

**APDG
LIVE PERFORMANCE
STANDARD
AGREEMENT FOR
DESIGN**

DISCLAIMER

This Standard Agreement has been prepared by the Australian Production Design Guild (APDG). The APDG provides this Standard Agreement in good faith as a sample only, to be used by APDG members either in whole or in part as a basis for a negotiated agreement. It includes common terms that should to be considered and may be agreed on. However, it will need to be changed according to the specific terms which the parties negotiate: every agreement is different and you should seek your own independent legal advice as the APDG cannot provide legal advice and disclaims any and all liability in relation to the use of this Standard Agreement.

Designers and Producers using this Standard Agreement may also refer to The APDG Live Performance Design Guidelines for additional guidance on fees, fee payments and royalties. The Guidelines can be found on the APDG website, under the 'Resources' tab.

This Standard Agreement has been developed in line with conventional main stage design and production processes but with the intention that it may be adapted, or clauses adopted and used as appropriate for other design processes, such as team devised projects or development and workshop process stages.

APDG LIVE PERFORMANCE STANDARD AGREEMENT FOR DESIGN

BETWEEN

The Designer:

(DESIGNER'S NAME and ABN): _____

if employed as a Company:

(DESIGNER'S COMPANY NAME and ABN): _____

if employed under PAYG Contract:

(DESIGNER'S TAX FILE NUMBER): _____

DESIGNER'S SUPERANNUATION FUND: _____

SUPERANNUATION MEMBER NUMBER: _____

Care of (AGENT'S NAME): _____

At (NAME OF AGENCY): _____

AND

The Producer:

(PRODUCER'S NAME or BUSINESS NAME and ABN): _____

This Agreement is governed by the laws of *(Insert State or Territory, as appropriate)*

STATEMENT OF AGREEMENT

It is agreed that, following initial discussions, **The Designer** will execute **The Design** and undertake **The Services** (as outlined in Section A, Section B and Section F) and adhere to all other obligations (as outlined in Section D, Section E and Section F). **The Producer** agrees to facilitate this work, agreeing to financially compensate **The Designer** for their work and support **The Designer** in this undertaking (as stipulated in Section B and Section C) and in meeting all other obligations (as stipulated in Section D, Section E and Section F). For the purposes of this Agreement **The Designer** may nominate their Agent to deal in any matters on their behalf.

SECTION A – POSITION TITLE

_____ (*Insert Designer's name*), Designer, or Set Designer, or Costume Designer, or Lighting Designer _____
_____ (*or insert preferred credit*).

SECTION B – THE PROJECT

1. THE PRODUCTION

The Initial Season of a stage production of _____
(*Name of Production*) by _____
(*Playwright or Choreographer's name*) (**The Writer**); produced by _____
_____ (*Producer's name*) (**The Producer**); directed by _____
_____ (*Director's or Choreographer's name*) (**The Director**)
and managed by _____ (*Production Manager's name*)
(**The Production Manager**) to be presented in _____
(*the name of theatre*) at _____ (*the name of centre*)
(e.g. The Drama Theatre at the Sydney Opera House). Opening to the public on the DD/MM/YYYY
(*insert date*) and proposed closing on the DD/MM/YYYY (*insert date*), (**The Initial Season**).

The Producer shall be responsible for communicating to those engaged in **The Production** any and all contents of this Agreement which may affect their involvement and/or their understanding of **The Production**.

The Producer may nominate **The Production Manager** to deal on their behalf with **The Designer** in the management of **The Design** from Engagement to Presentation, and so where **The Production Manager** is referred to in this Agreement they will be understood to be the representative of **The Producer**.

2. DATES & DEADLINES

The **Producer** and The **Designer** agree on the following dates. Any changes to dates and deadlines in sections 2.1, 2.2, 2.3 and 2.4 will have substantial impact on **The Designer** and **The Producer**. Any changes to dates by either party will be notified in writing, negotiated by both parties and then agreed to in writing.

