

*THE WORD DOCUMENT VERSION OF THIS CONTRACT HAS
PARAGRAPHS AND SECTIONS NUMBERED AUTOMATICALLY.
THIS WAS A REQUEST FROM THE MEMBERSHIP.*

*IF A PARAGRAPH IS DELETED OTHERS WILL RENUMBER.
USE CARE WHEN EDITING OR DELETING.*

THIS AGREEMENT, made as of [Month Day, Year],

BETWEEN: [PROD CO. NAME]
[PROD CO. ADDRESS]

(the "Producer")

AND: [COMPOSER NAME]
[OR COMPOSER'S LOAN OUT COMPANY]
[OR COMPOSER NAME d/b/a COMPANY NAME]
[ADDRESS]
[CAVCO #]
[HST #]
[SCGC #]

(the "Contractor")

If the composer offers his/her services as a company, he/she must sign a "letter of inducement" authorizing the loan out of the composer's personal services to Producer. The letter of inducement can be found in Schedule C of this agreement.

WITNESSES THAT:

The Producer is producing a [feature film/MOW/Television or Web Series/Animated Series] currently entitled ["NAME OF PRODUCTION"]; (the "Production"); and

The Producer wishes to engage the services of the Contractor to create and deliver the music score for the Production, and the Contractor desires to provide the services requested by the Producer, in accordance with the terms and conditions of this agreement (the "Agreement").

ACCORDINGLY, IN ACKNOWLEDGEMENT OF VALUABLE CONSIDERATION RECEIVED, the parties agree as follows:

1. Engagement

- 1.1. Producer hereby engages Contractor to compose, arrange, orchestrate, produce and deliver an original score and master soundtrack recording (collectively, the “Music Score”), timed for synchronization with the picture version of the Production provided by the Producer.

The composer should include any additional information they may have which gives more detail regarding, for example: number of episodes; how much music has been agreed to; etc. This info can be inserted either in this section or above when defining the “Production”, or in the Schedule A or some combination thereof, as appropriate.

It is quite common in this day and age for producers to request one or two source cues from the score composer. However, it also very common for a producer to wind up in a situation where they had planned on licensing a certain amount of source music/songs for the production and then discover they can't afford the required licensing fees. At this point, they may ask the composer to write a bunch of sound-a-likes and simply count this extra music as part of the score. This can require a great deal of extra time and money that needs to be negotiated separately from the original terms.

The producer might also ask the composer if they have any pieces available in their archives that could serve the same purpose. This can be a win-win situation but it is suggested that in this type of scenario the pieces be contracted on an a la carte basis using the song license agreement.

- 1.2. For greater certainty, the Contractor is engaged as an independent contractor and not as an employee of the Producer.

In an employer/employee relationship, employer ownership of the copyright in works created by an employee is referenced in the Canadian Copyright Act as “work made in the course of employment”. In order for an employer to obtain this copyright however, there must be a genuine employee/employer relationship: i.e. CPP, UIC, Tax Withholding, provision of a workplace, etc. In most cases in the Canadian Industry, composers are independent contractors. This is important distinction, especially in the U.S. context in which the concept of “work made for hire” contained in the US Copyright law, deems the employer to be the author of the work for copyright purposes. Such language is not applicable in the Canadian situation.

If the Production is a television series, it is important to specify whether Contractor is being engaged for all episodes produced during the current production season, or for some lesser number of guaranteed episodes, or whether Producer can terminate the engagement at any time.

2. Obligations of the Contractor

2.1. Delivery, format and other technical specifications. Contractor shall deliver the completed Music Score to the Producer in accordance with:

(a) the agreed upon due dates set out in Schedule A, and

(b) the delivery format, e.g., Pro Tools, Nuendo, Logic, etc., and other technical specifications and requirements (e.g., number of stems and/or surround format, etc.), also set out in Schedule A, or as may be otherwise agreed upon in writing by the parties or their respective designates from time to time.

It is often useful to specify the type of arrangement and orchestration that the Producer is expecting – i.e. full symphonic, jazz, synthesizer, barebones acoustic, etc.

2.2. Studio. The parties agree that Contractor shall use a facility of Contractor's choice to produce the Music Score and that Contractor shall be the sole performer of the Score. In the event that Producer requires Contractor to use any other recording facility or hire any additional performers, Producer shall be responsible for, and pay to the Contractor, all additional costs incurred by Producer's decision.

This clause is intended to establish a default position that the composer will be “doing it all”, and that any extras such as additional players or a different studio facility should be part of a negotiation between composer and producer, not an assumption on the part of producers.

