



The Screen Composers Guild of Canada

COMPOSER (as Contractor)/PRODUCER MODEL AGREEMENT

The contract wording set out below can be used in developing a composer agreement where the composer retains publishing rights. In this wording, the composer grants master use and synchronization licenses to the Producer for the use of the music.

*Annotated comments appear in italics. **NOTE: Delete italicized comments in the final draft of your agreement.** Suggested additions or options are in brackets [].*

Please note that any clauses contained in this document may be amended, edited, or expanded as required by the particular parameters of the project. When in doubt, it is advisable to seek professional advice from a qualified legal advisor, preferably one who specializes in the entertainment industry.

To properly protect yourself and promote your interests in any contract negotiation, the Guild recommends that you get professional legal advice. This "Composer As Contractor / Producer Model Agreement" wording should only be used as a starting point or guide in developing your own terms and your own agreements.

The Guild will not accept any legal liability for anyone's use of any contract wording suggested or included in this document.

COMPOSER (as Contractor) /PRODUCER MODEL AGREEMENT

DATED the _____ day of _____, 20__ .

BETWEEN

Name :

Address :

composer

Company offering the services of and acting on behalf of:

(composer's name)

(Hereinafter referred to as "Contractor")

AND

Name :

Address :

(Hereinafter referred to as "Producer")

**note: If the composer offers his/her services as a company, he/she must sign a "letter of inducement" (found at the end of this document) authorizing the loan out of the composer's personal services to Producer.*

Producer wishes to engage Contractor to compose and produce the music score for the production presently entitled, " _____";

Contractor wishes to accept the engagement to compose and produce the musical score for the production;

The parties hereby declare and agree as follows:

PRODUCTION, SCORE AND MASTERS

1.1 In this Agreement:

- (a) "Production" means the [theatrical feature, television series, MOW, etc.] which has been produced or is being produced by Producer and is presently entitled "[insert title]".

If the Production is a TV series, specify the running time of each episode and the number of episodes to which this Agreement applies.

- (b) "Score" means all musical compositions composed by Composer for inclusion in the Production, including all arrangements and orchestrations of those compositions. The Score will consist of dramatic underscore, source music cues and stings, not to exceed [# OF MINUTES] in total length [per episode if applicable].

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.

Also note that source music cues are not always included in the basic compensation, particularly if more than a few are required by Producer.

- (c) "Masters" means all master recordings containing recorded performances of the Score, which Contractor is required to record and produce pursuant to this Agreement, which will be performed using sampled and synthesizer orchestrations, and/or such acoustic instrumentation as Composer considers necessary or appropriate.

If some other type of orchestration has been agreed upon, that should be specified.

- (d) The Score and the Masters are sometimes referred to in this Agreement collectively as the "Music".

ENGAGEMENT

2.1 Producer hereby engages Contractor (as a non-exclusive independent contractor and not as an employee) to provide, and Contractor agrees to provide, the personal services of [NAME OF COMPOSER] to compose, arrange, orchestrate, produce and record the original Music for the Production.

This is important, especially in the U.S. context in which the concept of "work made for hire" deems the employer to be the author of the work for copyright purposes. Such language is not applicable in the Canadian situation. In Canada, the concept is called "work made in the course of employment". In this case, the copyrights to the music would belong to the employer. However, this must be a genuine employee/employer relationship: i.e. CPP, UIC, Tax Withholding etc. In almost all cases, composers are contractors in Canada.

If the Production is a television series, it is important to specify whether Contractor is being engaged on a "pay or play" basis 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.

OPTIONAL (IF CONTRACTOR TO ACT AS MUSIC SUPERVISOR)

2.2 Contractor agrees to engage and supervise, on Producer's behalf, the services of such stock music libraries and/or license clearing agencies as may be necessary to acquire appropriate licenses and clearances for any 'source' music cues or other third party music not originally created by Contractor for the Production ("Source Music Cues"). As the designated licensee, the Producer agrees to assume sole responsibility for all costs of acquiring those licenses and/or services including all license fees, any legal fees and other costs associated with securing the necessary Master Use and Synchronization Licensing agreements.