2.1 Engagement Phase

- a. Meetings with Creative Team commence DD/MM/YYYY
- b. Initial Briefing (aka. 'Parameters Meeting') by **The Producer** DD/MM/YYYY

2.2 Design development phase

- a. Preliminary Design Presentation by **The Designer** DD/MM/YYYY
- b. Design Cost Estimate / Feedback from **The Producer** DD/MM/YYYY

2.3 Design management phase

- a. Final Design Presentation by **The Designer** DD/MM/YYYY
- b. Costing and Approval of **The Design** by **The Producer** DD/MM/YYYY
- c. Projected Build Commencement Date DD/MM/YYYY

2.4 Presentation phase

- a. Rehearsals commence DD/MM/YYYY
- b. Bump-in commences DD/MM/YYYY
- c. Previews commence DD/MM/YYYY
- d. Opening Performance DD/MM/YYYY

2.5 Design Completion and Review

- a. Proposed Closing Performance DD/MM/YYYY
- b. Production Debrief DD/MM/YYYY

2.6 Additional dates (as needed) for touring productions

- a. Bump-in at tour venue commences DD/MM/YYYY
- b. Opening performance at tour venue DD/MM/YYYY

2.7 Other dates outside **The Services** where **The Designer** may be requested to attend

- a. Sponsors' Event DD/MM/YYYY
- b. Friends' Event DD/MM/YYYY
- c. Audience Discussion Event DD/MM/YYYY

3. THE PRODUCTION DESIGN BUDGET

3.1 **The Producer** has allocated \$ _____ as the cash budget to develop and realise **The Design** for **The Production**.

This amount will cover materials, labour (excluding staff employed full-time by **The Producer**) and hire fees for all scenery, props, costumes, wigs or other design elements, seating turnarounds or disbursements, but excludes costume dry cleaning and maintenance. **The Producer** will make stock items available to **The Production** at no cost to **The Production**, excluding additional labour costs.

3.2 **The Design** budget may be reapportioned (in consultation with **The Production Manager**) but it is provisionally broken down as:

3.3

Set \$ _____

Costumes \$ _____

Props \$ _____

Scenic Art \$ _____

Other (specify) \$ _____

3.4 Additionally **The Producer** has allocated _____ hours of labour to the realising of **The Design**.

This is provisionally broken down as:

_____ hours costume manufacture;

_____ hours set construction;

_____ hours props construction;

_____ hours scenic art;

_____ hours other: specify (e.g. wig and/or makeup manufacture)

3.5 Costs incurred by **The Designer** in research, preparation and/or presentation of **The Design** (disbursements) may include mileage/petrol, local transport, materials or fabric samples, model-making or other design materials, software (specific to **The Production**) and specialised services such as model making. These costs shall be negotiated in good faith with **The Producer** and/or **Production Manager**. These costs as agreed, up to \$ _____ will be reimbursed by **The Producer** upon presentation of receipts or an itemised invoice.

4. DESCRIPTION OF THE SERVICES PROVIDED BY THE DESIGNER, AND REQUIREMENTS OF THE PRODUCER

4.1 Engagement Phase

The Engagement Phase will establish basic creative and practical parameters for **The Production** and **The Services**. The Engagement Phase will commence with signing this Agreement and payment of the first instalment of **The Designer's** fee. Pre-engagement consultation between **The Producer/Production Manager** and **The Designer** may be required to facilitate 4.1(a) and 4.1(b).

