COMMISSION AGREEMENT dated as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_ by and between Party 1 (“Composer”), Party 2 (“Librettist”), and Party 3 ("Producer").

WHEREAS, Producer desires to commission a new opera entitled *Opera Name* (the "Work"), with music composed by Composer and a libretto written by Librettist, based on the stage play of the same name written by Librettist (the “Play”);

WHEREAS, Composer and Librettist have agreed to create the Work and have the right to enter into an agreement to permit Producer to present the Work;

WHEREAS, Composer and Librettist intend to designate Publisher (“Publisher”) as the publisher of the Work; and

WHEREAS, Composer and Librettist intend to complete the creation of the Work in time for presentation of the world premiere performance in the 20XX-20YY season;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, it is agreed between the parties hereto as follows:

1. The Work; Not a Work-for-Hire

 1.1. The Work. Producer hereby commissions and agrees to present Composer and Librettist hereby agree to create and allow the presentation of the Work for a world premiere (the “World Premiere”) at the Grand Opera House in the 20XX-20YY season. The Work will comprise a performance time of no more than X hours and YY minutes, exclusive of intermission. Unless otherwise established by written agreement between the parties, the Work shall be written for no more than X principals, YY choristers, and orchestra as set out on the attached Schedule A.

1.2 Not a Work-for-Hire. Nothing herein will be construed as creating an employer-employee relationship between the parties, nor will the Work be considered a work-made-for-hire as that term is defined under the United States copyright law.

1. Performances; Broadcasts and Recordings; Additional Co-Commissioners; Casting

 2.1 Performances. Producer shall have the exclusive right to present the World Premiere performance and up to six (6) additional live performances of the Work during the 20XX-20YY season. Producer shall have the right to join with an additional opera company, with each of Composer and Librettist to have a right of approval of such opera company, in order for such company to become an initial co-commissioner (the “Initial Co-Commissioner”). The Initial Co-Commissioner shall have the right to present up to six (6) live performances of the Work during the one year period following the premiere performance by such Initial Co-Commissioner, provided, however, that such Initial Co-Commissioner shall agree in writing to be bound by all terms and conditions of this Agreement in connection with its performances of the Work and provided further that Producer agrees to assume all liability for any breach of such terms and conditions of this Agreement by Initial Co-Commissioner. Such performances by Producer and Initial Co-Commissioner shall not be subject to royalty or rental fees. For any additional performances by Producer or Confirmed Co-Commissioner, normal royalty and rental fees shall apply, subject to negotiation with Composer and Librettist or, if applicable, Publisher. Notwithstanding the grant of exclusive rights to present the World Premiere performance, in the event that Producer is unable to assure the timely presentation of the World Premiere performance as set forth herein, Producer will not unreasonably withhold its consent to Composer and Librettist or, if applicable, Publisher licensing such rights to other companies.

2.2 Broadcasts and Recordings. Except as specifically provided for herein, the Work may not be broadcast, televised, retransmit or broadcast, nor may Producer’s performances of the Work be taped, recorded or otherwise permanently fixed in any format without the prior written approval of Composer and Librettist. Notwithstanding the foregoing prohibition, it is agreed that Producer will have the right to authorize the creation of one or more recordings of excerpts not to exceed fifteen (15) minutes in length for the sole purpose of publicizing and advertising the Work and Producer’s performances thereof; provided, however, that no more than six (6) minutes of the Work in the aggregate may actually be used in any single publicity use or advertisement. In addition, Producer shall have the right, without payment by Producer of any additional fees and/or royalties, to present, at Producer’s sole cost and expense, live and/or tape delayed audio-only radio broadcasts of the Work transmitted in any audio-only form, whether analog or digital, by any means, including without limitation by means of podcasts or internet transmissions. Producer may also make, at Producer’s sole cost and expense, archival audio and/or video recordings of its live performances and rehearsals of the Work (the "Archival Recordings") subject to the following restrictions: (a) neither Producer nor anyone else associated with the production (except as required by union) shall receive any compensation or profit from the Archival Recording, either directly or indirectly; (b) the Archival Recordings may be used only for library, study, or archival purposes; and (c) copies of said Archival Recordings shall reside only in the Producer's archives. A copy of each Archival Recording shall be given to Composer and Librettist for their personal use only, subject to all applicable restrictions.