2.3 Contractor will be responsible for, in consultation with Producer's designate, the supervision, selection, and placement of those Source Music Cues. The parties agree that the total cost of acquiring these proposed Source Music Cues will not exceed [\$BUDGET FOR STOCK MUSIC ACQUISITION].

*(**Optional clause**)*

2.4 Contractor agrees that any of the Source Music Cues which Contractor undertakes to create originally for the Production will be within the indicated amounts as contained in the budget for stock music acquisition as set out above. Contractor will be paid separate, additional compensation as set out below for the provision of music supervision services.

The above optional paragraph(s) is/are only to be used if the Contractor assumes the responsibility of supervising the acquisition of Source Music Cues. Otherwise, delete.

If the Contractor takes on this role, it is very important to know that both a Master Use (from owner of master recording) and Synchronization License (from publisher/writer) is required for all source music. Some songs will need to be cleared through the CMRRA and/or SODRAC (sync licenses). It is imperative to make sure that these contracts conform with the producer's broadcast or distribution plans and license obligations. This agreement contemplates that the Producer's staff will handle the actual chain of title/licensing issues, however the Contractor may be asked to perform the contracting role as well.

DELIVERY AND CONTRACTOR'S OBLIGATIONS

3.1. Contractor will deliver to the Producer a mixed and edited stereo soundtrack recording of the Masters on [DELIVERY FORMAT – DA88, DAT, CD etc.], timed for synchronization with the picture version of the Production provided by the Producer.

3.2 Contractor agrees to assume all costs involved in the original creation of the Score and recording of the Masters. These costs include, but are not limited to, musicians and/or singers session fees, so-called "fringe payments" payable to the American Federation of Musicians (AFM), ACTRA, UDA or other guilds or unions having jurisdiction, music copying costs, arranging and orchestration expenses, studio expenses and tape costs. Producer will be responsible for any

additional costs for the lay-in of the completed Masters into the playback medium which will be used in the final mix.

3.3 Notwithstanding 3.2 above, Producer will be solely responsible for all so-called "re-use", "new use", "step-up", residual and similar payments which may be required under any AFM, ACTRA, UDA or other collective agreements. The Contractor agrees to provide the Producer with copies of such agreements executed for the production of the Masters. Upon delivery of the Masters, Producer will execute and deliver to Contractor the form of Assumption Agreement specified by AFM, ACTRA, UDA or other guild or union having jurisdiction.

NOTE: Under the new AFM Canadian Production Rules Agreement, qualifying productions pay a single fee to acquire unrestricted use of the recording in association with the production. Please note that this special AFM agreement only applies to AFM rights and not general copyright matters. For further information, contact the office of the AFM Vice-President for Canada.

3.4 **** OPTIONAL **** The Producer hereby acknowledges that the amount of compensation paid the Contractor does not allow for substantial expenditure on the engagement of musicians under AFM agreements due to Producer's requirements of length of Score, and residual, upgrade, or buy-out costs necessary to provide Producer with clearances in all contemplated venues, and such expenditure shall be entirely at the Contractor's discretion.

This clause is important for lower budget productions. It is important to place reasonable limits on expectations on the part of the Producers regarding expenditures for the number of live musicians to be used in recording the Score.

