

Production Design & Set Build Agreement

This agreement is made on the 25 July 2023

Between

MONKEY BAA THEATRE COMPANY (ABN 92 112 407 075) a company limited by guarantee with its registered office situated at 273-279 Sussex Street, Sydney, NSW 2000 (hereinafter 'Monkey Baa Theatre Company'; 'Monkey Baa' or 'The Producer').

and

MATTHEW ABERLINE (ABN 24 302 740 359) at Unit 2, 414 Botany Road, Beaconsfield NSW 2015 (hereinafter called 'VISUAL ARTIST').

Whereas:

- A. The Producer hereby wishes to engage the Visual Artist to provide the non-exclusive services of the Visual Artist to prepare and provide the set and costumes ("the Design" and "the Deliverables") for the first phase of the Producer's production of ***The Duck and the Darklings*** based on the book by Glenda Millard ("the Production") for the presentation in 2024 (schedule to be decided) ("the Season").
- B. The Visual Artist accepts such engagement by the Producer and agrees to provide the services for the Production upon the terms and conditions contained in this Agreement.

1. PERIOD OF CONTRACT

The Producer engages the Visual Artist to work on the Production as follows:

Start date: 24 July 2023
End date: 1 September 2023

Note: This agreement is for the first phase of the production only. There is no guarantee that the Production will continue beyond this first phase outlined in this agreement.

2. VISUAL ARTIST'S RESPONSIBILITIES

The Visual Artist will:

- a) Consult with the Director Eva Di Cesare during this first phase. Final decision regarding the design shall be made mutually between the Director, Head of Production and Visual Artist.
- b) The Visual Artist will design the set design for the Production completely in this first phase within the parameters laid out in Schedule B by 1 September 2023.
- c) The Visual Artist will complete the build of the living spaces within the set in this first phase within the parameters laid out in Schedule B by the 28 August 2023. This will allow the Producer to work with the performers and the Visual Artists in that week.
- d) The Visual Artist will provide preliminary costume renderings for each character by the 28 August 2023.

- e) The Visual Artist will adhere to the Producer's scope of works requirements for Set, Costume and Props as outlined in Schedule B.
- f) The Visual Artist will attend any and all design meetings, future Creative Developments and Production Meetings.
- g) Design and deliver within the budget of \$40,000.00 for the purchase and construction of props, set and costumes and all budget decisions will be referred to the Producer. and be required to provide a detailed budget breakdown.
- h) The Visual Artist will provide a work in progress site.
- i) The Visual Artist will provide all engineering documentation in conjunction with the Producer.
- j) The Visual Artist will provide SWMs documentation.
- k) The Visual Artist will be responsible for all installation of deliverables, maintenance and operations as required in conjunction with the Producer, specifically the Head of Production.
- l) Provide bio and headshot including but not limited to any information requested by the Producer for the program.
- m) The Visual Artist is required to adhere to the Producers standard HR and organisational policies sent with this Agreement and subject to change by the Producer.
- n) Be responsible for the arrangements for the manufacture of the sets and props. The purchase or hire of all materials and equipment shall be the responsibility of the Visual Artist with the approval of the Producer.

3. SCHEDULE OUTLINE

The below schedule outlines the timeline and outcomes of phase one.

Activity	Dates
Consult with the Director and Head of Production regarding all set and costume designs for phase 1	Ongoing between date of execution and the end of the week commencing 28 August 2023
Detailed meeting to discuss the budget for the design and set build and Producer to provide approval.	By the 11 August 2023.
Design the complete set design for the entire production	To be completed by 1 September 2023
Complete the build of the living spaces	To be completed by 28 August 2023
Complete costume renderings for each character	To be completed by 28 August 2023
Attend any and all design meetings and/or production meetings	Ongoing between date of execution and the end of the week commencing 28 August 2023
Attend the creative development	During the week commencing 28 August 2023

4. PRODUCER'S RESPONSIBILITIES

The Producer will:

- a) Within 6 weeks of the date of the last paid public performance, the Producer shall supply to the Visual Artist copies of all advertising and promotional materials, hi-res of photos of the Production and a full set of reviews. With prior approval from the Producer, the Visual Artists may publish content during Phase 1 to social media and their own website for promotional purposes only.
- b) Should the Visual Artist be required travel from their place of residence, the Producer shall cover all airfares, ground transfers, accommodation and per diems. For the avoidance of doubt the Visual Artist is Sydney-based.

