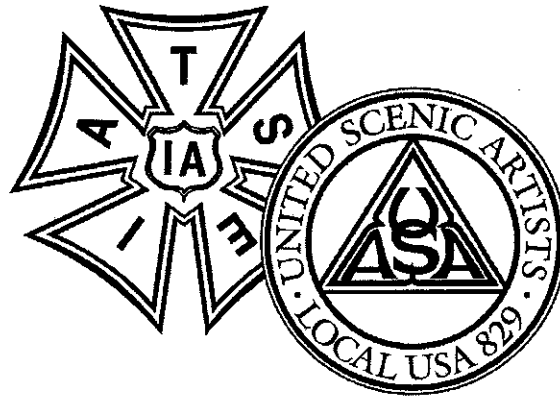


# Agreement between

**United Scenic Artists  
Local USA 829, I.A.T.S.E.**



and

**The San Francisco Opera Association**

**2008-2012**

# THE AGREEMENT

## I. SCOPE AND JURISDICTION

- A. The Scope of this Agreement applies to persons who are employed by the San Francisco Opera Association (Association) to perform work covered under this Agreement including but not limited to Scenic Designers, Lighting Designers, Costume Designers, Projection Designers, and Sound Designers, and all categories of Studio Assistants (Designers); represented by United Scenic Artists, Local USA 829, IATSE (Union) as their sole collective bargaining agent. The Agreement does not cover the Staff Designers or Assistant Designers or the support staff of the Association, nor does it extend to young artist, educational or outreach programs, or to affiliates of the Association.
- B. The Scope of the work covered under this Agreement includes work done for live theatrical events, still photography, television broadcasts, and still and motion picture images intended for viewing on a television, video, web-cast, pod-cast, or any other kind of viewing screen including images created on film, video tape or by any other mechanical, electronic, magnetic or digital means.

## II. RECOGNITION AND UNION WARRANTY

Association recognizes the Union as the exclusive collective bargaining agent for the Designers and their Assistants subject to the provisions of Section 9(a) of the Labor Management Relations Act of 1947, as amended. The Union warrants that it represents and will continue to represent during the term of this Agreement for collective bargaining purposes, a majority of the individuals in the bargaining unit described herein.

## III. UNION MEMBERSHIP

- A. During the term of this Agreement, except where noted below or where restricted by state law, the Association will employ only such persons who are members in good standing of the Union when hiring positions covered by this Agreement.
- B. Designers who are not members of the Union will, on designing a 3rd covered production, be required to make application for Union membership. Said application shall be made on or before the 30<sup>th</sup> day following the date of hire.
- C. In each and every Association production season that is covered under this Agreement, certain design positions, but no more than 25% of the total, may be excluded from coverage hereunder. Prior to the beginning of each season, the Employer will notify the Union of the production schedule and the number of the design positions that will be excluded from coverage hereunder. The Union's agreement with respect to the Employer's choice of excluded positions shall not be unreasonably withheld. The Union may request a meeting with the Employer to discuss how the determination was made. This provision shall not apply to members in current good standing with the Union, or to circumvent a lapsed member's financial obligation to the Union. Design positions assigned to full-time staff of the Association shall be excluded from coverage regardless of the individual's standing with the Union. .
- D. The above provisions shall govern provided:
  - 1. Nothing in this Agreement shall be construed to require the Association to cease employing or refrain from employing any person if the Association 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 is denied or terminated for reason other than his/her failure to tender the periodic dues and initiation fees uniformly required by the Union as a condition of acquiring or retaining membership.

#### **IV. NON-DISCRIMINATION**

- A. No covered employee shall be dismissed or otherwise penalized by the Association for fulfilling his/her obligations to United Scenic Artists, Local USA-829, International Alliance of Theatrical Stage Employees
- B. Neither the Union nor the Association will intentionally discriminate against anyone because of his/her age, race, creed, sex, color, nationality, disability, or sexual orientation. Work described in this Agreement will not be used in any venue where discrimination is practiced against artists or patrons in any manner.

#### **V. GENERAL PROVISIONS**

- A. The Designer shall provide, as agreed upon by the Association and the Designer, and according to the schedule specified in the *Cover Sheet* and Rider, visual presentations, specifications, selections, and/or approvals, and consultation customary for the execution of designs.
- B. The Association will provide, on a timely basis, all necessary theater dimensions, production schedules, and/or other information required by the Designer(s) to fulfill his/her obligations to the production.
- C. It is expected that the Designer will act in a professional manner and make every effort to prepare themselves, including but not limited to, meeting and planning with the other Designers and other members of the creative team.
- D. The Association shall inform the Designer of appropriate pre-production conferences connected with the production, and the Designer shall, at the request of the Association, attend such conferences and coordinate their work with that of all members of the creative team and representatives of the Association.
- E. The Association will provide the Designer with the production budget and it is the responsibility of the Designer to make every effort to adhere to that budget.
- F. The Designer shall be responsible for the completion and delivery to the Association of all designs and design specifications. The Association reserves the right, during the design process, to supervise the modification of the design for budget and practicality of repertory requirements.
- G. A reasonable design period of not less than four (4) weeks is necessary prior to submission of the design for bid or beginning construction. Additional consideration for Assistants and/or fees will be provided if this period is unreasonably compressed.
- H. The Designer shall not be required to perform the work of the production staff.
- I. The Association agrees to engage adequate quality personnel for the proper realization, installation, running and maintenance of the Production.