3.5 Producer will deliver to Contractor, not less than [NUMBER OF DAYS OR WEEKS] prior to the scheduled mix date, an approved final edited version (the "Fine Cut") of the Production on [VHS, OR OTHER FORMAT] video tape with visual and audio SMPTE time code. Any changes in the Production made after delivery of the Fine Cut which involve substantial changes in the Score or the Masters (which may include, but are not limited to, additional composition, re-arranging, re-recording sessions, or engagement of additional musicians) will be subject to additional charges to Producer as warranted by the nature and substance of those changes. Contractor agrees to incur no such additional charges as a result of such changes without consulting first with Producer and obtaining Producer's approval and Contractor will not be obligated to make any such changes to the Score or the Masters until the additional charges have been agreed upon and approved by Producer. Producer and Contractor agree that any such picture changes which adversely affect Contractor's ability to complete the Score and deliver the completed Masters by the agreed delivery date will be discussed in a timely fashion, and the parties agree to mutually adjust the Delivery Schedule as necessary, taking into account Contractor's need for adequate time to complete the Score and the Masters to the highest professional

standards and Producer's own delivery obligations for the completed Production.

A common complaint among film composers is that once they have agreed to a fixed price, Producers do not hesitate in presenting 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 over and above the scope of the work originally contracted. Changes are costly and time-consuming.

- 3.6 Contractor agrees to deliver the final recorded Masters on or before [NUMBER OF DAYS] following the receipt by Contractor of the final edited Production from Producer (the "Delivery Date").
- 3.7 After delivery of the completed Masters to Producer, Contractor and Composer shall have no obligation to store any recordings, disks, tapes or other data storage devices containing the Music or any portion thereof. If any such materials are left in the possession of Contractor or Composer after the Delivery Date, they shall be solely and entirely at Producer's risk, and Contractor and Composer shall not be liable for any loss, damage or destruction of such materials, however caused, including as a result of negligence by Contractor or Composer.

CONSULTATION AND SUPERVISION

4.1 The Contractor will consult with the Producer and/or Producer's designate regarding the quantity, style and placement of music. The Producer appoints, and the Composer acknowledges, [NAME OF PRODUCER'S DESIGNATE] as the Producer's agent to make, on the Producer's behalf, decisions on the acceptance of the Music.

4.2 Contractor agrees to make the services of Composer available, upon reasonable notice and subject to Composer's prior professional commitments, to supervise the lay-in of the Masters into the Production, and to attend the interlock and mix, if required. Producer agrees to pay for Composer's travel, accommodation and per diem expenses, if applicable.

GRANT OF RIGHTS

SYNCHRONIZATION LICENSE

5.1 (a) Subject to and conditional upon full payment of the compensation specified in paragraph 7.1, below, [optional: use if AFM, ACTRA, UDA, etc, agreements are involved - "and execution and delivery of the Assumption Agreement(s) referred to in paragraph 3.3, above"], Contractor grants to Producer an irrevocable [non-exclusive or

exclusive] synchronization license to the Score throughout the world in perpetuity for inclusion in the Production, and in any publicity or promotional material for the film including trailers, television, radio, internet site postings and other advertising, without any further payment to Contractor.

The use of "exclusive" or "non-exclusive" wording above will reflect the negotiation of fees paid to the composer/contractor. Generally, low budget productions will not be able to afford exclusivity. In the above clause, the Contractor retains copyright and assigns to the Producer the necessary license to use the music in the Production.

Producer will have the right to make copies of the Score in synchronization with the Production in any media, subject to any mechanical license terms and conditions contained in this agreement. Contractor retains the underlying copyrights in the Score, including all orchestrations and arrangements thereof delivered under this Agreement.

In the event that Contractor wishes to enter into a publishing or co-publishing arrangement with Producer, a separate agreement should be executed.

(b) If the Production is a television Series, should Producer wish to use musical cues contained in the Score of one episode of the series in one or more other episodes of the series within the same production season, as that term is generally understood in the television production industry, Producer may do so with no additional payments to Contractor. However, use of musical cues from the Score of an episode contained in one season [may or may not] be used in a different season without new use fees paid to the Contractor. Such use would be subject to any additional AFM, ACTRA, UDA or other collective agreement provisions regarding new uses which may apply.

5.2 Producer will have the right to record the Score, or any part of it, in synchronization with the Production, and to adapt, arrange, change, transpose, add to, interpolate or subtract or omit portions of the Score, in its discretion.

