receipt of such notice, the non-breaching party may terminate this Agreement upon delivery to the breaching party of a written notice to that effect, with the termination effective upon receipt of such notice by the breaching party. The non-breaching party may in its reasonable discretion determine whether the breach has been cured.

9.3 Termination for Force Majeure

Designer and Company may each terminate this Agreement by giving written notice to the other party as provided in Section 7.3. Such termination will be effective upon delivery of the notice by the terminating party.

9.4 Termination by Company for Conduct or Reputational Harm

Company may immediately terminate this Agreement by giving written notice to Designer if (a) Designer has engaged or is alleged to have engaged in conduct in violation of Section 6.5 or (b) based on information about Designer not known to Company at the time this Agreement is signed, Company concludes in its sole discretion that a continued association with Designer is inconsistent with its values or could otherwise adversely affect its reputation. Such a termination will be effective upon delivery of the notice by Company.

10. General Provisions

10.1 Entire Agreement

This Agreement expresses Company's and Designer's 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 Company and Designer relating to its subject matter.

10.2 Amendment

This Agreement may be amended only as described in a written document signed by Company and Designer that refers specifically to this Agreement and says that it is amending this Agreement.

10.3 Severability and Waiver

If any provision in this Agreement is held invalid or unenforceable, the other provisions will remain enforceable, and the invalid or unenforceable provision will be considered modified so that it is valid and enforceable to the maximum extent permitted by law. Waiver of any breach or provision of this Agreement will not be considered a waiver of any separate or later breach of this Agreement.

10.4 Third-Party Beneficiaries

Except as contemplated by Section 8, this Agreement is for the exclusive benefit of Company and Designer, and is not for the benefit of any third party, including, without limitation, any employee or other associate of Designer.

10.5 No Assignment

Company by this Agreement intends to obtain the personal services of Designer. As such, Designer may not assign Designer’s rights or delegate Designer’s duties under this Agreement to anyone else without the prior written consent of Company.

10.6 Governing Law and Jurisdiction

This Agreement is governed by _____ law. Company and Designer consent to the exclusive jurisdiction of the state and federal courts for _____, _____.

10.7 Counterparts

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

* * * * *

Company and Designer signed this Agreement as of the date set out in its first paragraph.

[Company name]

[scene designer name]

By: _____

By: _____

Name: _____

Name: _____

T t e: _____

T t e: _____

Exhibit A
Schedule, Design Timeline, and Contact Information

Schedule

[insert schedule of Production Meetings and rehearsals]

Design timeline

Designer will deliver the designs and participate in rehearsals in accordance with this timeline:

Deliverable	Due Dates
Pre m nary des gns	
F na des gns	
Techn ca rehearsa w th dancers	
[Orchestra rehearsa w th dancers and a techn ca e ements]	
F na dress rehearsa	
Open ng n ght performance	

Contact information

Designer	Account nformat on (for payments):
Company	