



# **CO-PRODUCTION** Handbook

**OPERA  
AMERICA**

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# PREFACE

**I**n North America, virtually every company has had to adjust to reductions in grants from public funding agencies and to increased competition for contributions from private donors. Similar conditions are taking shape, to varying degrees, in European countries. Because of this, opera companies are constantly seeking to become more efficient in the utilization of their resources. Today, increased co-production, involving both standard repertoire and new operas, is becoming more interesting to opera professionals around the world. In light of this interest, OPERA America has made the encouragement of co-productions among companies a top priority.

The *Co-Production Handbook* came into existence at the suggestion of Professional Company Member general directors and their colleagues abroad. They asked for a guidebook — an "aide-mémoire", as one general director called it — to help ensure the consideration of as many of the details involved in co-production as possible.

At the summer 1996 meeting of the Technical/Production Committee, committee members participated in a brainstorming session during which they enumerated issues and concerns related to co-production. The OPERA America staff organized the resulting list into broad categories. Staff then gathered numerous co-production contracts from member companies. Excerpts from each of these contracts were reorganized to address each of the issues and concerns named by the members of the Technical/Production Committee. In most instances, several contractual excerpts address each point in order to provide the user with a range of reference points.

Since then, the *Handbook* has been reviewed and updated by many opera professionals, including a second review by the Technical/Production Committee during the 2008–2009 season. Their suggestions have been incorporated, and additional co-production contracts have been collected to make the Handbook as complete as possible. Keep in mind that the examples in this handbook are meant to be illustrative only. This is not a complete or exhaustive list of contractual provisions, and parties interested in co-producing should seek the advice of qualified legal professionals.

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## 1. — Definition of Scope of Activity

### 1.1 — Define the objective of the co-production.

**Is this endeavor conceived to save money, to pool resources for an unusually large project, or to expand artistic boundaries?**

### 1.2 — Define the “degree” of co-production. Is this endeavor truly a collaborative artistic project, a project with a lead producer in which several other companies are “investing,” a confirmed advance rental, or part of an agreement to exchange productions?

*Note: Not every partnership is a co-production. Imprecise use of language can lead to confusion.*

## 2. — Advance Considerations

### 2.1 — Consider the potential for artistic compatibility between/among partners.

### 2.2 — Consider the technical compatibility between among partners, e.g., theater size, chorus size, crew requirements, time constraints, technical equipment — especially lighting, video equipment, etc.

*(Reference: OPERA America’s Technical / Production Directory)*

**Example A** The staging of this co-production has been approved by the two parties and declared compatible with their respective stages.

### 2.3 — Determine responsibility for construction. Who is building the production? To what standard is it being constructed? How long is the production expected to last?

**Example A** Lead Producer will supervise and execute all construction of the production’s scenery in its shops in accordance with the co-production budget. Second Producer will supervise and execute all construction of the production’s props in its shops in accordance with the co-production budget.

**Example B** After approval of all sketches and plots for the scenery by (Lead Producer and/or all producers), Lead Producer’s technical department will produce the technical specifications book. A bidding session will

be organized by the Lead Producer. After a mutual agreement among the co-producers, the construction of the set will start.

*Note: At a minimum, the more stringent safety regulations for the partners’ jurisdictions should be followed, but the potential post-premiere rental options could be limited if certain aspects fail to meet national standards (e.g., flame-proofing or fog machines).*

### 2.4 — Determine who owns the production and in what proportion to other co-producers.

**Example A** The producers shall retain ownership interests in the production proportionate to their final contributions to the total capital cost of the production. The capital cost of the production (estimated to be \$XXX) shall be borne by the producers in amounts as described in the schedule of capital contributions attached hereto. The other producers shall make payments to Lead Producer as specified in Appendix X.

**Example B** Each co-producer’s financial obligation shall be a percentage of the total co-production budget as negotiated and described in Attachment X. Each co-producer agrees to pay its obligation to the Administering Producer according to the schedule outlined in Attachment X. Co-producer’s share in the co-production, whose sets, costumes, and properties will have been created by the Lead Producer, has been fixed at the total amount of \$XXX.