 2.3 Additional Co-Commissioners. Producer and Initial Co-Commissioner shall have the right to join with up to two (2) additional opera companies, with each of Composer and Librettist to have a right of approval of each such opera company, in order for such companies to become additional co-commissioners (“Additional Co-Commissioners”). Each Additional Co-Commissioner will be required to contract separately with Composer and Librettist or, if applicable, Publisher for presentation of the Work. However, it is agreed that the grand rights royalty fees payable to Composer and Librettist or, if applicable, Publisher with respect to the performances by the first and second Additional Co-Commissioners will be four and one-half percent (4.5%) and six percent (6%), respectively, of adjusted gross income (such adjustments to be limited to credit card processing fees) (the “Additional Co-Commissioner Fee”) for each such Additional Co-Commissioner’s initial run of up to six (6) performances of the Work. No rental fees will be payable by the Additional Co-Commissioner in connection with the foregoing performances of the Work. Each Additional Co-Commissioner shall pay Composer and Librettist or, if applicable, Publisher a non-refundable, non-returnable, recoupable advance equal to fifty percent (50%) of the estimated Additional Co-Commissioner Fee no later than thirty (30) days after entering into a co-commission agreement with Producer and/or Initial Co-Commissioner. Composer and Librettist or, if applicable, Publisher shall have the right of approval over the amount of the estimated Additional Co-Commissioner Fee. Producer may elect to pay the applicable advance and/or total Additional Co-Commissioner Fee on an Additional Co-Commissioner’s behalf.

2.4 Casting. Producer agrees to engage the services of a conductor, stage director and sound designer for the Work subject to the prior approval of Composer and Librettist and principal performing artists for the Work subject to meaningful and substantive consultation with the Composer and Librettist. In the event a principal performing artist becomes unable to perform or declines the engagement, Producer in its discretion may engage a substitute, subject to the approval of Composer and Librettist, which approval will not be unreasonably withheld. The right to approve the stage director, scenic designer, costume designer and conductor for the Work is reserved to the Producer but all such decisions will be taken in collaboration with Composer and Librettist in all events.

3. Commission Fee; Payment; Music-Copying Costs

 3.1 Commission Fee. Upon completion of the Work (complete vocal score, orchestra score, and orchestra parts), Producer shall have paid Composer and Librettist a total non-returnable, non-recoupable commission fee of \_\_\_\_\_\_\_\_\_\_\_\_ Thousand Dollars ($XXX,000.00) (the “Commission Fee”). The Commission Fee shall be payable in accordance with Schedule B annexed hereto.

3.2 Payment. Payment is to be denominated in United States Dollars. Payments are to be made subject to collection for the total fee without setoff or deduction for any taxes or other fees imposed or collected by any municipal authority or by any union, guild, or author society. Payment is a condition precedent to the grant of rights to use the Work.

3.3 Music-Copying Costs. Composer will be responsible for arranging for the notesetting services involved in creating the orchestral score, vocal score, and orchestral parts for the Work. Producer will reimburse Composer to a maximum of \_\_\_\_\_\_\_ Thousand Dollars ($XX,000.00) for the costs of notesetting. Producer will be responsible for duplicating costs involved in making multiple copies of scores and orchestral parts to be used in the World Premiere, it being understood, however, that the resulting masters and copies are the sole and absolute property of Composer.

4. Delivery; Authors’ Presence; No Obligation to Produce; Termination

4.1 Delivery of Score. Composer and Librettist will deliver materials to Producer in accordance with the following schedule:

Delivery of the Act I libretto on Month Day, 20XX;

Delivery of the Act II libretto on Month Day, 20XX;

Delivery of the Act I p/v score and orchestra score Month Day, 20XX;

Delivery of the Act II p/v score and orchestra score Month Day, 20XX; and

Final performance materials (orchestra parts) Month Day, 20XX.

