

AGREEMENT

THIS AGREEMENT (this "Agreement") is made and entered into as of April 14, 2022 by and between New York City Opera at 142 W 57th Street, Floor 11, New York, NY 10019 ("NYCO") and Phoenicia Festival of the Voice Foundation, having an address at 24 Main, Phoenicia, NY ("PFoV").

RECITALS:

NYCO is contracted to perform the opera *La Traviata*, on the PfoV stage (the "Stage") on August 6, 2022 (the "Performance"), upon the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Performance and Expenses.

(a) NYCO agrees to perform its specially adapted version of Verdi's *La Traviata* on the Stage on August 6, 2022 starting at 8:30 pm. The performance will be staged or semi-staged, utilizing NYCO's own singers, costumes, set pieces, lighting plot, projections. NYCO will supply its own computers or programs connected with lighting, projections or sound cues for the Performance. NYCO will provide its own orchestra and conductor.

(b) NYCO will have the full use of stage, equipment and crew following the Teatro Grattacielo performance on the festival stage which will end approximately 10:45pm on Aug. 5, 2022..

(c) All of NYCO's costs and expenses associated with the Production will be paid by NYCO. In addition, NYCO shall pay to PfoV \$4,200 US for the services, personnel and equipment described in the following paragraph 1(d), which payment is due no later than July 5th, 2022.

(d) For the use of the Stage in Phoenicia, NYCO agrees to pay the aforementioned fee of \$4,200.00 (Four thousand, two hundred dollars) U.S. which fee covers the following-

(e) use of all FOV lighting, sound and video (NYCO may bring their own engineers if they want, but the Live Sound team must remain present.)

-PFOV jumbotrons, cameras and camera operators

-general labor to unload trucks/equipment

-backstage labor for scene changes with normal sets and change times (if additional labor is required due to heavy sets or faster than normal scene changes, NYCO will bear the cost of the extra labor upon agreement with PfoV management) etc

To reiterate and in addition the fee includes basic lighting, sound (radio and public address speaker), stage crew, video operators and one sound engineer for the Performance. PFoV will also provide a production manager, stage manager, volunteer labor to unload and load equipment, green room sanitation, covid-19 management, use of the stage on the day of the Performance, ticket management, house management, orchestra chairs/music stands/lights, publicity, overnight security and liquor licensing. NYCO agrees to supply any additional production staff necessary outside of the above if needed for running the Performance, including extra lighting operators, extra camera operators, extra stage managers, props, costume master/mistress.

This Fee does not include:

-Lighting design or programming

Payments due under this paragraph 1(c,d) are due no later than July 5, 2022.

(f) If any video/sound cues are used in the Performance, NYCO shall bring their own playback device (laptop) and a person to operate it. Any device being used for video playback must have an HDMI output, any device being used for audio output must have an 1/8" headphone jack output. If either of these requirements presents difficulties for NYCO, PFoV will endeavor to make reasonable accommodations if NYCO notifies PFoV of these difficulties before July 29, 2022.

2. Ticketing. All ticketing will transit PFoV's ticket manager, Laura Spey, via the NYCO ticketing platform Yapsody. Login information will be given to designated representatives of in order to access ticketing progress and information. NYCO will be entitled to all proceeds of the sale of tickets for the Performance only, net of the per ticket handling fees and [Yapsody fees] for those sales. NYCO also will be entitled to one-third (1/3) of the proceeds of 3-day passes sold for the entire Festival, net of the per ticket handling fees and [Yapsody fees] for those sales. PFoV will provide on-site greeting staff and ticket handlers for the Performance.

3. Licensing. NYCO shall be responsible for obtaining and paying for any and all licenses, approvals and/or royalties required by all applicable copyright laws in connection with the Performance.

4. Termination. NYCO may terminate this Agreement by providing written notice to PFoV. PFoV may terminate this Agreement for material breach of this Agreement by NYCO by providing 10 days' written notice to NYCO, unless the material breach is cured within such 10 day period. In either of such events, NYCO shall remain obligated to pay to PFoV the amounts described in paragraph 1(b) and (c). In addition, NYCO shall reimburse to all ticket holders who purchase tickets for the Performance the full amount of the ticket price, [net of the per ticket handling fees and Yapsody fees for those sales]. [Any refund on 3-day passes?]