2.3. Payment of Music Score creation costs. Unless otherwise specified in this Agreement, Contractor shall pay all Music Score production costs, including studio fees; arranging and copying costs; payroll service costs; musician and other performer fees and costs of any other services rendered in relation to the production of the Music Score. Such payments shall include all expenses incurred by the Contractor in relation to the creation of the Music Score, including the acquisition of all rights in and to the results and proceeds of services required from third parties in connection with the use, re-use and other exploitation of the Music Score.

It is a good idea, particularly in lower budget productions, to place reasonable limits on the expectation of live musicians to be used in the recorded score. For example: number of live musicians other than composer not to exceed 5 players.

- 2.4. Music editors. The Contractor shall have the option, but not the obligation, to hire a music editor as part of Contractor's creation of the Music Score, in which case such music editor's fees shall be the responsibility of the Contractor. Producer shall have the option, but not the obligation, to hire a music editor as part of Producer's post-production activities, in which case such music editor's fees shall be the responsibility of the Producer.

In some productions music editors are included as a separate line item in the post budget. This is much more common in the US whereas in Canada it can often be up to the composer to pay for a music editor out of the score budget. It is important to make it clear at the outset which party will incur the cost of music editing. Note that if working on a DGC production and a music editor is required, then it is a good idea to suggest that the production handle the payroll for the music editor.

[OPTIONAL FOR UNION GIGS:]

- 2.5. Payment of performer fees, etc. Contractor shall pay, in connection with the creation of the Music Score, all fees and/or other costs due pursuant to any applicable industry agreement that is in force at the time of execution of this Agreement. Such fees include but are not limited to musician and/or singer session fees; so-called "fringe payments" payable to the CFM, ACTRA, UDA or other guilds or unions having jurisdiction; music score copying costs; arranging and orchestration expenses; studio expenses and recording media costs. However, Contractor's obligations in this respect are limited to those uses of the Music Score specifically described in this Agreement. For greater certainty, Producer shall be responsible for all costs relating to any new or additional uses of the Music Score, including but not limited to any applicable CFM or ACTRA step-up fees.

For clarity, this clause means that while the Producer may be paying for additional performers, studios, etc., the composer will be the one who deals with actually "signing the cheques".

If the production is eligible to be contracted under the CFM buyout agreement, then a letter of adherence must be obtained from the CFM and signed by the producer.

If hiring non-union performers, composers should get each non-union performer to sign a waiver for any further compensation from the Contractor beyond what has been paid for the session fees. Sometimes the producer will specifically ask for this but not always. One simple way to deal with this is to have each performer include the phrase "buyout of all rights for all territories" on their invoice.

- 2.6. Lay-in costs. For greater certainty, Contractor shall not be responsible for any costs relating to the “lay-in” or “conform” of the completed Music Score into the playback medium to be used in the final mix.
- 2.7. Copies of agreements. The Contractor agrees to provide the Producer with copies of such agreements as may have been executed for the production of the Music Score. Upon delivery of the master recordings, Producer will execute and deliver to Contractor the form of assumption or other agreement specified by CFM, ACTRA, UDA or other guild or union having jurisdiction.
- 2.8. No liability after delivery. After delivery of the completed Music Score as described in Schedule A to Producer, Contractor shall have no obligation to store or otherwise retain the Music Score or any portion thereof. If any such materials are left in the possession of Contractor after delivery, they shall be solely and entirely at Producer’s risk, and Contractor shall not be liable for any loss, damage or destruction of such materials, however caused, including as a result of negligence by Contractor.

In some cases, additional rights may be required for works not created by the Contractor. Such rights include but are not limited to the so called “derivative right” of a copyright owner to control arrangements of works based upon their copyrights. In this case consider the following language:

Producer hereby acknowledges and agrees that, in addition to the fees paid to Contractor when acting as arranger/orchestrator of works not created by the Contractor, rights clearance and/or other fees may also be payable to the owner(s) or representative(s) of the owner(s) of the original musical works that are the subject of the arrangement/orchestration services provided by the Contractor herein. Producer shall be responsible for the payment of any and all such additional fees and/or clearances required, and agrees to hold harmless and indemnify the Contractor for the payment of any such additional fees and any related claims, without limitation.

3. Obligations of the Producer

- 3.1. Delivery of Locked Cut. Producer shall deliver to the Contractor, not less than [NUMBER OF DAYS OR WEEKS] prior to the mix date indicated in Schedule A, an approved final edited version (the “Locked Cut”) of the Production in the format indicated in Schedule A. (This clause shall not apply in cases where the Contractor’s services are limited to the provision of a pre-score library of music cues.)

