



*Before the  
United States Copyright Office  
LIBRARY OF CONGRESS  
Washington, D.C.*

*Music Licensing Study: Notice and Request for Public Comment*

*Docket No. 2014-03*

**THE SOCIETY OF COMPOSERS & LYRICISTS  
COMMENTS ON THE COPYRIGHT OFFICE  
MUSIC LICENSING STUDY**

*Duly submitted  
May 23, 2014*

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## INTRODUCTION

Audiovisual music creators find themselves at a critical juncture through no fault of their own. While the introduction of new technologies and delivery platforms ensure their music is, and will continue to be, delivered to a much broader audience, they are less assured of receiving fair payment for their works than ever before.

Unlike their overseas counterparts, U.S. music creators have virtually no control over the music they write.

Audiovisual works, of which music is an integral component, generated \$96.48 billion dollars of foreign income from 2009-2012<sup>1</sup> accounting for approximately 6.5% of the U.S. Gross Domestic Product. AV music creators may be small in number but they generate enormous revenues around the world.

The copyright economy is growing faster than the national economy. Between 2009-2012 the copyright economy grew by 4.73% while the national economy only grew by 2.14%<sup>2</sup>.

However, the problems with the Consent Decree and the rate courts' rulings, if not corrected, may cause certain publishers to consider withdrawing from the performing rights organizations in order to maximize their earning potential.

This scenario would be catastrophic for AV music creators who rely on the transparency of, and the payments from, the PROs to earn a living. For the AV music creator, performance royalties are their lifeblood and the PROs currently offer the best solution.

The future of licensing for AV composers relies on the viability of collective licensing of rights through the Performing Rights Organizations.

While ever the courts maintain that there are no performances in downloads, the AV music creator is not receiving any royalties from downloads of film and TV programs, unlike the creators of non-AV works who receive mechanical royalties when their songs are downloaded. Therefore we respectfully request that Congress amend the law and define in law, once and for all, the "Writer's Share" of royalty revenues. The SCL respectfully asks that ASCAP and BMI be afforded wider powers to collect a variety of royalties on behalf of all music creators, particularly those working in the audiovisual realm.

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<sup>1</sup> From the 2013 report: *"Copyright Industries and the U.S Economy"* by Stephen E. Siwek

<sup>2</sup> From the 2013 report: *"Copyright Industries and the U.S Economy"* by Stephen E. Siwek

## DEFINING THE AUDIOVISUAL COMPOSER OR SONGWRITER

The audiovisual composer or songwriter (i.e. music creator) is most commonly engaged in the U.S. under contracts governed by the terms of “work made for hire” or “work for hire” (WFH<sup>3</sup>).

These terms put the AV music creator in a unique situation by virtue of the fact that, unlike most other music creators in the U.S. and around the world, the U.S. AV music creator has no control over the music he/she has created, as the “author” is considered the entity that *commissioned* the work to be incorporated in an AV program. This establishes an anomaly that exists, in law, nowhere else in the world.

While the National Labor Relations Board has, on multiple occasions, rejected the composers’ requests to form a labor union, deeming the composers “employers” (because they employ musicians, music preparation staff, recording engineers etc.), there is no dispute that they do not conform to the accepted definition of an “employee” but instead are “independent contractors”:

1. Employees are salaried - Independent Contractors are not  
**AV music creators are paid by the job**
2. Employees work under direct supervision – Independent Contractors do not

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<sup>3</sup> Section 101 of the Copyright Act (title 17 of the U.S. Code) defines a “work made for hire” in two parts:

- a) a work prepared by an employee within the scope of his or her employment
- or
- b) a work specially ordered or commissioned for use
  - i as a contribution to a collective work,
  - ii as a part of a motion picture or other audiovisual work,
  - iii as a translation,
  - iv as a supplementary work,
  - v as a compilation,
  - vi as an instructional text,
  - vii as a test,
  - viii as answer material for a test, or
  - ix as an atlas,

if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.



**AV music creators are given initial direction, but do not work under direct supervision**

3. Employees are required to work at a specific location and use equipment provided by the employer - Independent Contractors are not  
**AV music creators work in their own or rented facilities and use their own or rented equipment**
4. Employees are required to work specifically regulated hours with overtime allowances etc. - Independent Contractors do not  
**AV music creators work their own hours, often many more than anticipated**
5. Employees receive benefits such as health insurance and pension contributions - Independent Contractors do not  
**AV music creators must make their own health and welfare contributions**
6. Employees have an ongoing relationship with the employer for whom they perform their services - Independent Contractors do not  
**AV music creators customarily are engaged on a project-by-project basis**
7. Employees have the order of services set by the employer – Independent Contractors do not  
**AV music creators work to their own schedule and perform their services at their own discretion in order to meet milestones along the way and an ultimate delivery deadline**
8. Employees are generally restricted from working for multiple employers - Independent Contractors are not  
**AV music creators often work on multiple projects at any given time while managing and ensuring each project has its milestones and deadlines met**

These are just some of the many distinctions that define AV music creators as independent contractors. Nonetheless, AV music creators find themselves shackled with “work for hire” contracts unlike their counterparts throughout the rest of the world.

Operating as independent contractors, AV music creators are ostensibly small businesses. In order to “manufacture” our product we need thousands of dollars of equipment housed in a specifically designed space and the product we manufacture (i.e. the “Music”) contains copyright, which then gets folded into yet another copyright (i.e. the “Program”) and this is what puts the U.S. AV music creator in such a unique predicament. Elsewhere in the world, the common practice is for the AV music creator to issue a license to use the Music in perpetuity to the producer of the

Program. This allows the producer to do everything with the Music allowed under a WFH agreement **except** collect the publisher share of revenue.

However, given that the vast majority of AV music creator agreements are created under WFH terms, it is imperative that there are independent entities to monitor and collect these revenue streams on behalf of the creators. The primary revenue stream for the AV music creator is the performance royalty, generated every time there is a transmission of the Program. Other revenue streams (e.g. soundtracks CDs, downloads, sheet music etc.) pale in comparison. Also, as a rule, AV music creators do not share in any revenue from DVD sales and, because of the 1948 Alden Rochelle<sup>4</sup> court ruling, there are no performance royalties generated by theatrical exhibition in U.S. cinemas. Again, the latter is out of step with the rest of the world where cinemas **do** pay performance royalties to their local performing rights organization for theatrical exhibition and the raises the question of reciprocity for the foreign PROs.

**The SCL would like to see the abolition of “work for hire” contracts and the adoption of “license in perpetuity” agreements as they exist in the rest of the world, where the Composer retains the copyright in the work and the entity contracting with the Composer (e.g. the Producer) retains the copyright in the Sound Recording and the right of exploitation therein.**

## **BROADCAST MECHANICAL RIGHTS**

Throughout Europe royalties associated with broadcast music, including the “underscores” from audiovisual works, are often divided into the traditional performing right and a lesser-known royalty stream often called the *broadcast mechanical right*. The justification and inclusion for a mechanical right in broadcast music is arcane and the explanation of the practice varies from country to country, as do the revenues. However, what is critical to understand is that as much as 33% of monies collected from European broadcasters for music rights holders is segregated by the local performing/mechanical rights society (almost always the same organization in Europe) as a mechanical right and not distributed with the performing rights. Therefore we are talking about very large sums of money.

Two of the largest markets for U.S.-produced audiovisual works (Germany and France) designate a large percentage of their broadcast income as “broadcast mechanicals”. The problem that arises for U.S. creators is their performing rights organizations are unable to collect and distribute the Writer’s share of this revenue, as it is not considered a *performing right*. Therefore U.S. creators have not been, and are not now, receiving millions of dollars in royalties that their works are generating

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<sup>4</sup> Although the decision only affected ASCAP, BMI agreed to be bound by the judgment, and henceforth no U.S. movie theater has paid performance royalties for music in films for more than five decades, despite the Alden Rochelle licensing objectives having been corrected many years ago. (SOURCE: “Music, Money and Success” by Jeffrey Brabec and Todd Brabec – Schirmer Trade Books © 2011)

in these territories. This money is often being put in the “black box” which eventually ends up being distributed to the local societies’ members as a “bonus”.

**The SCL believes that unless and until the Consent Decree is repealed or modified to the enable ASCAP and BMI to license multiple rights for AV creators, the broadcast mechanical revenues generated by U.S. creators’ works in Europe will continue to remain unremitted by the European collection societies.**

## THE EUROPEAN RIGHTS MODEL FOR THE AV COMPOSER

All countries in the European Union, according to several EU directives (e.g. 93/98/CEE December 12, 2006<sup>5</sup>) consider at least the director, the scriptwriter and the film composer authors of a film. Therefore all related contracts are under *author’s right/copyright* and “work for hire” is a rare exception, not the rule. An audio-visual work is generally considered a "collective work" **coordinated** by the producer. Only in *copyright* and **not author’s right** countries (e.g. UK and Ireland) is the producer considered among authors, as copyright is a *property* right.

	Director	Script	Music	Tech (N.)	Producer
Austria	X	X (1)	X (1)	X	No
Belgium	X	X	X	No	No
Czech Rep.	X	X (1)	X (1)	X (1)	No
Estonia	X	X	X	X	No
Finland	X	X	X	X	No
France	X	X	X	No	No
Germany	X	X (2)	X (1)	X	No
Italy	X	X	X	No	No
Ireland	X	X (1)	X	No	X
Holland	X	X	X	X	No
Poland	X	X	X	X	No
Portugal	X	X	X	No	No
Romania	X	X	X	No (3)	No
Slovach Rep.	X	X	X	No	No
Spain	X	X	X	No	No
Sweden	X	X	X	X	No
Switzerland	X	X	X	No (3)	No
UK	X	X (1)	X (1)	No	X

N.= for instance director of photography, costume and set designers.

- 1) If authors of a pre-existing work.
- 2) According to prevailing juridical opinion.
- 3) If explicitly put under contract as “creative contributions”.

If you are an "author" you cannot waive your rights, either for moral or financial reasons. In fact, it's very close to illegal.

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<sup>5</sup> Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights

Exceptions exist but only in certain cases, such as advertisements and certain TV series where the director may change from episode to episode but is required to maintain the existing format of the program.

On a practical level there is also another reason why throughout most of Europe (certainly in the EU countries) the audio-visual composer's contract is an *author's right/copyright* contract and not "work for hire". The cost of creating the film score and accompanying master recording are not always considered part of the production budget but are produced (i.e. financed) by a "publisher". Such publisher pays for the recording of the music and has a publishing contract with the film composer. In some cases the publisher even gives an advance payment to the author (composer), but this is not to be confused with "work for hire", since the publisher will recoup the advance from performance royalty income over the life of the film. While some larger producers also have their "publishing" entities, they are not restricted and may provide publishing or administration services for other producers.

### **EXAMPLE FOREIGN COMPOSER CONTRACTS** (Annexure A in the SUPPLEMENTARY MATERIALS)

1. This is a commissioning contract from **Holland** between the film's Producer and the Composer (i.e. the Producer is commissioning the Composer to create the score). At 3.3 it refers to another contract for *publishing rights*. This indicates that an additional "performing rights" contract or agreement will be done when the **cue sheet**<sup>6</sup> is created, customarily when the film is completed (3.1). At 3.1, notice that *moral rights* (i.e. "personal rights") are retained by the Composer.

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<sup>6</sup> The (Music) Cue Sheet is defined by BMI as follows:

Cue sheets are the primary means by which performing rights organizations track the use of music in films and TV. Without cue sheets, it would be nearly impossible for such composers and publishers to be compensated for their work.

An accurately filled out cue sheet is a log of all the music used in a production. This information includes:

- Series/Film Title
- Series/Film Title AKA
- Episode Title
- Episode Title AKA
- Episode Number
- Air Date
- Show Length
- Music Length
- Production Company Information
- Song/Cue Title
- Composer
- Publisher
- Performing rights society
- Timing
- Usage

If there is more than one composer for an individual piece of music, or if the writer and publisher split their royalties on other than a 50/50 basis, this must also be indicated on the cue sheet.

2. This more detailed contract from **Germany** is conceptually similar to Example 1. It is also a commissioning contract between the Producer and the Composer. The *moral rights* are again retained by the Composer, however there is a provision for the music to be edited to the needs of the film if necessary. In this contract and Example 1, the Producer is responsible for the costs incurred for the production of the music.
3. In this **Italian** contract the Composer's Publisher (not the Producer) pays for the music. This contract is for a made-for-television movie, produced by a film production company (RTI). Except for the author rights, all rights are assigned to the Publisher in Art.2 with the Composer's share of revenues specified in Art.7.
4. This is a similar **Italian** contract to Example 3, but for a feature film, where the producer is Medusa. Both contracts, (Example 3 at Art.9 and this one at Art.18) refer to the fact that the collection of royalties will be assigned to the Italian collecting society, **SIAE**. Of particular interest in this contract is the provision in Art. 6.1 of an advance for the soundtrack album and the terms of Art.13 where the Publisher pays an advance to the Composer for any countries where the Italian collecting society has no reciprocal agreements with a local collection organization. This situation is unlikely to arise in many territories so the amount of the advance is not large.
5. This is a low budget **Spanish** film where the film's Producer contracts the Composer to both compose and produce of the music. Item 4 (Cuarta) lists all the remuneration rights of the Composer from the Spanish collecting society, **SGAE**, for the authorship and at 5 (Quinta) is the compensation for the production of the music: Two distinct services. Also of interest is Item 8 (Octava) which states the Composer only has *moral rights* on the final cut of the film. The Producer expressly waives any mechanical rights with all income from the soundtrack going to the Composer.
6. This co-production had the biggest budget of any film produced in **Spain** in 2011. Here the Composer receives an advance payment for delivering the music score but is not required to produce the recording. However the Composer must be available (7.4) during the production and post-production for any adjustments to the music until the film is completed. At 3.3 the contract clearly defines the difference between the transfer of rights necessary to produce and sell the film (i.e. *exploitation rights*), and the Author's rights managed by the Composer's collecting society, **SGAE**.
7. In this **German** contract the Composer is commissioned by an orchestra to compose a score that will, in turn, be licensed to a German TV broadcaster for synchronization to an existing film production. In the paragraph on page 3 entitled "Rechtsübertragung" (English: "Transfer of Rights") the Composer transfers to the orchestra a non-exclusive, synchronization right in the music and in the original recording of the music. The Composer (via his corporation) retains the copyright and/or other rights in the music including the performing rights.

8. In this **French** contract for a telefilm, a music production budget is mutually agreed upon by the telefilm's Producer, the Publisher and the Composer (who is also designated the "Artist"). The Composer/Artist, while required to compose and perform the score, is also responsible for all production costs in creating and delivering the score. In article 4.1 the Producer is granted *audiovisual rights* in perpetuity which includes synchronization and master use licenses. In article 6.2 the Composer/Artist retains the right to collect performance and mechanical royalties through Collecting Societies (e.g. **SACEM**) while in article 10 simultaneously assigns to the Publisher, the right to exploit the work.

9. This **Australian** feature film contract is an interesting hybrid. The **Fee** is defined as having two components: a *creative* component (for the composition) and a *production* component (for the sound recording). The composer retains the copyright in the **Original Music** in paragraph 6.3 and grants the Producer an exclusive license in perpetuity in paragraph 6.1. The Producer retains ownership of the master sound recording in paragraph 6.5 and is exclusively entitled to the mechanical royalties (defined as **Producer Royalty**). The bifurcation of these rights allows the Producer to deem the sound recording a "work for hire" in paragraph 6.5 while leaving the copyright ownership in the underlying work with the Composer.

Two other things of note:

(i) the "work for hire" status of the engagement extends to any musicians who played on the sound recording (Schedule 1: **Musician's Release**)

(ii) should the Producer require additional cues in excess of the agreed forty minutes, as defined in **Services** (b), paragraph 3.2 states the Composer is entitled to an additional fee.

