

**AGREEMENT** made as of this 21<sup>st</sup> day of March 2011, by and between **UNITED SCENIC ARTISTS, LOCAL 829**, (hereinafter referred to as "Union") for and on behalf of its members, and **NEW YORK CITY BALLET**.

**I. RECOGNITION**

The Employer recognizes the Union as the exclusive bargaining agent for such Employees as are covered by this Agreement subject to the provisions of Section 9(2) of the Labor Management Relations Act of 1947 as amended. The Union makes this agreement on behalf of such employees, the majority of whom have designated the Union as their exclusive bargaining agent for purposes of collective bargaining.

**II. UNION SHOP**

Except as noted below, during the term of this Agreement the Employer will employ in the positions covered by the Agreement, and maintain in its employ in such positions only such persons as are members of the Union in good standing or shall make applications for membership in the Union on or before the thirtieth (30th) day following either the date of hiring; or the date of execution of this Agreement, whichever is later; provided, however, that nothing in this paragraph shall be construed to require the Ballet Company to cease employing or refrain from employing any such person if the Ballet company has reasonable grounds for believing that:

- A. Membership in the Union was not available to him/her on terms and conditions generally applicable to other members, or
- B. Membership in the Union was denied or terminated for reasons other than his/her failure to render the periodic dues and the initiation fees uniformly required by the Union as a condition of acquiring or retaining membership.

**III. MINIMUM RATES**

A. The terms and conditions set forth in this Agreement are minimum terms and conditions and nothing in the Agreement shall preclude an employee from negotiating and receiving better terms and conditions than are provided herein.

B. In its exercise of the right to manage its enterprise, the Employer may come to agreement with an employee on additional terms or conditions, provided that such additional terms and conditions in no way lessen or are inferior to the terms of this Agreement.

C. Any and all additional terms or conditions shall be set forth in a rider to the employee's "individual agreement," which "individual agreement" is provided for in Article X of this Agreement.

Effective July 1, 2010, and each year of this Agreement thereafter, Designers in all categories employed by the Ballet Companies shall be paid not less than the following rates:

(All Minimum Rates and Royalties, and all Pension and Welfare contributions {Section IV. Page 5.}, are retroactive to July 1, 2010 and are effective upon the signing of this agreement.)

	<b>7-1-2009 to 6-30-2010 (extention)</b>	<b>7-1-2010 to 6-30-2011 (0% increase)</b>	<b>7-1-2011 to 6-30-2012 (2% increase)</b>	<b>7-1-2012 to 6-30-2013 (0% increase)</b>
<b>A. Scenic Design</b>				
1. 1 <sup>st</sup> Set	\$7879.00	\$7879.00	\$8037.00	\$8037.00
2 <sup>nd</sup> Set	\$2317.00	\$2317.00	\$2363.00	\$2363.00
3 <sup>rd</sup> thru 6 <sup>th</sup> Set	\$1735.00 ea.	\$1735.00ea.	\$1770.00ea.	\$1770.00ea.
Thereafter	\$1735.00 ea.	\$1735.00ea	\$1770.00ea	\$1770.00ea.
2. Unit Set	\$7886.00	\$7886.00	\$8044.00	\$8044.00
Next 9 Phases	\$1735.00 ea.	\$1735.00ea.	\$1770.00ea	\$1770.00ea
Thereafter	\$ 966.00 ea.	\$ 966.00 ea.	\$ 985.00ea.	\$ 985.00ea
<b>B. Costume Design</b>				
1-3	\$3708.00 min.	\$3708.00 min.	\$3782.00	\$3782.00
4-10	\$ 250.00 ea. (max. \$1000)	\$ 250.00 ea. (max. \$1000)	\$ 255.00 ea. (max. \$1020)	\$ 255.00 ea. (max. \$1020)
11-25	\$ 285.00 ea.	\$ 285.00 ea.	\$ 291.00ea	\$ 291.00ea
26-50	\$ 191.00 ea.	\$ 191.00 ea.	\$ 195.00ea	\$ 195.00ea
51-plus	\$ 156.00 ea.	\$ 156.00 ea.	\$ 159.00ea	\$ 159.00ea
Repeats	\$ 85.00 ea.	\$ 85.00 ea.	\$ 87.00	\$ 87.00ea
<b>C. Lighting Design</b>				
1. a) Full Length Ballet	\$6369.00	\$6369.00	\$6496.00	\$6496.00
b) More than 1/3 but less than full	\$4243.00	\$4243.00	\$4328.00	\$4328.00
c) 1/3 of an Evening	\$2214.00	\$2214.00	\$2258.00	\$2258.00
2. Classical Pas de Deux and Pas des Trois	\$1451.00	\$1451.00	\$1480.00	\$1480.00