- 3.2. Additional costs for changes. In the event that the Producer modifies the Production after delivery of the Locked Cut, and such modifications require the Contractor to make substantial changes to the Music Score, the Producer shall pay to the Contractor all additional costs resulting from those changes. Such changes may include, but are not limited to, additional composition, re-arranging, re-recording sessions, or engagement of additional musicians and other performers and service providers, including a music editor or engineer.

While "substantial changes" is sufficiently vague to allow some leeway, the above clauses are intended to aid composers in situations where subsequent edits made to the picture require huge changes to the score. A common concern among film composers is that once they have agreed to a fixed price, Producers will make changes to the final edit. This can cause great financial hardship to a Composer if cues need to be re-worked or re-recorded. While some reasonable changes in the edit are normal and inevitable, the above clause is important in allowing the Composer to indicate when changes are above and beyond the scope of the work originally contracted.

Be aware of the possibility that there can be multiple versions of a project, each formatted differently for other markets. For example, an MOW might have an international version that is a slightly different cut from the domestic version. These additional versions can require a fair bit of time either re-writing or editing cues to suit new act breaks or scene changes. Make sure to ask about versioning deliverables before agreeing to an all-in fee that doesn't make allowances for this extra time requirement.

- 3.3. Prior consultation with Producer. Notwithstanding above section 3.2, the Contractor shall not make any substantial changes to the Music Score without consulting first with Producer and obtaining Producer's written approval of the proposed changes and their additional costs.
- 3.4. Producer acknowledges and agrees that requests for changes to the Music Score may adversely affect Contractor's ability to complete and deliver the Music Score by the agreed delivery date. In such cases, Producer shall make its best efforts to extend the delivery date to accommodate the Contractor's need for adequate time to complete and deliver the Music Score to the highest professional standards.
- 3.5. Producer shall not be obligated to use any or all of the Music Score delivered by Contractor, and may instead use for the Production music that the Producer has obtained from a source other than Contractor, and credit such individuals accordingly. In the event that the Music Score, or any part thereof, is not used in the Production, all payment obligations of the Producer to the Contractor shall remain in effect and enforceable by the Contractor.

This means the Producer doesn't HAVE to use your music, but they do HAVE to pay you either way (as long as you fulfill your contractual obligations, of course).

- 3.6. Where the Producer has a right to revenue sharing as set out in section 7 below, Producer shall, throughout the term of this agreement, use best efforts to maximize the commercialization of the Music Score throughout the world, including providing all services customarily provided by reputable music publishers and labels in adherence the highest music industry standards in Canada and the United States.

It is important to note that if the composer is entering into an agreement where there is no assignment of publishing rights, then the composer would own the copyright in its entirety and there would be no revenue sharing by the Producer. In this case use the other "License" agreement where there is no assignment of publishing.

- 3.7. The above obligation shall include, but not be limited to: providing music rights organizations with all information and data required to identify uses of the Music Score and make payments for those uses (e.g. filing cue sheets, registering International Standard Recording Code (ISRC) codes, etc.); ensuring that all relevant publishing and sound recording rights revenue is duly collected throughout the world and the applicable share paid to Contractor pursuant to the terms of this Agreement; and remedying any infringements of the copyright in the Music Score.
- 3.8. Contractor will not register any cue sheet(s) for the Production with any performing rights society. Producer will provide Contractor with a copy of the cue sheet(s) prior to their registration with a performing rights society and will incorporate any reasonable revisions requested by Contractor. Producer or its designated agent shall register the final cue sheet(s) prior to the first public performance of the Production. Notwithstanding the foregoing, Contractor shall have the right to register cue sheets in the event Producer fails to do so in a timely manner.

The data that enables performing rights organizations like SOCAN to pay television performance royalties is contained in the cue sheet. Without the cue sheet, these performances will remain unidentified and unpaid. Next to the contract the cue sheet is the most important document to the music score. The Producer registers it but the Composer must ensure it gets done.

4. Grant of Rights

- 4.1. Assignment. Subject to the reservations of rights described in section 5 below, Contractor hereby sells, assigns and transfers to the Producer all right, title and interest in the Music Score. This includes, without limitation, all intellec-

tual property rights, including the copyright, e.g., the right to publish, produce, reproduce, distribute, sell and rent, for the duration of the copyright term and any extension thereof, throughout the world.

It is important that the Composer understands the scope of this assignment clause: in this agreement, the Composer (as Contractor) assigns the ownership of music score to the Producer for the purposes of allowing the Producer to have a free hand in maximizing the distribution of the Production. However, the Reservation of Rights in Section 5 specifically maintains the ability of the Composer to continue to receive the Royalties from various sources that would have flowed if the Composer had not assigned the copyright.