10. In this **Australian** composer agreement for a TV series the Composer's creative fee and production costs are merged. The Composer retains the copyright while granting the Producer a license to use the music in perpetuity (Para. 5.1). The Producer retains full ownership of the Master Sound Recording by way of assignment (Para. 5.3) and all exploitation rights. However, the Composer is allowed to collect the Artist's share of any mechanical royalties (Para. 5.5 & 6.3) and has complete approval of the Soundtrack album, including content and sequencing while any third party costs (e.g. mastering etc.) are borne by the Producer. Also, with some caveats, the Composer is entitled to an additional fee if there is an overseas remake of the series that uses the music created under this the terms of this agreement (Para. 5.1e[i]). As in Example 9, the Composer is obliged to secure Performer Clearances (Para. 3.1 & Annexure A) for the Master Sound Recording.

11. This agreement from the **United Kingdom** between the BBC (British Broadcasting Corporation) and the Composer for an unspecified program declares the BBC has no ownership in the copyright of the Music in the last paragraph of Item 2 and defines the copyright owner as the Composer in Item 2(ii) and again in the last paragraph of Item 2. The Composer grants the BBC a license to create the Master Sound Recording; the BBC retains the copyright to it in Item 2(iii) and the

accompanying exploitation rights in Item 1. The Composer waives all moral rights (droites morales) in Item 3 and warrants he has the right to issue a synchronization license to the BBC via PRS<sup>7</sup> and the BBC warrants that its U.S. distributor will procure a similar license from PRS prior to theatrical exhibition in the U.S.

12. This **Canadian** agreement for a documentary TV series, clearly states that the Composer is engaged as an Independent Contractor NOT and as an Employee For Hire (Para. 1). The Composer grants to the Producer licenses to synchronize the “Score” and the “Recording” with the Program as well as the necessary exploitation rights in perpetuity (Para. 3). The Composer retains the Copyright in the Score and the Recording whether either separate from, or incorporated with, the Program but waives all moral rights (Para.5). The Composer is paid an “all-in” fee.

***NOTE: More example contracts, from these territories and others, are available upon request.***

### **THE AV MUSIC CREATOR’S RELATIONSHIP WITH HIS/HER PERFORMING RIGHTS ORGANIZATION IN THE U.S.**

For over 100 years (in the case of ASCAP), performing rights organizations (PROs) around the world have been collectively licensing the works of composers and songwriters. The PRO not only provides the collection mechanism but a transparency that would not otherwise be afforded the rights holders. This is of particular importance in the case of the AV music creator who relies completely on the PRO to collect the “writer share” of the performance royalty because, as described previously, the WFH contract deems the entity that commissions the work, the author of the work and since the PRO also collects for the “publisher share”, a transparency in accounting currently exists but would be jeopardized if the publisher were to withdraw from the PRO in order to directly license works to licensees.

In principle, the SCL does not take issue with a more open and progressive form of licensing, provided the PRO maintains the ability to collect the “writer share” for the creator, but while the Consent Decree remains in place and rate courts arbitrarily determine the value of music, it’s disingenuous to suggest that the publisher ultimately has the best interests of the AV creator at heart.

Currently, the “writer share” is a notional and not a statutory share of revenue. AV creator contracts contain language such as “customarily known as the writer share” or “as defined by general industry practice”, but nowhere in the Copyright Act is the “writer share” defined.

**The SCL believes some protections for the AV music creators must remain or the system will break down. Therefore, any revision of the Copyright Act should define the “writer share” as no less than 50% of performance revenue.**

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<sup>7</sup> U.K. collecting society

**The SCL also believes that the creator should have the right to determine who collects that share of revenue on his/her behalf irrespective of the publisher or copyright holder.**

## **THE INEQUITIES AND INEFFICIENCIES OF THE CONSENT DECREE & RATE COURTS**

The Consent Decree has outlived its usefulness and no longer serves the purpose for which it was originally intended. Rather, it has become an impediment to the open market negotiations demanded by today's delivery services and licensees. It is generally acknowledged that the rate courts to which ASCAP and BMI are subjected are keeping the fair market value of music artificially low. This has created a disparity in the marketplace because of unfair restrictions on the two PROs subject to the Consent Decree and their subsequent rate courts. Commercial entities like SESAC, start-ups like Azoff MSG Entertainment and a variety of foreign PROs are all competing for the opportunity to collect revenues of the music creators but unlike ASCAP and BMI, are not constrained by antiquated regulations in their efforts to do so.

Many of the foreign PROs are merged with their mechanical collection agency counterparts in an effort to make licensing simpler for its licensees and more cost-effective for its rights holders.

**The SCL believes that music creators will be best served by rights collection organizations having the ability to bundle all rights and the clearance thereof, creating 'one-stop shops' for end users, the Licensees.**

## **THE CURRENT LICENSING DISPARITY**

Currently, record companies are collecting license fees from streaming services for their recordings that are approximately 13 times those being paid to the music creators. This is unconscionable and completely undermines the value of the creators' works. The U.S courts have determined that there is no performance in a download yet, once again, this ruling is out of step with the majority of court decisions in the rest of the world.

**The SCL believes that music creators should be entitled to a share of revenue for their works equal to that received by the record labels for their artists.**



## FOREIGN INTERPRETATIONS OF PERFORMANCES STREAMING v. DOWNLOADS

### United Kingdom

The different assessment of streaming and downloading in relation to the relevant *communication to the public* and *reproduction* right respectively seems not to matter in practice. The UK Collecting society **PRS for Music** licenses the full range of music business models, including downloads and streaming. As far as the two rights (i.e. communication to the public and reproduction right) apply to a single act of economic exploitation in the online environment (e.g. a download or a stream) there are no practical problems or differences; it is handled internally and in no way disadvantages the licensee.

As PRS for Music elaborates in its response to the recent ECSA<sup>8</sup> questionnaire on changes to European copyright rules, March 2014: “Many businesses handle the clearance of multiple rights with ease, online and offline: this has always been routine administration for any copyright business. Therefore, we see no evidence, either now or historically, that the existence of two rights has provided a barrier to the licensing of musical works. However, we recognize the importance of **joint licensing** and the **aggregation** of repertoires for streamlined licensing, and we are committed to initiatives which simplify the licensing process, such as the consolidation of front and back office operations between PRS for Music and other CMOs<sup>9</sup>.” Unfortunately, there is no information publicly available on how the monies are distributed between or apportioned to the different rights (which might be owned by different right holders). However, an article in “The Guardian” (March 12, 2014) by Helienne Lindvall provides some insight into the situation. She states:

“Interestingly, publishers and songwriter collecting societies have acknowledged this when it comes to paying songwriter royalties, with a stream requiring a mechanical license (which historically covers per-unit record sales, i.e. reproduction) as well as a performing rights license (which covers public performance including TV and radio broadcasts). They don’t even consider a download purely a sale.

However, how much of a stream or download is considered *reproduction* and how much is *performance* differs from country to country in Europe. In the UK, when it comes to the composition of a track, a download is considered to be 75% mechanical and 25% performance. The reverse is true for a pure streaming service (Spotify, for some reason, is considered 50/50 mechanical and performance). It’s also worth noting that, in the UK, 50% of performance royalties go straight to the songwriter, but 100% of the mechanical royalties are paid to the publisher in order to recoup any advances it has paid the songwriter.”

### Germany

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<sup>8</sup> European Composer and Songwriter Alliance

<sup>9</sup> Copyright Management Organizations

The U.K position is echoed by the German Collecting society, **GEMA**, in their response to the abovementioned European questionnaire:

“Like all European CMOs, GEMA has a long tradition of licensing uses for which more than one right is required. Insofar there is no difference between the transmission of works by digital networks requiring the rights of reproduction and making available, and radio or television broadcasts requiring the right of reproduction and the public performance right.

Potential complications do not arise from the split of rights which are entrusted to the same entity but in consequence of the fragmentation of rights and repertoires. Even if there was only one single right required for all kinds of digital transmissions, users would still have to get the authorizations from all right holders including performing artists and producers.

So instead of artificially reducing the rights involved in complex technical processes, the EU should focus on the already established and functioning collaborations between collective management organizations by offering reasonable support and an appropriate legal framework. In this sense the new CMR Directive can be considered as one step in the right direction.”

In **Annexure B** of the **Supplementary Materials**, documents from GEMA provide Royalty Rate Schedules for the following uses:

Royalty Rates Schedule VR-OD 4

for the use of works in GEMA's repertoire in film- and video-on-demand services and products via download and/or streaming

Royalty Rates Schedule VR-OD 7

for the use of works from GEMA's repertoire for downloading single titles and albums as well as for limited subscriptions

Royalty Rates Schedule VR-OD 8

for the use of works from GEMA's repertoire within the scope of streaming offers subject to a fee (so-called “unlimited subscriptions”)

Royalty Rates Schedule VR-OD 9

for the use of works from GEMA's repertoire within the scope of ad-funded streaming offers

## **Denmark**

Under Danish law, both forms of exploitation involve performing rights and mechanical rights.

For a **download**, one needs the *mechanical rights* for the copy of the work and one needs the *performing rights* because of the "making available" element, which is separately protected under Danish and European law.

For a **streaming service**, one needs the *performing rights* for the public performance and the *making available* of the work and one needs the *mechanical rights* for the original copy of the work and possibly also for any intermediary copies of the work.

### **Australia & New Zealand**

When clearing music rights for digital services in Australia and New Zealand, APRA AMCOS has the mandate from members and overseas societies to issue licenses for both the *communication rights* and the *reproduction rights* involved in the service. The distribution division (i.e. split) of the performing and the mechanical right is determined by the Boards of APRA and AMCOS. Under the presiding local law, the *right of communication* to the public includes the “making available” right as provided for in the WIPO Internet Treaties.

### **CONCLUSION**

AV composers’ works comprise the fastest growing segment of the PRO repertory. A full 51% of revenues collected by ASCAP in 2013 were generated from the works of AV creators. The consumers have voted with their pocketbooks: they want to **see** content and **hear** music at the same time. Our numbers, as AV music creators, may seem small, but our impact on the entertainment industry is disproportionately large. Therefore, the contribution our works make to the many and varied parts of the entertainment industry, that return billions of dollars to the U.S., should not be discounted. As responsibility for delivery of entertainment programming moves rapidly to digital platforms, it is of dire importance that creators of the music embodied in those programs are fairly compensated for the fruits of their labors. And unless there are reforms made to the Copyright Act and the Consent Decrees under which ASCAP and BMI operate, the future of that compensation is anything but assured.

The following excerpt from the 09-0539-cv(L), US v ASCAP, ASCAP Appellant-Cross-Appellee’s Brief is an apt description of the unfortunate reality that may lie ahead:

#### ***Without Performance Rights, Music Authors Will Not Be Fairly Compensated***

*Composers, lyricists, and songwriters depend for their livelihood on the royalties they receive from the performance of their works. And in an era when digital transmissions are increasingly displacing performance by cable and over-the-air music broadcasting, performance rights in online music are more important than ever. Yet the District Court’s judgment eviscerates them.*

*For music authors, the consequences are dire. While the District Court seemed to believe that authors are already adequately compensated for download transmissions by mechanical royalties, in fact they are hardly compensated at all. Many music writers, especially those who compose for film or television, do not receive mechanical royalties of any kind. Instead, these writers are offered a onetime, lump-*

*sum payment to compose. Under this work-for-hire arrangement, authors sign over to the entity that hires them the ownership of their works, along with most rights to later royalties. The only subsequent payment these authors receive are royalties for public performances of their work.*

*Other authors do receive mechanical royalties, but only after they have been divided among multiple parties. Pursuant to standard industry practices, these authors, many of them songwriters, agree to assign their copyrights to a publisher for a term of years. The publisher and author then share the royalties for reproduction, distribution, and public performance. But even in this arrangement, the public performance royalty remains the author's major source of income.*

*The consequence of the District Court's opinion is to destroy in one stroke the primary source of compensation available to music authors in digital transmissions, effectively shutting them out of this vital new segment of the music industry. Given authors' relative lack of bargaining power and the long-standing structure of music industry contracts, the result will not be larger up-front payments to music authors or an increase in mechanical royalty payments. The result will be less compensation for authors—potentially far less. Already badly pressed, music writers of all sorts will find their work even more difficult to sustain. And no doubt many will be forced to abandon their calling altogether.*

**APPENDIX A:  
The SCL's Mission Statement**

The Society of Composers & Lyricists is committed to advancing the interests of the audiovisual music community. Toward this end, the SCL:

- Disseminates information concerning the creative and business aspects of writing music and lyrics for film, television, videogames and theatre;
- Presents educational seminars to provide the SCL membership with the latest legal, artistic and technological information affecting our industry;
- Seeks to enhance the workplace and working conditions in order to maintain the highest level of quality in our crafts;
- Encourages a sense of community and the sharing of experience and knowledge among our membership and related organizations worldwide;
- Provides opportunities for dialogue and the exchange of information between our membership and visual content makers;
- Establishes forums where issues confronting the audiovisual music industry can be openly examined and debated.

The creation of scores and songs for motion pictures, television and other visual media involves unique skills and presents special challenges. The SCL assumes a central role in helping composers and lyricists achieve their full career potential in a demanding and ever-changing field.

## **APPENDIX B: The SCL's History - From SCA to CLGA to SCL**

by Jon Burlingame

The Society of Composers & Lyricists is not the first group of musicians and wordsmiths to organize for the collective good of its membership. In fact, the SCL has had two major predecessors – one of which was actually a union that, for more than a decade, set minimum financial terms and governed working conditions for composers and lyricists.

The first such group of "cleffers" (as *Variety* put it in those days) was the Screen Composers Association. Formed in 1945 as an offshoot of the American Society of Music Arrangers, the SCA boasted among its membership virtually every great composer of the Golden Age of motion pictures, including Max Steiner (*Gone with the Wind*), Miklos Rozsa (*Spellbound*), Erich Wolfgang Korngold (*The Adventures of Robin Hood*), Alfred Newman (*Wuthering Heights*), Bernard Herrmann (*Citizen Kane*), Franz Waxman (*Sunset Boulevard*), David Raksin (*Laura*), Hugo Friedhofer (*The Best Years of Our Lives*), Alex North (*A Streetcar Named Desire*), Dimitri Tiomkin (*High Noon*) and Victor Young (*Shane*).

"Our goal was to be able to bargain for composers and arrangers," said composer Herschel Burke Gilbert (*The Rifleman*), who helped found SCA and later served as its president. Concerned that ASCAP paid little or no attention to music written for films, SCA eventually forced the performing rights society to accept composers of "background" music, a key decision that has affected the lives and fortunes of thousands of composers since.

As composer / archivist Warren Sherk points out in his introduction to the SCA Collection at the Academy of Motion Picture Arts & Sciences Library: "SCA not only convinced ASCAP of the importance of dramatic underscore in film and television but also lobbied for, and received, larger royalty payments from ASCAP."

David Raksin, chairman of SCA's agenda committee, championed the cause of a guild among conservative and initially reluctant SCA officials; the dream wouldn't become a reality until a few years later. At a landmark meeting held at the Hollywood Roosevelt Hotel on December 4, 1953, more than 150 composers voted unanimously to create a Composers Guild of America and pledged nearly \$3,000 towards its startup costs.



L-R: Leith Stevens and David Raksin

The opening paragraph of a five-page paper declaring the need for a composers' guild -- drafted in November 1953 and read at the meeting – could just as easily have been written today: "Composers are the only creative group in the radio, television, motion picture, recording and other entertainment fields without the protection and guidance of a guild. All other creative groups in these fields, without exception, enjoy the right of collective bargaining in their relations with employers. This standing separately, rather than together as a guild, is one of the

primary reasons why fees for composition (as separate from orchestration or arranging) have practically disappeared in radio. Further, the practice of no fee for composition is being carried into television in a frightening percentage of cases. This is only one of many abuses common in these fields, and the composer without an organization to back him up can only accept the situation."