### 2.5 — What does ownership include?

**Example A** The co-producers shall fund and produce the design, manufacture, shopping, and assembly of theatrical scenery, props, and non-stock properties, herein referred to as the “Production.”

**Example B** The total budget of the production is \$XXX. Said cost reflects expenses paid by the Lead Producer for advancing work on the production prior to presentation in (city) and the capital materials and labor costs of the production. Shared costs shall be limited to the scenery and costumes.

### 2.6 — Define what scenic elements are being built and what elements are being pulled from stock. Define the utilization of a co-producer’s individual stock resources devoted to the co-production, and establish appropriate fees for the use of this material.

**Example A** Specifically excluded from the “scenery” are stock properties, firearms, and stock scenic elements such as house masking, unpainted scrim, and the like.

**Example B** Each producer shall provide its own stock materials, including but not limited to monochromatic scrim, black velours, etc.

**Example C** Scenery includes all designed stage settings, set dressing, and properties. Scenery does not include stock electrics and/or scenery, including without limitation, rake system platforms, unpainted scrim, house masking, chain motors, and rigging hardware.

*See Appendix A.*

## 2.7— Define responsibility for securing additional equipment and materials.

**Example A** Each producer shall pay entirely for any additional equipment required for its own presentation.

**Example B** Any stock properties belonging to Lead Producer shall remain in (city), and each co-producer shall provide their own for use during the presentation of the opera.

*Note: Lead Producer may want to work with an A/V rental company to compile a pre-arranged package for the technical equipment (projectors, moving lights, LED panels, etc.) that may be shipped with the set to facilitate smooth installations at co-producer venue(s) and avoid incompatibility issues.*

*If projection soft goods require trussing, ensure that it is clearly specified, particularly if the dimensions of the truss are unusual.*

## 2.8— Define Technical Supervision.

**Example A** Lead Producer agrees to provide a technical staff person to be present for load-in, load-out, packing, and inventory assessment of production materials at each producer’s presentation. Each producer shall assume all transportation and lodging costs for such supervision, and the producer at each presentation shall reimburse Lead Producer for the costs of the technical supervisor’s salary and expenses, at the following rates...

**Example B** The technical director associated with the Lead Producer will supervise all load-in and strikes for each co-producer. All costs associated with this consultation are included in the Administrative and Overhead costs.

**Example C** Co-producers will engage a qualified scenery and a qualified costume representative of Lead Producer’s choosing to be in attendance in their presenting cities, their purpose being to attest to the condition of and to support proper handling of the production during load-in, set-up, unpack, fittings, alterations, packing, and load-out of the production. Local fees (not to exceed \$XXX per day), per diems, housing, and round-trip airfare from (city) to the presenting city shall be arranged and paid by the co-producers. In no way shall the representatives be expected to replace a regular employee.

## 2.9— Specify exceptions to technical supervision policies.

**Example A** The requirement to engage a scenery representative for load-in may be waived if Co-Producer’s technical representatives are able to observe the load-in and set-up at Lead Producer’s theater. The requirement to engage a costume representative for unpacking, fittings, and alterations may be waived if the costume designer is present. Should such requirements be waived, scenery and costume representatives will still be required for load-out.

## 2.10— Determine the prop list.

Specify any items that might be difficult to source, either because of obscurity or legal restrictions (e.g. firearms, rare consumables, etc.). Remember that firearms, even if non-operational or replicas, may not be allowed to travel across state lines.

## 2.11— Address the status of costumes.

**Example A** Costumes include all designed clothing, specialty footwear, and jewelry specifically built for this production. Costumes do not include stock undergarments, footwear, jewelry, or hair goods.

## 2.12— Determine who administers the co-production. What is the scope of this administrative responsibility?

**Example A** Lead Producer shall serve as the administering producer and fiscal agent for the

production and will supervise and execute all construction of the production's scenery in its shops in accordance with the co-production budget. Lead Producer will provide a full final account of all co-production expenditures by (date). Lead Producer will then prepare a final combined co-production accounting and shall administer all future rental, sale, or any other exploitation of the production. Lead Producer will also thereafter provide annual statements of revenue and expense for the production's ongoing storage, insurance, maintenance, and usage, and on or about June 30 of each year, any net proceeds shall be distributed among the Producers in accordance with the provisions of this agreement.