4.2. Permitted uses. For greater certainty, the assignment to the Producer pursuant to this Agreement includes, but is not limited to, the following uses and exploitations of the Music Score, whether or not it is used as part of the Production or as part of a soundtrack album:

- (a) to record and mechanically reproduce and synchronize the Music Score for exploitation in any manner in all media and platforms now known or hereafter developed, including all forms of: theatrical releases; conventional television broadcasting; pay television and other forms of cable, satellite and Internet delivery of programming; and home video usage;
- (b) to administer the rights acquired in the Music Score in accordance with this Agreement, including, without limitation, the right to grant all performance, synchronization, print and mechanical reproduction licenses, as well as collect and administer all revenues related to the Music Score in accordance with section 7 below;
- (c) to use Contractor's name, likeness and biographical data in connection with the distribution, exhibition, advertising and exploitation of the Production and/or Music Score;
- (d) to paraphrase, arrange, rearrange, add to, subtract from and further orchestrate any portion of the Music Score; and
- (e) to protect the rights granted to Producer throughout the world.

5. Reservation of Contractor's rights

5.1. Notwithstanding anything in this Agreement, the following rights are retained by the Contractor:

- (a) Performing rights. Contractor's performing rights in the Music Score (including public performance, making available and communication to the public by telecommunication rights) are subject to any pre-existing assignment to a performing right society or any other entity, and thus cannot be legally assigned or otherwise granted to Producer.

In order for this clause to be relevant, it is imperative that the composer be a member of a performing rights organization (PRO) such as SOCAN. Without a PRO membership, no cue sheet can be filed for the score and no performance royalties can be collected.

- (b) Neighbouring rights. Contractor retains his or her right to receive equitable remuneration or such other compensation for the performance in public, making available and communication to the public by telecommunication of the Music Score, to the extent recognized by law and in accordance with the administration of such rights by any neighbouring rights organization of which Contractor is a member.

- (c) Reversionary rights. All rights granted to the Producer pursuant to this Agreement shall revert to the Contractor in the following circumstances:

- i. As provided pursuant to statutory or other law (e.g., section 14(1) of the Canadian *Copyright Act*);
- ii. In any case where the Producer has removed the cue or cues from the Music Score forming part of the Production, the Producer shall give prompt notice of the removal to the Contractor and all rights relating to the music cue(s) in question shall revert to the Contractor forthwith upon their removal. Cues removed due to any subsequent remixing, re-editing, or versioning of the Production are not subject to this clause.
- iii. Subject to the assurance given in 5.1(e) below, in the event that the Contractor's total revenue generated by the use of the Music Score is less than [CAD \$500.00] annually for any uninterrupted period of three (3) years commencing from the date of first exhibition, all rights in the Music Score shall revert to Contractor.

Copyrights, which initially belong to the author/maker of the work, are valuable and should not be assigned without careful consideration. This clause focuses on situations where a composer, either by law or via these sub-clauses, can potentially regain their rights in certain scenarios (such as, in point iii, where they are not earning a certain amount of money from the Producer's use of their music, over a period of time; in this case, \$500 has been suggested as a possible starting point). Note the reference to sec-

tion 8, which gives the Producer an assurance that even if a reversion is triggered, they will still be able to use the music on a non-exclusive basis.

(d) Moral rights. The Producer acknowledges and agrees that the Contractor is the author of the Music Score and this Agreement does not constitute or include any waiver of the Contractor's right, where reasonable in the circumstances, to be associated with the work as its author by name or under a pseudonym, and the right to remain anonymous, as determined in the Contractor's sole discretion. A decision by the Contractor to use a pseudonym or to remain anonymous shall not affect any of the Contractor's other rights under this Agreement.

It is important in any discussion of a waiver of moral rights – which may sometimes be requested by a client – that it be clear that the composer retains their right to authorship. In other words, you may agree to waive your right to integrity (giving the client the right to change the music, as in section 4.2(d) above), but at the same time retain your right to paternity or authorship.

(e) Assurance. For greater certainty, the parties acknowledge and agree that, notwithstanding anything in this Agreement, other than Producer's obligation to pay Contractor's fee for services under section 6.1, the Producer shall retain, for the duration of the copyright in the Music Score, the non-exclusive right to continue using the Music Score in synchronization with the Production and in any publicity or promotional material for the Production, without any additional payment to Contractor.