Leith Stevens, composer of such films as *The Wild One* and *Destination Moon*, was elected first president of the Composers Guild of America, with Walter Schumann (*Dragnet*) as vice president. A New York chapter was also organized, with the famed orchestrator Robert Russell Bennett, composer and writer Deems Taylor and songwriter Arthur Schwartz chairing the group.

The first general membership meeting occurred May 21, 1954. The following year, the organization added lyricists and became the Composers and Lyricists Guild of America, and in August 1955 the National Labor Relations Board certified the group as the recognized bargaining agent in negotiating with the studios.

The CLGA acted quickly to open negotiations with the major studios. By January 1956, with more than 360 members -- nearly every working composer and lyricist in Hollywood and New York -- CLGA proposed payment for film scoring on a per-minute basis and payments for songs on a per-tune basis. Although the Association of Motion Picture Producers (representing the major studios) recognized the guild, it would take four years and a strike threat before both sides could ratify a "minimum basic agreement" for composers and lyricists.

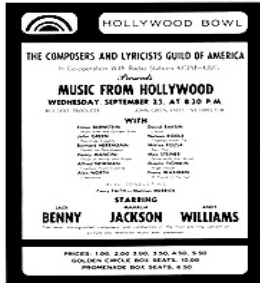
Members approved that first agreement in October 1960. Two more would be ratified, in 1965 and 1967. The CLGA was added to the industry's health and welfare and pension plans, and in late 1962, Raksin succeeded Stevens as president of the group.

The minimum basic agreement, like those of the Writers Guild of America and Directors Guild of America contracts, specified minimum wages and outlined essential working conditions. In addition to rates of compensation (for films, hour TV shows, half-hour TV shows, 90-minute movies of the week, etc.), the document covered issues including screen credit, preparation of cue sheets, speculative composition, (writing music "on spec" was forbidden), performing rights matters, soundtrack releases and more.

The CLGA became, like the Writers Guild, Directors Guild and other industry unions, a recognized and powerful entity. Orchestration and conducting had been covered by the American Federation of Musicians (AFM) contracts for years, but now composers and songwriters had a governmentally sanctioned voice as well. Collective bargaining was just one part of the overall CLGA agenda. Public recognition of their work (as hard won then as now) was also deemed significant.

The CLGA sponsored one of the most remarkable nights in the history of film music -- the "Music from Hollywood" program at the Hollywood Bowl on September 25, 1963 which celebrated the 10th anniversary of the guild and was attended by an

estimated 10,000 fans. Conducting their own music that night was an amazing group of composers: David Raksin, Bernard Herrmann, Alfred Newman, Alex North, Miklos Rozsa, Dimitri Tiomkin, Elmer Bernstein, Henry Mancini, John Green and Nelson Riddle. Andy Williams and Mahalia Jackson sang classic film songs, and Jack Benny (with his violin) provided comic musical relief.



Hollywood Bowl Program

As the Los Angeles Herald-Examiner critic reported the next day: "Hollywood film composers asserted themselves in the Hollywood Bowl last night, and they made a persuasive and sometimes impressive case for themselves. No composers have ever been so widely heard as these cinema men, and no composers have been, by and large, so narrowly recognized." (Most of that concert has now been released on a Columbia/Legacy CD: "*Music from Hollywood*").

Respect from the public is one thing, but respect at the bargaining table is often something else. Bernstein succeeded Raksin as CLGA president in 1970, and during the summer of 1971 a negotiating committee consisting of some of the finest composers and lyricists in the business (among them Alan Bergman, Jerry Fielding, Norman Gimbel, Jerry Goldsmith, Dave Grusin, Arthur Hamilton, Quincy Jones, Leonard Rosenman, Lalo Schifrin, Henry Mancini, David Raksin and Elmer Bernstein) drew up a series of proposals for consideration by the Association of Motion Picture and Television Producers (AMPTP), representing the studios.

First on the list was a proposal that composers and lyricists retain publishing rights to their music and lyrics. Producers refused even to discuss the issue. For decades, producers and/or studios had owned all publishing rights -- that is, ownership and control of the music. The rare exceptions were legendary songwriters like Irving Berlin or composers with strong track records such as Mancini or Tiomkin (and then only occasionally, as in Mancini's co-ownership of *The Pink Panther* music and Tiomkin's full ownership of the *Rawhide* theme).

CLGA members went on strike Nov. 30, 1971. In full-page trade ads taken out in December, the guild explained its position: Producers' ownership of the copyrights bars composers and lyricists from taking advantage of the full commercial possibilities of their scores and songs. "We feel there is value in the broader exploitation of music," the CLGA declared. "We ask the right to avail ourselves of this potential which we can do without infringing on the producers' rights to the music in his picture and its promotion. Between total copyright ownership and no ownership there are 100 negotiable percentage points. We have repeatedly stated that we are 100 percent negotiable on all aspects except total withdrawal of the issue. In light of the present state of the industry, we strongly feel that we are being both fair and realistic."

By mid-January 1972, members were fed up with industry stonewalling and authorized famed New York labor lawyer Theodore W. Kheel to proceed with an antitrust action against the studios, networks and producers.



On February 7, 1972, 71 composers and lyricists filed a \$300-million class-action lawsuit against Universal, 20th Century-Fox, Paramount, MGM, Warner Bros., Columbia, Walt Disney, United Artists, CBS, ABC, NBC, the AMPTP and other film-related conglomerates. The guild itself was not a party to the suit, although Bernstein's name was first on the otherwise alphabetical list of plaintiffs.

The suit charged the studios with "conspiracy in restraint of trade" by refusing to hire any composer or lyricist who fails to agree to their terms: complete ownership of the music and lyrics, granting publishing rights to the producer and/or his publisher (thereby relinquishing 50 percent of performance fees from overseas exhibition) and surrendering all rights to exploit the music outside of the film or TV show.

"Thousands of musical compositions remain idle, unused and unexploited in the files of the defendants," the 27-page brief pointed out. With an estimated loss to the composers of \$100 million, the triple-damages rule in federal district courts enabled them to ask for \$300 million in damages.

This was an act that would forever alter the course of composers and lyricists working in the film and television industry. The lead story in the next day's issues of *Variety* and *The Hollywood Reporter*, it also made news across America. The *New York Times*, *Los Angeles Times* and the *AP* wire ensured that John Q. Public would read about (if not fully understand) the case. At the very least, it appeared that six dozen note-scribbling "Davids" were standing up to a handful of powerful, monolithic Goliaths.

Bernstein, at the time, said the suit "has stirred our conscience as artists who believe in the ongoing value of our work and further that its life outside the film media rightfully and morally belongs to the composer and to the public."

In September 1972, CBS settled with the composers and lyricists, agreeing to give Bernstein the copyright on a *Gunsmoke* score and use that contract as a model for future composer deals. NBC settled on a similar basis in 1976. The number of writers joining in the suit ballooned to more than 130. A federal district court judge dismissed the suit in 1974, but the New York Court of Appeals overturned that decision in 1975, directing that the case go to trial.



Elmer Bernstein  
at the 1979 CLGA Dinner

It never happened. As Bernstein wrote in 1976: "The reaction of the studios to the filing of the suit appears to be one of delay, hoping that the composers will not be able to support their complaint either spiritually or economically over a long period of time." While there was little wavering on the spiritual front, it did cost the composers and lyricists a fortune. About half of the plaintiffs paid the mounting legal bills out of their own pockets, often \$5,000 at a time, and signed notes guaranteeing another \$100,000 in loans. By one estimate, the composers spent more than \$250,000 battling the producers as the case dragged on.

Wrote Bernstein: "It has been a long, sometimes discouraging, sometimes rewarding but always expensive struggle. Creative people do not primarily live in a world of capital gains, oil depletion allowances and the many tax dodges, shelters and shenanigans of big business. An artist has only the talent and the product that the talent produces. We feel that it is not much to ask that the creative artist have a reasonable voice in the destiny of the work."

Composer James DiPasquale (who would later serve as CLGA vice president) explains what happened through the 1970s: "There would be a little victory for the studios, and then some interrogatories or a big hearing somewhere, and then a little victory for the composers and lyricists." Adds Raksin: "They outlasted us. It cost [the studios], maybe, a million and a half bucks. But we realized that in order to continue, we would have to raise another \$300,000 and we couldn't. So we had to give up."



Cover of *Variety* read:  
Composers Suit Ordered To Trial

On April 9, 1979, the federal district court approved a settlement between the two sides that ended the case. The agreement conferred some rights – limited, at best – to composers and lyricists who had worked for the studios prior to October 1973. Lyricist Arthur Hamilton, later SCL president, recalls: "Cosmetically, it looked good, because in it was the potential of recapture of some of the copyrights." But the 38-page settlement was legally complex, the windows of opportunity were limited,

and those few composers and lyricists who took advantage of these rights found that a substantial portion of their potential earnings still belonged to the original producers of the film or TV project.

With the settlement, the CLGA attempted to once again negotiate a contract. "The studios laughed at us for about six months," says DiPasquale. They had fought this group for seven years and, taking full advantage of the situation, simply ignored the CLGA. "It just whimpered and died," says Hamilton. "We were no longer the beneficiaries of health and welfare benefits; we had no working relationship with them as employer and employee; it placed us completely out on the street. They had no responsibility to us other than to hire us when they chose to."

A new group, including DiPasquale and later SCL president Bruce Broughton, took the reins and attempted to revitalize the CLGA. They published a newsletter ("Quarter Notes"), sponsored fundraising events (notably a October 1981 event that raised \$2,000 for the National Endowment for the Arts) and staged a grand dinner honoring Steven Spielberg ("for fostering a continuing standard of excellence in the use of music for film"). But, says DiPasquale, "the finances started catching up to us." By June 1982, the CLGA was dead.

Raksin, in a later interview, reflected: "The CLGA was important because for the first time, all of the composers banded together to present a united front to the producers. We showed them that we had power. We spoke with a single voice, and

these people [the studios] actually bargained with us. We got some very good things. It was the most important organization that we have ever had, and it's a shame it's gone."

Yet, as the new decade progressed, composers and lyricists began to express concern about the growth of cable, the increasing popularity of videocassettes and the potentially large new revenue streams that would soon be flowing to the producers. Because a handful of lyricists were also Writers Guild members, discussions began about a possible affiliation. Well-known music attorney David Braun joined the cause pro bono, and in April 1983, he and a group of composers and lyricists (including Elmer Bernstein, David Raksin, James DiPasquale, Arthur Hamilton, ex-CLGA president John Cacavas and others) appeared before the WGA board of directors to petition for membership. WGA – recognizing the Reagan administration's hostility toward unions, and wary of jeopardizing its own certification – chose instead to help the remnants of the CLGA reorganize into a new group which in turn would petition the federal National Labor Relations Board for certification as an independent union.

That group was the **Society of Composers and Lyricists**, born during the summer of 1983.

On February 14, 1984, the SCL formally met for the first time, with 310 composers and lyricists – including such luminaries as Henry Mancini, John Williams, Marilyn and Alan Bergman, Jerry Goldsmith and Quincy Jones – at the Writers Guild theater. James DiPasquale was the "organizing chairman," effectively the first president of the group.

The NLRB held hearings in October 1984. Nineteen individuals from both sides (composers / lyricists and studios) testified over seven days, and, "by any cursory reading" of the 1,400 pages of testimony, DiPasquale says, "the studios proved our case." But the decision of the NLRB, handed down in December 1984, was that composers and lyricists were independent contractors, not employees, and therefore not entitled to union status. The SCL appealed, but that too was lost in early 1985.



Joyce Moller from the Writers Guild,  
Arthur Hamilton & Lori Barth

"Such is the bias of the National Labor Relations Board," said Raksin, "that, in spite of all evidence to the contrary, they refused to certify us as an employee organization. Studios are able to, and choose to, talk out of both sides of their mouths. When they want to control our rights, then we're employees; when they want to make sure we can't band together, they call us independent contractors. The NLRB accepted this false reasoning."

The NLRB decision was later criticized as simplistic and an inappropriate application of the law ("Labor Law: Are Creative Artists Independent Contractors or Employees?" Loyola Entertainment Law journal, 1986). Speaking before the SCL in July 1985, Rep. Howard L. Berman (D-Calif.) denounced the decision, reported that

Sen. Edward M. Kennedy (D-Mass.) joined him in supporting the composers' and lyricists' cause, and urged the SCL to try again under a different administration.

What was patently unfair even to the most casual observer is the fact that the AMPTP negotiates regularly with every other group of creative artists in the community: the Writers Guild, the Directors Guild, the Screen Actors Guild, even the AFM (which, fortunately, still bargains on behalf of musicians, orchestrators, conductors and copyists).

Twenty years after the lawsuit, Elmer Bernstein found conditions no better: "Composers are being abused in the workplace in terms of work procedures, and are certainly being abused economically," he said. "There's no question that, in terms of the budgets of the pictures, and what [artists and craftspeople] are making in other professions, the composers are very disadvantaged."

In November 1993, the SCL again began to explore unionization. Then president Richard Bellis found that re-filing with the NLRB would be expensive (\$150,000 or more) and discussed the possibility of affiliating with existing unions, such as the musicians' union or the International Alliance of Theatrical Stage Employees (IATSE), and "hope for voluntary recognition by the producers at the table," in Bellis' words. In a 1995 vote, SCL members split three ways on the issue: Some favored the AFM, some IATSE, some no union at all.

As subsequent SCL president Mark Watters explained: "The function of the SCL now is a bit different than when it was first formed in 1983. After the union issue was decided – at least for the time being – the organization became one of a central meeting point, a place for disseminating information about various aspects of our craft and our business. There is a need for this, simply because of the way we work; we are pretty solitary, we work alone and don't really have an occasion to interact with each other. The SCL provides that meeting point, whether it be social occasions, seminars, workshops or various other activities. Is the issue of unionization a closed book? Definitely not."

In the meantime, the SCL continues in its non-union role of education, support and mutual benefit. Its status today is the outgrowth of more than half a century of efforts by composer and songwriter activists to build a community united not only by talent but by a genuine concern for each other.



Congressman Howard Berman  
& Jim DiPasquale

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<sup>10</sup> Jon Burlingame writes about film and television music for *Variety*, teaches at USC and is the author of three books including *TV's Biggest Hits* and *Sound & Vision: 60 Years of Motion Picture Soundtracks*. This piece is an expansion of an article published in 1992 in SCL's *The Score*.

## **SUPPLEMENTARY MATERIALS**

### **ANNEXURE A: Example Foreign Composer Contracts**



Overeenkomst

tot het vervaardigen van de soundtrack & score,  
hierna te noemen Het Werk, voor de filmproductie



Tussen

[redacted]  
[redacted] te Amsterdam en vertegenwoordigd door [redacted]  
hierna te noemen [redacted]

En

[redacted]  
[redacted] en vertegenwoordigd door hemzelf. Hierna te  
noemen Componist;

In aanmerking nemende dat:

- [redacted] de intentie heeft een speelfilm te co-producen onder de titel [redacted], hierna te noemen De Film,
- Componist ervaren is in het componeren van muziek, met name bij speelfilms, en de opdracht heeft aanvaard Het Werk, bij De Film te componeren.

zijn genoemde partijen overeengekomen te gaan samenwerken onder de hierna beschreven afspraken en condities.

1. Componist aanvaardt hierbij de opdracht om voor eigen rekening en risico voor De Film Het Werk te componeren, arrangeren, orchestreren en de orkestpartijen te verzorgen. Bovendien zal Componist de opname en de mixage begeleiden en de muziek aanleggen bij de film eea.in samenwerking met een van de zgn. omroeporkesten, uiteindelijk geschikt als de complete achtergrondmuziek bij De Film(beelden). Indien er onverhoopt geen omroeporkest beschikbaar is zal [redacted] de kosten van orkest en opname voor haar rekening nemen.

1.2 Tevens zal De Componist, indien vereist, een titel song componeren, bedoeld om tijdens de openingstitels en de aftiteling van De Film te gebruiken. Deze song dient van tekst te worden voorzien door een nader te bepalen tekstschrijver. De song valt onder Het Werk.