The classical Pas des Deux and Pas des Trois lighting rates shall apply for cases where no more than three dancers are used, where no scenery other than the Company's basic setup of sky drops and/or velours is used, where the choreography is either a restaging of older choreography or new choreography to existing music from the classical repertory such as the Sylvia pas des deux from Delibes Sylvia or Tchaikovsky pas des deux to music from Swan Lake. Where pas des deux or pas des trois rates apply, no royalty fee shall be paid.

1. **Unit Set** (Full length) - the applicable rate or 1/2 of Scenic Design fee, whichever is higher.
2. **Bare Stage** (more than 1/3 less than full) - 25% higher than the applicable rate set forth in subparagraph above. If a repertory set-up is necessary, a contract shall be negotiated with the Union.

D. Projection Design				
1. a) Full Length Ballet	\$7091.00	\$7091.00	\$7233.00	\$7233.00
b) More than 1/3 but less than full	\$4751.00	\$4751.00	\$4846.00	\$4846.00
c) 1/3 of an Evening	\$2471.00ea.	\$2471.00ea.	\$2520.00ea.	\$2520.00ea

**E. Assistants Scenic, Costume, Lighting or Projection Designers (per week) all categories:**

<b>7-1-2009 to 6-30-2010 (0% increase)</b>	<b>7-1-2010 to 6-30-2011 (0% increase)</b>	<b>7-1-2011 to 6-30-2012 (2% increase)</b>	<b>7-1-2012 to 6-30-2013 (2%increase)</b>
\$1006.00	\$ 1006.00	\$ 1026.00	\$1047.00

If an Assistant is engaged for less than a full week (five work days) he/she will be paid at a daily rate of 1/5 the weekly.

Assistants shall be engaged by the Company or its Authorized Representative at the request of the Designer, subject to the approval of the Company, which approval shall not be unreasonably withheld.

**F. Workshop Productions**

Where there is design work required to provide scenery, costumes, lighting and/or projections for in-house workshops there will be a good faith effort to negotiate compensation to the designers involved. Additionally, Pension & Welfare payments will be made on the gross sum. Should a workshop piece enter the repertory there shall be full union contracts filed at full fees.

**G. Daily Rate**

<u>7-1-2009 to 6-30-2010 (0% increase)</u>	<u>7-1-2010 to 6-30-2011 (0% increase)</u>	<u>7-1-2011 to 6-30-2012 (2% increase)</u>	<u>7-1-2012 to 6-30-2013 (0% increase)</u>
\$ 383.00	\$ 383.00	\$ 390.66	\$ 390.66

If the original scenery, costumes lighting or projections are subsequently used by the Company and additional work is required of the Designer to make the scenery, costumes lighting or projections available for such subsequent use, the Designer shall receive a daily payment as listed above for such work. Prior to the commencement of such work, the Designer and Company shall agree upon the number of days required to perform the work.

#### H. **Royalty**

Designer royalties shall be paid for original designs created specifically for the company on or after July 1, 1978, for subsequent use in the repertory by that Company but only on the following conditions:

1. During the year in which a new ballet is premiered, no royalties shall be due designers.
  - a. With respect to any new ballet that has a first public performance on or before June 30, 2012, for subsequent years in which the ballet is performed, royalties shall be paid on September 1 of the following year up to a cap of five (5) years consecutive or non-consecutive as determined by the repertory programming. A year is defined in this agreement as July 1st to June 30th of the following year.
  - b. With respect to any new ballet that has a first public performance on or after July 1, 2012, for each and every subsequent year in which the ballet is performed, royalties shall be paid on September 1 of the following year. A year is defined in this agreement as July 1<sup>st</sup> to June 30<sup>th</sup> of the following year.
2. With respect to individual agreements executed between July 1, 1990 through June 30, 1991, the royalty shall be 8% of the minimum fee set forth in this Agreement with a maximum of \$750.00 per individual designer in any given year up to five years of royalty payments whereupon no further royalty payments shall be due.
3. With respect to individual agreements executed between July 1, 1991 through June 30, 1992, the royalty shall be 9% of the minimum fee set forth in this Agreement with a maximum of \$850.00 per individual designer in any given year up to five years of royalty payments whereupon no further royalty payments shall be due.
4. With respect to individual agreements executed after July 1, 1992 the royalty shall be 10% of the minimum fee set forth in this Agreement with a maximum of \$1,000.00 per individual designer in any given year up to five years of royalty payments whereupon no further royalty payments shall be due.
5. Only one royalty payment shall be due per theatrical year (Labor Day to Labor Day) regardless of the number of times the particular ballet may be performed by the Company during said year.
6. Notwithstanding the above, no royalty shall be due to a supervisory Designer. Nor shall any royalty be due for a lighting design for a pas des deux or a pas des trois, meeting the criteria of Section III.C.2 hereof.

#### IV. **PENSION AND WELFARE**

In order to provide certain pension and welfare benefits to persons employed under this Agreement, the Employer shall make benefits contributions on behalf of each and every person employed hereunder in an aggregate amount of sixteen and one-half percent (16½ %) of each employee's gross wages (17 ½ % effective July 1, 2011, 18 ½% effective July 1, 2012).

To provide pension benefits, six percent (6%) of the aggregate amount shall be apportioned to the United Scenic Artists Pension Fund (6 ½ % effective July 1, 2011, 7 ½% effective July 1, 2012). To provide welfare benefits, ten and one-half percent (10½ %) shall be apportioned to the United Scenic Artists Welfare Fund (11% effective July 1, 2011).

Except as may be otherwise provided for in this Agreement, the Employer shall remit the aggregate amount of sixteen and one-half percent (16½ %) in a single check made payable to the United Scenic Artists Pension and Welfare Funds (17 ½% effective July 1, 2011, 18 ½% effective July 1, 2012).

Said rate of contribution shall be effective for all productions having a first, public performance on or after July 1, 2010.

#### V. **TRAVEL**

Designers and Assistant Designers required to travel out-of-town for the company will be provided with transportation, hotel rooms and per diems at least as good as those provided for the company's dancers.

#### VI. **CREDITS**

The designers shall receive billing in the performance program, on the page with the title of the work they designed, on the same line and in the customary order of the company's program format. No other credits shall appear on that line.

#### VII. **CONTRACT PROCEDURE**

- A. All individual agreements must be signed and filed in triplicate with the Union for approval after the Company and the Designer have executed same. The Designer shall refrain from commencing any work whatsoever until said agreement has been approved in writing by the Union. No agreement between a Designer and the Company shall become binding or effective for any purpose nor shall the Designer be bound or liable thereunder until the said agreement has been so approved in writing by the Union. This paragraph shall apply only to persons who are members of the Union at the time of the execution of the individual agreement.

It is recognized that the standard practice of preliminary discussions between a Designer and a Company prior to employment relating to the possibility of employment do not constitute a violation of this Agreement.

The applicable Pension and Welfare payment, made payable to "United Scenic Artists, Pension and Welfare Funds" shall accompany each contract before any such contract will be approved by the Union.

- B. In the event the Designer is not a member of the Union and has applied for membership therein, the Union (1) will not withhold approval of the agreement on the grounds of said Designer's non-membership, (2) will approve the agreement where the provisions of this Agreement are adhered to, and (3) will be deemed to have approved the agreement unless the Producer receives written notice to the contrary within ten (10) days after the filing thereof.

#### VIII. **ALTERATIONS OF DESIGNS**

A. Exception emergency circumstances or as set forth in this Agreement, the Company or its Authorized Representative shall not alter or permit anyone to alter or make substitution for the settings, properties, costumes, lighting plots or lighting cues or the projections after the official New York Opening without the Designer's consent.

B. "Emergency" circumstances shall be defined as one in which there has been irreparable damage to, or loss of, any materials which materials are to be replaced as soon as reasonably practicable. It shall further be defined as one in which one dancer has been substituted for a dancer for whom a costume was fitted at such time that is impossible to make appropriate alterations in the original costume.