5.3 Contractor agrees that any so-called "moral rights" that the Contractor may have in the "integrity" of the Music delivered under this Agreement are hereby waived. However, Contractor and Composer retain all moral rights dealing with the authorship ("paternity") of the Music delivered under this Agreement.

The Copyright Act recognizes the composer's inherent "moral rights" in a musical work. Moral rights may be waived but not assigned. Moral rights have two components: "integrity" and "paternity". It is simply fair and reasonable to protect the authorship ("paternity") of the work.

5.4 If Producer (or its assignees or licensees) wish to use any of the Score in a soundtrack album, then Composer will receive full credit on such album as the composer of such musical works from the Score that are used in the album and Contractor agrees to grant a mechanical license in perpetuity and throughout the world to Producer (or its assignee or licensee) for use of such musical works from the Score in any such soundtrack album at not less than the prescribed or statutory rates established from time to time in any territory in which such soundtrack album is manufactured.

Should such album be contemplated, the parties agree to negotiate in good faith a separate agreement setting out the provisions of the soundtrack album release including advances, mechanical royalties and other provisions to be mutually agreed upon at the time.

5.5 Any right granted to the producer in this Agreement is subject in its entirety to agreements in force on the day of this Agreement or during its term, between the composer and collective societies of copyright, author's associations or other similar organizations granting licenses and collecting royalties relating to communication to the public by telecommunication, the performance in public or the reproduction of works throughout the world (including SOCAN and SODRAC and the collective societies they have entered into agreement with).

5.6 This Agreement shall not alter or be understood as altering the composer's right to receive and collect sums directly granted to him and paid by such.

The Contractor and Composer may be members of a number of copyright collectives (SOCAN, SODRAC, etc.). Clauses 5.5 and 5.6 acknowledge Contractors and Composer's existing contractual relationship with those collective societies, authors' associations or organizations.

MASTER USE LICENSE

6.1 Subject to and conditional upon full payment of the compensation specified in paragraph 7.1, below, [optional: use if AFM, ACTRA, UDA, etc, agreements are involved - "and execution and delivery of the Assumption Agreement(s) referred to in paragraph 3.3, above"], Contractor grants to Producer a Master Use license for the copyrights in the Masters in perpetuity and throughout the world, subject to the following provisions:

(a) Producer agrees that the Masters may be used only in the soundtrack of the Production [and on a sound track album for the Production, if applicable] and in advertising and publicity for the Production.

(b) If Producer (or its assignees or licensees) propose to use the Masters (or any portion thereof) in a soundtrack album, Producer and Contractor will first negotiate in good faith an agreement regarding advances and royalties (producer and recording artist) payable to Contractor for such use of the Masters. Producer agrees that, in no event, will the amount, method of calculation and time for payment of such royalties to Contractor be less favourable than those granted to any other artist and/or producer whose performances are contained on such soundtrack album.

(c) Contractor retains all so-called "Neighbouring Rights" and associated royalties flowing from the recorded performances on the Masters that Contractor controls or acquires in the Masters (including both the "performer" and the "maker" share thereof).

"Neighbouring Rights" are a new set of rights created under the present Copyright Act. These rights create a new copyright in the performances on the master recordings. The performers and the owners of the masters will share in royalties payable by broadcasters (similar to SOCAN public performance royalties for the writers). A new collective society is being set up to

administer these rights. Additionally, the new Copyright Act contemplates a "Blank Tape Levy" being charged on blank recording media to compensate the owners of Master Recordings for lost revenue due to pirating of music (cassettes, CDs etc.).

COMPENSATION

7.1 Contractor's fees for providing all composing, arranging, orchestrating, producing and recording services (excluding Source Music Cue supervision fees and licensing, and all costs of licensing third party music) will be [TOTAL FEE] in [Canadian or U.S.] funds, plus Goods and Services Tax ("GST") to be paid in three installments:

- (a) \$[1/3 of fee] plus G.S.T. on execution of this Agreement;
- (b) \$[1/3 of fee] plus G.S.T. on delivery to Contractor of the Fine Cut of the Production;
- (c) \$[1/3 of fee] plus G.S.T. upon delivery of the completed Masters to Producer.