4.2 Delivery of Libretto. Librettist is creating the libretto in consultation with Composer during the compositional process. Following delivery of the score of the Work in accordance with Section 4.1 above, Librettist will make revisions to the libretto in collaboration with Composer, subject to the approval of all parties (Librettist, Composer, Publisher and Producer). In the event Composer and/or Librettist are unable for good reason to meet the delivery deadlines set forth herein, Composer will so notify Producer and the parties will attempt to establish new dates.

 4.3 Authors’ Presence. Composer and Librettist will be available during any mutually agreed workshop periods, fund-raising and promotional events, and the rehearsal periods in accordance with a schedule developed between them, the Director, and Producer. In addition, Composer will be in attendance for all rehearsals and performances scheduled and Librettist shall be entitled but not required to attend the same. Producer shall bear the costs of any workshops and rehearsals provided they are approved by Producer in advance. The agreed workshops and rehearsal periods are set out on the attached Schedule C. Further, Composer and Librettist will be present for the World Premiere, but will attend subsequent performances at their sole discretion. For each period of their participation, Composer and Librettist each will receive coach class transportation, with extra-legroom seating where available, upgradable to business class at Composer’s and/or Librettist’s expense, between their respective homes and City, State (it being understood that if either Composer or Librettist is required to be in City for a period of four weeks or longer, she or he shall receive one additional round-trip, upgradable coach class ticket with extra-legroom seating where available, so that he can return to his home during such period), mutually approved and suitable living accommodations consisting of a house or apartment with WIFI, the use of an appropriate mid size automobile with reimbursement for insurance, parking and tolls, and ground transportation to and from the airport. While they are present, Composer and Librettist will be available for all press interviews and public-relations activities pertaining to the Work and thereafter to comply with all reasonable requests for press interviews subject to their respective professional availability.

4.4 No Obligation to Produce. Producer shall not be obligated to produce the Work, but agrees to use its best efforts to do so. If for any reason Producer decides not to produce the Work, it shall so notify Composer and Librettist in writing, and in such case all monies due and to become due to Composer and Librettist under this Agreement shall be paid by Producer. In such event, Composer and Librettist may make, or authorize Publisher to make, whatever use of the Work they may choose, including granting the world premiere performance rights to another organization.

4.5 Termination. If, for any reason within the control of Composer, any delivery is not made on or before the respective delivery date scheduled in Paragraph 4.1, Producer shall have the option to terminate this Agreement by serving thirty (30) days’ written notice on Composer and Librettist, in which case no further payments shall be due subsequent to the date that is thirty (30) days after such notice is served. Composer and/or Librettist may terminate this Agreement by serving thirty (30) days’ written notice on Producer upon Producer’s failure to make the payments provided hereunder or to perform the Work in the period mutually agreed. In the event of termination by Composer and/or Librettist or Producer as provided in this Paragraph 4.5, Composer and Librettist may make, or authorize Publisher to make, whatever use of the Work they may choose, including granting the world premiere performance rights to another organization.

1. Warranties and Representations

5.1 Composer and Librettist. Composer hereby warrants that the music created by Composer will be original, except to the extent that any portion thereof may be in the public domain, and will not infringe upon the right, title or interest of any other person or persons. Librettist hereby warrants and represents that the libretto created by Librettist will be original or adapted from a previous original work of Librettist’s which Librettist has the right to adapt for use in the Work, except to the extent that any portion thereof may be in the public domain, and will not infringe upon the right, title, or interest of any other person or persons. Composer and Librettist hereby warrant and represent that each of them has the right and authority to enter into this Agreement and to carry out their respective covenants and conditions as set forth herein.

5.2 Producer. Producer hereby warrants that it has the authority to enter into this Agreement and to carry out the covenants and conditions as set forth herein.