5. REMUNERATION

- a) A total fee of \$60,000 (exclusive of GST) will be paid to the Visual Artist. This includes a fee for the Visual Artist services (\$20,000) and costs for the Props, Sets and Costumes (\$40,000).
- b) The payments will be made as per the following schedule:

Payment	Deliverable / Date
\$36,000 (60% of the total fee)	On execution and delivery of a valid tax invoice.
\$24,000 (40% of total fee)	Payment upon completion.

- c) An additional payment of 11% of the Designer Fee superannuation to the Designer's superannuation fund. This will be 11% of \$20,000.

6. INSURANCE

- a) The Producer shall maintain an injury compensation insurance policy, as required by statutory regulations, which includes adequate public liability insurance cover. The Producer agrees to indemnify the Visual Artist against any claims by third parties arising out of the performance of this Agreement.
- b) The Visual Artist will indemnify the Producer against all or any claims by third parties against the Producer arising out of the performance of this Agreement.
- c) Regarding the Set Build deliverables, the Visual Artist shall hold and maintain insurance coverage for the set build, including materials, construction, and any associated risks during the construction phase, with limits and coverage acceptable to Monkey Baa Theatre Company. The Visual Artist shall be solely responsible for any costs, damages, or liabilities arising from the set build deliverables.
- d) Both parties agree to promptly notify each other of any accidents, incidents, or claims that may give rise to an insurance claim under this Agreement. Failure to comply with the insurance requirements by either party may be grounds for termination of this Agreement.

7. BILLING

The Visual Artist shall be credited on posters, fliers and paid displayed advertising with no less prominence and in the same size, colour and typeface as that of the Director, wherever the names of the creative team appear.

Billing shall be as follows:

- a) Visual Artist: Matt Aberline
- b) Production Manufacturer: The Beautiful and Useful Studio

8. INTELLECTUAL PROPERTY

- a) The Visual Artist shall retain ownership of all intellectual property rights associated with the designs, including sketches, working models, drawings, and plans ("Design IP"). The Visual Artist grants Monkey Baa Theatre Company a non-exclusive, worldwide, royalty-free license for the premiere season to use the Design IP solely for the realisation of the Production on stage.
- b) The Producer shall not have the right to assign, lease, sell, license or use either directly or indirectly any of the Designs or Deliverables created by the Visual Artist pursuant to this Agreement whether for use in motion pictures, television, video cassette, merchandising, any other stage production or any other purpose whatsoever without prior written consent of the Visual Artist and without first negotiating a fee and/or royalty rate with the Visual Artist for such use.
- c) The Visual Artist shall not sub-contract any party to deliver on this contract without the prior approval by the Producer. The Visual Artists will take full risk and indemnify the Producer on any action by any sub-contractors involved in the project.
- d) The Designs and Deliverables provided by the Visual Artist and approved by the Producer shall not be altered after opening night without the prior written consent of the Visual Artist. Should the parties agree to change the Designs and/or the Deliverables after the approval of the original designs, both parties shall sign a written memorandum of such change.
- e) Upon completion, all physical deliverables, including sets, props, and costumes, shall be delivered to Monkey Baa Theatre Company. Monkey Baa Theatre Company shall become the owner of the physical deliverables, while the Design IP remains the property of the Visual Artist. Monkey Baa Theatre Company shall have the right to modify, adapt, or reproduce the physical deliverables for the purposes of staging and promoting the Production, but shall not have the right to use the Design IP for any other purpose without the prior written consent of the Visual Artist.
- f) Any unauthorised use or reproduction of the Design IP by Monkey Baa Theatre Company shall be subject to negotiation with the Visual Artist for a separate fee and/or royalty rate. Monkey Baa Theatre Company shall take reasonable steps to ensure the integrity of the Design IP and shall not alter the Design IP after the opening night without the prior written consent of the Visual Artist, except through a mutually agreed-upon written memorandum.
- g) In the event that the Production is further remounted, toured, or transferred beyond the Season, the Visual Artist shall receive a royalty of 2% of gross box office takings (for the Designer of both the set and costumes), less GST (if applicable), handling fees and credit card charges ("the Royalty"). If Monkey Baa Theatre Company decides not to engage the Visual Artist for further phases of the Production's development, the Visual Artist shall still receive credit as outlined in section 6a in any and all future productions.

- h) This clause shall survive the termination or expiration of this Agreement, ensuring the ongoing rights and ownership of the Design IP and physical deliverables as described herein.