- a. During the Engagement Phase **The Designer** and **Production Manager** will together determine and agree in writing the anticipated appropriate design documentation requirements for the **Preliminary Design Presentation** (as defined in 4.2a) and **Final Design Presentation** (as defined in 4.3a), and documentation priorities as necessary for effective communication of **The Design** (as defined in 5 **Description of The Design**).
- b. During the Engagement Phase **The Designer** will inform **The Production Manager** in writing of anticipated design requirements such as: changes to seating configuration or house size (if box office timelines allow); any required staffing for **The Designer** such as design assistants; special production crew requirements or subcontracted labour requirements; special production requirements that are likely to substantially impact on the budget, such as costume multiples, projection, special effects or prosthetics.
- c. To enable **The Designer** to develop **The Design** during the Engagement Phase, **The Producer** will facilitate and/or provide the following in digital or physical format as agreed below (required/not required. Detail as required)
 - i. Detail of the initial budget breakdown, the build and production schedule and other relevant information as part of an initial briefing _____
 - ii. Access (preferably face-to-face) to **The Director** or other creative team members at no cost to **The Designer** if they are interstate or overseas _____
 - iii. Petty cash floats and reconciliation policies if applicable _____
 - iv. Stock lists and access to view these stocks _____
 - v. Information of production staff allocation and skills base if they are in-house _____
 - vi. Approach and policy on tendering, quoting and/or outsourcing of build _____
 - vii. Any drafting services provided by **The Producer** _____
 - viii. Rehearsal script in hard copy _____
 - ix. Casting lists, current cast measurements and photographs _____
 - x. Theatre plans and four venue plans in a suitable format _____
 - xi. A 1:25 scale model-box of **The Production** stage/venue _____
 - xii. Lighting equipment stock if applicable _____
 - xiii. Background dramaturgical material as prepared by the company, or as it becomes available _____

4.2 Design Development Phase

During the Design Development Phase **The Designer** will undertake research, design development and documentation of initial concepts and preliminary design solutions, up to the **Preliminary Design Presentation**.

- a. **Preliminary Design Presentation Deliverables:** **The Designer** will provide **The Producer** with an outline of **The Design** concept and preliminary information on production scale, design style, labour requirements, construction methods and materials as agreed in writing in 4.1a, in a form and in sufficient detail to enable the **Production Manager** to prepare initial costings and initial schedule, to plan resource allocation and to determine design feasibility. This will constitute the **Preliminary Design Presentation**.
- b. **The Producer** will provide:
 - i. Access to **The Production** venue, unless not realistically accessible
 - ii. Further technical information as requested
 - iii. Costings and feedback on feasibility within two weeks of the **Preliminary Design Presentation**
- c. After the **Preliminary Design Presentation** **The Designer** and **The Production Manager** will together confirm and agree in writing the appropriate design documentation requirements and schedule for the **Final Design Presentation**.

4.3 Design Management Phase

The Design Management phase includes the **Final Design Presentation** through to opening night of **The Production**. In this phase the realisation, construction and staging of **The Design** will occur, managed jointly by **The Production Manager** and **The Designer** through design approval by **The Producer**, with adjustments made to **The Design** as reasonably required and as negotiated through rehearsal, realisation and staging.

- a. **Final Design Presentation Deliverables:** As agreed with **The Production Manager** in 4.2c **The Designer** will provide **The Producer** with the information required to cost and schedule the realisation of **The Design** and work with **The Production Manager** and any subcontractors to ensure its effective realisation. To facilitate this **The Designer** will provide digital and/or hard copy documentation detailing construction methodology, finishes and materials. Documentation may include, but is not limited to: finished scale digital or actual models, concept sketches, storyboards, reference materials, scale plan and section, technical drawings, set unit lists, set change plots, props lists, props references, costume renderings, costume lists, costume plots, costume references.
- b. Notification of acceptance or otherwise of **The Design** shall be given within two weeks of **Final Design Delivery**. If there is an indication that **The Design** as presented will not be accepted, or acceptance will be delayed, then the fee structure will be renegotiated with consideration to the time already invested by **The Designer**.
- c. **The Designer** and **The Production Manager** will together ensure that design information is communicated to heads of departments, stage management and artistic teams as necessary.
- d. **The Designer** will make themselves available for weekly production meetings at times negotiated with **The Production Manager**. Where **The Designer** is unable to attend these meetings they will consult with **The Production Manager** and will independently ensure that any information required is communicated prior to the meeting/s, and/or arrange for a deputy to attend in their absence.

4.4 Design Completion and Review

The Designer will be invited to participate if a Debrief Meeting is held after the opening of **The Production**.