- J.** The Association shall assume the responsibility to secure all necessary copyright, publishing and mechanical clearances required for Association requested materials used in the production. This shall include materials required by the Director and/or the Author/s. Should the Designer choose to include any design materials not required by the Association but that require copyright, publishing or mechanical clearances, it will be the Designer's responsibility to secure those rights. Should either the Designer or the Association be unable to obtain the necessary rights, the Designer will make the necessary changes to the design required by the Association. The Designer may request assistance from the Association where clearances might be granted to the Association that would not be granted to an individual.
- K.** All uses of the design, subsequent to the production detailed in the Cover Sheet shall be according to the terms of the Subsequent Use Addendum of this Agreement. Designer shall be offered the first opportunity to render Design Services for any future remounting or revivals of this production, produced by the Association or its licensee(s) subject to the then current United Scenic Artists rates and conditions

## **VI. DUTIES OF THE DESIGNER**

- A. The Scenic Designer** shall design the setting and render the following services, if required, and agrees:
1. To complete sketches or sketch model(s) of the settings as necessary.
  2. To supply working drawings, specifications for construction and color schemes or sketches as needed by the date specified in the contract Rider.
  3. To design, select or approve properties required for the production, including draperies and furniture.
  4. To supply specifications for competitive bids for scenery or properties.
  5. To attend appropriate rehearsals of the Production and to coordinate the scenic rehearsals when needed.
  6. To design and/or coordinate special scenic effects for the production, including but not limited to slides and projections.
- B. The Costume Designer** shall design or coordinate the costumes and render the following services if required, and agrees:
1. To provide a costume plot and complete sketches or representations necessary for execution of costumes and to design, select or approve all accessories.
  2. To supply color schemes/sketches or outline sketches with examples of materials for each costume including ornaments and detail.
  3. To design, select or coordinate all contemporary costumes, including selections from the performer's personal wardrobe when necessary.
  4. Select appropriate costumes from stock, rental or other resources and coordinate their adaptation for the production.
  5. To supply specifications for competitive bids for costumes, wigs and accessories.
  6. To supply specifications for the shop to make, sew, construct/and or paint costumes and costume accessories.
  7. To oversee the fittings and attend appropriate rehearsals.
  8. To approve hairstyles and/or select of wigs, hairpieces, mustaches, beards, prosthetics and special make-up.
  9. To attend the rehearsals as necessary to design the production.

**C. The Lighting Designer** shall design the lighting and render the following services, if required, and agrees:

1. To provide full lighting equipment lists and a light plot drawn to scale from Scenic Design and theatre drawings provided by Association.
2. To provide color, hook-up plots and instrument schedule including all information required for the realization of the design.
3. To coordinate and plot special lighting effects.
4. To supply specifications for competitive bids for lighting and special effects equipment,
5. To oversee focusing of the lighting equipment and setting of lighting cues.
6. To attend the rehearsals as necessary to design the production and to conduct the lighting rehearsals.

**D. The Sound Designer** shall design the sound and render the following services, if required, and agrees:

1. To provide all designs for pre-recorded music and or sound effects and enhancement of "live" voices, musical instruments and sound elements,
2. To provide technical drawings and specifications as required for the production.
3. To design a sound delivery system that will properly execute the needs of the production.
4. To attend the dress rehearsals and coordinate the sound rehearsals therefore.
5. To supply specifications for competitive bids for sound equipment and studio time from suppliers mutually satisfactory to the Company and the Sound Designer.
6. To coordinate the installation of the sound delivery system and the setting of the sound cues.

**E. The Projection Designer** shall design the projections and render the following services, if required, and agrees:

1. To provide all design and design consultation for projections and/or visual effects To provide technical drawings and specifications as required for the production.
2. To design a visual effects delivery system that will properly execute the needs of the production.
3. To attend the dress rehearsals and coordinate the visual effects rehearsal therefore.
4. To supply specifications for competitive bids for projection equipment.
5. To coordinate the installation of the visual effects delivery system and the setting of the cues.
6. Subject to designer's schedule restraints, participate in a revival or rental of a production he/she has designed if requested by the using company.

**F. Studio Assistants:**

1. The work of the Studio Assistant is to support the Designer in the work of the Designer.
2. Studio Assistants to the Scenic, Costume, Lighting, Sound or Projection Designer shall be engaged by the Association at the request of the Designer subject to the approval of the Association. Such approval shall not be unreasonably withheld. Said Assistants' terms and conditions of employment shall be governed by Article XVI of this Agreement.

## VII. COMPENSATION & PAYMENT SCHEDULE

### A. INDIVIDUAL DESIGNER'S AGREEMENT (*Cover Sheet*)

1. A *Cover Sheet*, provided by the Union, shall be promptly signed in triplicate by Association and the Designer, each time and as soon as a Designer is engaged. If the *Cover Sheet* is not signed concurrently, Association shall sign first. The Designer shall not be required to furnish designs until Association has executed and the Union has approved said *Cover Sheet*. The Association shall submit the *Cover Sheet*, accompanied by a Pension and Welfare contribution check for the first third of the Designer's fee, to the Union, within 15 business days of receipt of a signed copy from the Designer.
2. The Association and the Designer shall agree on the compensation to be paid for each design project or service provided, and such compensation shall be stated in the *Cover Sheet*. A fee for each venue must be specified for "Co-productions".
3. The Association and the Designer shall agree upon a scheduled termination date, on or before the official opening, which date shall be specified in the *Cover Sheet*.
4. No Designers' services shall be required beyond the contracted termination date specified in the *Cover Sheet*.
5. Better terms and conditions, schedules and budget requirements specific to the production shall be placed in a Rider to the *Cover Sheet* and shall be deemed a part thereof. Anything in the rider, which in any way contradicts or contravenes this Agreement, which is applicable to the work performed pursuant to or in conjunction with the Rider is null, void, and nugatory.