**Example B** The co-producers agree that the Administrating Co-Producer of the set will be the company that is going to build the scenery. As such, the Administrating Co-Producer shall:

- a. Administer the co-production agreement and the co-production budget, collecting and disbursing funds as required according to the terms of this agreement and the budget;
- b. Serve as the contact for future rental inquiries of the sets and properties;
- c. Supervise the logistics of co-production meetings, making sure that all co-producers are informed of important co-production activity in a timely fashion;
- d. Oversee the creation and manufacture of the production, including facilitating communication among the co-producers, the directors, and the designer(s), and overseeing the scheduling of design presentations;
- e. Be sure that the production will work within the technical physical limitations of each co-producer's theater;
- f. Establish a separate account into which all funds received for this project shall be placed.

**Example C** (Company name) shall be the Administrator of the co-production. As such, the Administrator shall:

- a. Assemble all budget funds and administer the payment of the production costs;

- b. Contract the Stage Director and Production Designer to conceive/create the production;
- c. Supervise the translation and execution of the production, including overseeing the artistic aspects of the production and administering the construction of scenery, costumes, and properties;
- d. Provide a copy of floor plans, hanging plot, stage manager's book, and costume inventory with original measurements to the co-producers;
- e. Administer the storage, maintenance, and rental usage of the production upon its return to (city) after the final presentation by co-producers.

#### **2.13 – Define procedures to accommodate budget overruns.**

**Example A** If the actual capital costs of the production are greater than the budget, Lead Producer will bear all additional costs. If additional co-producers agree to participate in the production, the capital contributions from the additional co-producer(s) will be paid to Lead Producer until additional costs are covered.

**Example B** If the actual capital costs are less than the co-production budget, the co-producers shall receive reimbursement or reduction of their contribution (proportionate to their ownership share).

#### **2.14 – Define a process for administration succession.**

**Example A** After the completion of the co-producers' presentations of the opera, those co-producers agreeing to keep the production intact will be the new (co-)owner(s) of the production, sharing or assuming the costs of subsequent storage and insurance, as well as the revenue (net of direct expenses) from future rentals or other exploiting.

**Example B** Lead Producer will store and maintain the co-production scenery and props until at least (date). At that time, or at any time after that date, in the event that Lead Producer decides to dismantle and dispose of the production, it will notify each of the producers of its intent, at least 90 days prior to the date of disposal. Any producer who so chooses may at that time elect to move the production, at its own expense, to its own facilities and continue then to store the production in accordance with the terms and conditions of this agreement.

**Example C** On or about (date), Lead Producer shall contact co-producers to determine the extent of continued interest in the production. Continued interest would be under the same terms and conditions outlined in the original agreement. Should any co-producer notify the others of its intent to abandon its interest, the remaining co-producers will assume a new agreement in which costs, revenues, and use will be reapportioned equally.

#### **2.15 – Define producers’ rights for future revivals.**

**Example A** Any producer may, at any time, elect to revive the production after its initial presentation, provided such subsequent presentation does not conflict with any other producer’s initial presentation, as scheduled in Appendix B. In the case of any revival presentation, the producer presenting the revival will be responsible for all round-trip transportation costs and technical supervisor fees and costs as described in this agreement. The producer presenting the revival also agrees to pay design fees to (name) according to the terms of agreements with these artists.

**Example B** Should the Lead Producer or any of the co-producers decide to produce the opera after its initial presentations, that company shall notify the others in writing of its plans to do so at least 12 months in advance. The company shall pay all costs for refurbishing, handling, and shipment of the production.

#### **2.16 – Define procedures for future rentals, rights to negotiate rental fees, and division of rental income. Define what is deducted from rental income.**

**Example A** All producers will retain ownership interests in the production and will share all net income, including that which may result from rentals, electronic exploitation, etc., in proportion to each producer’s final contribution to the final cost of the production. All costs incurred by Lead Producer in storing, insuring, and maintaining the production after the final co-production presentation may be reimbursed from subsequent revenues before any net income is disbursed among the producers.