1.3 Componist zal, met behulp van derden Het Werk uitvoeren, opnemen, opleveren en synchroniseren met de filmbeelden.

A handwritten signature in the bottom left corner of the page.

A handwritten mark or signature in the bottom right corner of the page.



1.4 Componist zal zijn composities afstemmen en in dit verband nauw samenwerken met de regisseur van De Film.

## 2 Vergoedingen & Betalingen

2.1 De totale vergoeding zal een bedrag van euro [redacted], inclusief assistent voor 3/4 uur muziek en Euro [redacted] (inclusief assistent), voor 1 uur muziek

Betaling van deze som zal als volgt geschieden:

- (1) 1/3rde, bij aanyang van de werkzaamheden ( 1 oktober 2002)
- (2) 1/3rde, na voltooiing van de opnamen ( eerste/tweede week maart 2003)
- (3) 1/3rde, als de nasynchronisatie en de titelsong zijn voltooid de zgn. master op DAT-tape t.b.v. De Film en een zgn. master is aangeleverd ten behoeve van het produceren van, onder andere, een CD en Cd-single uitgave aan [redacted] zijn opgeleverd en goedgekeurd. (uiterlijk 15 april 2003)

Reis- en verblijfkosten zullen door [redacted] worden vergoed. Eventuele per diems zullen volgens de algemene produktierichtlijnen worden vergoed.

Componist zal hiervoor een factuur zenden aan [redacted] welke binnen twee weken na factuurdatum betaalbaar is.

2.2 Betaling van deze facturen betekent finale kwijting voor alle geleverde werkzaamheden door Componist.

## 3 Eigendom en overdracht van rechten en materialen.

3.1 Componist draagt hierbij alle rechten op Het Werk, voor zover wettelijk mogelijk (dus met uitzondering van de persoonlijkheidsrechten) exclusief en onvoorwaardelijk over aan [redacted]. Hiertoe behoren eveneens het music cue sheet en de filmmuziek voor een zgn. "composers cut". [redacted] zal er voor instaan dat Het Werk niet gebruikt zal worden onder beelden van porno/politiekextremistische aard en/of onder extreemgewelddadige beelden.

3.2 De uitgave rechten zullen in een separaat contract met Componist worden overgedragen aan [redacted]. Dit geldt tevens voor de eventuele tekstbijdragen van derden aan de titelsong.

3.3 Alle materialen ontstaan ten behoeve van de vervaardiging van Het Werk worden automatisch eigendom van [redacted]. Dit geldt specifiek voor



het gemixt en gemasterd eindresultaat ten behoeve van, maar niet beperkt tot, de vervaardiging van CD's.

3.4 Tot de overgedragen rechten met betrekking tot de Opname behoort het eigendomsrecht op de Opname.

#### 4 Overdraagbaarheid

█ heeft het exclusieve recht tot het verlenen van sublicenties

#### 5 Territorium & Termijn

Alle beschreven rechten zijn geldig voor territorium: de gehele wereld. De termijn van de overdracht van rechten en exploitatie is oneindig.

#### 6 Credit

De Componist zal op de titels van de Film en op publiciteitsmateriaal worden vermeld als volgt: Muziek █. Deze credit zal geplaatst worden aan het begin van de film in letters die even groot zijn als die van de credit van de regisseur.

#### 7 Vrijwaringen en garanties

7.1 Componist garandeert dat alle composities en arrangementen ten behoeve van Het Werk origineel en zijn geesteskind zijn, en niet gebaseerd op enig ander bestaand werk. Componist garandeert en vrijwaart █ voor alle aanspraken van derden in dit verband.

7.2 Componist garandeert dat hij vrij is deze overeenkomst aan te gaan en deze overeenkomst precies en tijdig na te leven. Voor wat betreft de tijdige aanlevering is de goedkeuring van █ en de datum 15 april 2003 beslissend.

#### 8 Beëindiging

Mocht om welke reden dan ook een der partijen zijn verplichtingen voortvloeiend uit deze overeenkomst niet nakomen dan behoud(en) de overige partij(en) hun rechtspositie binnen deze overeenkomst en stellen de nalatige partij verantwoordelijk voor schade of gederfde inkomsten.



9 Overmacht

In geval De Film(productie) door onvoorziene redenen niet wordt voltooid zal de Componist slechts vergoeding ontvangen voor daadwerkelijk gemaakte kosten en aanvaardt reeds nu dat de opdracht als vervallen wordt beschouwd.

10 Toepasselijk recht

Deze overeenkomst is gebaseerd op Nederlands recht en eventuele geschillen zullen worden voorgelegd aan de rechtbank te Amsterdam.

Geaccepteerd en overeengekomen te Amsterdam 26/1/2002 :

[Redacted signature and name]

[Redacted signature and name]

# Kompositionsvertrag

[REDACTED] Berlin

- im folgenden **Produzent** genannt -

und

[REDACTED] Amsterdam, Niederlande

- Im folgenden **Komponist** genannt -

vereinbaren:

## 1. Vertragsgegenstand

1.1. Der Produzent beabsichtigt für einen Kinofilm die Musik zu produzieren. Der Produzent beauftragt in diesem Zusammenhang den Komponisten, die Filmmusik (Dramaturgische Filmmusik inklusive Trailer und Titelmelodie) für den Kinofilm mit dem Arbeitstitel [REDACTED] in Absprache mit dem Produzenten zu komponieren, Notendrucke zu erstellen und die Tonaufnahmen der Musik zu überwachen ("Musikproduktion") und erforderlichenfalls bei der Editierung der Musikspur bis zur Fertigstellung mitzuwirken.

1.2. Komponist nimmt den Auftrag an. Gegenstand dieses Vertrages ist somit die exklusive Übernahme der Filmmusik zur Verwendung im Rahmen der Produktion.

## 2. Umfang der Tätigkeit, Zeitplan und Lieferung

2.1. Im Rahmen seiner Tätigkeit ist Komponist unter Einhaltung sämtlicher ihm von Produzent sowie Regisseur aufgegebenen Termine verantwortlich für die Komposition, Notenerstellung, die Einrichtung der Arrangements, Überwachung der Orchesteraufnahme (d.h.: der Komponist wird während der gesamten Orchesteraufnahme anwesend sein und dafür sorgen, dass die Musik entsprechend der Vorgaben von Produzent und Regisseur eingespielt wird)

2.2. Darüber hinaus wird Komponist nach Fertigung der Komposition und des Arrangements einen Vorspieltermin mit dem Produzenten vereinbaren und dem Produzenten dabei die Komposition und das Arrangement vorstellen (nachfolgend Demotermin genannt). Die endgültige Musikproduktion wird erst nach einer Abnahme im Anschluss an den Demotermin (s. Ziffer 3.1) erfolgen.

2.3. Die Musikproduktion ist entsprechend des **anlegenden Zeitplanes** herzustellen. Die Lieferung der jeweiligen Noten mit der vollständigen Filmmusik sowie Musikliste mit Angaben über Titel, Komponist, evtl. Texter, Bearbeiter, Interpret, Verlag, Länge der verwendeten Musik erfolgt gemäß dieses Zeitplanes. Das Eigentum an den Notendrucken geht mit der Bezahlung des Kompositionshonorares nach diesem Vertrag auf den Produzenten über.

2.4. Der Komponist gewährleistet, daß er bis zur endgültigen Fertigstellung des Films für eventuelle Änderungen, Ergänzungen oder Überarbeitungen zur Verfügung steht, insbesondere auf Verlangen des Produzenten beim Schneiden des Tons, bei Nachsynchronisationsarbeiten und bei der Vornahme von Mischungen mitzuwirken.

2.5. Die Hinzuziehung von Mitarbeitern (Komponisten, Bearbeitern, Arrangeuren, Dirigenten, Textdichtern und ähnlichen Mitarbeitern) seitens des Komponisten bedarf für jeden einzelnen Fall der vorherigen Einwilligung von Regisseur und/oder Produzent. Auch für den Fall einer solchen Einwilligung befreit der Komponist mit dem Abschluß dieses Vertrages Produzent von allen nicht ausdrücklich mit Produzent schriftlich vereinbarten Ansprüchen, die Mitarbeiter gegen sie stellen könnten. Über die Hinzuziehung von Mitarbeitern seitens Produzent entscheidet dieser nach Abstimmung mit dem Komponisten.

## 3. Abnahme

[REDACTED]  
[REDACTED]



3.1. Die Abnahme der Komposition erfolgt durch den Produzenten nach Ablieferung der Noten und im Anschluss an den Demotermin. Die Abnahme der entgeltlichen Musikproduktion findet erst nach Abhören des fertig abgemischten Masterbandes durch den Produzenten statt. Die Abnahme liegt im alleinigen Ermessen des Produzenten

3.2. Bei Nichtabnahme der Komposition bzw. der entgeltlichen Musikproduktion bedarf es der schriftlichen Ablehnung durch den Produzenten. Lehnt der Produzent die abgelieferte Komposition nicht innerhalb von 10 Tagen nach dem Demotermin und der Ablieferung der Noten bzw. der Ablieferung des Masterbandes der entgeltlichen Musikproduktion ausdrücklich ab oder wird die Komposition in die Mischung der Filmproduktion integriert, so gilt die Abnahme als erfolgt.

3.3. Wird die Komposition ganz oder in Teilen nicht abgenommen, hat der Komponist sie auf Anforderung des Produzenten bis zur Abnahmefähigkeit nachzubessern. Hiernach steht dem Produzenten die Option zu, einen weiteren Nachbesserungsversuch durch einen anderen Komponisten durchführen zu lassen. In diesem Falle hat der Komponist keinen Anspruch auf die anteilige Vergütung gemäß Ziffer 9.1. Die gelieferten und abgenommenen Teile sind jedoch vollständig zu bezahlen.

#### 4. Rechtübertragung und Rechteeinräumung

4.1. Der Komponist erkennt hiermit an, daß er die Komposition zur umfassenden Auswertung durch den Produzent und auftraggebende Dritte in allen - nicht nur audiovisuellen - Medien schafft, d. h. auch zur Auswertung durch Tonträger, Aufführungen, Merchandising.

4.2. An den im Zusammenhang mit seiner Mitwirkung an der Produktion gemäß diesem Vertrag bei ihm entstehenden Urheber-, Leistungsschutz-, Persönlichkeits- oder sonstigen Rechten räumt Komponist dem Produzenten die zeitlich, räumlich und inhaltlich unbeschränkten ausschließlichen Nutzungsrechte zur Filmherstellung und umfassenden Auswertung des Filmwerkes und all seiner Bestandteile in allen Medien sowie das Eigentum an sämtlichen Masterbändern der Tonaufnahmen ein. Der Komponist räumt dem Produzenten insbesondere folgende Rechte an der Komposition ein:

##### a) zur Verfilmung:

- die Rechte, die Werke sowie Werkbestandteile zu ändern, zu ergänzen, zu kürzen, umzustellen oder sonst zu ändern oder zu bearbeiten, weitere Komponisten mit Bearbeitungen auf der Grundlage der Werke zu beauftragen, Übersetzungen der Texte der Komposition in allen Sprachen anfertigen zu lassen,
- die Rechte zur Herstellung von Filmen gleich welcher Art unter Verwendung der Werke oder Teilen hiervon in jeder Sprache, für jeden Auswertungszweck und jedes Format und beliebig oft (Wiederverfilmung), dem Produzenten ist es aber ohne Zustimmung des Komponisten verboten, das Werk in pornographischen, gewaltverherrlichenden Filmen und Filmen, die als politisch radikal (links- oder rechtsextrem) einzustufen sind, zu verwenden;
- die Rechte zur Fortsetzung und Weiterentwicklung der vom Komponisten geschaffenen Werke oder ihrer Bestandteile in jeder Technik und für jeden Zweck, gleich ob mit oder ohne Mitwirkung des Komponisten, stehen unter dem Vorbehalt der Zustimmung des Komponisten;
- die Zustimmung hinsichtlich der vorgenannten Rechtsübertragungen darf nicht grundlos verweigert werden. Eine Zustimmung gilt als erteilt, wenn der Komponist die Zustimmung nicht innerhalb von 7 Tagen nach Anfrage verweigert.

##### b) Auswertungsrechte:

- das Senderecht, d. h. das Recht der auf der Grundlage der Werke oder ihren Bestandteilen geschaffenen Produktionen durch nichtkörperliche Übertragungsmedien (z. B. elektromagnetische Wellen, Lichtwellen, Mikrowellen, Kabel- oder sonstige Verbindungen) zur öffentlichen Nutzung zu übertragen, und zwar in allen technisch bekannten oder zukünftig entwickelten Verfahren (z. B. terrestrische Sendung, Kabel, Kabelweitersendung, Satellitenfernsehen) in jeder Rechts- und Organisationsform (öffentlich-rechtliches oder privates Fernsehen) und zum unentgeltlichen wie auch entgeltlichen Empfang (z. B. Pay-TV),



- das Recht zur öffentlichen Wiedergabe von Funksendungen und die Möglichkeit der privaten Aufzeichnung,
- die Kinovorführungs- und Theateraufführungsrechte, insbesondere zur öffentlichen Vorführung durch technische Systeme aller Art (z. B. Filmvorführung, Videovorführung, Farbe, Schwarzweiß, Schmalfilm, Breitwandfilm, plastischer Film, 3D-Film, Cinerama, Vista Vision, Toss-AO, Cinemascope, Autokinos, Gaststätten, Diskotheken, Vereins- und Altersheimen, Schiffe, Flugzeugen, Krankenhäusern etc.), gleich ob gewerblich oder nichtgewerblich, ob kommerziell oder für Messen, Festivals oder durch lebendiges Spiel, z. B. Live-Vertonung, "Studiotour",
- die Videoauswertungsrechte, insbesondere zur Vervielfältigung und Verbreitung, gleich auf welcher vertraglichen Grundlage (z. B. Verkauf, Vermietung, Leihe), der unter Verwendung der Werke oder ihrer Bestandteile geschaffenen Bild-/Tonträger für die private Nutzung (Heimvideo) einschließlich aller technischen audiovisuellen Systeme, Videokassetten, Bänder, Bildplatten, Schmalfilme o. a. sowie diese Bild-/Tonträger öffentlich zugänglich oder wahrnehmbar zu machen,
- das Recht, die Werke im Rahmen der in diesem Vertrag vereinbarten Nutzungsrechte in allen bekannten oder zukünftig entwickelten technischen Verfahren zu vervielfältigen und zu verbreiten, z.B. durch Herstellung von Filmkopien aller Arten, Digitalkopien, Speicherung in Datenverarbeitungsanlagen etc.,
- die Rechte zur Änderung, Bearbeitung, Synchronisation (Playbackauswertung), Kürzung, Koppelung der Werke,
- die Rechte zur Wiedergabe von Teilen der Werke ggf. mit oder ohne Text zur Werbung für die Produktionen und ihrer Zweiterzeugnisse, z. B. Tonträger, Videoclip, sowie zur ausschnittweisen Verwendung von Produktionsteilen in anderen Produktionen (Archivauswertung),
- die Merchandisingrechte, insbesondere zur kommerziellen Auswertung der Werke, ihrer Bestandteile und der hieraus geschaffenen Produktionen durch Herstellung und Vertrieb von Waren aller Art unter Verwendung von Namen, Titeln, Vorkommnissen oder sonstigen Elementen der Werke oder der Produktion in jeder Form, z. B. bearbeitet, geändert und zu jedem kommerziellen Zweck, z. B. als Ware oder zur Werbung von Waren und Dienstleistungen aller Art,
- das Tonträgerrecht, d.h. das Recht zur Verwertung der Produktion durch Herstellung, Vervielfältigung und Verbreitung von Schallplatten, Bandkassetten oder sonstigen Tonträgern, einschließlich aller digitalen Systeme, unter Einschluß aller Konfigurationen (Single, Maxi-Single, LP, CD, EP, Doppel-CD, DVD, Boxen etc.) Hierunter fallen auch die Rechte an Musikvideos oder sonstigen filmischen Bearbeitungen der Produktion, die unter vollständiger oder teilweiser Verwendung des Soundtracks der Produktion und/oder des Originaltons der Produktion oder durch Nachherzählung, Neugestaltung oder sonstige Anlehnung an den Inhalt der Produktion erfolgen, einschließlich dem Recht, diese Tonträger in gleichem Umfang wie die Produktion selbst auszuwerten, insbesondere das Recht, derartige Tonträger durch Funk zu senden oder sonst irgendwie öffentlich wahrnehmbar zu machen, einschließlich der multimedialen Nutzungsarten,
- die digitalen Verwertungsrechte, d.h. die Rechte zur teilweisen oder vollständigen, unbearbeiteten oder bearbeiteten Auswertung (insbesondere Vervielfältigung und Vertrieb einschließlich Verkauf, Vermietung und Leihe) der Produktion zu gewerblichen und/oder nicht gewerblichen Zwecken auf digitalen Speichermedien (Bild-/Tonträger) aller Art, insbesondere auf CD (Compact Disc), Video-CD, CD-I (CD-Interaktiv), CD-I-Music, Foto-CD, Foto-CD-Portfolio, CD-DA, CD-ROM (CD-Read Only Memory), CD-Rom-XA, M-CD (Multimedia CD), MO-CD (Multi-Optical-Disk), CD-Plus, CD-Erasable, CD-Recordable, Videoplatten aller Art, Laserdisk, EBG (Electronic Book Graphic), EBXA, DAT (Digital Audio Tape), MD (MiniDisc), DCC (Digital Compact Cassette), SDD (Super Density Disc), Digital Versatile Disc (DVD), DVD-Video, DVD-Audio, DVD-ROM, DVD-Plus etc., sowie Magnetbänder, Magnetbandkassetten, Multi-Kassetten und Ton-Kassetten, Bildband, Disketten, Chips etc., einschließlich des Rechts, die digitalen Verwertungsrechte mit sonstigen, nach diesem Vertrag eingeräumten Nutzungsrechten in beliebiger Weise zu kombinieren, insbesondere im Rahmen der multimedialen Nutzungsarten,
- das Archivierungsrecht, d.h. das Recht, die Produktion/en ganz oder teilweise zu archivieren,
- die Multimedia- und Use-On-Demand-Rechte zur Nutzung und Verwertung der Produktion/en und der Leistungen im Zusammenhang mit allen digitalen, optischen oder sonstigen Speicher- und