### B. PAYMENT SCHEDULE

1. The Association shall pay the agreed upon compensation to the Designer(s) directly according to the following schedule:
  - a) ONE-THIRD (1/3) upon the signing of the *Cover Sheet* by the Designer.
  - b) ONE-THIRD (1/3) on the date that drawings, sketches, and/or specifications are accepted by the Association.
  - c) ONE-THIRD (1/3) upon the specified termination date, but no later than Opening Night.

### C. ADDITIONAL WORK

1. For any major Association-requested changes or additions to scenery, costumes, and/or projections during the construction period, the Association agrees to negotiate, in good faith, and agree upon additional compensation.
2. If any major changes in sets, costumes, lighting, projections, and/or sound are required after the official opening, because of changes related to staff, cast, Association request or theatre, such services shall be compensated at a Daily Rate to be agreed upon by the theatre and the designer.

### D. COMPENSATION

1. The fees listed in the Agreement are minimums and the parties may agree on better terms or compensation, but may not agree to less than the rates contained herein. The parties agree that the fee is based on one venue.
2. If the Association requires a full working color model, it is agreed that the Scenic Designer will be compensated as negotiated.
3. Sound studio costs, if any, shall not be considered part of the fee.
4. Compensation for subsequent use of the Design is governed by the "Subsequent Use Addendum" of this Agreement

## VIII. ROYALTY & REUSE

- A. Designer royalties shall be paid for use of the design in subsequent seasons. During the year in which a new work is premiered, no royalties shall be due.
- B. The royalty fee shall be no less than five per cent (5%) of the original fee.
- C. Only one royalty payment shall be due per fiscal year (currently August 1 to July 31) regardless of the number of times the particular work may be performed by the Association during said year.
- D. For subsequent years in which a work is performed, royalties shall be paid on or before the final performance of the particular production in the season schedule.
- E. Pension, Welfare and Annuity contributions are due on all royalty payments and shall be at the rate current in the performance year.

## IX. REIMBURSIBLE EXPENSES

- A. Association shall reimburse the Designer for expenses incurred directly related to the production including, but not limited to, the following: art and drafting materials, supplies for model building, sound studio expenses, and projection materials , research materials, telephone, fax, postage, shipping, and copying.
- B. The Association agrees to make funds or forms of credit available, in advance, for production related expenditures as agreed and within the agreed budget.. All cash expenditures will be accounted for to the Association in the form of receipts or other proofs of purchase, submitted to the Association no later than thirty (30) days after the official opening of the production. The Designer shall be reimbursed by Association for receipted expenses within fifteen (15) business days of submission.
- C. The Association agrees to reimburse the Designer(s) and/or the Studio Assistants as agreed and approved for all out-of-pocket expenses for local transportation when required for the purchase, coordination or assembly of items related to the production. It is understood that the Association, when practical, will supply these funds in advance or arrange for the transportation.
- D. Receipted reimbursed expenses shall not be considered income to the Designer, nor reported as income for tax purposes.

## X. CO-PRODUCTION

- A. Productions that are produced and financed jointly by two or more Companies to be presented in more than one venue, identified at the time of contract signing shall be considered "Co-Productions". All producers, performance venues, and performance dates or tentative dates, must be made known to the Designer and specified in writing as part of the coversheet.
- B. Where Association is the "Lead Producer" the Association will use it best efforts to reach agreement with the other Co-Producers to compensate Designer(s) as follows:
  - 1. Be compensated at no less than one hundred fifty per cent (150%) of the listed fee if there are two Co-Producers.
  - 2. For each additional Co-Producer named in the Rider, (with dates of performance), before signing of the *Cover Sheet* for the primary venue, the Designer's fee will increase by no less than forty percent (40%) of the fee for the first venue.
- C. If the Association is unable to reach such an agreement with the other co-producers, each co-producer will be required to negotiate separately with each designer.

- D. The reduction in fees after the first venue in co-productions assumes a license fee with no additional work. If, after the first public performance, any additional work is required at the first venue or to accommodate any subsequent venue, the Designer and or the Studio Assistant shall be offered the opportunity to perform such work and shall be paid the Daily Rate for each day worked.
- E. The Association shall make best efforts to include in it's co-production agreements the requirement that: If the Designer's presence is required at a subsequent venue to attend: rehearsals, load-in, technical-rehearsals or previews, he/she shall be compensated, at the Daily Rate, for each day worked including travel days.
- F. Co-production rates and conditions shall not apply to Lighting Designers. A separate lighting design agreement is issued for each new venue.
- G. A revival by any of the co-producing companies after the original season shall be compensated at no less than 5% of the original fee. Additional work will be compensated at the then current daily rate with appropriate Pension Welfare and Annuity contribution.
- H. Presentations by any company not a co-producer shall be deemed a rental.
- I. If the Association wishes to commission "design development" to create a design concept (including but not limited to sketches, designs, models, etc.) to attract co-producers, the parties may sign a "Letter of Intent" outlining fee structure and conditions. Depending on the scope of the presentation, the Designer will negotiate the fee in good faith, but in no case shall the non-refundable fee be less than 50% of the minimum listed in the Rate Sheet.

## **XI. PROPERTY RIGHTS & SUBSEQUENT USE**

- A. All rights in and to the design as conceived by the Designer in the course of his/her services hereunder shall be, upon its creation, and will remain, the sole and exclusive property of the Designer. The Association or its licensee(s) shall not use the designs for the scenery, the scenery as a whole, the designs for the costumes, the complete set of costumes, the design for the lighting, the design for the sound, or the sound tapes, discs or other sound media in any live stage production or electronic reproduction of the opera without additional compensation to the Designer/s. Compensation for additional use or license of the design by Association shall be subject to additional agreement between Association and the Designer/s.
- B. Association shall notify in advance, , the Designer and the Union of its intention to revive, extend, move, or tour the production, or its intention to transfer the production to another Association. The Association will supply the production schedule and dates of Performance.
- C. Terms and conditions for subsequent use will be negotiated according to the Subsequent Use Addendum to this Agreement.
- D. Beginning with the Designer being publicly announced for a production and continuing throughout the season, Employer shall not make changes in the production which constitute substantial visual changes in that production without the written consent and approval of the Designer or his or her authorized representative. Reasonable attempts to contact the Designer shall be documented to the Union.