5. DESCRIPTION OF THE DESIGN, AS EXECUTED BY THE DESIGNER IN THE UNDERTAKING OF THE SERVICES

The Design is defined as all design elements and creative concepts as expressed in The Production as realised onstage, as communicated verbally, visually or in writing as part of the creative process and as design documentation prepared by The Designer in the execution of The Services (as outlined in Section A, Section B and Section F) of this Agreement.

6. ADDITIONAL SERVICES REQUESTED BY THE PRODUCER

6.1 Press, media, social media strategies

Media calls for The Designer will be scheduled in agreement with The Designer.

6.2 Education and Access

In consultation with The Producer's education or access program and with the agreement of The Designer, The Designer will provide copies of The Design or print copy suitable for use in this context. This activity will not unduly require additional time from The Designer, and any cost incurred by The Designer in association with this activity will be notified in advance and will be recompensed by The Producer.

6.3 Programs and publicity

If requested and in consultation with The Producer's publications editor The Designer will provide design notes suitable for use in The Production's programs and other publicity. This activity will not unduly require additional time from The Designer.

6.4 Archives

- a. At The Producer's request The Designer will provide a digital file containing documentation of The Design for The Producer's Archive Collection.
- b. The Producer will notify The Designer should any part of The Design be required for publication, exhibition or commercial use and, depending on its intended use, may be required to pay The Designer a usage fee. Any such use of The Design from the archive will credit The Designer as in Section A and hold a separate agreement ensuring the quality of use.

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SECTION C – PAYMENT FOR SERVICES & ENTITLEMENTS

7. PAYMENT OF FEES

7.1 In consideration of **The Services** the following Designer's Fee will be paid via electronic funds transfer within 14 days of receipt of tax invoices issued by **The Designer** in accordance with the following schedule. Failure to pay in a timely manner may result in **The Designer** ceasing work.

All fees are exclusive of GST, superannuation contribution and reasonable disbursements, but inclusive of holiday pay.

Invoicing from and payment to **The Designer's Agent** will be the same as from and to **The Designer**.

7.2 **The Designer's Fee:** \$ _____

7.3 Schedule of payments:-

- a. Payment 1: (____ %) \$ _____ will be paid upon receipt of invoice at Engagement (signing of this Agreement) and will signal commencement of the design **Engagement Phase**.
- b. Payment 2: (____ %) \$ _____ will be paid upon receipt of invoice immediately following the **Preliminary Design Delivery**.
- c. Payment 3: (____ %) \$ _____ will be paid on receipt of invoice immediately following the **Final Design Presentation** and verbal or written notification of acceptance of **The Designs** from **The Production Manager** or **The Producer**.
- d. Payment 4: (____ %) \$ _____ will be paid on receipt of invoice (immediately following the public opening of **The Production**).

8. SUPERANNUATION

As **The Designer** is being paid primarily for their labour and artistic effort, according to The Australian Tax Office, unless **The Designer** is contracting as a Company, they are classed as employees for Superannuation Guarantee purposes. Therefore, it is **The Producer's** responsibility to pay superannuation into **The Designer's** nominated fund at whichever is the greater of the rate legislated at the time of employment or the rate **The Producer** pays its full time staff.

Information relevant to this clause may be found at: <https://www.ato.gov.au/Calculators-and-tools/Super-guarantee-eligibility/>

9. GOODS AND SERVICES TAX

9.1 Where **The Designer** has an Australian Business Number (ABN) and is not registered for GST as at the time of signing this Agreement, no GST will be payable by **The Producer** to **The Designer**.

9.2 Where **The Designer** has an Australian Business Number (ABN) and is registered for GST as at the time of signing this Agreement, **The Producer** will pay GST to **The Designer** (in addition to **The Designer's Fee**) on presentation of a Tax Invoice.

9.3 Where **The Designer** registers or deregisters for GST within the period of this Agreement **The Designer** will invoice **The Producer** as appropriate to their GST status current with the period of the invoice.