9. DOCUMENTATION

The Visual Artist agrees to:

- a) The photographing and video recording of any creative development, rehearsal and/or performance of the Production. The Producer may broadcast a filmed recording of the Design within the Production for commercial and publicity purposes provided that the broadcast does not exceed a maximum of 5 minutes.
- b) Subject to professional availability, be present at all photograph calls and filming sessions including material designed for the Production. The Visual Artist agrees to cooperate with the Producer in respect of all publicity and promotional activities related to the Production.

10. COMPLIANCE

- a) The Producer acknowledges that the Visual Artist is responsible for the design, manufacture and delivery of all aspects of the Set, Costume and Props.
- b) All set, costume and prop deliverables must be up to Australian Standards of safety and compliance when delivered to the Producer. All scenic elements, construction and materials must comply with the most stringent fire and safety codes applicable. These standards will be set out by the Producer.
- c) The Producer shall not be under the obligation to use any set item or prop (or part thereof) where there is a risk of health or safety of any actors, crew or patrons. In such event the Visual Artist shall, at the request of the Producer, undertake such work reasonably requested to minimise the risk of interaction with the set item or prop.

12. DISPUTE RESOLUTION

- a) Any dispute or claim arising out of or relating to this Agreement shall be resolved through good faith negotiations between the parties.
- b) If the parties are unable to reach a resolution through negotiation, the dispute shall be submitted to binding arbitration in accordance with the rules of a mutually agreed-upon arbitration institution. The decision of the arbitrator shall be final and binding upon the parties.

13. TERMINATION

- a) Either party may terminate this Agreement by providing a written notice of termination to the other party with a minimum notice period of 28 days for convenience. In the event of a material breach of this Agreement by the Visual Artist, the Producer reserves the right to terminate this Agreement immediately upon providing written notice of termination to the Visual Artist. Termination of this Agreement shall not relieve the parties of any obligations accrued prior to the effective date of termination.
- b) This Agreement shall terminate automatically on the death or incapacity or bankruptcy of the Visual Artist, in which case the Visual Artist's estate shall retain

payments and royalties made and owed to the Visual Artist and the Producer shall have the right to keep copies of preliminary Designs for the sole purpose of completing the Design.

- c) In the event of the abandonment or postponement of the Production by the Producer through no fault of the Visual Artist, the Visual Artist shall nonetheless be entitled to receive either a partial amount of their fee or their fee in full to be decided and dependent on how much of the Work has been completed at the time of abandonment or postponement. This is for the first phase of the Production only. The Visual Artist may terminate this Agreement by notice in writing if the Producers are more than 28 days late in making any payment.

14. FORCE MAJEURE

- a) In the event that either party is unable to fulfill its obligations under this Agreement due to circumstances beyond its control, such as acts of God, natural disasters, war, or government actions ("Force Majeure Event"), the affected party shall promptly notify the other party and the performance of the Agreement shall be suspended until the Force Majeure Event is resolved.
- b) If the Force Majeure Event continues for a specified period, either party may choose to terminate the Agreement. Neither party shall be liable for damages or losses resulting from the Force Majeure Event, but they shall still make reasonable efforts to mitigate the impact and resume performance when feasible.

15. CONFIDENTIALITY

- a) The Visual Artist acknowledges that they may have access to confidential information of Monkey Baa Theatre Company during the course of this Agreement.
- b) The Visual Artist agrees to maintain the confidentiality of such information, not disclose it to third parties without written consent, and use it solely for the purposes of fulfilling their obligations under this Agreement. The obligations of confidentiality shall continue even after the termination or expiration of this Agreement.

16. CHILD SAFETY & WORKING WITH CHILDREN CHECK

- a) If the Visual Artist's role under this Agreement involves working with children or young individuals, the Visual Artist must possess a valid and current Working with Children Check (WWCC) or any equivalent background check as required by applicable laws.
- b) The Visual Artist agrees to provide evidence of their valid WWCC to the Producer before commencing work with children and to maintain its validity throughout their involvement. The Producer reserves the right to periodically request and verify the Visual Artist's WWCC details, and failure to comply may result in immediate termination of this Agreement.

18. OTHER TERMS AND CONDITIONS

- a) The Agreement contains the entire understanding of the parties here to, superseding any prior agreement, and any modification or termination of this Agreement must be in writing and signed by both parties.
- b) If any provision in this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement shall remain otherwise in full force apart from such provision that shall be deemed deleted.