Thereafter, should Employer wish to make changes in a production, it will prior to making any substantial visual changes, contact the original Designer and discuss the proposed changes with him/her. Designer shall not unreasonably withhold consent for such changes. Employer nevertheless has the right to make said changes and the Designer, in this case, has the right to have his/her name removed from any credits

**E.** If requested, all original drawings, renderings, models, paint elevations, elevations, and other specifications shall be returned to the Designer no later than thirty (30) days following the final public performance of the production in the season for which it was created. The Association shall have the right to retain copies of all of the foregoing. Design materials retained by Association may be used by Association for its promotional and public relations purposes, which are understood to include community, promotional, and similar non-commercial purposes.

**F. ARCHIVAL AND PROMOTIONAL RECORDING**

1. Where any part of the scenery, costumes, lighting and/or sound, or the design for same, are broadcast or recorded during rehearsal or performance by any means, or for use as a television or internet broadcast spot, commercial, educational, or promotional program about the production, and where the recorded segment is no longer than fifteen (15) minutes of air time, no additional compensation shall be due to the Designer.
2. For archival purposes of Theatre or other official library theatrical archive, Association shall have the right to make a film, videotape, or make other visual record of the final dress rehearsal or of performances. Such record shall be labeled "for archival use only".
3. The Association shall not release any part of any promotional or archival recording, for any third party use without the written consent of the Designers. Release of Archival material by Association shall be governed by the Media Program provisions of this Agreement.

**XII. POSTPONEMENT AND ABANDONMENT**

- A.** If the opening date is postponed, payments shall be made with the same force and effect as if the production had been carried out and opened on the originally named date so long as the Designer shall have completed the necessary working drawings and color sketches or plots (sets, costumes, lighting and sound).
- B.** If the opening is postponed for four (4) weeks or more, the Designer shall perform the remaining services only so far as the Designer's other contractual commitments permit. The Designer may, in this case, approve an Associate Designer to be mutually agreed upon by the Association and the Designer to coordinate the realization of the design or an Assistant to coordinate the installation of the production. Additional fees for these added design services and the additional Associate and/or Assistant Designer will be negotiated in good faith.
- C.** In the event the Production is abandoned prior to the first public performance and the Designer shall have completed the necessary working drawings and color sketches or plots (sets, costumes, lighting and sound) the Designer shall receive three quarters (3/4) of the originally agreed upon payment.
- D.** In the event the production is abandoned and the Designer has not completed the designs agreed upon, the Designer and the Association shall agree to negotiate remaining payment due, but in no event shall the Designer receive less than one-half (1/2) of the originally agreed upon payment.

### **XIII. BILLING**

- A.** The Designers shall receive billing in the program on the title page, cast page, or with placement substantially comparable to such, and on house-boards, in the customary order of Set, Costume, Lighting, Projection, and Sound Designer, in the same size, quality, and format. In all cases where any Designer receives billing, all Designers shall receive billing.
- B.** In addition, best efforts shall be made to give billing to the Designers in cast recordings, internet advertisements, website or any other public acknowledgment, excluding television and radio, where billing is given to more than two other creative participants in a production (Director, Conductor, Choreographer, Singers, etc.).
- C.** Where a biography, other than that of the author(s) appears, Association shall include a biography of the Designers. The Designers shall have the right of approval of biographical materials for the program and souvenir program. Approval must be in writing and shall not be unreasonably withheld. Biographical materials not approved within 5 business days of its submission to the Designer shall be considered approved.
- D.** Inadvertent omission of any of the requirements herein shall be rectified, if possible, upon notification, but, in any event, shall not be considered a material breach of this Agreement.
- E.** The following notice or other acceptable written recognition shall appear in all theatre programs: The scenic, costume, lighting and sound Designers of [this Theatre or Production] are represented by United Scenic Artists, Local USA-829 of the IATSE. Such notice will appear with the USA-829 logo, a photo-ready copy of which will be supplied by United Scenic Artists. Logo may be downloaded at [www.usa829.org](http://www.usa829.org).

### **XIV. SAFETY AND LIABILITY**

- A.** The Designers are responsible for the visual or aural aspects of the production only, and it is understood that all specifications relate solely to the appearance/sound of the setting, costumes lighting and/or sound and not to matters of the safety. The Designers agree to make prompt correcting alterations to any specification found to be incompatible by Association with proper safety precaution.
- B.** Association will indemnify, defend, save, and hold the Designer(s), his/her heirs, executors, administrators and assigns harmless from and against any and all liability, charges, costs, expenses, claims and/or other loss, including reasonable attorneys' fees, whatsoever which they may suffer by reason of the designs furnished hereunder.
- C.** Association agrees to carry comprehensive general liability insurance applicable to any claims that might arise due to any work performed under this Agreement.

### **XV. DISPUTE**

- A.** The decision of the arbitrator(s) shall be final and binding on all parties.
- B.** In the event of a difference, dispute, or controversy between the parties hereto relating to this Agreement, which cannot be settled by representatives of the Union and the Association, the matter shall be submitted to an arbitrator designated by the American Arbitration Association. The arbitration shall be conducted in accordance with the Voluntary Labor Arbitration rules of the American Arbitration Association.