This clause assures the Producer that, regardless of other parts of this contract, such as the reversion rights, they will continue to have the non-exclusive right to use the score as long as the payments due under this contract are made in full.

6. Contractor's fee for services

6.1. In consideration of the services rendered by the Contractor pursuant to this Agreement, the Producer shall pay to the Contractor the total amount of CDN \$_____ plus HST and any other applicable taxes, to be paid in accordance with the payment schedule set out in attached Schedule B. Producer agrees that Contractor's invoices shall be payable within ten (10) business days of receipt by Producer.

7. Revenue sharing

Most forms of “revenue sharing” assume an assignment of copyright has been made. If there is no assignment, composers should be using the non-assignment “License” version of this contract Version 2B..

7.1. **General.** Producer shall have the right to receive revenues generated from the exploitation of the Music Score, subject to the Contractor’s right to receive royalties or other revenues payable to Contractor by music or other rights organizations with which Contractor is affiliated. Such instances of revenue participation and the respective shares of Producer and Contractor are described below.

7.2. **Performing rights.** The Contractor and the Producer shall be entitled to the following allocations of all royalties attributable to the public performance of the Music Score, as determined and distributed by the performing rights society to which Contractor has assigned the performing rights:

(a) Of the “writer share”: Contractor receives one hundred percent (100%)

(b) Of the “publisher share”: Producer receives (.....) percent (.....%)
Contractor receives (.....) percent (.....%)

It is standard PRO practice in North America to divide performance royalties into an equal split of writer's and publisher's share. In this particular scenario, the writer's share makes up 50% of the total performance royalties and the publisher's share makes up the other 50%. While the writer's share must remain entirely with the writer(s), the publishers share is often a matter of negotiation and can be either shared between the producer and writer or belong entirely to one or the other. In lower budget situations, it is quite common for the composer to negotiate a larger portion of, or even the entire publisher's share.

In other territories the 50/50 division is not standard practice. When possible, it is advisable to find out which territories will be airing a given project as this can greatly help inform the negotiated splits and fees up front. For example, if it is known that a series is already pre-sold to France, or England, the back end revenue for the show becomes more significant than if the show was only airing domestically.

Neither Contractor, nor any other party, shall have a claim against the Producer for any royalties received by Producer as a distribution from any performing rights society that makes payment directly to writers, authors and/or composers.

7.3. **Neighbouring rights.** The Contractor and the Producer shall be entitled to the following allocations of all royalties attributable to neighbouring rights in the Music Score, as determined and distributed by the neighbouring rights organization representing Contractor:

(a) Of the “performer share”: Contractor receives one hundred percent (100%)

(b) Of the “maker share”:

Producer receives (.....) percent (.....%)
Contractor receives (.....) percent (.....%)

For greater certainty, Contractor hereby acknowledges and agrees that Producer will not be responsible for collection and/or payment of the “performer’s share” of any neighbouring rights royalties. In the event that the copyright law in any country throughout the world mandates a specific division of such royalties between Contractor and Producer, in contradiction to what is set out herein above, in such case, the neighbouring rights royalties shall be shared according to the then current copyright law in effect in the applicable jurisdiction.

“Neighbouring Rights” are a set of rights created under the Copyright Act. These rights create a copyright in the musicians’ performances embedded in the master recordings. The performers and the owners of the masters will share in royalties payable from these growing revenue streams. (similar to the way SOCAN and other PRO’s administrate public performance royalties paid from conventional broadcasters to writer/ publishers).

7.4. Soundtrack sales. Producer agrees to pay to Contractor XX percent of the suggested retail list price (or the equivalent) of any soundtrack album containing the Music Score, pro-rated in the case of records containing other recordings and subject to any terms contained in any third-party recording or distribution agreement obtained with respect to any soundtrack album. Such amount shall include any new or re-use fees and/or amounts payable to Contractor for Contractor services as a recording artist, if applicable. The parties agree that any such fees, if applicable, shall be paid prior to the release of any soundtrack album.

The percentage to be paid on a soundtrack is widely negotiable. A suggested lower end threshold is 15%.

7.5. Producer shall direct record company or third party responsible for the soundtrack album to pay Contractor his/her share of all revenues, if any, derived from the exploitation of the soundtrack album semi-annually, or such similar or reasonable time periods as have been agreed upon by Producer and record company and/or third party responsible for such soundtrack album.

7.6. Mechanical rights. Producer and Contractor shall each be entitled to receive fifty percent (50%) of all mechanical rights royalties payable by any collective society, agent or other organization administering the collection and distribution of mechanical royalties, or any other reproduction royalties relating to the use of the Music Score. Producer shall remit to Contractor any mechanical royalties it receives on the Contractor’s behalf pursuant to section 8.1, below.