10. INTERSTATE AND INTERNATIONAL TRAVEL

10.1 **The Designer's** usual place of residence is _____.
If as part of **The Initial Season** of **The Production** or as part of any subsequent presentations or touring **The Designer** is required to travel in excess of 100km from their usual place of residence the following stipulations will apply:

10.2 Living Away from Home Allowance:

The Producer shall pay a daily living away from home allowance of no less than that stipulated in the most recent MEAA Performer's Collective Agreement. This will be paid without invoicing, either in local currency or deposited directly into an account nominated by **The Designer**.

10.3 Accommodation:

The Designer will be provided with appropriate one bedroom serviced accommodation of a standard as specified _____. Accommodation will be of no less than 3 Stars with internet provided and in walking distance or convenient to the venue for the duration of the time that **The Designer** is required to be away from home.

10.4 Travel:

The Designer will be entitled to up to _____ (number) of airfares of no less than standard economy on a full service airline nominated by **The Designer** as required to fulfil the obligations of this Agreement, and will be provided with full airport transfers at arrivals and departures. If travelling by other means **The Designer** will be reimbursed up to the same value on provision of receipts.

11. PAYMENT OF ROYALTIES AND ADDITIONAL FEES

11.1 **The Designer** agrees to licence the copyright of **The Design** to **The Producer** for **The Initial Season** of **The Production**.

11.2 **The Designer** agrees in good faith to additional license of **The Design** for all subsequent seasons, transfers, remounts, tours and presentations including, in perpetuity, subject to the renegotiation and extension of this Agreement, and subject to the following royalties and additional fees:

- a. **The Royalty** payable to **The Designer** will not be less than 1% of gross box office receipts when designing either sets or costumes and 2% when designing both sets and costumes. Gross box office receipts are all sums received by **The Producer** from all ticket sales to **The Production**, less credit card charges and/or agency or other booking fees.
- b. **The Producer** shall pay **The Royalty** within thirty (30) days of the last performance of **The Production** or at the end of each eight (8) week period of performances, whichever is earlier, and upon request will supply **The Designer** or their agent certified weekly returns of the receipts at each performance of **The Production**.
- c. **The Producer** shall keep full and proper accounts with respect to gross box office revenue. **The Designer** shall be entitled on 7 days' notice to audit and inspect **The Producer's** books of account no more than once a year. In the event that such audit reveals a discrepancy in the amount paid to **The Designer** in excess of 5% of gross box office revenue, or monies owed **The Producer** shall remit the amount owing within 7 days and meet the costs of **The Designer's** auditor.

11.3 A **Remount Fee** will be payable to **The Designer** where further creative or technical services are required. The **Remount Fee** will be negotiated in good faith by **The Producer** and **The Designer** and will take into consideration the scale and nature of proposed changes. The **Remount Fee** will be paid as a daily rate (or fee equivalent) of no less than \$ _____ (to be increased in line with CPI from 12 months following the signing of this Agreement).

11.4 The requirement for a **Remount Fee** may be identified when the creative or technical demands of **The Production** require it, in consultation with **The Production Manager**, **The Director** and **The Designer**, but will be triggered by any of the following events (as specifically relevant to costume and/or set design):

- a. When principals have been recast
- b. When there are multiple or significant other cast changes
- c. When **The Production** is touring to venues that are not part of the initial design brief
- d. When **The Production** is to be re-rehearsed
- e. When a period of 24 months has elapsed since the closing of the **Initial Production**
- f. When **The Director** is not re-engaged for the remount

SECTION D – ADDITIONAL OBLIGATIONS

12. CREDITS

12.1 **The Producer** agrees that all paid advertising of **The Production**, printed programs, posters and any other publicity prepared by **The Producer** will include **The Designer's** full name at a typeface not less than 25% of **The Writer's**. Where possible **The Designer's** name will similarly be included in all unpaid promotional or publicity materials for **The Production**.