- C. The arbitration shall be by one Arbitrator whose fees and expenses, including expenses normally charged by the American Arbitration Association, shall be apportioned equally between the Association and the Union. It is further understood that each party is responsible for and shall pay the cost of its own transcript, witnesses, representatives, etc. in the presentation of their case before the Arbitrator.
- D. The Arbitrator(s) shall not have the power to amend, modify, alter or subtract from this Agreement.

#### **XVI. STUDIO ASSISTANTS:**

- A. Studio Assistants to the Scenic, Costume, Lighting, Projection or Sound Designer shall be engaged by the Association at the request of the Designer subject to the approval of the Association. Such approval shall not be unreasonably withheld. Said Studio Assistants' terms and conditions of employment shall be governed by this Agreement.
- B. The work of the Assistant is to support the Designer in the work of the Designer.
- C. A separate *Cover Sheet* must be filed with and approved by the Union for each Studio Assistant. Association will make salary payment directly to the Assistant(s) each and every week for which they have been contracted and worked. .

#### **XVII. TRAVEL, HOUSING AND PER DIEM**

The Association agrees to provide, when the Designer/s or Studio Assistant/s are required, by Association, to travel away from their point of residence for work on the Production:

- A. Economy class transportation on a first class carrier. If the Designer elects to use his/her own motor transportation, he/she shall be reimbursed for his/her expenses up to but not to exceed the cost of transportation as set forth above.
- B. Transportation costs to and from both, his/her home and the Theatre, and the airport, terminal, or depot, whichever is applicable, by the least expensive reasonable means of transportation.
- C. Single occupancy, clean and sanitary hotel accommodations with private bath.
- D. Per Diem meal allowance at the IRS rate for San Francisco, to be reviewed annually.

#### **XVIII. PENSION, WELFARE AND ANNUITY BENEFITS**

##### **A. PENSION AND WELFARE**

1. In order to provide certain welfare (Health Insurance) benefits to the Designers covered under this Agreement, the Association shall contribute As of July 1, 2008, a sum of money equal to NINE PERCENT (9%) of each Designer's gross compensation to the *United Scenic Artists Welfare Fund*. On August 1, 2010 the rate shall increase to NINE AND ONE HALF (9.5%).
2. In order to provide certain pension benefits to the Designers covered under this Agreement, the Association shall, as of July 1, 2008, contribute a sum of money equal to SIX PERCENT (6%) of each Designer's gross compensation to the *United Scenic Artists Pension Fund*. On August 1, 2011 the rate shall increase to SEVEN PER CENT (7%).
3. Pension and welfare contributions may be made by a single check, made payable to the *United Scenic Artists Pension and Welfare Funds*.

## B. ANNUITY

In order to provide Annuity benefits to the Designers covered under this Agreement, the Association shall contribute, as of July 1, 2008 a sum of money equal to TWO PERCENT (2%) of each Designer's gross compensation to the *The IATSE National Annuity Fund*. On August 1, 2009 the contribution shall increase to TWO AND ONE HALF PERCENT (2.5%) and on August 1, 2010 the contribution shall increase to THREE PERCENT (3%). Annuity contributions may be made by check, made payable to the *IATSE National Annuity Fund*.

## C. CONTRIBUTIONS

1. All benefit contributions for design of a production must be submitted as follows: 1/3 upon the filing of, and attached to, the Cover Sheet for each Design Position covered under this Agreement and the remainder concurrently with each payment to the Designer.
2. The benefit rate for design of a production shall be that applicable on the opening night of the production at Association. Benefit rates for seasonal reuse and subsequent use are as specified elsewhere in the Agreement.
3. Benefit payments for Studio Assistants will be made by the 10<sup>th</sup> of the month following the month in which the work was performed, at the currently applicable rate.
4. All benefit fund contributions should be sent to the USA 829 Western Region office at the address below.

United Scenic Artists, Local USA-829 (IATSE) offices:

### *Eastern Region/National*

29 West 38th Street, 15th Floor  
New York, NY 10018  
212 581 0300 voice  
212 977 2011 fax

### *Western Region*

5225 Wilshire Blvd, Suite 506  
Los Angeles, CA. 90036  
323-965-0957 voice  
323-965-0958 fax

## XIX. CHECK-OFF

The Association shall deduct from the payments made to Designers who authorize such deduction (pursuant to the Labor Management Relations Act) union dues equal to two percent (2%) of the Designers' gross compensation excluding transportation, miscellaneous pre-approved and per diem expenses, and shall transmit the monies so deducted to the Union (authorization and remittance forms shall be supplied by the Union) within 30 days.

## XX. SEPARABILITY AND SAVINGS

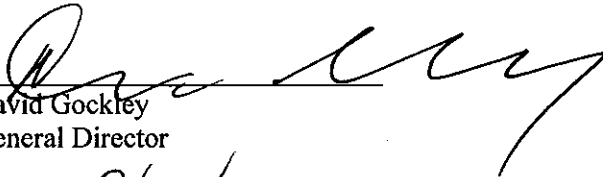
If any provision of this agreement is found by a court of competent jurisdiction to be in violation of applicable law or to be unenforceable in whole or in part, it shall be applied only to the extent permitted by the applicable law, and the remainder of this agreement shall remain in full force and effect. The parties will, upon written demand of either of them, promptly meet for the purpose of negotiating a lawful provision covering the same subject matter as the provision affected, but the enforceability of the remainder of this agreement shall not be affected thereby.

For United Scenic Artists

\_\_\_\_\_  
Cecilia A. Friederichs  
Business Representative

Date \_\_\_\_\_

For the San Francisco Opera Association

  
\_\_\_\_\_  
David Gockley  
General Director

Date: 9/27/09

**SAN FRANCISCO OPERA ASSOCIATION AGREEMENT  
SUBSEQUENT USE ADDENDUM**

**I. PENSION, WELFARE AND ANNUITY CONTRIBUTIONS**

All subsequent use payments shall be subject to pension, welfare and annuity contributions.