For greater certainty such Mechanical Rights shall include any reproduction of the Music Score that is not synchronized with the Production including, but not limited to, any and all royalties related to the reproduction of the Music Score, in whole or in part, in a sound recording of any format; and any reproduction of the Music Score as embodied in the Production solely for the purpose of broadcasting the program on a television station, including any simulcast (i.e., the "broadcast mechanical" right).

- 7.7. Sheet Music Sales. Producer agrees to pay to the Contractor the greater of the following amounts in respect of Music Score (and any arrangements made of music contained in the Music Score) sheet music sales:
- (a) Ten cents (\$0.10 CDN) per regular unbound piano/vocal print copy sold; and
 - (b) Twelve and a half percent (12.5%) of the retail selling price (exclusive of taxes).
- 7.8. Other Revenue. Producer and Contractor agree furthermore that all other revenue generated by the use of the Music Score shall be shared between the parties as follows:
- (a) Producer receives [.....] percent [.....%]
 - (b) Contractor receives [...] percent [.....%]

Section 7.8 is an important catch all clause to cover any future unforeseen revenues not mentioned in the agreement. It is suggested that this be negotiated and not exceed other splits in the contract. So for example, if it was agreed that the composer would keep all of the writer's share and the producer all the publisher's share, this would be a 50/50 split and could also be applied to "other revenue". In addition to the revenue participation set out in S.7.1-7.8, composers may wish to negotiate for participation in a production's revenue (i.e. "points" in the production's modified adjusted gross receipts ("MAGR")). In other circumstances, composers may negotiate for a deferred fee (or fees) payable on a date or milestone agreed by the parties.

8. Accounting and Audits

- 8.1. Producer shall render to Contractor a written statement of account as to all payments due to Contractor under this Agreement semi-annually within sixty (60) days of January 1st and July 1st of each calendar year that this Agreement is in effect. Each such statement shall be accompanied by payment of any and

all amounts due pursuant to this Agreement and all information necessary to allow Contractor to determine and calculate the amounts due and paid.

- 8.2. Upon written request of the Contractor, but no more than once in each calendar year, Producer shall permit Contractor or a representative appointed by Contractor to have access during normal business hours to those records of Producer as may be reasonably necessary to verify the accuracy of the statements provided to Contractor in respect of any calendar year to which this Agreement applies, provided however that Contractor or Contractor's representative undertakes in writing not to disclose the results of the audit report to any other party, except as may be required in the prosecution of any legal proceedings commenced thereon.

9. Representations, Warranties and Indemnities

- 9.1. Contractor hereby represents, warrants and covenants that:
- (a) Contractor has the full right and authority to enter into this Agreement and grant to Producer the rights granted herein, including the rights in any material delivered to Producer that was or will be created by Contractor's employees and/or contractors, and that each such individual has waived all of his or her moral rights in and to all such materials;
 - (b) Subject to Producer's obligations under sections 3.2 and 3.3 above, all payments required to be made by Contractor to any third parties providing services for the composition and/or production of the Music Score as specified in this Agreement have or will be made by Contractor;
 - (c) The Music Score is wholly original and is not taken from or based upon any other musical or dramatic works; nor does it contain compositions which are in the public domain, with the exception of arrangements based on public domain material and used with the prior approval of the Producer or its designee, and which do not in any way infringe on the copyright or any other rights of any person, firm or corporation; and
 - (d) Contractor has not committed any act, by grant or otherwise, which does or will impair the rights granted to, or interfere with the use and enjoyment of the Music Score by Producer in this Agreement.
- 9.2. The Producer hereby represents, warrants and covenants that Producer has the authority to enter into and perform its obligations under this Agreement.

- 9.3. Indemnity. The parties hereby indemnify and hold each other harmless from all claims, demands, actions, liability, reasonable costs and expenses arising out of any breach or alleged breach of the respective representations and warranties and covenants made hereunder.

The Contractor may wish to include a clause which requires the Producer to specifically ensure that the scope of services provided by the Contractor in the agreement are covered under any Errors and Omissions Insurance (E & O) which the Producer may be required to carry.

The SCGC is aware of the current climate of concern over Cultural Appropriation in works of art including Audio Visual projects. Members are encouraged to consider language that indemnifies them from any legal action with regard to the works being commissioned by the producer included in any legal action brought against the production as a matter of cultural appropriation. When boilerplate language exists to properly deal with this it will be updated in these documents.