1. Ownership of Copyright; Alterations

 6.1 Ownership of Copyright. As between Producer, on the one hand, and Composer and Librettist, on the other hand, Composer and Librettist shall be the sole owner of all rights of every kind and character in and to the Work, including without limitation the music, orchestrations and libretto thereof and all copyrights therein, throughout the world, whether or not such rights are now known or ascertained or shall hereafter come into existence. All rights in and to the Work other than those specifically licensed to Producer hereunder are reserved to Composer and Librettist, together with the unrestricted right to use, exploit and dispose of the Work and to exercise or authorize Publisher to exercise any of the foregoing rights at any time, without the approval of Producer, subject only to the exclusive and non-exclusive rights granted to Producer herein. Without limiting the generality of the foregoing, the copyright in and to the score of the Work shall be owned by Composer and the copyright in and to the libretto of the Work shall be owned by Librettist. The physical sets and costumes created by Producer shall be the sole property of Producer for Producer to license to other theaters, it being understood that the authority to issue dramatic performance licenses of the Work is solely within the province of Composer and Librettist or, if applicable, Publisher.

 6.2 Alterations. Producer will not alter or authorize any alterations to the Work without the prior written permission of Composer and Librettist, and, if given, such alterations will be performed pursuant to an employee-for-hire agreement under which Composer will be deemed the copyright owner thereof with respect to any new musical material and Librettist will be deemed the copyright owner thereof with respect to any new text without any further payment by Composer and/or Librettist being required. It is understood and agreed that all changes to the libretto must be pre-approved in writing by Librettist, and that all changes to the score must be pre-approved in writing by Composer.

1. Authors’ Billing; Publicity; House Seats

7.1 Authors' Billing. The Composer and Librettist will receive billing in all paid publicity, advertising, programs and house boards wherever and whenever the title of the Work appears as follows:

 100% Opera Name

 50% Music by Party 1

 50% Libretto by Party 2

 50% Based on the stage play “Opera Name” by Party 2

 25% Commissioned by Party 3

No soloist, ensemble, or guest conductor is to receive billing larger or more prominent than that afforded the Composer and Librettist.

7.2 Publicity. Composer and Librettist will provide Producer with approved photographs and biographies of the Composer and Librettist, respectively, for use by Producer in connection with the Work. The use of any other publicity materials related to the Composer and/or Librettist will be subject to the prior written approval of Composer and/or Librettist, as the case may be.

7.3 House Seats. With respect to the World Premiere performance, Producer will provide six (6) pairs of complimentary house seats in the orchestra (three pairs each for Composer and Librettist). For each subsequent performance hereunder, Producer or Confirmed Co-Commissioner, as the case may be, will provide four (4) pairs of complimentary house seats (two pairs each for Composer and Librettist).

 8. Indemnity; New York Law

 8.1 Composer will defend, indemnify and hold Producer harmless from and against (i) all claims, demands, costs and expenses (including attorney’s fees) which may be brought against Producer as a result of Composer’s breach of this agreement and/or any of Composer’s representations and warranties hereunder, and (ii) all other claims arising out of Producer’s performance of the score of the Work as delivered by Composer but excluding any elements of the production supplied by the Producer, including without limitation the staging and direction.. Librettist will defend, indemnify and hold Producer harmless from and against (i) all claims, demands, costs and expenses (including attorney’s fees) which may be brought against Producer as a result of Librettist’s breach of this agreement and/or any of Librettist’s representations and warranties hereunder, and (ii) all other claims arising out of Producer’s performance of the libretto of the Work as delivered by Librettist but excluding any elements of the production supplied by the Producer, including without limitation the staging and direction.

 8.2 Producer. Producer will defend, indemnify and hold Composer, Librettist and Publisher (each an “Indemnified Party”) harmless from and against (i) all claims, demands, costs and expenses (including attorney’s fees) which may be brought against the Indemnified Party as a result of Producer’s breach of this agreement and/or any of Producer’s representations and warranties hereunder, and (ii) all other claims arising out of Producer’s production of the Work, including without limitation the staging and direction, except to the extent that such claims relate to the applicable Indemnified Party’s own contributions to the Work.