**II. SUBSEQUENT WORK**

If the Association tours, rents or sells the production with the original design and determines that additional work is required for before touring, renting or selling or remounting, the Designer shall be afforded the first option to perform such additional work and shall have ten (10) days in which to respond to original or subsequent Company, in writing. The Company and the Designer shall agree upon compensation at the applicable Daily Rate. To the extent that the Designer is unable or unwilling to perform the additional work, the Company, after consultation with the Designer, may employ, at its cost, another person to perform the additional work. Should extensive re-design be required, the parties will negotiate the compensation in good faith.

**III. RENTAL, OR SALE, OF PRODUCTION**

A. It is the responsibility of the owner of the physical production at the time of the rental or sale to obligate the subsequent company to honor all terms and conditions the Agreement between the designer and the original owners. The same shall apply for each subsequent sale, rental, or donation in perpetuity.

**B. RENTAL OF PRODUCTION**

1. The Association (Co-producers) may lease or rent designs to a company ("Renting Company") for presentation before a live audience. The Association is under obligation to require the Renting Company to assume each of the following as part of the lease/rental agreement:
  - a) Require the Renting Company to sign a Rental/Lease Agreement Form (Please request Form from Union Business Office or see attached Form) outlining rates, conditions and Pension and Welfare contributions. The Rental Form shall be a part of the Association's minimum rental agreement.
  - b) In the event that the Association leases/rents any settings, projections, costumes or Sound for presentation before a live audience, the Renting Company shall pay the Designer a minimum of 20% of their original fee.
  - c) When possible, the Designer will be consulted a minimum of four weeks in advance regarding any possible changes and/or adaptations planned for the production.
  - d) If the original lighting design is used, the Renting Company shall be obliged to offer right of first refusal to the original Designer at a rate to be negotiated between the Renting Company and the Designer.
  - e) Pension and Welfare contributions shall be calculated at the rate current in the SFO/USA Agreement at the time of the rental.

- f) The Renting Company shall pay the travel and per diem costs, and out of pocket expenses as required in the SFO/USA agreement.

### **C. SALE OF PRODUCTION**

1. The Association (Co-producers) shall have the right to sell the production to any second party ("Purchasing Company"). The Association shall require the Purchasing Company, as part of the agreement of sale, to assume the following obligations:
2. In the event settings, projections, sound and/or costumes are purchased, the Purchasing Company shall compensate the Designer according to the following terms:
  - a) A minimum fee of 25% of the original design fee, for the first season of use shall be paid.
  - b) A royalty of 5% of the original design fee in subsequent individual seasons shall cover unlimited use per season.
  - c) Any pre-existing payments, conditions, or responsibilities shall remain in full force for the life of the visual production and shall remain attached to the design through subsequent sale, rental or donation by the new Association (Purchasing Company) or any subsequent Purchasing Company.
  - d) If the original lighting design is used, the Purchasing Company shall be obliged to offer right of first refusal to the original Designer at a rate to be negotiated between the Purchasing Company and the Designer.
  - e) Pension and Welfare contributions shall be calculated at the rate current in the SFO/USA Agreement at the time of the rental.
  - f) The Purchasing Company shall pay the travel and per diem costs, and out of pocket expenses as required in the SFO/USA agreement.

### **D. PARTIAL USE OF PRODUCTION**

Nothing contained herein shall imply that the sale or rental of any part of a production (settings or costumes) shall obligate the rental or sale of any other category (design element) of the production. The elements rented or sold shall in no way affect other design categories, and shall require no additional compensation to the Designers of those elements not rented or sold.

## **IV. MEDIA AGREEMENT**

### **A. RIGHTS GRANTED TO THE ASSOCIATION:**

The Association may tape, film, photograph and otherwise record all performances and other activities (e.g., rehearsals,) for simultaneous or future distribution in any media form, as well as exploit any archived material and previously-exploited material for which third party rights have expired by any and all means and media, and the Association will own all copyrights and all other rights in the captured products and exploitations and the elements therein. Nothing herein is intended to change a designer's rights to title to his/her drawings, designs and specifications as is provided for in the collectively bargained agreement or in the designer's individual contracts with the Association.

### **B. COMPENSATION**

1. As full and complete consideration for the License for use of the Designer's designs in the Media Program, the Opera agrees to pay to Designer, upon first release of the program in any medium, the sums listed below:
2. For the avoidance of doubt Designers of multiple elements, scenery, costume, projections, lighting, or sound, shall be paid for each element designed and credited. Production Designer shall be understood to include multiple elements.
3. The Designer of each element shall receive a "Media Payment" of 25% of their original design fee, but no less than \$3,000.
4. The Association will create a "Pool" of 50% of net revenues from the new sale and commercial licensing of all audio and audiovisual productions. The Association will provide more complete information on how "net profit" is determined for revenue streams other than movie theatre ticket sales as it becomes available.. Union will accept the general model provided to date. Designer participation in the pool will be triggered by an audiovisual capture of the production, but not by an audio-only capture. Once participation is triggered, Designers shall share in all net revenues as follows:
  - a) The Designer of each element shall receive a \$1000 advance of revenue sharing. Recoupable by the Association
  - b) The Designer of each element shall receive no less than .75% of Media Net Profit.
5. If a recording made prior to the 2007-2008 season, for which a Designer was already paid a usage fee is used for Media Release, the Designer of each element shall receive, a \$2500 media fee plus a \$1000 advance of revenue sharing.
6. If a recording made prior to the 2007-2008 season, for which a Designer received no usage fee, is Released for Media, the Designer of each element shall receive a "Media Payment" of 25% of their original design fee, but no less than \$3000. There shall be a \$1000 advance of revenue sharing.
7. If a Compilation Program is made of material existing prior to the 2007-2008 season the Designer of each element shall receive a media payment of \$300 per "clip" included, and no "clip" may exceed 3 minutes. There shall be a revenue sharing advance of \$250.