Übertragungstechniken und Nutzungsarten, insbesondere der körperlichen Nutzungsarten, wie im Bereich der Off-Line Dienste und der unter Ziffer 4 aufgeführten Datenträger, sowie der unkörperlichen Nutzungsarten, wie im Bereich der Online- und Broadcasting-Dienste, einschließlich der Verteil-, Zugriffs- oder Abrufdienste, wie Free-TV, Pay-TV, Pay per View, Television on Demand, Video on Demand, Near Video on Demand, Multiplexing (oder sonstige parallele oder zeitversetzte Sendung), Videotext, Datenbanken, Datennetze - auch individueller Betreiber-, via Internet, T-Online, Compuserve, AOL und sonstigen Betreibern/Providern, via Modem, in allen Kommunikationsformen, einschließlich "News Groups", "Chat Rooms", "Schwarzen Brettern", Foren, Homepages, Portale etc. zur Durchführung aller notwendigen technischen Vorgänge, insbesondere der Digitalisierung, Einlesung und digitalen Abspelcherung auf körperlichen/unkörperlichen Datenträgern. Datenübertragung zu Nutzern, Einlesung der Daten in Nutzerempfangsgeräten. Erfasst ist auch die Verwendung zu allen Multimedia-Anwendungen, bei denen Texte, Bilder, Musik, Film, Video, Fotomaterial, Daten etc. zu neuen Werken, Einheiten, Fragmenten etc. kombiniert werden, sowie ferner die Verwendung der Produktion/en und Leistungen im Zusammenhang mit interaktiven Mediennutzungen, bei denen es Endnutzer, Teilnehmer etc. u.a. mittels technischer Verbindungswege möglich ist, Inhalt, Ablauf und Abfolge der Sendung, Wiedergabe und Anwendung zu beeinflussen. Mit eingeschlossen ist das Recht, die Produktion/en und Leistungen mittels digitaler oder anderer Speicher- und Übertragungstechniken einer Vielzahl von Nutzern derart zur Verfügung zu stellen, daß sie auf individuellen Abruf mittels Fernseh- und/oder anderer Geräte empfangen werden können ("Television on Demand"). Ferner ist das Recht eingeschlossen, die Produktion/en und Leistungen so auszuwerten, daß sie für die Herstellung, Verbreitung und Vervielfältigung von Bild-/Tonträgern, auf denen die Produktion/en nicht vollständig gespeichert sind, so verwendet werden können, daß zum Empfang oder Abspielen der Produktion/en durch den Nutzer die separate, auf individuellen Abruf erfolgende Übermittlung der fehlenden Datenteile der Produktion/en erforderlich ist,

- das Recht, die Komposition als Klingeltonmelodie für Mobiltelefone oder sonstige Telefone in jedweder Art, Länge und Bearbeitung auszuwerten,
- das Festival- und Messerecht, das Recht, die Produktion ganz oder ausschnittsweise zur Teilnahme an Festivals, Ausstellungen und/oder Wettbewerben anzumelden sowie dort und auf Messen und ähnlichen Veranstaltungen öffentlich vorzuführen,
- das Verlagsrecht. Der Komponist verpflichtet sich, einen entsprechenden Verlagsvertrag nach dem branchenüblichem Standardformular des deutschen Musikverlegerverbandes über das vertragsgegenständliche Musikwerk mit einem vom Produzenten zu bestimmenden Verlag abzuschließen.

4.3. Die Rechteinräumung umfaßt die entsprechenden Leistungsschutzrechte der an der Musikherstellung mitwirkenden Interpreten einschließlich etwaiger Gastsolisten. Das Leistungsschutzrecht des Bildontragerherstellers entsteht vereinbarungsgemäß beim Produzenten.

4.4. Im Hinblick auf noch nicht bekannte Nutzungsarten räumt der Komponist dem Produzenten folgende Optionen ein:

Der Produzent hat das Recht, neue Nutzungsrechte zu dem zukünftigen Markt angemessenen Bedingungen vom Komponisten zu erwerben. Der Komponist verpflichtet sich, auf Wunsch vom Produzenten mit diesem mit dem Ziel der Vertragsergänzung vor etwaigen dritten Interessenten zu verhandeln. Zugleich verpflichtet sich der Komponist, den Produzenten über etwaige Angebote Dritter zu informieren. Der Produzent hat das Recht, in solche Dritt-Angebote binnen einer Frist von sechs Wochen nach deren Bekanntgabe durch den Komponisten einzutreten. Ist der Komponist für einen Zeitraum von mehr als neunzig Tagen nach Rücksendung eines unzustellbaren Schreibens an seine letzte bekannte Anschrift nicht erreichbar, gelten die vom Komponisten dem Produzenten zur Verhandlung gestellten neuen Nutzungsrechte als zu angemessenen Bedingungen eingeräumt.

## 5. Weiterübertragung

Der Produzent ist berechtigt, die ihm übertragenen Rechte ganz oder teilweise oder an Teilen der Werke auf Dritte weiterzuübertragen oder durch Dritte (z. B. Filmproduzenten, Filmverleiher, Fernsehsender etc.) vollumfänglich auswerten zu lassen.



## 6. Garantie

6.1. Der Komponist produziert ausschließlich Originalmusiken. Die Verwendung fremder Themen oder Motive ist darüber hinaus nur zulässig, soweit diese nachweislich urheberrechtlich frei sind, und hat im Zweifel zu unterbleiben.

6.2. Der Komponist garantiert, daß die Werke von ihm höchstpersönlich, ohne Mitwirkung Dritter und ohne Verwendung geschützter bzw. schutzfähiger Leistungen Dritter geschaffen wurden, unbeschadet etwaiger in diesem Vertrag ausdrücklich vereinbarter Einschränkungen, z. B. bei Verwendung eines vom Produzenten vorbestimmten Stoffes.

6.3. Der Komponist gewährleistet ferner, daß die Komposition nicht die Persönlichkeits- oder sonstige Schutzrechte Dritter verletzt.

6.4. Der Komponist verpflichtet sich, dem Produzenten in geeigneter Weise bei der Rechtsverteidigung gegen Ansprüche oder Forderungen Dritter sowie der nach diesem Vertrag betroffenen Rechte bei der gerichtlichen und außergerichtlichen Geltendmachung beizustehen und ggf. Auskünfte zu erteilen, erforderliche Erklärungen oder Vollmachten abzugeben und notwendige Formalitäten zu erfüllen und für die Verwirklichung des Vertragszwecks notwendige Abtretungen von Rechten vorzunehmen oder zu veranlassen. Komponist stellt den Produzenten und seine Lizenznehmer von allen etwaigen Ansprüchen Dritter frei.

6.5. Der Komponist versichert, daß er sich die Rechte zur Verwertung der von ihm geschaffenen Filmkompositionen (das sogenannte Filmherstellungsrecht) von der Verwertungsgesellschaft BUMA bzw. einer anderen aufgrund eines Gegenseitigkeitsvertrages zuständigen Verwertungsgesellschaft (z.B. die GEMA) - wie üblich und im Wahrnehmungsvertrag vorgesehen - zur eigenen Wahrnehmung für die filmische Auswertung zurückübertragen läßt und diese Rechte nicht von einer Verwertungsgesellschaft, einem Verlag oder Dritten wahrgenommen werden. Der Komponist steht darüber hinaus dafür ein, daß er die übrigen Rechte dem Produzenten im vollen Umfang einräumen kann, soweit diese nicht durch die BUMA bzw. einer anderen aufgrund eines Gegenseitigkeitsvertrages zuständigen Verwertungsgesellschaft (z.B. die GEMA) - wahrgenommen werden.

6.6. Der Komponist stellt den Produzenten hinsichtlich aller in Frage kommender Rechte Dritter frei und hält Produzenten auch für alle aus einem solchen Anlaß getätigten Aufwendungen und sonstigen Folgen schadlos.

## 7. Auswertung

7.1. Der Produzent ist nicht verpflichtet, die vom Komponisten geschaffene Musik im Film oder in sonstigen Medien zu verwenden. Es steht dem Produzenten frei, in welcher Weise er die Produktionen auswerten will. Bei Nichtverwendung der abgenommenen Werke stehen dem Komponisten keinerlei Schadensersatz- oder sonstige Vergütungsansprüche über die in diesem Vertrag vereinbarte Vergütung hinaus zu.

7.2. Das Rückrufsrecht wird soweit ausgeschlossen, wie dies gesetzlich zulässig ist. Soweit danach ein Rückrufsrecht bestehen bleibt, kann dies erst frühestens ab fünf Jahre nach Ablieferung der letzten Werkfassung bzw. -überarbeitung ausgeübt werden. Der Rückruf kann erst erklärt werden, nachdem der Komponist dem Produzenten eine Nachfrist von 2 Jahren unter Aufforderung zu im einzelnen bezeichneten Nutzungen gesetzt hat. Im Falle eines Rückrufs ist die gesamte Vergütung dem Produzenten zurückzuerstatten. Anderenfalls bleibt der Rückruf unwirksam.

## 8. Nennung

8.1. Der Komponist wird im Film und im Begleitmaterial an entsprechender Stelle genannt.

8.2. Die Verpflichtung gemäß Ziffer 8.1 muß der Produzent - soweit möglich - auch dritten Auswertern und Bearbeitern des Films und hierauf basierender Erzeugnisse auferlegen. Produzent haftet nicht für versehentliche oder durch Dritte begangene Verstöße gegen diese Nennungspflicht.



## 9. Vergütung und Lizenzbeteiligung

9.1 Der Produzent zahlt dem Komponisten zur Übertragung der nach dem vorliegenden Vertrag auf den Produzenten übergehenden Rechte und für alle weiteren nach diesem Vertrag zu erbringenden Leistungen ein Pauschalhonorar in Höhe von:

**17.895, 22 EUR**

zzgl. der gesetzlichen MwSt. Nachforderungen jeder Art werden ausgeschlossen. Reise- und sonstige Kosten werden nur aufgrund schriftlicher Genehmigung des Produzenten und nach Rechnungsstellung erstattet.

Diese Vergütung umfasst nur die vom Produzenten abgenommene dramaturgische Filmmusik.

9.2. Die Vergütung ist wie folgt fällig:

- 25 % der Vergütung bei Vertragsunterzeichnung.
- 25 % der Vergütung bei Beginn der Musikproduktion
- 25% bei Abnahme der endgültigen Musikproduktion
- 25% der gesamten Vergütung am 30.08.2002.

9.3 Bei einer Verwertung der Vertragsaufnahmen durch Produzent auf Tonträger wird Komponist - nach Verrechnung eines ggfs. von der Tonträgerfirma an Produzenten gezahlten Vorschusses - mit 5% (Fünf Prozent) vom H.A.P. für jeden weiteren verkauften, nicht retournierten Tonträger pro rata titulis entlang des Bandübernahmevertrages zwischen dem Produzenten und der Tonträgerfirma beteiligt. Reduzierungen und/ oder sonstige Abzüge beim Tonträgerverkauf im In- und Ausland, auf Single-Tonträger, im Clubverkauf etc. finden entsprechend den Reduzierungen und/ oder sonstige Abzügen auf Seiten des Produzenten Anwendung. Die Einnahmen des Komponisten betragen in jedem Fall max. 50 % (fünfzig Prozent) der Einnahmen des Produzenten.

Für die Erfüllung der Zahlungsverpflichtungen gemäß dieser Ziffer 9.4 ist allein der Produzent verantwortlich.

9.4 Erzielt der Produzent aus der separaten Verwertung der Vertragsaufnahmen (d.h.: unabhängig vom Filmwerk) andere Erlöse als Absatzbeteiligungen, so werden diese im Verhältnis 50:50 zwischen den Vertragschließenden aufgeteilt.

## 10. Abrechnung der Lizenzbeteiligung

10.1 Der Produzent ist berechtigt, die entsprechenden Abrechnungsmodalitäten seines Lizenznehmers zu übernehmen.

10.2. Die dem Komponisten vertragsgemäß zustehende Umsatzbeteiligung wird zum 30. Juni und 31. Dezember eines jeden Jahres abgerechnet. Abrechnung und Zahlung erfolgen spätestens innerhalb von sechs Wochen nach Abschluß der Abrechnungsperiode. Abrechnung und Auszahlung der Umsatzbeteiligung können jedoch nur erfolgen, soweit Produzent die jeweiligen Umsatzbeteiligungen auch von seinen Verwertungspartnern erhalten hat.

10.3. Die Abrechnungen und Auszahlungen an den Komponisten erfolgen zuzüglich der gesetzlichen Mehrwertsteuer in der Währung, die zu dem jeweiligen Zeitpunkt in der Bundesrepublik Deutschland gültig ist.

10.4. Der Produzent hat dem Komponisten auf Anfrage jederzeit ein Einsichtsrecht zur Überprüfung der Abrechnungsunterlagen durch einen zur Verschwiegenheit verpflichteten Wirtschafts- bzw. Buchprüfer zu gestatten.

10.5 Versicherungsmäßige Belange gehen zu Lasten des Komponisten. Komponist entrichtet selbst die Steuern für seine vertraglichen Vergütungen. In bezug auf Komponisten, die in der Bundesrepublik Deutschland nicht oder nur beschränkt steuerpflichtig sind, gilt folgendes: Der Komponist hat Produzent umgehend eine entsprechende Mitteilung zu machen. Von den vertraglichen Vergütungen an





solche Komponisten hat Produzent den gesetzlich geregelten Steuerabzug vorzunehmen und an die zuständige Finanzbehörde zu überweisen, es sei denn, der Komponist hat in Zusammenarbeit mit Produzent von der zuständigen Behörde im Rahmen eines Abkommens zur Vermeidung der Doppelbesteuerung einen Freistellungsbescheid erlangt. Wenn der Komponist in der Bundesrepublik Deutschland mehrwertsteuerpflichtig ist, so wird er hiervon Produzent unter Angabe seines zuständigen Finanzamtes und seiner Steuernummer Mitteilung machen. Der Komponist erklärt sich damit einverstanden, dass Gutschriften als Rechnungen gelten. Änderungen seiner Steuerungsart wird er Produzent rechtzeitig mitteilen.