C. Staff designers may alter designs as required by circumstances like galas and tours. Any such work does not constitute a new design.

#### **IX. IMPORTATION**

A. Importation, whether domestic or foreign, of scenery or scenic designs, lighting or lighting designs, or costumes or costume designs, projections or projection designs shall be permitted.

B. If the right of importation is exercised by the Company, but the production is not already being designed by a member of United Scenic Artists Local 829, the Company agrees to employ a Supervisory Designer at not less than the defined rate.

#### **X. SUPERVISORY DESIGNER**

A. It is the policy and practice of the Company to hire only Designers who possess professional quality in the respective design categories. The company will hire a Supervisory Designer who possesses professional quality in a specific design category, when the Artistic Director of the Company has chosen an Artist for any design assignment who is not a member of USA Local 829, but whose unique artistic perspective in the opinion of the Company's Artistic Director, will bring the necessary collaborative elements to the production. When Supervisory Designers are employed, they shall receive billing as such. The rate of the Supervisory Designer shall be negotiated at the time of engagement, but in no event shall the fee be less than 1/2 of the minimum fee otherwise applicable.

B. The Companies will utilize only professionals to execute all designs and to engage in all major maintenance and touch-up of designs.

C. It is not the intent of this clause to limit the range of the Company's artistic creativity with respect to designs or their execution or maintenance.

#### **XI. NOTICE OF SEASON:**

The Company or its Authorized Representative shall file with the Union not less than thirty (30) days prior to the opening of each New York Season a list of all new productions and revivals to be produced during said Season, provided the identity and structure of the Ballets are known at that time. If such identities and structure are not known at that time, notice shall be given as soon as reasonably practicable.

## **XII. UNION CONTRACTS**

- A. Union Lighting Design contracts must be filed for all new Ballets of any kind or size.
- B. Union Set Design contracts must be filed for all productions other than “bare stage productions.”
- C. Union Costume Design Contracts must be filed for all productions other than “no costume productions”.
- D. Union Projection Design Contracts must be filed for any production where the Company credits a Projection Designer in the performance program.
- E. Definitions
  - 1. “Bare stage production” shall be defined as the use of a plain cyc. borders, and/or legs only.
  - 2. “No costume production” shall be defined as the use of leotards and tee shirts of stock colors only, provided only one color (or black and white) is used for any performance.

## **XIII. OWNERSHIP AND REUSE OF DESIGNS.**

A. It is agreed that the designs and concepts of designs of scenery, costumes lighting and projection plots are and remain the property of the Designer. The Company shall not have the right to assign, sell, lease, license or give any such design or concept to any other production company without first negotiating with the designer for such use. Such negotiation shall result in a supplementary contract with the Designer, which contract must be filed with and approved by the Union. In no event shall the agreed-upon fee to be paid to the Designer be less than one-half (1/2) of the original contract fee. It is the intent and essence of this paragraph that the actual, physical scenery, costumes, lighting plot and/or projections be considered the design and design concept, and as such, no subsequent use of such scenery, costumes, lighting plots or projections is permitted without compliance hereto. This paragraph shall not apply to television which shall be covered separately in paragraph XIV.

B. Proactively from July 1, 2005, New York City Ballet shall have the exclusive rights to the use of the original designs created for the Company by a person employed under this Agreement, for a period of five (5) years from the date of the first public performance of the production that uses the design(s). If within the five-year period of the Company’s exclusive rights, the company should permit the choreographer of the production to reproduce the choreography for another producer, the Designer(s) shall also be permitted to recreate his/her (their) designs on a “favored nations” basis with the choreographer. The foregoing “favored nations” provision shall not apply to new designs created for the choreography of deceased choreographers; however, under no condition, shall the Company’s exclusivity for such new designs obtain for longer than five (5) years from the first public performance of a production that uses the new designs.