8. Additional Work

The compensation listed above is exclusive of any “additional work” required of the Designer to prepare the stage production for recording, which shall be compensated at no less than the daily rate set forth in the collective bargaining agreement for the year in which the recording takes place.

9. Pension and Annuity benefits shall be paid on gross Media compensation at the following rates:

- a) To the United Scenic Artists Pension Fund only, an amount equal to the combined Pension and Welfare contribution rates listed in Article XVIII A applicable at the time of first release.
- b) To the IATSE National Annuity Fund the rate listed in Article XVIII B applicable at the time of first release.

**C. CALCULATING AND REPORTING REVENUE SHARING**

1. The Association will calculate revenue sharing payments after the close of each fiscal year, currently July 31, and send to each affected employee a statement of revenue sharing earnings and a payment for his/her share within 60 days. The Association will inform the Union should there be changes in the fiscal year.
2. The Association shall provide to the Union a copy of said statement together with revenue sharing reports showing revenues and expenses for each production for which there is revenue sharing.
3. Notification  
If the production is to be included in the Media program, the designer shall be so informed as soon as it is known and at least one week prior to taping of the stage production or any personal participation in media activity to create publicity materials

In the event payment is owed hereunder to a former employee who is deceased, the payment will be made to the USA 829 death benefit beneficiary on file with the Union. If an employee (or named beneficiary of a deceased employee) cannot be located by the Association or Union after a reasonable period of time, then the amount due will be contributed into a charity mutually agreeable to the Association and Union. The agreed charity is The Actor’s Fund.

- D.** In regard to revenue sharing, the Union may request a reopener at the end of the second year of the Agreement, or if there are issues of Revenue Sharing that may arise that cannot be foreseen at the time the Agreement is ratified.

#### **E. ADDITIONAL WORK**

The compensation listed above is exclusive of any "additional work" required of the Designer to prepare the stage production for recording, which shall be compensated at no less than the daily rate set forth in the collective bargaining agreement for the year in which the recording takes place. Should the designer of the stage production be on the staff of the Association, this paragraph shall not apply.

#### **F. PENSION AND ANNUITY**

Pension and Annuity benefit contributions shall be made by the Association on all Media compensation at the rates current when the compensation is paid to the Designer. The Pension contribution shall be paid at the rate of the combined Pension and Welfare rates then current and no Welfare benefit contribution shall be made on Media compensation.

#### **G. NOTIFICATION**

If the production is expected to be included in the media program, the designer shall be so informed as soon as it is known. And at least one week prior to taping of the stage production or any personal participation in media activity to create publicity materials.

#### **H. CREDIT**

Designer shall be accorded credit on all positive prints of the Media Program. In accordance with Article XIII (B) of the collective bargaining agreement between the Association and Union, cast albums, CDs, tapes, production photographs, electronic or mechanical reproduction, or any other commercial use of the production shall include the names of all the Designers where billing is given to the stage director.

#### **I. COPY OF PROGRAM**

If and when copies of the Media Program become generally commercially available, whether on DVD or other format, the Association will provide Designer with one copy of the Program for Designer's personal use.

#### **J. INFORMATIONAL MEETINGS**

Representatives for the Union and the Association shall meet periodically to discuss media plans, status and activities, and any other subjects of mutual interest, either as part of a multi-union committee or separately

#### **K. DISCIPLINARY ACTIONS**

The Association may not use any of its recordings made under the terms of this Agreement for disciplinary action against a Union member, except for willful violations of Association policies provided the Designer has been notified as per Article IV (G) above.

## L. AUDIT AND DISPUTE PROCEDURES

Union shall have the unqualified right once during each period of one (1) calendar year to audit the records of the Association for the prior two (2) year period relating to the payments due under this agreement, for the purpose of verifying the accuracy of such payments, provided the Union has a good faith belief that payments due under this agreement are not being paid. Union will give the Association ten (10) days written notice of its intention to conduct an audit, and will conduct the audit at the Association's offices, within normal business hours for the Association's office staff. The Association also agrees that for this purpose it will keep and maintain adequate records and accounts and all gross receipts of the Association and commissions paid by the Association that are relevant to the calculation of payments due hereunder from the Association to the Designers.

## M. ASSIGNMENT OF RIGHTS

1. It is agreed that the rights of Designers Revenue Sharing payments in accordance with the terms of this Agreement shall not be affected by any sale, assignment, pledge, hypothecation, or other transfer of the Media Programs subject to this Agreement, or by any attachment, garnishment, bankruptcy, assignments for benefits to creditors, probate, or any other legal proceeding involving the Association or its successors in interest. Accordingly, it is expressly agreed that the right of the Association to Release any Media Program captured pursuant to this Agreement is subject to the Association's commitment to pay all Revenue Sharing payments and other payments required by this Agreement and that:

2. Voluntary Assignment

Any person or entity acquiring all or part of the Association's rights in any Media Program material subject to this Agreement by voluntary assignment by the Association shall do so subject to the same Revenue Sharing and other obligations under this Agreement of the Association to Union and the Designers.

