



Associated
Designers of
Canada

Friday, May 29, 2020

Letter to Independent Producers

Re: Letters of Intent for new productions during COVID-19

To all Independent Producers:

We recognize the exceptional circumstances facing the live performance sector in Canada and all Producers as a consequence of the COVID-19 crisis. In an effort to ensure that Producers can continue to make plans for the future in this uncertain time, the Associated Designers of Canada has elected to temporarily suspend Clauses III.3.b) and III.3.b.i) of our Standard Terms and Conditions. This change will: suspend the requirement to issue a Contract within 30 days; suspend the penalty for failure to issue a Contract; and permit the Designer to engage in preliminary creative process prior to the execution of the full Design Engagement Contract.

The issuance of this specific Letter of Intent and the suspension of Clauses III.3.b) and III.3.b.i) is a temporary measure meant to address specific challenges that may arise as a result of the COVID-19 pandemic. Our expectation is to remove the suspension as quickly as possible.

As a result of the extreme uncertainty within the sector regarding when live performance may resume, we recognize that it will likely not be possible for Producers to know all of the firm details required by a contract at this juncture. However, we also recognize the desire to begin building creative teams, to establish aspirational timelines, and to allow the start of creative collaborations.

To that end, the ADC is providing a template Letter of Intent (attached), which may be used by Producers wishing to engage Designers: either to hold dates or to begin creative collaborations.

When determining payment schedules, both Producers and Designers are reminded to consider the existing emergency benefits, including the Canada Emergency Response Benefit, which allows the recipient to earn a maximum of \$1000 (plus tax) in each four-week period without affecting eligibility for the Benefit.

The temporary suspension of Clauses III.3.b) and III.3.b.i) shall expire on August 1, 2020, at which time the ADC will review if an extension to the suspension as required.

Ken MacKenzie
ADC President



Design Letter of Intent to Engage between

_____ (“Designer”)

and

_____ (“Producer”)

To design the _____ (“Design Discipline(s)”)

for the production of _____ (“Production”)

Directed by _____ (“Director”)

This agreement outlines the basic terms of understanding between both parties. This (or any) letter of intent for a design may only be initiated up until August 1, 2020.

1. This Letter of Intent serves as a placeholder to reserve the Designer’s time and provide for preliminary discussions and will be augmented with a full ADC Design Engagement Contract should the Production proceed.
2. Due to the global pandemic of COVID-19, it is possible that the parties may or may not be able to proceed with the Production. In consideration of that, the parties agree to review the feasibility status of the Production and this Letter of Intent no later than _____ (Date). At that time, the parties will either:
 - a) Enter into a full ADC Design Engagement Contract to continue with the Production;
 - b) Abandon this Letter with no further terms or conditions owed by either party; or
 - c) Agree to revised terms and conditions for this Letter, including a new review date.
3. Should the Production move forward beyond this Letter of Intent, the final Total Design Fee shall be \$_____ (+ taxes if applicable). The payment schedule will follow that which is outlined in the ADC Standard Terms and Conditions and Design Engagement Contract, unless otherwise negotiated between the parties.
 - a) Under this Letter of Intent, the Designer may engage in preliminary design discussions with the other members of the creative team.
 - b) A fully-executed Design Engagement Contract must be in place no less than 3 weeks prior to the submission of any preliminary designs to the Producer.
4. The Producer agrees to pay the Designer \$_____ (+ taxes if applicable) upon the signing of this Letter, as a non-refundable advance against the total fee, to hold the Designer’s availability to the best of their ability and/or commensurate to the time required for initial design consultations to meet the needs of the Director and Production.
 - a) The amount of this advance shall be deducted from the first installment payment issued to the Designer upon the execution of a Design Engagement Contract.
 - b) No deliverable submission to the Producer may be required without a fully-executed Design Engagement Contract.
 - c) If an agreed-upon advance is \$0, then it is understood the Designer cannot be required to hold the time should another offer be received. Should the Designer receive another offer, they agree to notify the Producer promptly.
 - d) If an agreed-upon advance is \$0, no work can be required of the Designer.

5. The fee advance, where applicable, is due to the Designer upon signing this Letter of Intent.
 - a) At the request of the Designer, the total sum payable in 4. above, will be paid in agreed installments. It is understood that instalments are to be determined by the Designer with the consent of the Producer, such consent not to be unreasonably withheld.
 - b) The payment stipulated in 4 above is a total sum agreement with the Designer. Should this letter of intent be terminated and/or replaced by an ADC Design Engagement Contract prior to any advance payments, full payment of the advance stipulated in 4, above, is required, in addition to any applicable fees stipulated in 3, above.
6. The Designer shall retain the right of first refusal to be engaged for these design disciplines should the Production move forward at a future date.
7. The Designer shall retain ownership over the intellectual property of the designs developed under this Letter of Intent, and the Producer shall not have the right to assign, lease, sell, license or otherwise use directly or indirectly any part of the designs developed without negotiating permission and a license from the Designer. The Designer retains ownership over the intellectual property of the designs, including concepts developed and materials produced, in the event that this Letter of Intent is abandoned.
8. At the time of signing, the anticipated Production details are as follows:

Production Budget

Labour: _____

Materials: _____

Deadlines: _____

Production Dates

Build starts: _____

Rehearsals start: _____

Residency dates: _____

Tech week: _____

Previews: _____

Opening: _____

The above represents the entire understanding between the parties.

Print (Producer)

Print (Designer)

Signed (Producer)

Signed (Designer)

Date: _____

Date: _____

Copies of this Letter of Intent must be distributed as follows:

- One copy to be retained by the Producer
- One copy to be retained by the Designer
- One copy to be forwarded to the ADC, via email: adc@designers.ca