10. Termination

- 10.1. Producer may terminate this Agreement if Contractor is in material breach of this Agreement and/or fails or refuses to satisfy its obligations, provided that Contractor will be given one week's written notice to cure such breach, failure or refusal. In the event of such termination by Producer, Producer shall provide written notice and Producer shall pay forthwith to Contractor all fees due as of the date of termination up to and including the next instalment payable as per the payment schedule. No termination will affect Producer's ownership of all rights and benefits granted under this Agreement with respect to the Contractor's services provided to the date of termination.
- 10.2. Contractor may terminate this Agreement if Producer is in material breach of this Agreement and/or fails or refuses to satisfy its obligations, provided that Producer will be given one week's written notice to cure such breach, failure or refusal. In the event of such termination by Contractor, Contractor shall provide written notice and Contractor shall retain all fees paid by Producer as of the date of termination. No termination by Contractor will affect Producer's ownership of all rights and benefits granted under this Agreement with respect to the Contractor's services provided to the date of termination.

11. Contractor's Credit

11.1. Producer shall provide Contractor with a "composer credit" on a separate card in the main/opening titles (tied on a no less favourable basis with respect to grouping, size, boldness and duration to the credit afforded the Production's Screenwriter). The credit(s) shall appear as "Original music – _____" in all video presentation formats of the Production, with the size, duration, style, and any other matter relating to said credit(s) at the sole discretion of the Producer. No inadvertent failure by Producer to comply with the provisions of this paragraph nor any failure of any person, firm or corporation to comply with its agreements with Producer relating to the aforesaid credit, shall entitle Contractor to rescind or terminate this Agreement and/or to seek equitable relief with respect to the exercise by Producer, or Producer's licensees, assigns and successors, of the rights granted to Producer hereunder. Producer's only obligation shall be to take all reasonable steps to prospectively cure such failure after notice by Contractor to Producer of same. Any additional credit shall be subject to the prior approval of the Producer, which shall not be unreasonably withheld.

12. General Provisions

12.1. Assignment. Producer may assign the benefit of the rights specifically assigned in this Agreement in whole or in part to any person, firm or corporation. Such assignment shall relieve Producer of its obligations hereunder provided the assignee agrees to assume such obligations, and Producer and Assignee agree to notify Contractor forthwith in writing of such assignment. Such notice to Contractor shall include a full description of the parties. Where the assignment results in multiple publishers and/or label administrators of the Music Score, a separate agreement or addendum will be concluded setting out the publishers' and/or label administrator's respective duties and their revenue shares.

12.2. Subject to the right of the Contractor to rely on the services of other service providers as permitted herein, the obligations of the Contractor in this Agreement shall not be assigned by Contractor, in whole or in part, without the prior written consent of the Producer, which consent shall not be unreasonably withheld.

12.3. Notwithstanding section 13.2 above, Contractor shall have the right to assign Contractor's right to receive compensation pursuant to the terms of this Agreement.

12.4. Notice. All notices shall be in writing and, if mailed by prepaid first class registered mail at any time other than during a discontinuance of postal services due to strike, lockout or otherwise, shall be deemed to have been given on the

fifth (5th) business day after its posting or, if hand delivered, on the business day following such hand delivery, and if delivered by facsimile, email or other electronic communication, on the date as evidenced by the notice of transmission. Notices shall be addressed to the addresses set out on the first page of this Agreement. Any party may give notice in writing to the other party of a change of its address for the purpose of this section.

- 12.5. Successors and Assigns. This Agreement shall inure to the benefit of and be binding on the parties to it and, to the extent permitted in this Agreement, their respective heirs, executors, administrators, successors and assigns.
- 12.6. Jurisdiction. This Agreement shall be construed in accordance with the laws of the Territory/Province of _____ and the laws of Canada.
- 12.7. Entire Agreement. This Agreement sets forth the entire agreement between the parties, and no modification, amendment or waiver of any of the provisions of it shall be valid unless in writing and signed by the parties.
- 12.8. Limitation of Remedies. Provided that Contractor has received all payments due from Producer under Section 6.1 of this Agreement, the rights and remedies of Contractor in the event of a breach of this Agreement by Producer shall be limited to a recovery of damages in an action at law, and in no such event shall Contractor be entitled by reason of any such breach to terminate this Agreement or to enjoin or restrain the distribution, broadcast or other exploitation of the Picture or exploitation in any form of the Music Score.
- Any legal action for breach of contract can only be for monetary damages, not to stop the production from being broadcast or distributed - with one exception: failure to fully pay the Composer all due payments.*
- 12.9. Further Documents, etc. Both Contractor and Producer agree to execute all further documents and do all acts and things as may be reasonably necessary to carry out the terms of this Agreement.
- 12.10. Arbitration. All disputes, differences and matters of interpretation arising under or in connection with this Agreement shall be referred to binding arbitration by a single arbitrator under the Commercial Arbitration Act of [province or territory].
- 12.11. Promotional Copies. Producer will provide Contractor with one copy of the Production containing the Music Score as mixed for either theatrical release or broadcast, in a mutually agreed upon format, for the Contractor's professional and private use only. It is agreed that such professional use may include extracting excerpts for the purpose of creating a promotional reel, as that term is generally understood in the film and television industry, but neither