3. Involuntary Assignment

In the event of any involuntary assignment, the Association's rights in any Media Program material subject to this Agreement shall be deemed personal and non-assignable, and no assignee thereof shall acquire any rights to Release such Media Program material. The foregoing notwithstanding, in the event of an involuntary assignment, by operation of law, Union agrees to permit the assignee to exercise all rights of the Association hereunder upon payment to the Designers involved in the creation of such Media Program material of all payments that may be due to them hereunder. In addition, such an assignee shall be deemed to have succeeded to all rights of the Association in such Media Program material if such assignee executes an agreement with Union whereby such assignee assumes the Association's future obligations to the Designers hereunder, including the obligation to make Revenue Sharing payments and other obligations of the Association to Union and the Designers under this Media Agreement, to distribute such payments directly to the Designers and to perform such obligations and other negotiated terms and conditions as they may arise.

#### 4. Assumption of Obligations By Voluntary Transferee

As a condition of the effectiveness of the Association's voluntary sale, assignment, license or other transfer, (collectively, "Transfer") of any Media Program material produced during the term of this Agreement, the Association agrees to require any purchaser, assignee, licensee or other transferee (collectively, "Transferee") to expressly assume the economic obligations of the Association hereunder with respect to any such Media Program material. To the extent that the Association Transfers its rights to Media Program material (for example, by way of assignment), then the Association and the Transferee may agree that the Transferee shall be solely responsible for the payment distribution and record-keeping obligations of the Association hereunder, subject to Union's approval as set forth in Section IV.O., below. Nothing contained in this provision shall be interpreted to diminish the obligations of the Association to Union in any way whatsoever, except upon such written consent of Union.

#### 5. Rights To Future Compensation – Voluntary Transfer Of Rights

##### a) Required Provision in Transfer Agreement

- (1) The Association agrees to incorporate the terms of this Agreement by reference in any agreement with a Transferee evidencing a Transfer, as described above. It shall include the following provision in the document evidencing the Transfer:
- (2) [name of transferee] ("Transferee") hereby agrees with the Association that all Media Program material being sold, assigned, licensed or created with the Association's permission (collectively, "Transferred") under this Agreement is subject to the Media terms of the USA/SFO Agreement. Transferee hereby agrees, expressly for the benefit of the United Scenic Artists ("USA 829") as representative of the Designers participating in the creation of the Media Program material ("Designers"), to make the payments incurred after the date of this Agreement that may be required by the USA-SFO Agreement and all Pension, Welfare and Annuity Fund payments required of the Association as set forth in the USA/SFO Agreement, to the extent applicable. Transferee expressly agrees to comply with the provisions of the USA/SFO Agreement with respect to the Release of the Media Program material. It is expressly understood and agreed that the right of Transferee to release any such Media Program material shall be subject to and conditioned upon the prompt delivery to the Association on behalf of the Designers (or directly to the Designers, as applicable) of any payments required by the USA/SFO Agreement. Transferee agrees that USA 829 has the same right to audit Transferee's records as it has to audit the Association's records related to the Media Program material, and that the Association may exercise these audit rights on behalf of USA 829.

**N. DISPUTE**

It is also expressly understood and agreed that all disputes and controversies of every kind and nature whatsoever between the transferee and USA 829 or any member of USA 829 arising out of or connected with this Agreement, including disputes arising out a failure to make payments required under the USA/SFO Agreement, shall be submitted to arbitration in accordance with Article XV DISPUTE of the USA/SFO Agreement July 1, 2008 to July 31, 2012 or in accordance with the applicable provisions of the then current collective bargaining agreement between the Association and USA 829, as applicable.

**O. WRITTEN NOTICE**

The Association agrees to give written notice to USA 829 within thirty (30) days after each Transfer of any Media Program material subject to this Agreement, which notice shall specify the name and address of the Transferee, and to deliver to USA 829 a copy of the agreement documenting such Transfer.

**P. NO FURTHER LIABILITY**

Upon delivery of an agreement between the Association and a Transferee of Media Program material in accordance with this Section, and provided that USA 829 approves, in writing, the financial responsibility of the Transferee, such approval at the sole discretion of USA 829, the Association will no longer be liable for making or distributing any payments to the Designers or keeping any such records required hereunder with respect to such Media Program material, it being agreed that the Transferee shall be solely liable therefore.

**Q. FAILURE TO COMPLY**

An inadvertent failure on the part of the Association to comply with any of the provisions of this Article shall in no event constitute a default by the Association or a breach of the Agreement, provided that such failure is cured promptly after notice thereof from USA 829.

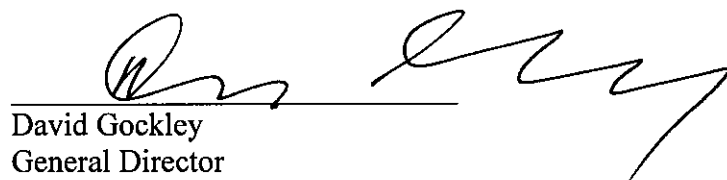
For United Scenic Artists



Cecilia A. Friederichs  
Business Representative

Date 9/27/09

For the San Francisco Opera Association



David Gockley  
General Director

Date 9/27/09

## Appendix A RATES

Design rates shall apply based on the opening date of the production

rates	July 1, 2008- July 31, 2009	August 1, 2009-July 31, 2010	August 1, 2010-July 31, 2011	August 1, 2011-July 31, 2012
Scenic or Costume Design	\$16,000	\$16,480	\$16,892	\$17,314
Lighting or Sound Design	\$10,000	\$10,300	\$10,558	10,821
Projection Design	\$13,000	\$13,390	\$13,725	\$14,068
Designer day rate	\$360	\$371	\$380	\$390
Studio assistant weekly	\$800	\$824	\$845	\$866
All benefits are paid on gross earnings				
Pension	6%			7%
Welfare	9%		9.5%	
Annuity	2%	2.5%	3%	
Per Diem	IRS rate for San Francisco to be adjusted annually			