**Example B** As long as the production is kept intact, each co-producer shall be a co-owner of the production and will participate in revenue (net of deduction of applicable direct costs) resulting

from any exploitation of the production. Each co-producer’s portion of such net revenue will be the percentage of its total contribution to the total production budget. Fees for rental of the production’s scenery and properties will be \$XXX.

**Example C** Any income derived from rentals shall be shared proportionately, net of deductions of applicable direct costs and preapproved refurbishment as necessary. Approval shall not be unreasonably withheld.

Income derived from rentals shall be payable as a credit to the payment fees owed by the co-producers until they are fully invested in the production, at which point income shall be paid on a cash basis.

**Example D** Lead Producer shall provide annual statements of revenue and expense for the production’s ongoing storage, insurance, maintenance, and usage, and on or about July 1 of each year, any net profits shall be distributed among the producers.

**Example E** Fee for rental of the scenery and properties of the production will be \$XXX.

#### **2.17 – Clarify the timing of rentals in relation to the co-producers’ presentations of the production.**

**Example A** While this agreement is in effect, the production shall not be rented to a separate company without first obtaining consent from all co-producers.

#### **2.18 – Define procedures for terminating the co-production at all phases, from pre-construction to years later.**

**Example A** In the event that a producer either fails to meet its financial obligations under this agreement or terminates its operations for any reason, its ownership interest in the production shall automatically pass to the remaining producers in shares proportionate to each producer’s contribution to the capital cost of the production.

**Example B** Co-producers shall have the right to cancel and/or terminate this agreement due to the suspension of its operations in case of fire, war, strike, epidemic, act of God, public mourning, or for any circumstances of the same general class, beyond its control or without its fault, which make the

fulfillment of this agreement impossible or unfeasible. In such case, the defaulting co-producer shall be liable to the others for its pro-rata share of expenses already incurred (or contracted for and which must be paid) for those items contained in the budget.

#### **2.19\_ Define arbitration procedures.**

#### **2.20\_ Develop procedures to accommodate additional co-producers.**

**Example A** If additional co-producers agree to participate in the production, the net revenue will be divided among the co-producers in proportion to each producer's final contribution to the capital cost of the production.

**Example B** Should an additional co-producer be added to this agreement subsequent to its signing, such co-producer will be subject to the terms of this agreement and the financial obligation of each co-producer shall be adjusted accordingly.

#### **2.21\_ Define procedures for disposing of the production.**

**Example A** Lead Producer will store and maintain the co-production scenery and props until at least June 30, 2021. At that time, or at any time after that date, in the event that Lead Producer decides to dismantle and dispose of the production, it will notify each of the producers of its intent, in writing, at least 90 days prior to the date of disposal. Any producer who so chooses may at that time elect to move the production at its own expense to its own facilities, and to continue then to store the production in accordance with the terms and conditions of this agreement.

### **3.\_ ARTISTIC DECISIONS**

#### **3.1 — Specify who has the right to approve aspects of the production.**

**Example A** The staging of this co-production has been approved by the two parties and declared compatible with their respective stages.

**Example B** The right of final approval of the scenery and construction is jointly held by the General Director of the Lead Producer and the General Director of the co-producer.

#### **3.2 — Define who hires the production team. Who makes these decisions? Is there an approval process?**

**Example A** Each producer shall make its own arrangements for the engagement of a stage director, projection designer, costume designer, sound designer, and lighting designer. Lead Producer shall make all arrangements for the engagement of the set designer for the design of the scenery and props and the supervision of its premiere. All fees and royalties payable to the designer and associated with the producers' presentations will be paid by Lead Producer and are included in the capital cost of the production. Each producer will be individually responsible for transportation, accommodation, and a per diem allowance of \$XXX for the scenic designer's residency supervising the production installation at each opening venue.

#### **Example B**

1. Lead Producer has contracted (name) as Stage Director for presentation of the opera in (city). Similarly, co-producers shall contract (name) for their presentations. All local fees, per diem, airfare, and housing shall be negotiated directly with (name) and are the financial responsibility of the contracting co-producer.
2. Lead Producer has contracted (name) as the Production Designer and he/she shall be paid directly by Lead Producer for the design of the scenery and costumes. Co-producers agree to each pay a royalty of \$XXX for their presentations.
3. Lead Producer has contracted (name) as Lighting Designer for the initial presentation of the opera in (city) and shall be paid directly by the Lead Producer. Co-producers shall offer (name) the right of first refusal for their presentations. All local fees, per diem, airfare, and housing shall be negotiated directly with (name) and are the financial responsibility of the contracting co-producer.