- c) This Agreement shall not constitute a partnership nor be deemed to constitute a partnership between the parties.
- d) This Agreement shall be governed by and construed according to the laws of the state of New South Wales and the Parties hereby submit to the non-exclusive jurisdiction of the courts of New South Wales.

EXECUTION

IN WITNESS WHEREOF the parties hereto have hereunto signed in agreement on

27th July 2023 (date)

26 July 2023

SIGNED FOR AND ON BEHALF OF
Monkey Baa Theatre Company

SIGNED FOR AND ON BEHALF OF
Matthew Aberline



NAME

Emma Khamis

NAME

Sally Rintoul

WITNESS (signature)

Emma Khamis



WITNESS (signature)

SCHEDULE B

PHASE 1 - DESIGN REQUIREMENTS FOR SET, COSTUME AND PROPS

Monkey Baa's livelihood is based upon being able to present to audiences in a wide range of venues. Set Designs for our productions must conform to parameters that will be agreed during the phase one design process. These requirements will be met with design solutions at the design stage rather than construction solutions down the track. We have a hands-on approach as an organisation, our expectations of all company members and creative teams is to be flexible and fill in the gaps when the need arises.

The Duck and the Darklings design will incorporate an immersive environment for both cast, crew and audience. With an audience of up to 40 people in attendance for each session. The scale of the space will be discussed with the Visual Artist, director, Lighting Designer and Head of Production during phase one. A final decision will be agreed mutually.

General Scope

- Set must break into elements that can be lifted by two small people
- The set must fit into touring vehicle along with reasonable room for props/costume/technical equipment that may be in road cases.
- Set must be freestanding. No drilling/fixing to floor or walls.
- No flown elements/support from above.
- In venues without a loading dock the set will need to be carried from the back of the truck through the venue and onto the stage. This must not have a significant impact on the bump in time.
- In venues without a covered loading dock the set must withstand being moved a short distance through rain or inclement weather.
- The set must be fire retarded. This is part of the build budget.
- If live flame is used costumes and props must also be fire retarded.
- The set must be, as far as possible, quiet when walked/moved upon by performers.
- The set must not feature any dangerous items or other factors that would preclude it from travelling via air freight.

Deliverables for Phase One

Design for the Production including:

- The living areas (ie the set pieces where most of the action takes place)
- Costume designs
- Floor plans
- Options for 'A Bubble' immersive environment
- Style guide ideas of the Duck

In addition to the conceptual material, the following physical elements will be realised:

- the living area sets
- Important physical staging pieces (ie beds and chairs)
- Important Props as negotiated

Out of scope

Phase Two is not included in this contract.

The manufacturing of the other scenic elements - ie any towers, the fields, the hide-places
Costume Manufacture

Budget Requirements

The budget allocation is to cover the following:

- Materials and labour required to create the set
- Materials and labour required to create the props (Note that stage managers are not props buyers, money must be set aside for a props buyer if this need is anticipated)
- The first delivery of the set to the rehearsal room or otherwise agreed location from the builders.
- Any other transport (to/from workshop) before the first venue
- Fire retardant additives for any paint to be applied to the set
- Fire retardant wash for any unpainted materials, synthetic or natural fibres

Strength Requirements

The designer must determine, in discussion with the director and Technical Producer what loads the set will bear. In the design documentation it must be clear if set elements need to be strengthened to take, for example, the weight of an individual standing on them.

If performers dance or perform acrobatics on set items this must be notated in the design documentation.

If strength of items is not indicated in documentation it will be assumed they only have to support their own weight or used for their natural purpose (eg a chair will only be sat on, a table will only support the weight of props etc...)

Safety Requirements

The design of set, costume and props must be inherently safe for (according to Australian Standards): These 'standards' need to be expressed by the production manager in a timely manner.

- Crew installing/loading/working on the set
- Performers
- Members of the public

Any anticipated safety risks must be identified as part of the presentation of the design to the company and a risk management process will be entered into.

Documentation

Documentation will be delivered to the company on an agreed date. Unless otherwise agreed the designer must provide:

- A physical model of the set
- Digital drawings of the set in plan view and in section view
- Any other drawings required for accurate construction, Eg detail views

Unsuitable design or deliverable

If, following the design presentation, the design is not deemed suitable by the Producer then it is the responsibility of the designer to solve the identified problems and submit corrected documentation.