12.2 Unless otherwise negotiated the billing will be that listed in Section A of this Agreement. The following ordering of credits is the standard for drama productions:

Writer
Director
Set Designer
Costume Designer
Lighting Designer
Choreographer/Composer
Sound Designer
Movement/Fight Director

12.3 If **The Designer** makes a written request to withdraw their name from **The Production**, **The Producer** will immediately remove **The Designer's** name from all materials that it is possible to recall and will cease including it in any further publicity or promotional materials. Such a withdrawal will in no way alter the financial and other rights as agreed in this Agreement.

12.4 If **The Producer** uses a photographic or video image of **The Production**, **The Designer** or **The Designs** in any form of publication other than press media concurrent with the production, or provides any such video or image to another for publication **The Designer's** permission will be sought prior to release, and such permission will not be unreasonably withheld. The image and/or video will bear **The Designer's** credit in Schedule A.

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13. INTELLECTUAL PROPERTY RIGHTS, MORAL RIGHTS AND COPYRIGHT

13.1 **The Producer** recognises that **The Designer** retains all intellectual property rights, moral rights and copyright of **The Design** for **The Initial Season** and for any subsequent transfer, remount, tour or other presentation, including film adaptation. Under this Agreement **The Designer** grants **The Producer** an exclusive license for the use of **The Design** for **The Initial Season**.

13.2 **The Producer** shall seek approval from **The Designer** if there is a requirement to change, copy, edit, add to or in any other way adapt **The Design** in any manner or context. **The Designer** and **The Producer** will negotiate in good faith and **The Designer** will not unduly withhold approval.

13.3 **The Producer** acknowledges that **The Designer** retains the right to adapt their design ideas, techniques or methods that they have developed for **The Production** in other creative contexts. This in no way affects the exclusive licence granted to **The Producer** and outlined in this Agreement.

13.4 All elements of **The Design** documentation remain the property of **The Designer**, however permission for use by **The Producer** for archiving, publicity or internal development will not be unreasonably withheld. **The Designer's** credit as specified in Section A must accompany any such use.

13.5 **The Designer** has the right to grant permission for the reproduction or display of **The Design** items in all other contexts and will credit **The Producer** and **The Production** in these circumstances.

14. TOURING AND FUTURE SEASONS OR PRESENTATIONS

14.1 Regardless of the need for additional work at identified in 11.2, as a matter of courtesy **The Producer** will keep **The Designer** informed of possible and/or confirmed further presentations of **The Production**.

14.2 **The Producer** grants **The Designer** the first right of refusal to oversee, redesign or make alterations for any further presentations of **The Production**, and to negotiate relevant fees (as outlined in Section C, Item 5 of this Agreement). Both parties will negotiate this new agreement for further presentations in good faith. **The Producer** cannot approach another party to undertake these services until and unless **The Designer** refuses to take this new agreement.

15. LICENSING AGREEMENT

15.1 The terms of this Agreement apply only if **The Producer** remains the producer of **The Production**. In the case of a change of producer, or assignment, sub-licensing or co-production arrangement **The Designer's** fees, royalty, touring fees and conditions will be re-negotiated with the understanding that they will be no less than those listed herein. **The Producer** will ensure that the terms of their agreement with the new producer retain **The Designer's** rights under this Agreement.

15.2 If **The Producer** assigns the benefit of this Agreement any such licensee, transferee, assignee or sub-licensee shall remain liable to fulfil the terms and conditions of this Agreement.

15.3 If a recording is made of **The Production** by **The Producer**, or if **The Producer** permits a commercial exploitation of **The Production** by a third party, including but not limited to radio, television, motion picture, SVOD and internet, **The Designer** will be notified in writing by **The Producer** with details, at which point terms and conditions including a fee and/or royalty and credit will be negotiated in good faith. In any event the payment will be no less than to any other creative, including **The Director**.

16. ENVIRONMENTAL SUSTAINABILITY POLICY

While the APDG is developing their Environmental Sustainability Policy **The Designer** will comply with **The Producer's** environmental sustainability policy, or where no policy exists will work together with **The Producer** to the highest possible standards of environmental sustainability.