#### **3.3 — Clarify procedures to resolve artistic conflicts.**

Terms of the relationship, whether an equal partnership or a hierarchy, are important to document. Artistic conflicts can compromise a co-production if the understanding of the roles is not clear.



### 3.4 — Clarify who issues contracts.

### 3.5 — Coordinate provisions in individual artists' contracts with provisions in the co-production agreement.

**Note 1: Terms** It is often important to lay out the terms for each design member of the production team—specifically regarding right of first refusal (and at what fee, both for the co-producers and any subsequent rentals), as well as the base royalty payments for each remounting independent of the participation fee. If the lead producer is using a most-favored-nations offer, ensure that it complies with the terms by which the other company(ies) contract.

**Note 2: Grand Rights** With the increasingly common use of projection content as either part or all of the scenic design, the intellectual property of the resultant media is generally retained by the designer and cannot be used without their explicit consent. This is unique from a scenic design, where a royalty would be paid but the ownership of the set would remain with the producing company. Ensure that any terms set forth in the agreement cover the entirety of the consortium run. Clarify if and how the media could be “sold” if the production is sold or rented.

**Note 3: Video Platform** With the increasing use of video and projection content, questions of video platforms should be resolved in the contracting of the video artists. If a company mandates that the projections be run through a specific platform, there are a few things to consider:

- If the designer does not work in that platform, will the designer outline the basic construct and then an on-site programmer will develop it in the theater with the designer? How much time will this add to the process?
- How will the video content be shared between producing companies? Particularly if the designer is sending an assistant to subsequent runs of the production, platform changes may alter the core content. If the platform is not changing, do all parties have access to an engineer familiar with the program?

**Example A** Some companies prefer to run all projection through D3. While currently (as of 2018) the most reliable and high-performance system, it is a very expensive system to rent and requires programmers who generally charge a rate of \$500 to \$1,000/day. Companies who use D3 exclusively generally have a staff person trained in this—but it would add significant expenses to any other company hoping to replicate their system without the infrastructure

and staff. Alternatively, if another company hoped to move the projections to Watchout/Isadora/etc., it may require an initial investment of extra time by the designer and an assistant to transfer the assets to the new system.

### 3.6 — Will casting remain the same or change from city to city?

**Example A** Each co-producer will exercise a free hand in the hiring of the soloists and conductor for the performances organized by its house and will pay for all the outstanding musical rights, including those of the publisher.

**Example B** Each co-producer will offer the following personnel the right of first refusal (list names and roles). Chorus and any roles not listed below may be hired at the discretion of the co-producer.

### 3.7 — Involve/invest the creative artists in the concept and spirit of the co-production.

### 3.8 — Clarify the responsibility of the creative artists to remain involved in the production over time and to make adjustments for cast changes.

Any terms relating to the onstage personnel should be conveyed to the principal design team members to get an understanding of how this may affect the total rehearsal time required to remount the production. Terms of archival video capture related to the lead producer's labor agreements may affect the feasibility of cast changes. Consider that some members of the creative team may include provisions for a specific assistant, who may supervise the remounting of a production in their place.

### 3.9 — Clarify designers' responsibility to design a production that works in all co-producers' venues. Make certain these expenses are reflected in the co-production budget.

It is important, particularly with productions that have sizeable projection or audio installations, that all co-producers are informed of the specific requirements of the designers. For example, some video designers only work within one platform, which may not be compatible with the venue system for one of the co-producers. Or a sound-designer might specify a specific soundboard or an additional payment to reprogram the installation to the new board.

**Example A** The Administering Co-Producer shall ensure that the production will work within the technical physical limitations of each co-producer's theater provided.

### 3.10 — Clarify the residual rights of the creative artists directors, assistant directors, designers.

**Example A** The co-producer’s stage director will be (name). It is agreed that (name) has a first refusal right on directing the production for all eventual rentals. If the rental company decides to use its own director, (name) will receive compensation in the amount of \$XXX.