#### 11. Öffentliche Mitteilungen

Der Komponist verpflichtet sich, öffentliche Erklärungen im Zusammenhang mit der Musikproduktion oder der Erstellung nur nach vorheriger Billigung durch den Produzenten abzugeben.

#### 12. Leistungsstörungen/Vertragsverstoß

12.1. Im Fall von Leistungsstörungen behält der vertragstreue Vertragspartner gegenüber der vertragsbrüchigen Partei alle Rechte aus diesem Vertrag neben allen vertraglichen und gesetzlichen Gewährleistungs- und Schadensersatzansprüchen, wobei die Geltendmachung eines Anspruches oder Rechtes kein Verzicht auf die Geltendmachung weiterer Ansprüche oder Rechte bedeutet. Die vertragsbrüchige Partei ist zunächst zu mahnen, wobei zur Erfüllung der Vertragspflichten eine Frist von 7 Tagen zu setzen ist, es sei denn, die Vertragserfüllung ist dem verpflichteten Vertragspartner unmöglich oder für den berechtigten Vertragspartner wirtschaftlich sinnlos geworden.

Bei Kündigung dieses Vertrages durch den Komponisten verbleiben die an den Produzenten übertragenen Rechte jedoch bei dem Produzenten.

#### 12.2. Verhinderung des Komponisten

Falls der Komponist für mindestens 14 Tage an der Erbringung seiner Leistungen nach diesem Vertrag gehindert ist, hat der Produzent nach Abmahnung insbesondere folgende Rechte:

- a) den Komponisten von seinen Leistungspflichten für den Zeitpunkt seiner Verhinderung freizustellen,
- b) den Vertrag fristlos zu kündigen, wobei die nach diesem Vertrag dem Produzenten einzuräumenden Nutzungsrechte beim Produzenten verbleiben, nicht abgenommene Werkteile jedoch nicht vergütet werden.

#### 12.3. Höhere Gewalt

Falls durch höhere Gewalt, z. B. Zerstörung durch Feuer, Erdbeben oder sonstige Naturkatastrophen sowie durch politische, wirtschaftliche oder kriegerische Ereignisse (z. B. Streik, Bankenschließung, Bürgerkrieg) in dem Gebiet, in dem die Produktion stattfinden soll, der Produzent an der Produktion gehindert ist, verlängern sich die Leistungsfristen und sonstige Fristen, die der Produzent nach diesem Vertrag zu beachten hat, um einen entsprechenden Zeitraum, ohne daß der Komponist hierfür eine zusätzliche Vergütung beanspruchen kann.

12.4. Die Aussetzung des Vertrages hat zur Folge, daß der Komponist während der Aussetzungszeit keinerlei Zahlungen für von der Aussetzung betroffenen Leistungen beanspruchen kann. Der Komponist darf in dieser Zeit jedoch vorrangig für Dritte tätig werden, falls der Produzent nicht freiwillig weitere Vergütungen entsprechend den ursprünglichen Leistungen leistet.



12.5. Komponist kann den Rückfall der nach diesem Vertrag auf den Produzenten übertragenen Rechte nicht geltend machen. Die Durchsetzung der Ansprüche des Komponisten im Wege der einstweiligen Verfügung oder des Arrestes ist ausgeschlossen. Beendet der Produzent diese Vereinbarung infolge eines Vertragsverstoßes des Komponisten, so verbleiben dem Produzenten die ihm nach diesem Vertrag übertragenen Rechte.

**13. Weitere Vereinbarungen**

13.1. Der Komponist verpflichtet sich, auf Anforderung vom Produzenten ausführliche vertragliche Regelungen zu einzelnen Nutzungsrechtseinräumungen zu den Bedingungen dieses Vertrages einzugehen, etwaige erforderliche Vollmachten oder Urkunden auszustellen sowie zur Dokumentation erforderliche Rechtseinräumungsbestätigungen und zur Registrierung nach ausländischen Rechtsordnungen erforderliche Erklärungen abzugeben.

13.2. Rechte und Ansprüche des Komponisten aus diesem Vertrag dürfen vom Komponisten nicht an Dritte abgetreten und verpfändet werden.

13.3. Die Vertragsparteien verpflichten sich zu Stillschweigen hinsichtlich der vertragsgegenständlichen Regelungen.

13.4. Dieser Vertrag bleibt auch wirksam, wenn einzelne Bestimmungen hierin unwirksam sind oder rückwirkend oder zukünftig unwirksam werden. Von Anfang an nichtige oder ungültige Bestimmungen sind durch solche zu ersetzen, die dem wirtschaftlichen Zweck des Vertrages entsprechen. Entsprechendes gilt für die Ausfüllung von Vertragslücken. Der Komponist verpflichtet sich, in derartigen Fällen vom Produzenten entworfene Vereinbarungen oder Nachträge zum Vertrag zu unterzeichnen, falls er nicht binnen 14 Tagen nach deren Erhalt konkrete Änderungsvorschläge macht.

13.5. Änderungen und Ergänzungen des Vertrages bedürfen zu ihrer Rechtswirksamkeit der Schriftform, die durch Telefaxübermittlung bei Nachsendung der Originalurkunden gewahrt wird.

13.6. Der Vertrag unterliegt dem deutschen Recht. Soweit hiernach im Ausland urheberrechtliche Befugnisse nicht eingeräumt werden können, gilt das Recht des jeweiligen Territoriums mit der Verpflichtung des Komponisten, bei Bedarf auf Anforderung vom Produzenten den Erfordernissen des ausländischen Rechts entsprechende Urkunden auszustellen und Rechtshandlungen vorzunehmen. Gerichtsstand und Erfüllungsort ist, soweit dies vereinbart werden kann, Berlin.

Ort, Datum: Berlin [Redacted]

Ort, Datum: Berlin [Redacted]

[Redacted signature and name]

[Redacted signature and name]

[Redacted signature]

SCRITTURA PRIVATA

Fra

**BMG RICORDI MUSIC PUBLISHING S.p.A.**, con sede in Milano, Via Berchet 2,  
(qui di seguito detta EDITORE), da una parte

e

Il Maestro [REDACTED]  
residente a Palermo in [REDACTED]

(qui di seguito detto AUTORE), dall'altra parte

Premesso

- a) che l'AUTORE ha prima d'oggi ideato musiche idonee ad essere sincronizzate nell'ambito di uno sceneggiato televisivo prodotto da RTI S.p.A. avente il titolo provvisorio/definitivo:

**"MARIA MONTESSORI"**

(tali musiche vengono qui di seguito indicate come "OPERA")

- b) che l'EDITORE si è dichiarato interessato ad acquisire tutti diritti di utilizzazione economica relativi all'OPERA, alle condizioni qui di seguito precisate;

TANTO PREMESSO, DA COSTITUIRE PARTE INTEGRANTE DEL PRESENTE CONTRATTO, LE PARTI CONVENGONO E STIPULANO QUANTO SEGUE:

**ART. 1**

L'AUTORE, agendo per sé, suoi eredi e aventi causa a qualsiasi titolo, col presente atto cede e trasferisce all'EDITORE, che accetta, alle condizioni qui di seguito indicate, tutti i diritti esclusivi di utilizzazione economica dell'OPERA.

A titolo soltanto indicativo (e senza limitazione alla generalità di quanto precede) l'AUTORE cede all'EDITORE i diritti esclusivi di pubblicare l'OPERA; di riprodurla con qualsiasi mezzo, come la copiatura a mano, la stampa, la litografia, la incisione, la fotocopiatura, la fonografia, la fotografia e registrazione su disco, nastro, filo, videogramma, colonna sonora o con qualsiasi altro procedimento attuale o futuro adatto alla riproduzione dei suoni, dei segni e/o delle immagini; con la cinematografia o qualsiasi mezzo analogo o equivalente; di trascriverla; di eseguirla, rappresentarla e recitarla, anche parzialmente, in pubblico; di diffonderla con qualsiasi mezzo di diffusione a distanza, quali la radio, la telefonia, la televisione via etere e/o via cavo, il satellite o altri ritrovati anche futuri; di utilizzarla attraverso le banche informatiche, le reti telematiche ed ogni altro mezzo di diffusione e comunicazione al pubblico, il tutto anche attraverso sistemi digitali e, più in generale, con ogni altro ritrovato anche futuro; di metterla in commercio stabilendone ogni inerente facoltà, e di ritirarla, temporaneamente o definitivamente, dal commercio stesso; di elaborare l'OPERA e modificarla, con facoltà di riduzione, adattamento e trascrizione; di esercitare, rispetto alle elaborazioni e modificazioni di cui sopra, le più ampie facoltà e in particolare quelle come sopra spettanti all'EDITORE sull'opera originale; insomma di utilizzare economicamente l'OPERA in ogni forma e modo in tutti i Paesi del mondo in virtù delle leggi interne, delle convenzioni e dei trattati internazionali in materia di diritto d'autore.

**ART. 2**

I diritti di cui al presente atto sono ceduti all'EDITORE, per l'Italia e per ogni altro Stato, per tutta la durata di protezione dell'OPERA e per tutti i periodi di proroga che le leggi interne e i trattati internazionali presenti e futuri accordano all'AUTORE, agli eredi o comunque agli aventi diritto.

**ART. 3**

L'AUTORE dichiara di essere l'unico autore dell'OPERA, e di avere tutte le facoltà necessarie per stipulare efficacemente il presente contratto.

L'AUTORE garantisce all'EDITORE, il pacifico godimento dei diritti ceduti, ivi compreso quello relativo al titolo dell'OPERA, e assicura che l'esercizio da parte dell'EDITORE di tali diritti non violerà in alcun modo diritti di terzi. In caso contrario, egli terrà l'EDITORE sollevato e indenne da ogni danno e spesa fermo ogni altro diritto dell'EDITORE, compreso quello di chiedere la risoluzione del contratto.

L'AUTORE si impegna per sé suoi eredi e aventi causa a qualsiasi titolo, a prestarsi tempestivamente,

INIZIALI  
[REDACTED]

a semplice richiesta e a spese dell'EDITORE, a tutti gli atti, formalità e documentazioni, tanto in Italia quanto all'estero, che l'EDITORE riterrà necessari od opportuni ai fini dell'esercizio, del riconoscimento e della migliore tutela dei diritti contemplati dal presente contratto. Ciò vale anche in relazione agli adempimenti e alle formalità (bollettini di deposito, cessioni all'estero, ecc.) nei rapporti con gli Enti di percezione e ripartizione dei diritti, presenti e futuri, italiani e stranieri, pubblici e privati.

#### ART. 4

L'AUTORE non può pubblicare né in proprio né in collaborazione con altri, né sotto anonimo né sotto pseudonimo, altra opera che, per la sostanziale somiglianza all'OPERA, possa fare diretta concorrenza alla stessa.

#### ART. 5

L'AUTORE ha prima d'ora consegnato all'EDITORE i computer-files della partitura dell'OPERA in forma completa, corretta, chiara e definitiva.

Dato atto che ai fini del numero minimo di esemplari per ogni edizione, di cui all'art. 122 Legge 22 aprile 1941 n. 633 sul diritto d'autore, vengono presi in considerazione solo la partitura ed eventuali riduzioni per uno o più pianoforti o pianoforte a quattro mani, l'EDITORE provvederà alla stampa del numero minimo di 30 esemplari delle edizioni succitate, fermo il diritto di provvedere a tutte le edizioni e ristampe nei modi e nei tempi che riterrà.

#### ART. 6

L'EDITORE invierà le bozze di stampa all'AUTORE e questi dovrà restituirle corrette entro venti giorni dal ricevimento. L'AUTORE avrà diritto, a sua richiesta, a una seconda correzione delle bozze, che dovrà restituire entro dieci giorni dal ricevimento col "buono per la stampa" da lui firmato.

#### ART. 7

Quale compenso per la cessione di cui sopra, e comunque di tutto quanto al presente contratto, l'EDITORE riconosce all'AUTORE - quali che abbiano ad essere il tipo e l'ampiezza dell'utilizzazione dell'OPERA:

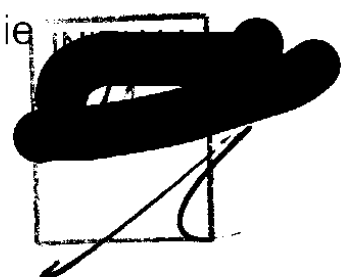
1. l'importo forfettario lordo di €  (quattromila  700 Euro) alla firma del presente contratto, previa presentazione da parte dell'AUTORE di idonea documentazione fiscale;

2. le seguenti compartecipazioni sulle sottoindicate forme di utilizzazione dell'OPERA medesima:

- |  |                                  |
|--|----------------------------------|
| (a) noleggio materiali d'orchestra:        | 20% (venti per cento);           |
| (b) pubblica esecuzione:                   | 12/24 (dodici ventiquattresimi); |
| (c) riproduzione meccanica e audiovisiva:  | 50% (cinquanta per cento);       |
| (d) sincronizzazione:                      | 50% (cinquanta per cento);       |
| (e) vendita edizione a stampa dell'OPERA : | 10% (dieci per cento).           |

Le somme di cui alle lettere (a), (b), (c) e (d) sono direttamente incassate dall'EDITORE nei confronti degli utilizzatori ovvero il loro incasso è conferito dall'EDITORE - a suo giudizio - ad Enti di percezione e ripartizione dei diritti (fra cui la S.I.A.E.) ovvero ad altri agenti o intermediari italiani e stranieri; in ipotesi di conferimento del mandato predetto, l'AUTORE ha l'obbligo di adempiere a tutte le condizioni stabilite dal mandatario per la percezione e la ripartizione dei diritti di cui trattasi. Qualora l'OPERA comprenda un testo letterario in pubblico dominio, l'eventuale relativa detrazione, nella misura di volta in volta stabilita dalle società di percezione sarà ad esclusivo carico delle percentuali sopra stabilite a favore dell'AUTORE. Qualora l'OPERA sia elaborazione di altra opera in pubblico dominio, l'eventuale relativa detrazione sarà a carico delle parti in proporzione delle rispettive quote. Tali compartecipazioni sono computate sulle somme complessive effettivamente incassate dall'EDITORE, al netto delle provvigioni, commissioni di incasso e corrispettivi d'uso agli Enti di percezione e ripartizione dei diritti, intermediari, sub-editori, agenti e rappresentanti dell'EDITORE (ivi comprese le sue succursali e società collegate italiane ed estere, presenti e future); delle imposte, tasse, ritenute ed altri contributi che, in base alle norme vigenti nei vari Stati, devono venir trattenute prima della rimessa; nonché delle eventuali insolvenze.

La percentuale di cui alla predetta lettera (e) è computata sul prezzo di copertina di tutte le copie



vendute in Italia dall'EDITORE, al netto tasse e resi, della partitura dell'OPERA. In caso di esportazione la percentuale di cui sopra è computata sul prezzo all'ingrosso di esportazione, secondo i listini dell'EDITORE. In caso di sub-edizione a terzi (ivi incluse le succursali e società collegate italiane ed estere, presenti e future, dell'EDITORE), la percentuale predetta è raddoppiata e computata sugli importi netti effettivamente incassati dall'EDITORE.

Nessuna percentuale spetta all'AUTORE sulle altre edizioni grafiche dell'OPERA.

La corresponsione delle percentuali viene effettuata in base alla durata della protezione dell'OPERA nei singoli Stati.