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17. COMPLIMENTARY TICKETS

17.1 **The Designer** will be provided with no less than two complimentary tickets to the opening night of **The Initial Season** and for each subsequent season or tour. Additionally no less than two tickets will be provided for use within **The Initial Season** and subsequent seasons. If **The Designer** is required or wishes to revisit **The Production** during **The Initial Season** or subsequent seasons a single ticket will be provided to **The Designer**.

17.2 **The Designer** will be entitled to purchase additional tickets at concession price throughout the season and any subsequent presentations.

18. MEDIA KIT

18.1 Upon request **The Producer** will provide **The Designer** with an electronic copy of all reviews, prepress and general press pertaining to **The Production**.

18.2 **The Producer** acknowledges **The Designer's** requirement for a photographic record of **The Production**, and within reason, and when appropriate gives **The Designer** the right to direct **The Producer's** photographer to take suitable images and/or for **The Designer** to photograph the production for their own records.

18.3 Upon request by **The Designer**, **The Producer** will provide **The Designer** with electronic copies of any photographs taken of the production (including rehearsal photography), on the proviso that **The Designer** accepts responsibility for crediting **The Producer** and photographer if the photographs are used publicly, and that any requests of publication (digital or analogue) are approved by **The Producer** and photographer.

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SECTION E – ASSURANCES

19. THE PRODUCER'S ASSURANCES

The Producer assures The Designer that they will:

19.1 Inform both The Director and Designer of The Production design budget and will consult with both parties before committing to any alterations to the budget or schedule.

19.2 Provide The Designer with detailed budget and schedule updates and construction progress in a clear and timely manner.

19.3 Accept The Design, or request in writing changes to The Design, within 14 days of both The Preliminary Design Presentation and Final Design Presentation, or any other presentation milestone.

19.4 Make their best endeavour to work to the dates and meet the deadlines as specified in this Agreement, acknowledging that deadlines cannot be changed except by agreement with The Designer.

19.5 To the best of their ability fulfil The Design as specified by The Designer.

19.6 Consult with The Designer if any aspect of The Design is not completely understood, or if there is a risk of miscommunication.

19.7 Not make any changes to The Design without the approval of The Designer.

19.8 Take responsibility for the structural integrity and safety of all scenic or costume elements used in rehearsal and performance; assume responsibility for proper engineering, construction, handling or use of machinery; and ensure all scenic elements, construction methods and materials comply with the most stringent fire and safety codes applicable.

19.9 Not make any commitments on behalf of The Designer without prior consultation.

19.10 Provide information in a timely manner, including documentation, materials, equipment as requested by The Designer for the purposes of fulfilling The Services.

19.11 Inform The Designer of any policies of The Producer's that may be relevant to the undertaking of this Agreement.

19.12 Schedule meetings and costume fittings to make efficient use of The Designer's time.

19.13 Provide The Designer with an on-site dedicated desk and locker if requested, and provide a production desk in the theatre if requested.

19.14 Recognise that in order to deliver The Services in this Agreement The Designer will invest their own additional resources which may take the form of insurance, studio rental, computer hardware and software, materials and tools along with additional professional development outside the scope of this Agreement. While the cost of these resources is included in the fees as listed in this Agreement, The Producer will not assume or unreasonably request their provision.

19.15 Name The Designer as an "additional insured" on The Producer's public liability insurance, unless The Designer is contracting as a Company.

19.16 Provide The Designer with workers compensation cover for The Designer when at work on The Production on The Producer's company premises and when travelling to and from those premises on business related to this Agreement, unless The Designer is Contracting as a Company.

19.17 Provide The Designer with insurance cover for professional indemnity against claims relating to The Production, unless The Designer is contracting as a Company.

20. THE DESIGNER'S ASSURANCES

The Designer assures The Producer that they have the right to enter this Agreement and will:

20.1 Execute The Design and The Services for The Production in accordance with accepted industry practice and to the best of their ability.