**Example B** Designer’s royalties for an amount of \$XXX payable to (name) and \$XXX payable to (name) at the date of the first performance must be paid by all eventual rental companies.

**Example C** In the event that the production were to be later rented or sold to another company, each of the co-producers agrees to require this additional party to renegotiate rights with each of the members of the original production team. (NOTE: This example might limit the feasibility of future rentals.)

### 3.11 — Define terms for audio/visual capture.

#### a. Archival capture

**Example A** Lead Producer will capture archival footage of (XX) rehearsal(s) and performance(s) for the documentation and restaging of the production. This footage is considered separate from any promotional capture and may only be shared with co-producers or subsequent renters for the purposes of restaging the production (subject to the terms of Lead Producer’s collective bargaining agreements and other contractual limitations). Each subsequent co-producer may capture archival footage for their records or to facilitate further stagings of the production.

#### b. Promotional capture and exploitation.

**Example A** Each co-producer may capture promotional footage subject to the terms of their collective bargaining agreements and other contractual limitations. These promotional uses may not be direct-revenue sources (pay-per-view) and may not exploit more than 5% (total percentage of running time) of the entire production. In the case that a co-producer would like to exploit non-revenue-generating distribution methods of broadcast (“free live or on-demand streaming”), they may request permission from the other co-producers no less than 90 days before the capture. Permission for geographically limited exploitation (local showings, local TV, etc.) shall not be unreasonably withheld. In the case of internet-streaming distribution, it is understood that co-producers may opt to delay permission of exploitation

until the completion of the final performance within the co-producer consortium. No royalties are due to the co-producers.

National or international TV broadcasts (including non-revenue-generating broadcasts such as PBS) are not covered in this agreement and should be arranged separately.

Direct-revenue-generating products deriving from the production (e.g. DVD, “pay-per-view” streaming, or inclusion in a subscription digital streaming services) are not covered in this agreement and should be arranged separately.

**Example B** The television, video, and movie rights of the production are not covered by this contract. In the event of a subsequent recording, it will require a separate negotiation and contract.

### c. Fundraising and educational exploitation

Each co-producer should understand the larger needs of the media capture materials for educational programs or fundraising appeals (either as work samples for grants or promotional materials to donors). With regard to educational and granting exploitation, the question of shared media between the companies becomes essential.

**Example A** If there is a year between company 1 and company 2’s presentations, can company 2 use capture from company 1’s production in grant applications to support that performance? Or would the education departments from companies 1 and 2 work together to create a unified educational program (curriculum, media, activities, etc.) that could be exploited by other companies in the consortium or future renters?

Much of this will be determined by the labor agreements of the capturing company, but understanding the departmental needs from each organization can help to offer a more unified and refined product.

### 3.12 — Make a realistic timetable.

Consider when each of the designers is brought into the process. Particularly with new works (world premieres), there has been an increasing trend of bringing the scenic designer and projection designer into the planning at the same time as the director. Evaluate whether this will help or hinder the goals and timeline for realistic execution of the design, approval, and construction process.

## 4.— COST CONSIDERATIONS

### 4.1 — Separate co-production from overhead and running costs.

Ensure that any costs that would significantly affect the running cost of a production are clearly conveyed to all members of the consortium. (E.g., staging requires 15 onstage and costumed musicians, production requires 5 live-capture video operators, etc.)

**Example A** This agreement covers only the capital costs of the production, which are defined as the costs for design, performance rights, and production of the scenery and stage properties. All other costs, including costs of transportation, installation, and running in each producer's theater are to be borne separately by each individual producer.

**Example B** All expenses normally associated with a producing company, including, without limitation, local warehouse handling, packing, shipping, storage, costume alterations, rehearsal, and performance costs, shall be the sole responsibility of each co-producer.

### 4.2 — Accommodate cast changes in the costume budget. Purchase enough fabric for new costumes.

Determine if fabric alone is a co-production expense or whether new costume construction is covered by the co-production agreement. Define procedures for altering and caring for costumes.