5. Force Majeure; Cancellation of Performance. Neither party shall be responsible for any delay or failure in performance resulting from any force beyond its control including without limitation, war, terrorism, strikes, civil disturbances and acts of God. If PFoV determines to cancel the Performance due to emergency, inclement weather, or if, due to the Covid-19 virus or related restrictions, the Performance cannot be safely performed or is impracticable, each party shall reimburse to all ticket holders who purchase tickets for their Festival performance the

full amount of the ticket price, net of the per ticket handling fees and [Yapsody fees] for those sales. [refund on 3-day passes?]. There is no alternate date for the Performance. PFoV will not be obligated to return any payments made by NYCO under this Agreement and will not be responsible for any other costs incurred by NYCO in the event of cancellation. Before cancelling the proposed performance, PFoV agrees to consult with NYCO before making its final decision.

6. Insurance. Each party to this Agreement shall maintain, at their own expense and for the entire term of this Agreement, event insurance in which both NYCO, and PFoV and their respective officers, agents, employees, directors and trustees are named insureds, with minimum policy limits of \$[]US for personal injury (including death) and \$[]US (aggregate) for property damage, and covering all activities contemplated by this Agreement. In addition, each party will obtain, at its own expense, cancellation insurance covering the cost of all of such party's expenses and its obligation to reimburse ticket holders in the event of cancellation of the Performance.

7. Indemnification. NYCO agrees, to the extent not expressly prohibited by law, to pay, and to protect, defend, indemnify and save harmless PFoV and its affiliates, employees, officers, directors, trustees and agents (the "PFoV Indemnified Parties"), from and against, any liabilities, losses, damages, costs and/or expenses (including, but not limited to, attorneys' fees and expenses) of any nature whatsoever which may be imposed upon, incurred by, or asserted against any PFoV Indemnified Party by reason of any accident, injury to, or death of any person or any damage to property, or any other events occurring, on the Stage or at the Festival, caused by NYCO, its employees, agents, contractors, licensees, visitors, officers and representatives; provided, however, NYCO shall not be responsible for any of the foregoing to a PFoV Indemnified Party to the extent same was caused by the gross negligence or willful misconduct of PFoV.

8. Independent Contractors and No Joint Venture. NYCO and PFoV shall act as independent contractors under this Agreement. Nothing in this Agreement shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties to this Agreement for any purpose, and the employees of one party shall not be deemed to be the employees of the other party. Neither party has any right to act on behalf of the other, nor represent that it has such right or authority.

9. Entire Understanding. This Agreement sets forth the entire understanding between the parties to this Agreement and supersedes all prior agreements, arrangements and communications, whether oral or written, with respect to the subject matter hereof.

10. Notices. All notices and demands hereunder shall be in writing and shall be served in person, or sent by email or nationally recognized overnight courier, as follows:

If to PFoV:

[]
Attention: []
Email:

If to NYCO:

142 W. 57th Street, Floor 11, New York, NY 10019
Attention: Michael Capasso
Email: MCapasso@nycopera.com

Such notices shall be deemed served when delivered to the addressee. Any party may change the address for notices to it by a notice given as described herein.

11. Miscellaneous. This Agreement shall be binding upon NYCO, PFoV and their successors and permitted assigns. Neither this Agreement nor any rights or obligations under this Agreement may be assigned by either party without the prior written consent of the other party. This Agreement shall not be modified except by a written instrument signed by both parties. In the event of any dispute regarding this Agreement the prevailing party in the dispute will be entitled to recover its legal fees from the other party. This Agreement shall be governed by New York law, without regard to choice of law principles. The parties agree that any dispute or claim relating to this Agreement will be brought and heard in the courts of the United States located in the State of New York or in the courts of the State of New York.

12. Authority. Each of NYCO and PFoV represents and warrants to the other that each person executing this Agreement is a duly authorized representative of NYCO or PFoV, as the case may be, and has full authority to execute and deliver this Agreement.

13. Counterparts. This Agreement may be executed in several counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument. An executed counterpart of this Agreement transmitted by facsimile, email or other electronic transmission shall be deemed an original counterpart and shall be as effective as an original counterpart of this Agreement and shall be legally binding upon the parties hereto to the same extent as delivery of an original counterpart.

14. COVID Policies. NYCO agrees to comply, and shall cause its employees, agents, contractors, licensees, visitors, officers and representatives to comply with the COVID Protocols established by PFoV for the Festival and all applicable rules and regulations of the Centers for Disease Control and Prevention, the State of New York and local jurisdictions applicable to the Festival.

[No further text; signatures follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

New York City Opera

By: 
Name: Michael Capasso
Title: General Director

**PHOENICIA FESTIVAL OF THE VOICE
FOUNDATION**

By: _____
Name: _____
Title: _____