#### **ART. 8**

L'attribuzione delle percentuali di cui all'articolo precedente costituisce il compenso globale dell'AUTORE per tutto quanto è oggetto del presente contratto, restando pertanto esclusa ogni altra sua pretesa nei confronti dell'EDITORE.

#### **ART. 9**

I compensi previsti all'art. 7 vengono corrisposti come segue:

- quelli di cui alle lettere (a) e (b) in base a rendiconti da chiudersi al 30 giugno ed al 31 dicembre di ogni anno, relativamente alle somme incassate dall'EDITORE in ciascuno di tali semestri, e da inviarsi entro il 30 settembre ed il 31 marzo immediatamente successivi;
- quelli di cui alle lettere (c) e (d) in base a rendiconti da chiudersi al 30 giugno di ogni anno, relativamente alle somme incassate dall'EDITORE nell'anno precedente, e da inviarsi entro il 30 settembre immediatamente successivo;
- quelli di cui alla lettera (e) in base a rendiconti da chiudersi al 31 dicembre di ogni anno relativamente alle somme incassate dall'EDITORE in tale anno e da inviarsi entro il 31 marzo immediatamente successivo.

I pagamenti delle somme di spettanza dell'AUTORE in base ai rendiconti predetti, decurtate delle ritenute fiscali a norma di legge, saranno effettuati unitamente all'invio dei rendiconti medesimi.

In caso di mandati d'incasso, licenza o cessioni dell'OPERA a terzi il diritto dell'AUTORE alle percentuali matura solo dopo che l'EDITORE abbia ricevuto i corrispettivi dei concessionari ed è liquidato secondo le scadenze e le modalità di cui sopra.

Ciò non concerne le percentuali corrisposte direttamente all'AUTORE dalla S.I.A.E. e/o dagli altri Enti di percezione e ripartizione dei diritti; riguardo a tali rapporti e loro esecuzioni (e nell'ambito di vigenza dei medesimi) resta più in generale esclusa qualsiasi ingerenza o responsabilità dell'EDITORE, anche per ogni conseguenza del mancato adempimento da parte dell'AUTORE delle condizioni poste a carico del percipiente dagli Enti predetti ai fini del pagamento dei diritti.

#### **ART. 10**

Ove all'OPERA venga aggiunto un testo letterario verranno proporzionalmente ridotte le percentuali di cui al punto 2) dell'art. 7.

#### **ART. 11**

L'AUTORE rinuncia a contrassegnare gli esemplari stampati dell'OPERA, pubblicata dall'EDITORE o da qualsiasi altro debitamente autorizzato.

#### **ART. 12**

Senza pregiudizio della generalità prevista all'art. 1, si dà atto che l'EDITORE avrà, a titolo esemplificativo, la facoltà: di mettere in vendita i materiali grafici apprestati per l'esecuzione dell'OPERA (quali ad esempio la partitura, gli spartiti per canto e pianoforte o solo per pianoforte, le parti staccate e di coro, ecc.); di pubblicare per la vendita al pubblico riduzioni e trascrizioni dell'OPERA, anche parziali, per qualsiasi strumento o gruppo di strumenti, e infine di includere brani dell'OPERA in album, raccolte o antologie offerti in vendita al pubblico, anche contenenti opere o brani di opere di autori diversi.





Nessun particolare compenso (salvo quanto specificamente previsto all'art. 7) è dovuto all'AUTORE per quanto convenuto nel presente articolo.

**ART. 13**

L'EDITORE ha in qualsiasi momento la facoltà di cedere a terzi, in tutto o in parte, il presente contratto, come pure di cedere a terzi l'esercizio di uno o più dei diritti e delle facoltà da esso contemplate, stabilendo tutte indistintamente le modalità di tali cessioni e fissandone l'eventuale corrispettivo; tutto ciò temporaneamente o definitivamente, per tutto il mondo o limitatamente ad alcuni territori.

Le cessioni poste in essere dall'EDITORE in base a quanto precede sono sin d'ora per allora riconosciute ed accettate dall'AUTORE, senz'uopo, di volta in volta, del suo consenso, di cui peraltro l'AUTORE si obbliga a far constare, ove richiesto, per ciascuna specifica cessione.

L'AUTORE dichiara di essere a conoscenza dell'intenzione della società RTI S.p.A. di acquisire una quota editoriale, relativamente ai diritti di utilizzazione economica dell'OPERA, e dichiara di non avere alcuna obiezione al riguardo, riconoscendo pertanto all'EDITORE ogni inerente facoltà.

**ART. 14**

In qualsiasi caso di risoluzione o cessazione del presente contratto, quale che ne sia il motivo, ogni pattuizione fatta dall'EDITORE con terzi, in armonia alle norme del contratto stesso e che non sia ancora esaurita al momento della risoluzione, rimarrà valida ed operante e l'AUTORE assumerà direttamente tutti gli impegni previsti dalla pattuizione stessa.

**ART. 15**

L'EDITORE ha facoltà di usare e divulgare in relazione all'utilizzazione dell'OPERA, il nome, l'eventuale pseudonimo, l'immagine, le notizie biografiche e la riproduzione della firma autografa dell'AUTORE, senza che per ciò questi abbia diritto ad alcun particolare compenso.

**ART. 16**

L'AUTORE dovrà comunicare, per lettera raccomandata, all'EDITORE ogni variazione di residenza e domicilio. In difetto di ciò l'EDITORE potrà indirizzare ogni comunicazione e pagamento all'ultimo recapito comunicato dall'AUTORE, ovvero, a propria scelta, al più recente recapito ad essa altrimenti noto.

Qualsiasi comunicazione da inviarsi all'EDITORE dovrà essere indirizzata, salvo diverso avviso in futuro, a BMG RICORDI MUSIC PUBLISHING S.p.A. - Via Berchet, 2 -20121 MILANO.

**ART. 17**

Il presente contratto è sottoposto alla legge italiana.

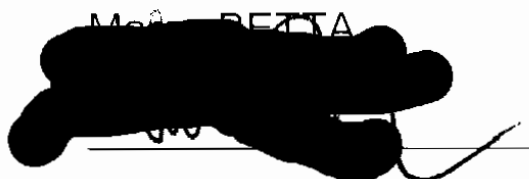
Per ogni contestazione è esclusivamente competente, anche in deroga alle norme di legge l'Autorità Giudiziaria di Milano.

Fatto in duplice originale, letto, confermato e sottoscritto oggi in Milano l'8 maggio 2007.

Informativa ex D.leg.196/2003 relativa all'utilizzo dei dati forniti

L'AUTORE riconosce, anche ai sensi e per gli effetti dell'Art. 13 del D.leg.196/2003, che i dati personali acquisiti in esecuzione e/o in occasione del presente accordo potranno essere trattati dall'EDITORE, con o senza l'ausilio di mezzi elettronici, per l'esecuzione di questo contratto nonché per le attività di gestione interna dell'EDITORE, ed in tali limiti possono essere comunicati a terzi. La prevalenza dei trattamenti di cui sopra risponde ad obblighi contrattuali contabili e fiscali ed in tali limiti il conferimento deve ritenersi necessario. L'AUTORE potrà esercitare i diritti di cui all'Art. 7 del D.leg. 196/2003, che dichiara di ben conoscere. Titolare dei trattamenti di cui sopra è BMG Ricordi Music Publishing S.p.A.

L'AUTORE  
Marta BETTA



BMG RICORDI MUSIC PUBLISHING S.p.A.



Ai sensi dell' art. 1341 C.C. e in quanto occorra, si approvano specificatamente le seguenti clausole: Art. 1 (ritiro dal commercio); Art. 2 (durata dei diritti ceduti e proroghe nella protezione); Art. 3 (manleva); Art. 4 (divieto di altre opere in concorrenza); Art. 5 (stampa numero minimo di esemplari); Art. 9 esclusione responsabilità per pagamenti da parte degli Enti di percezione e ripartizione); Art. 17 (competenza esclusiva dell'Autorità Giudiziaria di Milano).

L'AUTORE

Mario BETTA



---

Egr. Sig.  
[redacted]  
[redacted]  
Palermo

[redacted]

Milano, 27 marzo 2006

A conferma dei nostri accordi verbali,

premesse

- I. Che la MEDUSA FILM S.p.a. ha in corso di produzione un film dal titolo - provvisorio o definitivo:  
**"VIAGGIO SEGRETO"**  
diretto [redacted]
- II. che noi, al fine di realizzare la colonna musicale di detto film, Le abbiamo affidato l'incarico di comporre le musiche originali di commento del film e dei relativi arrangiamenti;
- III. che Lei, in adempimento dell'incarico affidatoLe, ha composto le predette musiche e i relativi arrangiamenti;
- IV. che noi Le abbiamo richiesto di cederci in esclusiva tutti i diritti di utilizzazione economica di dette opere;
- V. che Le abbiamo altresì affidato l'incarico di rendere prestazioni artistiche in qualità di direttore d'orchestra per la realizzazione delle registrazioni fonografiche delle musiche originali di commento che saranno inserite nella colonna musicale;
- VI. che noi intendiamo acquisire da Lei, con riferimento a le registrazioni di cui al precedente punto V, tutte le autorizzazioni di cui all'art. 80 n. 2 Lda;
- VII. che Lei intende aderire alle nostre richieste di cui ai precedenti punti IV e VI;

resta tra noi convenuto quanto segue

**Art.1 - Efficacia delle premesse**

Le premesse formano parte integrante di questo atto e, per quanto di ragione, vengono qui confermate con efficacia di patti.

**Art.2 - Definizioni**

Ai fini tutti di questo contratto:

- I. per "film" deve intendersi il film indicato sub n. I delle premesse;
- II. per "musiche originali di commento", dette anche "opere" debbono intendersi le composizioni musicali da Lei appositamente create per la realizzazione della colonna musicale del film e, quindi, fino a quel momento inedite;
- III. per "registrazioni" debbono intendersi le registrazioni fonografiche delle opere;

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[redacted]

- IV. per "arrangiamenti" debbono intendersi gli arrangiamenti delle opere (ivi comprese quelle previste al successivo art. 14.3.) nonché, nel caso di cui all'art. 3.2., gli arrangiamenti delle opere ivi indicate;
- V. per "colonna musicale" deve intendersi la colonna musicale del film indicato al n. 1 delle premesse;
- VI. per "fonogrammi" debbono intendersi i dischi fonografici di qualsiasi tipo e/o velocità, le musicassette e qualsiasi altro mezzo tecnico riproduttore di suoni e/o di voci attualmente in uso o che fosse in futuro inventato;
- VII. per "videogrammi" debbono intendersi i videodischi, le videocassette e qualsiasi altro analogo mezzo tecnico che accoppi la riproduzione del suono con la proiezione di immagini;
- VIII. per "fonogrammi di sonorizzazione" debbono intendersi i fonogrammi di qualsiasi tipo e/o velocità contenenti registrazioni delle opere o di frammenti delle stesse che hanno lo scopo di promuovere e di consentire l'utilizzazione delle stesse e delle relative registrazioni in film (a lungo e/o a corto metraggio), in spettacoli teatrali, in spettacoli radiofonici e televisivi, in documentari, in telefilm, in spot pubblicitari (radiofonici, televisivi e cinematografici) per la promozione di prodotti commerciali, di imprese commerciali, di Associazioni e di Enti (pubblici e privati) e per la pubblicità in genere, nonché in altre forme di rappresentazione anche se qui non specificate;
- IX. per "prezzo netto da noi fatturato" deve intendersi il prezzo netto da noi fatturato al rivenditore (ovvero all'importatore straniero) per la vendita delle riproduzioni a stampa delle opere, al netto delle voci fiscali e degli sconti da noi praticati, sconti che, in ogni caso, non potranno essere superiori al 50% (cinquanta per cento) del nostro prezzo di listino al pubblico per le vendite effettuate attraverso i canali tradizionali ed al 60% (sessanta per cento) per le vendite effettuate attraverso il canale c. d. "Grande Distribuzione" e per le vendite al di fuori del territorio italiano, Repubblica di San Marino e Città del Vaticano;
- X. per "pubblicazioni da noi effettivamente vendute" devono intendersi quelle pubblicazioni a stampa delle opere da noi vendute, con deduzione di quelle che, sebbene in precedenza vendute, ci vengano restituite dagli acquirenti in conformità agli usi di mercato;

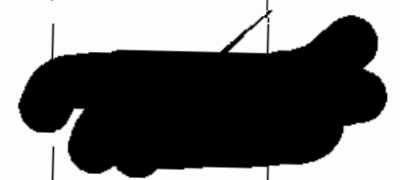
### **Art.3 - Cessione dei Suoi diritti d'autore - Garanzie da Lei prestate**

3.1. Lei ci cede in esclusiva tutti i diritti di utilizzazione economica delle opere, in ogni paese del mondo.

Per effetto delle cessioni sopra poste in essere, noi avremo il diritto esclusivo:

- a. di utilizzare le opere per la realizzazione delle registrazioni delle stesse che saranno riversate nella colonna musicale del film: di/o farle diffondere insieme con il film in occasione di qualsiasi utilizzazione economica dello stesso (quale, ad esempio, la proiezione in pubblico, la riproduzione su videogrammi e la trasmissione per televisione);
- b. di/o far pubblicare le opere, riprodurle attraverso la fonografia e con ogni altro procedimento di riproduzione: eseguirle e rappresentarle, diffonderle con l'impiego di qualsiasi mezzo di diffusione a distanza (quali la telefonia, la radiodiffusione, la televisione e altri mezzi analoghi); metterle in commercio e noleggiarle, tradurre e/o adattare gli eventuali testi letterari in qualsiasi lingua straniera e farne versioni dialettali; elaborare, modificare e adattare le parti musicali;
- c. di riprodurre e/o di far riprodurre le opere per le stampe;
- d. di utilizzare direttamente e/o di consentire a terzi di utilizzare le opere, complete o incomplete (congiuntamente e/o disgiuntamente, musiche ed eventuali testi letterari), come motivo principale, secondario o musica di sottofondo di film (a lungo e/o a corto metraggio) diversi da quello indicato sub n. 1 delle premesse, di spettacoli teatrali, di spettacoli radiofonici e televisivi, di documentari, di telefilm, di spot pubblicitari (radiofonici, televisivi e cinematografici) per la promozione di prodotti commerciali, di imprese commerciali, di Associazioni e di Enti (pubblici e

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- privati) e per la pubblicità in genere, nonché' di altre forme di rappresentazione anche se qui non specificate;
- e. di utilizzare le opere attraverso la riproduzione visuale dei testi letterari (se esistenti) sincronizzata alla base musicale della registrazione fonografica.
- 3.2. Lei ci cede altresì in esclusiva per tutti i paesi del mondo e per l'intera durata della protezione di legge tutti i diritti indicati al precedente n. 3.1. delle opere che Lei dovesse creare per il commento musicale dei film in sostituzione di quelle da Lei composte e non accettate dal regista del film stesso.
- 3.3. L'elencazione delle cessioni dei diritti contenuta al precedente n.3.1. e richiamata sub precedente n. 3.2. non deve intendersi tassativa atteso che Lei ci cede e ci trasferisce tutti indistintamente i Suoi diritti d'autore.
- 3.4. Lei ci cede altresì, in esclusiva, per tutti i paesi del mondo, per l'intera durata della protezione accordata dalla legge vigente e alle condizioni in prosieguo stabilite, il diritto di utilizzare, in ogni paese del mondo, gli arrangiamenti delle opere per la realizzazione delle registrazioni delle stesse.
- 3.5. Il diritto di edizione a stampa delle opere e degli arrangiamenti, limitatamente all'Italia, si intende ceduto per la durata di venti anni dalla consegna del relativo manoscritto; detta cessione, dopo tale ventennio, si intende tacitamente prorogata alle stesse condizioni per successivi periodi di vent'anni ciascuno e fino al termine di protezione delle opere e degli arrangiamenti, se non disdetta con lettera raccomandata inoltrata dall'una all'altra parte e data alle Poste almeno un anno prima di ogni scadenza ventennale. Tale eventuale disdetta non pregiudicherà la permanenza esclusiva a capo della nostra Società dell'esclusiva proprietà dei diritti di edizione a stampa delle opere e degli arrangiamenti per il resto del mondo al di fuori dell'Italia, oltre che della generalità degli altri diritti di utilizzazione economica delle opere e degli arrangiamenti, in tutto il mondo.
- 3.6. Ci diamo reciprocamente atto:
- del fatto che la cessione del diritto di pubblicare le opere e gli arrangiamenti per le stampe è, per nostra espressa e concorde volontà, nettamente distinta e indipendente dalla cessione degli altri diritti di utilizzazione economica delle opere;
  - del fatto che per la ragione enunciata sub precedente lett. "a" le durate delle distinte cessioni sono diverse e, più precisamente, sono quelle rispettivamente pattuite ai precedenti 3.4. e 3.5.;
  - del fatto che la cessione del diritto di pubblicare le opere e gli arrangiamenti per le stampe ha scarso contenuto economico, atteso che i proventi più rilevanti sono, com'è noto, quelli che matureranno in nostro comune favore in conseguenza dell'esecuzione, nei paesi in cui viene corrisposto, del compenso separato di cui all'art. 46 Lda e per effetto delle altre utilizzazioni economiche;
  - del fatto che sia noi che Lei saremmo addivenuti alla conclusione di questo contratto anche in assenza della cessione del diritto di riprodurre le opere e gli arrangiamenti per le stampe.