the copy of the Production nor any excerpts therefrom shall be used for any other purpose except with Producer's prior written consent. It is also agreed that Contractor may use the Music Score in isolation (i.e. not synchronized as part of the Production) for professional and private promotional use. Without Producer's prior written consent, no promotional use shall take place until after the Production has been released or broadcast.

IN WITNESS OF WHICH this agreement has been executed by the parties:

For Production Company:

[PROD CO. NAME]
[PROD CO. ADDRESS]

For Contractor:

[COMPOSER NAME]
[OR COMPOSER'S LOAN OUT COMPANY]
[OR COMPOSER NAME d/b/a COMPANY NAME]
[CONTRACTOR ADDRESS]

Name of Signing Officer:

Name of Signing Officer:

Position of Signing Officer:

Position of Signing Officer:

Date:_____

Date:_____

Schedule A

Specifications, Due Dates and Additional Credit (if any)

1. Specifications

Contractor will deliver to the Re-Recording (Dubbing) Mix Facility designated by the Producer a Pro Tools session or sessions containing all the Contractor's approved original cues created for the Production, fully mixed and edited to the following specifications:

Examples of potential format specifications are included for convenience in italics below:

- *Audio Format: .wav (BWF)*
- *Sample Rate: 48 KHz*
- *Bit Depth: 24-bit*

The following tracks and stems:

- *Stereo Full Mix*
- *5.1 Full Mix*
- *Stereo Stems as appropriate to the score and in consultation with the Re-recording (Dubbing) Mixing Engineer:*

Producer will deliver to Contractor a locked picture in a video format the specifications of which will be discussed between Contractor and the production's Picture Editor.

A current example follows:

QuickTime H264 format, with continuous time code window burn-in matching the frame rate of the picture that will be used at the final dub or mix. Temporary dialogue and sound effects will be placed on track 1 (left channel) of the audio track and temporary score will be placed on Track 2 (right channel).

2. Due Dates, including "mix date", etc.

In consultation with the Re-Mix Engineer or other Supervisory Personnel designated by the Producer, all completed Mixes of Contractor's original Score are to be delivered to the Re-Mixing facility no later than _____.

[i.e.: either a specific date, or number of days prior to completion of Final Mix date]

3. Additional credit information if applicable:

Schedule B

Contractor's Fee – Payment Schedule

Producer shall pay to the Contractor the total amount of CDN \$_____ plus HST and any other applicable taxes, to be paid as follows:

- (1) \$ _____, representing _____ % of the total fee, on execution of this Agreement;
- (2) \$ _____, representing _____ % of the total fee, on [delivery or other date or milestone agreed by the parties]; and
- (3) \$ _____, representing _____ % of the total fee, on the earliest of [date or delivery and acceptance of the Music Score in its entirety]

Schedule C

LETTER OF INDUCEMENT

I acknowledge and agree that:

1. I have read and understood the above "Composer as Contractor/Producer Agreement" between [PRODUCER] and [CONTRACTOR] dated the ___ day of ___, 20__ (the "Agreement").
2. I am a Canadian Citizen or lawfully landed permanent resident of Canada.
3. I represent and warrant that the representations and warranties made in the Agreement in respect of my work and services are true.
4. I hereby waive any moral rights that I may have in relation to the integrity of the musical works delivered pursuant to the Agreement, however I retain all moral rights dealing with the paternity of such musical works.
5. Provided that Producer pays to Contractor all amounts required in the Agreement, I will only look to Contractor for compensation with respect to any of my rights or services dealt with in the Agreement.
6. Producer has entered into this Agreement in reliance on the statements made by me in this Letter of Inducement.
7. This Letter of Inducement shall survive any termination of the Agreement or of my engagement by Contractor.
8. Contractor has the full right and authority to deal with any copyrights that I might have in the musical works and master recordings created under the Agreement including publishing rights.

Dated this ___ day of ___, 20__:

Signed, Sealed and Delivered
In the presence of:

Witness

[COMPOSER]