20.2 Ensure that all creative content is The Designer's own work and does not infringe on another's intellectual property rights or copyrights. If The Design requires any additional usage permissions The Designer will inform The Producer, allowing sufficient time for such permissions to be sought and, if unobtainable, will redesign as necessary.

20.3 Work to the dates and meet the deadlines as specified in this Agreement, acknowledging that deadlines cannot be changed except by agreement with The Producer. If an agreed design deadline or deliverable is unable to be met The Designer will proactively negotiate an appropriate strategy with The Producer.

20.4 Make their best endeavour to work within the allocated budget and labour hours as specified in this Agreement. If submitted designs are costed as over-budget The Designer will negotiate with The Director and The Producer to determine an appropriate solution, and if required to alter The Designs to reduce costs and/or labour The Designer will not unreasonably refuse to do so.

20.5 Consult with The Producer when changes to The Design may have an impact on budget or schedule.

20.6 Consult with The Producer and The Production Manager to ensure effective realisation of The Design.

20.7 Make their best endeavour to design The Production within The Producer's OHS standards. However, The Designer cannot accept responsibility for the structural integrity or safety of scenic or costume elements used in rehearsal or performance. The Designer is unqualified to determine the structural appropriateness of The Design and will not assume responsibility for improper engineering, use of machinery, construction or handling.

20.8 Not make any commitment or incur any debt or liability on The Producer's behalf without their prior approval.

20.9 Commit to maintaining appropriate Occupational Health and Safety standards including taking care of their own health and take precautions for others who may be affected through their conduct in the course of providing The Services.

20.10 Work efficiently within The Producer's structure and adhere to agreed standards of behaviour, policies and procedures providing that these are made known to The Designer.

SCHEDULE F – EARLY TERMINATION & CANCELLATION OF THE PRODUCTION

21. CANCELLATION

If **The Production** is cancelled by **The Producer** for any reason other than **The Designer** defaulting in any of their obligations under this Agreement, **The Producer** may terminate the engagement by:

- a. giving notice in writing to **The Designer**; and
- b. paying **The Designer** the next instalment of their fee, in accordance with the Schedule. In any event the total payment to **The Designer** will be no less than 50% of **The Designer's** Fee under this Agreement. In that event **The Producer** shall not be liable for any further payments whatsoever to **The Designer** and all rights in **The Design** shall revert to **The Designer** and any license to **The Producer** to use **The Design** is terminated.

22. TERMINATION

22.1 This engagement can be terminated immediately by **The Producer** by giving written notice to **The Designer** if **The Designer** has committed a breach of any of the obligations or duties set out in this Agreement and has refused to rectify the breach within fourteen (14) days of **The Producer** giving written notice to **The Designer** requiring such breach be remedied.

22.2 This engagement can be terminated by **The Producer** without prior notice, compensation or further payment of fees beyond those already paid to **The Designer** if:

- a. **The Designer** commits any act or omissions which, in the reasonable opinion of **The Producer** may seriously injure the reputation or business of **The Producer**;
- b. **The Designer** is convicted of any criminal offence other than an offence which, in the absolute opinion of **The Producer**, does not affect **The Designer's** position as Designer of **The Production**.

23. DISPUTE RESOLUTION

If any dispute arising under this Agreement is not resolved expeditiously between **The Designer** and **The Producer** it shall be referred to an Arbitration Committee consisting of one (1) representative appointed by the Australian Production Design Guild (APDG) on behalf of **The Designer** and one (1) appointed by **The Producer** and one independent person appointed by both parties.

24. NOTICES AND GOVERNING LAW

24.1 Jurisdiction

This Agreement is governed by the laws of the State listed on page 2 of this Agreement, and the parties irrevocably submit to the jurisdiction of those courts.

24.2 Severance

If any part of this Agreement is found to be unenforceable for any reason, that part of the Agreement is severed to the extent of that unenforceability, without affecting the remainder of the Agreement.

24.3 Entire agreement

This Agreement represents the entire Agreement between the parties on this subject matter and may be varied only in writing signed by both parties.

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