 8.3 New York Law. This Agreement will be governed and construed according to the laws of the State of New York, as if this Agreement were wholly executed and wholly performed within the State of New York, and without reference to the conflicts of laws principles thereof. The parties consent to the exclusive jurisdiction of the Courts of the State of New York over their persons with respect to any dispute related to or arising under this Agreement and waive any objections that they may now or hereafter have to the venue of any such action or proceeding in such courts or to the convenience or inconvenience of conducting or pursuing any action or proceeding in any such court.

9. Miscellaneous

9.1 Force Majeure. In the event that Composer, Librettist or Producer is prevented from performing due to causes beyond its control, such as, but not limited to, physical disability, acts or regulations of public authorities, strikes, civil tumult, acts of terrorism, war or Acts of God, performance hereunder will be suspended for the duration of said causes. In the event that such suspension continues for one hundred and eighty (180) days or more, then either party may terminate this Agreement upon proper notice without further liability of one to the other.

9.2 Notices. All notices hereunder will be sent to the addresses first herein set forth transmitted by facsimile with an additional copy by overnight delivery.

9.3 Assignment. The duties and obligations of the Producer, and the Composer and Librettist, delegated or otherwise, hereunder are of a unique and personal nature and may not be assigned or otherwise transferred, voluntarily or by operation of law, without the prior written consent of the other. Any such assignment or transfer without the prior written consent of Composer and Librettist is null and void and of no force or effect whatsoever.

9.4 Waiver. Failure by either party to insist, in one or more instances, upon the performance of any terms or condition of this Agreement will not be construed as a waiver or relinquishment of that party's right to such performance or the future performance of such terms or conditions, and the obligation of each party with respect thereto will continue in full force and effect.

9.5 Integration. This Agreement constitutes the entire agreement between the parties and may not be altered, modified or cancelled (except as herein specifically provided) except by written agreement signed by the party to be charged.

9.6 Headings. The paragraph headings in this Agreement are used for convenience only. They form no part of this Agreement and are in no way intended to alter or affect the meaning of this Agreement.

9.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first set forth hereinabove.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: Party 1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: Party 2

Grand Opera House

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SCHEDULE A

Instrumentation

The opera will be written for the Standard Instrumentation compliment of Grand Opera House Orchestra and additional instruments to be confirmed and agreed by both parties.

The standard instrumentation of The Grand Opera House is Strings (11/9/7/6/4); 2 oboe/2fl/2 clarinet/2 bassoon/4 horn/3 trumpets/3 trombones/harp/timpani/2 percussion

SCHEDULE B

Payment Schedule

Amounts to be paid to Composer by check made payable to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and delivered to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in accordance with the following payment schedule:

1. \_\_\_\_ Thousand Dollars ($XX,000) upon execution of this Agreement;
2. \_\_\_\_ Thousand Dollars ($XX,000) upon delivery of the complete vocal score of Act I, or on Month Day, 20XX, whichever is earlier;
3. \_\_\_\_\_\_\_\_\_ Thousand Dollars ($XX,000) upon delivery of the complete vocal score of Act II, or on March 1, 20XX, whichever is earlier; and
4. \_\_\_\_\_\_\_\_\_ Thousand Dollars ($XX,000) upon delivery of the final performance materials, or on Month Day, 20XX, whichever is earlier.

Amounts to be paid to Librettist by check made payable to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and delivered to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in accordance with the following payment schedule:

1. \_\_\_\_\_\_\_ Thousand Dollars ($XX,000) upon execution of this Agreement;
2. \_\_\_\_\_\_\_ Thousand Dollars ($XX,000) upon delivery of the Act I libretto, or on Month Day, 20XX, whichever is earlier;
3. \_\_\_\_\_\_\_\_Thousand Dollars ($XX.000) upon delivery of the Act II libretto, or on Month Day, whichever is earlier;
4. \_\_\_\_\_\_\_\_Thousand Dollars ($XX,000) upon delivery of the final performance materials, or on Month Day, 20XX, whichever is earlier.

SCHEDULE C

Workshops and Rehearsal Periods

Summer of 20XX (Act I) and 20XX (Act II)