## **XIV. TELEVISION.**

A. Where the designs in this Agreement and/or any setting or parts of settings, costume or part of costumes, projection or part of projections, or lighting are used for reproduction for television broadcasting (whether live, filmed or any other process) the Company shall pay to the Union on behalf of the Designer the following in full consideration for such use:

1. For any single use in any closed-circuit television or subscription television (whether by closed-circuit or air broadcast) the amount of the Designer's fee for those designs actually used shall be negotiated on a case-by-case basis; in commercial (free air broadcast) television, fifty (50%) percent of the Designer's original design rate for those designs actually used; and in non-commercial (free air broadcast, such as PBS), thirty-five (35%) percent of the Designer's original design rate for those designs actually used.

2. In the event that an 'excerpt' is used in commercial (free 'air-broadcast') or non-commercial (free 'air-broadcast', such as PBS) television, the amount of the Designer's fee shall be equal to one-half (1/2) of the amount provided in the preceding sentence for "those designs actually used." For the purposes of this paragraph, 'excerpt' is herein defined as any single 'clip' of continuous action that is not longer than five (5) minutes. In no event, shall a single 'excerpt' represent more than one-half (1/2) of the actual running time of the complete ballet work.

3. The television rights granted under this provision are limited to a single broadcast and no rights are granted beyond this initial broadcast (except for PBS when the broadcast rights shall be limited to one week following the initial broadcast and except for the Dance in American series on PBS when the broadcast rights shall permit broadcasts within a one-week period in each of three years following the initial broadcast) nor is any right granted herein to reproduce said television broadcast or showing by means of film, electronic tape or other means, except upon written agreement with the Designer and upon payment of the moneys for each broadcast as provided herein. If used for promotional purposes and no one connected with the production is paid (other than dancers at the applicable dancers' union minimum), no payment shall be made to the Designer.

B. When the Company pays the staff Lighting and Costume designers a 'buy out' royalty for use on television, the Company shall also pay its Assistant Lighting Designer a 'buy out' royalty, which shall be equal to the amount paid to the Assistant Stage Manager.

## XV. LIABILITY

A. Designer and Assistants are responsible for the visual aspects of the production only, and it is understood that most specifications relate solely to the appearance of the setting, costumes lighting and/or projections and not to matters of safety. The Designers agree to make prompt correcting alterations at any time during the use of the production to any specification found to be incompatible with proper safety precautions whether for appearance or for structural reasons.

B. The Company will indemnify and hold harmless the Designer, Assistants, their heirs, executors, administrators from and against all losses, liabilities, claims or demands whatsoever, including, without limitation, all reasonable costs and expenses related thereto, whether resulting from injuries and/or damage to persons or property or loss of use occasioned by any act or omission, except to the extent that any such claims may be occasioned by the willfully negligent act of the Designer and Assistants, their employees or agents.

C. **Insurance**  
The Company agrees to carry comprehensive general liability insurance applicable to any

claims that might arise due to any work performed under this contract. The Designers and the Union are to be provided with the details of such insurance.

**XVI. ARBITRATION.**

A. In the event that a grievance, controversy, complaint or any dispute of any nature arising from the application of any of the terms and conditions of this Agreement cannot be settled by representatives of the Union and the Ballet company, the matter shall be submitted to an arbitrator. If the parties cannot agree on an arbitrator within three (3) days, the American Arbitration Association shall submit a list of arbitrators to the parties pursuant to the then applicable rules of the Association for Voluntary Labor Arbitration. The essence and spirit of this paragraph is to provide for expeditious arbitration. It is understood that an arbitratable dispute may arise at such time that the Ballet Company is on tour. In that event, the arbitration hearing shall be conducted as soon as possible after the Company has returned to New York City.

B. The decision of the arbitrator(s) shall be final and binding on all parties and shall be fully enforceable. The arbitrator(s) shall not have the power to amend, modify, alter or subtract from this Agreement. The arbitration shall be conducted in accordance with the Voluntary Labor Arbitration rules of the American Arbitration Association.

XVII. **TERM.** The terms and conditions of this Agreement shall be in full force and effect from July 1, 2010 until June 30, 2013.

XVIII. **ALTERATIONS.**  
No part or provision of this Agreement may be altered, changed, modified or amended in any way without the express written, and signed consent of the party against whom the change, alteration, modification or amendment is sought.

**ACCEPTED:**

**ACCEPTED:**

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

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

*For United Scenic Artists Local 829, Cecilia A. Friederichs*

*For New York City Ballet, Brooks Parsons*

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

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