Note that in the case of a series, (b) and (c) should be revised to refer to delivery of the Fine Cut and delivery of the Masters for each episode.

7.2 ***Optional*** Contractor will be paid a fee of [INSERT AMOUNT] for any music supervision services provided by Contractor under this Agreement for acting as music supervisor of Source Music Cues. Such fee will become payable upon delivery of the completed Masters. All payment of licensing fees for the securing of Source Music Cues will be the sole responsibility of Producer and will be paid directly by Producer to any licensors of such Source Music Cues.

The above paragraph is optional and should only be used if the Composer is also acting as music supervisor.

7.3 Failure to make any payment as set out in 7.1 and 7.2 above on or before its due date will be considered a default under this Agreement and all licenses and/or assignments conferred under this Agreement to Producer will automatically terminate.

7.4 Upon payment of the above stated fee, Producer will not be liable for any additional costs in the form of residuals or royalties to Contractor for the use of the Score in synchronization with the Production in perpetuity. This waiver is restricted to those portions of the Score, which Contractor has created originally for the Production, and not to Source Music Cues, pre-existing songs or other material which Producer may wish to include in the Score. It is agreed that Producer will be solely responsible for the acquisition of any rights necessary to synchronize this non-original material with the Production.

- 7.5 If any Source Music Cues, pre-existing songs or other third party musical material are included in the Score or the Masters, Producer agrees that Contractor and Composer will be added as additional insured parties to Producer's policy of Errors & Omissions insurance for the Production with respect to such musical material, and Producer agrees to provide to Contractor a certificate issued by the agent, broker or underwriter of such policy evidencing same.
- 7.6 Pursuant to paragraph 3.3, Producer will be solely responsible for payment of all residual, re-use, new use, step up, royalty and similar payments which may become due in respect of the Masters.

In the case of a low budget film, clauses allowing for additional payments to be made upon certain sales levels or box office receipts may also be added.

NAME AND LIKENESS

- 8.1 Contractor and Composer grant to Producer the non-exclusive right to use and publish, and to permit others whom Producer may authorize to use and publish, Composer's name, approved likeness and approved biographical material for the purposes of advertising the Production. Composer's name, likeness and biographical material shall not be used or published in any manner which implies or depicts Composer's recommendation, endorsement or use of any institution, service or product (other than the Production) unless the prior written consent of Composer is obtained in each case.

CUE SHEETS

- 9.1 The music Cue-Sheets for the Score will be drafted by:

- o the composer
- o the producer

but must be approved by both parties.

- 9.2 Producer shall ensure that such Cue Sheets are filed in a timely manner with the appropriate performing and reproduction right society in each territory in which the Production is licensed for distribution. If Producer fails to do so, Contractor is hereby authorized to do so on Producer's behalf.

PROMOTIONAL COPIES

- 10.1 Producer will provide Contractor with one VHS Videocassette of the Production containing the Score and Masters as mixed for either theatrical release or broadcast, 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 videocassette copy of the Production nor any excerpts therefrom shall be used for any other purpose, nor shall Contractor or Composer cause or allow it to be exhibited, reproduced, or broadcast in any manner or media anywhere in the world.

CREDIT

- 11.1 Composer will be afforded the following credit on a single card in the main titles of the Production and in the billing block (if there is one) on all lobby posters and paid ads placed by or under the authority of Producer :

MUSIC BY [COMPOSER]

***OPTIONAL: MUSIC PRODUCED BY [CONTRACTOR]

CONDUCTED BY []

RECORDED AND MIXED AT []

Style, size, duration and placement of the credit shall be at the discretion of the Producer but shall not be less favourable than that of the screenwriter. The parties acknowledge that Composer is the sole and exclusive composer being credited for the Music, however Producer may credit the composers of Source Music Cues if any are used in the Production.