**Example A** Lead Producer shall build costumes for the principal artists, chorus, and supers engaged for the original performances. Costumes shall be constructed in such a manner to allow for limited size changes. Replacement costumes and alterations to fit new cast members shall be the sole responsibility of each co-producer.

All alterations of costumes shall be of temporary nature; no garments may be cut or otherwise permanently altered without the written permission of Lead Producer. Costumes shall be dry cleaned by each co-producer immediately after their presentations and prior to shipment. Each co-producer shall bear this expense.

### 4.3 — Who pays for production storage?

**Example A** Lead Producer will store and maintain the co-production scenery and props until at least June 30, 2021.

**Example B** All co-producers agreed to equally share the costs of storing and/or dissolving the production after last presentation of the production.

**Example C** Co-producers shall share proportionate financial responsibility for storage and insurance of the production upon its return to storage after the final presentation by a co-producer. Such costs will be billed by the Lead Producer to co-producers on a quarterly basis.

### 4.4 — Who pays for production maintenance and refurbishment?

**Example A** Each co-producer shall be responsible for maintaining the production in good condition while the materials are in its care.

**Example B** Each producer shall be responsible for maintaining the production in good condition while it is in its possession, and agrees to be financially responsible for the cost of repairs or replacements required as a result of damage during its possession or during shipment.

**Example C** Co-producers agree to responsibly store and maintain the production in good condition while such materials are in its care. Co-producers agree to accept responsibility for physical damage or loss to the production beyond normal wear and tear while the production is in its care. Major refurbishment, if needed, shall be by prior mutual consent of the co-producers.

The Lead Producer makes no representation as to the safety of the production materials as installed, handled, or used while under the direct supervision of the co-producer's personnel.

### 4.5 — Limit co-producers' right(s) to make alterations.

**Example A** Major alterations to the production may not be done without the prior written consent of all co-producers and designers.

**Example B** Major alteration of the production may not be done without the prior written consent of the Lead Producer.

**Example C** Each of the parties will assume responsibility for the alterations, additions, or transformations that the sets may possibly require to fit on each of the respective stages.

### 4.6 — Define limits on utilization of co-production elements for other productions.

**Example A** No company shall use the set, or any part of it, for any other production.

**Example B** Technological components (dedicated computers, interfaces, cameras, etc.) may be used by the company storing the production, but that company will be

responsible for any damage or wear to the devices, and all equipment must be returned to the production inventory when it is shipped to the next co-producer.

#### 4.7 — Who pays for shipping from city to city? Is shipping by truck, train, air, or ship?

**Example A** The production shall be shipped between the producers according to the schedule of shipments and productions, Appendix X. Each producer shall arrange and pay separately for round-trip shipment to and from (city). All shipments will be by truck only. Rail shipment is not permitted.

**Example B** The co-producers shall equally share the costs of shipment of the production to the various sites of presentation of each co-producer. It is understood that the method and cost must be agreed upon by all co-producers and that they shall make payment of their share of transportation, to the Administrating Co-producer.

**Example C** Co-producer #1 shall arrange for transportation of the production to (co-producer's city) immediately following Lead Producer's presentation and shall store the production until their presentation of the opera. Similarly, co-producer #2 shall arrange and pay for transportation of the production to their city immediately following co-producer #1's presentation and shall store the production until their presentation of the opera. After the final presentation, the Lead Producer shall arrange and pay for the transportation of the production to (city).

#### 4.8 — Include insurance costs.

**Example A** Each producer shall obtain and carry in full force commercial comprehensive general liability insurance and fire and extended coverage insurance on all property of the production in the amount of XX, from the time it receives shipment of the production until the time the production is safely delivered to the next producer.

Lead Producer agrees to insure the scenery at all times during construction until the time that the production is received by the first co-producing partner, and to insure the co-production scenery and props at all times while the production is permanently stored by the Lead Producer.

**Example B** Each co-producer agrees that it shall obtain "all risk property insurance" to cover the production's sets, costumes, and props at a value of no less than \$XXX.

**Example C** Co-producers shall, at their sole expense, insure the production in the amount of \$XXX against all risks of direct physical loss or damage beyond that which

is normal and customary as a result of any peril, natural element, vandalism, collision, or other source of harm to the production and further shall provide comprehensive general liability insurance. Coverage shall be during the term of transportation to and usage by the presenting co-producer, secured through a reputable nationally recognized insurance company, and shall name the co-producers as co-insured and loss payee(s).