- 11.2 Producer shall advise all distributors, licensees and assignees of the Production of the foregoing credit requirements and shall use its reasonable best efforts to ensure that they comply with such requirements.

REPRESENTATIONS AND WARRANTIES

- 12.1 Contractor represents and warrants that:

- (a) Composer is a Canadian citizen or permanent resident of Canada and that Contractor is a taxable Canadian corporation within the meaning of the *Income Tax Act (Canada)*;
- (b) Fees paid to the Contractor are for the creative services of the Composer and the production services in realizing the Composer's composition, and administration thereof.
- (c) The music contained in the Score and the Masters (except any Source Music Cues or other third party music included at the request of Producer) are or will be original works and will not knowingly infringe upon the copyright, moral rights, or any other rights of any person, and Contractor will indemnify and hold harmless Producer, its agents, employees, directors, officers, licensees, successors and assigns from any actual and documented damage,

cost or expense arising, directly or indirectly, from the breach of any above representations and warranties.

12.2 ****Optional - insert if working under AFM Canadian Production Rules Agreement*

Producer represents and warrants that the Production meets or exceeds all requirements of the AFM Canadian Production Rules Agreement. If, for any reason, AFM determines that the Production does meet the requirements of such Agreement, then upon delivery of the Masters by Contractor, Producer will execute and deliver the form of Assumption Agreement specified by AFM.

LAW AND NOTICES

13.1 This agreement will be governed by and interpreted according to the laws of [TERRITORY OR PROVINCE] and the laws of Canada where applicable.

13.2 Any notice, request, payment, or other communication required or permitted to be given under this agreement will be given either personally, by electronic facsimile transmission or by prepaid registered post, addressed to the addresses first written above. Any notice, request or other communication as mentioned will be deemed to have been given on the day that it is personally delivered, on the day following the date that it is delivered by electronic facsimile transmission or, if delivered by registered mail, on the third business day (excluding Saturdays, Sundays, statutory holidays and periods during which strikes, lockouts or slowdowns interfere with normal mail services) next following the date of post mark thereon. Either party may at any time give notice in writing to the other party of any change of address of the party giving the notice and from and after the giving of notice, the address specified shall be deemed to be the address of the party for the giving of notices under this agreement.

Note: Composer/Contractors who are residents of Quebec may wish to add the following:

13.3 The parties hereto have requested that the present document be drafted in the English language. Les parties aux présentes ont exigé le présent document soit rédigé en langue anglaise.

ASSIGNMENT

14.1 This Agreement will not be assignable by Contractor to any person, firm or corporation but Contractor shall have the right to assign its right to receive compensation pursuant to the terms of this Agreement.

14.2 Producer will have the right to assign this Agreement or any of its rights, in whole or in part, to any person, firm or corporation, without the prior written consent of Contractor; provided that:

(a) The assignee executes and delivers a written acknowledgement in favour of Contractor to comply, fulfill and abide by the terms of this Agreement so assigned; and

(b) Producer will not be relieved of liability for the full and proper performance of the terms of this Agreement so assigned, except to the extent that they are actually and properly performed by the assignee.

Producer agrees to notify Contractor of any third party assignment, license or sale of the Production within 10 (ten) days following the execution of any such third party agreement.

FURTHER DOCUMENTS

15.1 Both Contractor and Producer agree to do all acts and things and execute all further and other documents as may reasonably be necessary to carry out the terms of this Agreement.

ENTIRE AGREEMENT

16.1 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 to it.

16.2 This Agreement shall inure to the benefit of and be binding on the parties to it and their respective heirs, executors, administrators, successors and permitted assigns.

ARBITRATION

17.1 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].

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

[PRODUCER]

per:
Authorized Signatory

[CONTRACTOR COMPANY]

per:
Authorized Signatory

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]