#### 4.9 — Specify notification procedures in the event of damage.

**Example A** All damages, losses, or injuries observed at the arrival or at the return of the production must be immediately pointed out to the transporter and at the same time to the Lead Producer. Non-apparent damages, losses, or injuries must be reported within seven working days from their receipt. Failure to act within the prescribed deadlines will result in forfeiture of any claim by the defaulting party toward the other.

**Example B** In the event of a loss or claim after the production is returned to Lead Producer for permanent storage, Lead Producer will decide, in consultation with the other producers, whether or not to restore the production. In the event that a decision is made not to restore the production, the deductible paid and the proceeds resulting from any loss or claim shall be shared by the producers in shares equal to their respective interests.

#### 4.10 — Determine specific payment dates.

**Example A** Co-producer shall pay \$XXX to Lead Producer in the following manner:

- 50% upon the signing of the contract by both parties.
- 50% upon delivery of the production to the co-producer.

**Example B** Co-producer shall pay \$XXX to Lead Producer in the following manner:

- 33% upon the signing of the contract by both parties.
- 33% at an interim date, to be determined.
- 34% upon delivery of the production to the co-producer.

## 5.— ADMINISTRATIVE CONSIDERATIONS

### 5.1 — Within each company, who negotiates the co-production agreement? Who signs it? Who reviews it from a legal perspective? Who administers the agreement internally?

**5.2 — Determine who within the company administration should review the agreement before it is signed. Make certain appropriate personnel review the logistical implications of the co-production provisions.**

**5.3 — Determine procedures for continued staff communication.**

**Example A** The technical departments of both theaters will be in direct communication and will agree mutually on the final dates of delivery of the production and on its modes of transportation.

**Example B** The Lead Producer’s Director of Production will communicate on a regular basis with the other Technical Directors throughout the construction period to update them on methods of construction and choice of construction materials.

**5.4 — Clarify the rights and responsibilities, individual and collectively, for fundraising in relation to the co-production.**

**5.5 — Clarify sponsor/program credit for the co production as well as for the local presentations.**

**Example A** The following shall appear on the title page of all house programs and in all promotional materials where the scenery or costumes are mentioned: Scenery and props designed by:

Scenery and props for this production are jointly owned by:

**Example B** On the title page of the in-house programs, and in all publicity and advertising where appropriate, the co-producers agree that the production shall receive billing as follows:

For Lead Producer: New production by (Lead Producer) and (Co-Producers)

For Co-Producers: New production by (Co-Producer) and (Lead Producer)

Set Designers:  
Projection Designers:  
Costume Designers:  
Scenic Shop:  
Costume Shop:

**Example C** In the co-producers’ house programs, credit shall be given to:

- a. The co-producers, with each company having the right to list itself first in its own city.
- b. The stage director, scenic and costume designers, and scenic and costume shops.
- c. Sponsors contributing an amount equal to or greater than \$50,000.

**5.6 — Clarify who coordinates publicity for the co-production.**

## 6. STANDARD CONTRACTUAL PROVISIONS

**6.1 — Force Majeure**

**6.2 — Indemnification**

**6.3 — Obligation, Assignment, Counterparts, Severability**

**6.4 — Disputes**

## 7. INTERNATIONAL CONSIDERATIONS

**7.1 — Specify currency in which agreement is being defined.**

**7.2 — Verify that the design team and onstage artists can be expected to receive work visas.**

**7.3 — Specify what currency fluctuations might result in the exploitation of a force majeure cancellation.**

**Example A** If the Euro loses more than 25% of its value against the dollar, the European partner may re-evaluate their capacity to participate in the production without prejudice.

## 8. TERMINOLOGY

The following terms are often used interchangeably among co-production contracts throughout the field. Though these synonymous terms exist, attempt to use one term only within a single contract.

| <i>North American Term</i> | <i>Alternative Term</i> |
|----------------------------|-------------------------|
| Rent [a production]        | Lease [a production]    |
| Opera Company/Company      | Theater                 |
| Load-in                    | Get-in                  |