#### **Art.4 - Aggiunta di testi letterari**

Lei espressamente fin da ora ci autorizza ad aggiungere alle opere o a parti delle stesse testi letterari creati da soggetti di nostra libera scelta e a riservare agli autori di detti testi le seguenti percentuali:

- per il diritto di pubblica esecuzione, il 4/24 (quattro ventiquattresimi) delle somme derivanti da questa utilizzazione economica;
- per lo sfruttamento fonomeccanico, il 20% (venti per cento) delle somme derivanti da questa utilizzazione economica;

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- per il diritto di riproduzione a stampa, il 2,50% (due e cinquanta per cento) da conteggiarsi in applicazione dei patti di cui al successivo art.5.2.;
- per tutti gli altri diritti cedutici: la stessa percentuale pattuita per lo sfruttamento fonomeccanico.

**Art.5 - Corrispettivi per la cessione del diritto di pubblicare per le stampe le opere e gli arrangiamenti**

- 5.1. Quale corrispettivo della cessione, da Lei attuata in nostro favore, del diritto di pubblicare per le stampe le opere e i relativi arrangiamenti, noi ci obblighiamo a pagarLe l'importo di [REDACTED] al lordo delle ritenute di legge.
- 5.2. Noi ci obblighiamo altresì:
- I. a riprodurre le parti delle opere che riterremo suscettibili di possibile e conveniente pubblicazione per le stampe in una edizione, a stampa o a stamponi, con un minimo di 200 (duecento) copie;
  - II. a riservarLe le seguenti percentuali:
    - ⌞ per le opere prive di testi letterari  
5% (cinque per cento) da calcolarsi sul prezzo netto da noi fatturato;
    - ⌞ per le opere con testi letterari  
2,50% (due e cinquanta per cento) da calcolarsi sul prezzo netto da noi fatturato.
- 5.3. Le singole copie delle edizioni a stampa delle opere avranno il tipo e la forma che noi riterremo opportuni.  
Noi avremo il diritto di realizzare quel numero di edizioni delle opere che riterremo necessario.  
Nell'ipotesi che noi realizzassimo altre edizioni oltre quelle previste sub n. I del precedente art.5.2., ognuna delle nuove edizioni si comporrà di un minimo di 200 (duecento) copie.  
In ogni caso, noi saremo liberi di produrre e/o di far produrre, di distribuire e/o di far distribuire le edizioni nel numero di ristampe che riterremo conveniente.
- 5.4. Noi potremo distribuire gratuitamente le riproduzioni a stampa delle opere per la promozione delle stesse e Lei rinuncia, in considerazione di tale scopo promozionale, a qualsiasi corrispettivo per le copie così distribuite.  
Per le vendite delle riproduzioni a stampa delle opere, noi Le pagheremo:
  - a. per le riproduzioni a stampa vendute direttamente da noi, le percentuali pattuite sub n. II del precedente art.5.2., conteggiate sul prezzo netto da noi fatturato per le pubblicazioni effettivamente vendute;
  - b. per le riproduzioni a stampa vendute da nostri aventi causa, le stesse percentuali sopra ricordate, conteggiate, però, sulle somme nette (al netto, cioè, delle voc. fiscali) a noi effettivamente pagate dai nostri aventi causa quale corrispettivo della concessione del diritto di riprodurre le opere per le stampe, fermo restando, nella ipotesi di cessioni all'estero, i patti di cui al successivo art.8.
- 5.5. Per le vendite di riproduzioni a stampa delle opere, contenenti anche altre opere musicali non oggetto di questo contratto, le percentuali ricordate rispettivamente alle lett. "a" e "b" dell'art.5.4. che precede verranno ridotte in proporzione al numero totale delle opere contenute nella stessa riproduzione.

- 5.6. Per le utilizzazioni delle riproduzioni a stampa delle opere attraverso le reti telematiche, noi Le pagheremo le stesse percentuali pattuite al n. II del precedente art. 5.2., da calcolarsi sulle somme nette (al netto, cioè, delle voci fiscali) da noi incassate in conseguenza di detta utilizzazione.
- 5.7. Ci diamo reciprocamente atto del fatto che, a cagione della particolare natura delle opere che, come convenuto, sono state da Lei create per il commento musicale del film, abbiamo concordemente stabilito che riprodurremo per le stampe e utilizzeremo attraverso le reti telematiche solo quelle opere che riterranno suscettibili di possibile e conveniente sfruttamento commerciale attraverso il predetto mezzo.
- Lei, però, avrà il diritto di chiederci di riprodurre le opere per le stampe con le modalità sopra convenute, prefiggendoci, a mezzo lettera raccomandata A.R., un termine per adempiere non inferiore a sei mesi.
- Decorso inutilmente detto termine, noi, dietro Sua richiesta scritta e senza alcun corrispettivo a Suo carico, Le retrocederemo il diritto di pubblicazione per le stampe, limitatamente all'Italia e limitatamente a quelle opere da noi non riprodotte per le stampe entro il termine come sopra assegnatoci.
- 5.8. Nel caso previsto all'ultimo comma del precedente n.5.7., Lei tratterrà ugualmente la somma da noi pagataLe per effetto del patto di cui al n.5.1. e il nostro totale o parziale inadempimento rispetto all'obbligo di pubblicare per le stampe le opere non produrrà, per patto espresso, alcuna conseguenza sia in ordine a eventuali Sue pretese derivanti da detta mancata riproduzione (alle quali fin da ora rinuncia in considerazione anche del fatto che tratterrà la somma da noi pagataLe ex art.5.1.), sia in merito alla cessione degli altri diritti di utilizzazione economica delle opere, cessioni che resteranno valide e operanti anche in considerazione di quanto precisato al precedente art.3.7.

**Art.6 - Corrispettivi per le cessioni di tutti i diritti di utilizzazione economica delle opere e degli arrangiamenti, diversi dalla riproduzione a mezzo stampa**

- 6.1. Quale corrispettivo per le cessioni di tutti gli altri diritti di utilizzazione economica delle opere e degli arrangiamenti, diversi dalla riproduzione a mezzo stampa, nonché delle opere di cui al precedente n. 3.2. e dei relativi arrangiamenti, noi ci obblighiamo:
- I. a pagarLe l'importo di Euro XXXXXXXXXX al lordo delle ritenute di legge;
  - II. a riservarLe, in ossequio al disposto di cui all'art. 180 Lda, le seguenti percentuali sui proventi maturandi dalla pubblica esecuzione e dallo sfruttamento fonomeccanico delle opere:
    - A. - per il diritto di pubblica esecuzione:
      - delle opere prive di testi letterari: 12/24 (dodici ventiquattresimi) delle somme derivanti da questa utilizzazione economica;
      - delle opere con testi letterari: gli 8/24 (otto ventiquattresimi) delle somme derivanti da questa utilizzazione economica.
    - B. - per lo sfruttamento fonomeccanico:
      - - delle opere prive di testi letterari, il 50% (cinquanta per cento) delle somme derivanti da questa utilizzazione economica;
      - - delle opere con testi letterari, il 30% (trenta per cento) delle somme derivanti da questa utilizzazione economica.

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C. - per lo sfruttamento di altri diritti a noi ceduti diversi dalla riproduzione per le stampe, da quelli indicati alle precedenti lett. "A" e "B" e da quelli regolati con i patti di cui agli art. 9, 10, 11, 12 e 13: le stesse percentuali previste per lo sfruttamento fonomeccanico, percentuali che saranno calcolate sulle somme nette (al netto, cioè, delle voci fiscali) da noi incassate in conseguenza di detto diverso sfruttamento.

6.2. Noi ci obblighiamo altresì:

- I. a realizzare con totali spese a nostro carico le registrazioni e a riversarle nella colonna musicale;
- II. a che il produttore del film assuma la specifica e formale obbligazione di inserire, nei titoli delle copie del film che saranno proiettate in Italia, un cartello a parte contenente la seguente indicazione: "musica del M [redacted]";
- III. a che il produttore del film assuma l'obbligazione di inserire la colonna musicale che sarà da noi realizzata nell'ambito e in esecuzione di questo contratto in tutte le copie del film e a utilizzarla in occasione di qualsiasi sfruttamento dello stesso;
- IV. a produrre o far produrre e commercializzare o far commercializzare fonogrammi contenenti una selezione delle opere e degli arrangiamenti.

6.3. Ci diamo reciprocamente atto del fatto che la somma pattuita al n. I del precedente art. 6.1. è stata determinata nel convenuto ammontare perché è comprensiva:

- a. della somma di Euro [redacted] (cinquemila) che costituisce un ulteriore corrispettivo (oltre a quello convenuto alla lett. "B" dell'art. 6.1.) per la cessione del diritto di sfruttamento fonomeccanico delle opere e dei relativi arrangiamenti;
- b. della somma di Euro [redacted] (cinquemila) che costituisce un ulteriore corrispettivo, oltre a quello convenuto alla lett. "A" dell'art. 6.1., del diritto di pubblica esecuzione delle opere;
- c. della somma di Euro [redacted] che costituisce un ulteriore corrispettivo (oltre a quello ricordato sub lett. "C" dell'art. 6.1.) degli altri diritti di utilizzazione economica specificati nella predetta lett. "C" dell'art. 6.1.

6.4. Con specifico riferimento alla cessione dei diritti di sfruttamento fonomeccanico delle opere, ed all'obbligo da noi assunto al punto IV dell'art. 6.2, ci diamo reciprocamente atto che, a cagione della particolare natura delle opere che saranno da Lei create per il commento musicale del film, noi riprodurremo su fonogrammi solo quelle che riterremo suscettibili di conveniente sfruttamento commerciale attraverso la produzione e la messa in commercio di fonogrammi. Conseguentemente, la mancata riproduzione di parte delle opere su fonogrammi non produrrà, per patto espresso, alcuna conseguenza sia in ordine a eventuali Sue pretese derivanti dalla predetta mancata riproduzione sia in merito alla cessione del predetto diritto che, per patto espresso, resterà valida e operante.

**Art.7 - Condizioni economiche per la pubblica esecuzione e per la riproduzione fonomeccanica delle opere - Mandato per l'esazione dei proventi derivanti dalle qui considerate utilizzazioni**

7.1. Lo sfruttamento delle opere attraverso le utilizzazioni qui considerate sarà posto in essere, in Italia, alle condizioni economiche praticate dalla Società Italiana Autori ed Editori (SIAE) presso la quale Lei dichiara e garantisce di essere iscritto e, all'estero, alle condizioni economiche d'uso in ogni singolo paese.

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- 7.2. Il mandato per l'esazione dei proventi derivanti dai predetti sfruttamenti economici sarà affidato alla SIAE, alla quale saranno denunciate, a mezzo degli appositi bollettini di dichiarazione (che Lei si obbliga a sottoscrivere) le chiavi di ripartizione sopra stabilite.
- 7.3. Con specifico riferimento ai bollettini di dichiarazione indicati al precedente n. 7.2., Lei si obbliga, se da noi richiesto, a sottoscrivere un singolo bollettino per ognuna delle opere e ad attribuire, in detto bollettino, il titolo dell'opera alla quale si riferisce.

**Art.8 - Trasferimenti a terzi dei diritti di utilizzazione economica delle opere - Licenze per le utilizzazioni economiche delle opere - Cessione all'estero di detti diritti - Concessioni di licenze per gli sfruttamenti economici delle opere**

8.1. Noi potremo trasferire a terzi i diritti indicati nel titolo di questo articolo e concedere licenze per le utilizzazioni economiche delle opere.

8.2. Nel caso di cessione all'estero del diritto di pubblica esecuzione e di sfruttamento fonomeccanico delle opere, noi potremo far partecipare il cessionario straniero (compresi eventuali parolieri, traduttori e/o adattatori) con una quota delle somme derivanti dalla pubblica esecuzione e dallo sfruttamento fonomeccanico delle opere nel paese per il territorio del quale sarà posta in essere la cessione, in conformità ed entro i limiti disposti dalla normativa SIAE.

Sulle somme nette maturate all'estero, in conseguenza della pubblica esecuzione e dello sfruttamento fonomeccanico delle opere, Le saranno attribuite le stesse percentuali sopra stabilite in Suo favore per le utilizzazioni economiche qui considerate.

8.3. Nel caso di cessione del diritto di riproduzione delle opere a mezzo stampa all'estero, noi potremo far partecipare il cessionario straniero (compresi eventuali parolieri, traduttori e/o adattatori) con una quota non superiore al 90% (novanta per cento) dei proventi derivanti dalla vendita delle riproduzioni a stampa delle opere effettuate nel paese per il territorio del quale sarà posta in essere la cessione, fermo restando che anche al cessionario straniero potrà essere da noi riservato il diritto di distribuire gratuitamente dette riproduzioni.

Sulle somme nette maturate all'estero in conseguenza della riproduzione a stampa delle opere, Le saranno attribuite le stesse percentuali sopra stabilite in Suo favore per detta utilizzazione economica.

8.4. Ai fini di quanto pattuito ai precedenti artt.8.2. e 8.3., per "somme nette" debbono intendersi le somme maturate in ciascun paese straniero, previa deduzione della quota riservata al cessionario straniero (compresi eventuali parolieri, traduttori e/o adattatori), di quanto dovuto ai soggetti che cureranno l'incasso dei proventi derivanti dallo sfruttamento fonomeccanico e dalla pubblica esecuzione delle opere, delle voci fiscali, delle spese di trasferimento della valuta e delle commissioni bancarie.

**Art.9 - Eventuale sfruttamento dei titoli delle opere - Suoi compensi**

I diritti di sfruttamento a noi ceduti in esclusiva comprendono anche quello di utilizzazione economica dei titoli delle opere.

Ciò rilevato, noi potremo consentire a terzi l'uso (anche in esclusiva) dei titoli delle opere, anche disgiuntamente dalle opere stesse, per tutti gli sfruttamenti possibili, ivi compresi quelli pubblicitari di prodotti commerciali.

Lei parteciperà agli eventuali incassi derivanti dalle utilizzazioni qui considerate con una quota di partecipazione pari a quella stabilita per la riproduzione fonomeccanica delle opere da calcolarsi sulle somme nette (al netto, cioè, delle voci fiscali e, per l'estero, anche delle altre voci previste sub precedente art. 8.4.) da noi incassate.



**Art.10 - Riproduzione delle opere e delle relative registrazioni su fonogrammi di sonorizzazione**

- 10.1. Noi avremo il diritto di utilizzare totalmente o parzialmente le opere su fonogrammi di sonorizzazione.
- 10.2. Nei casi previsti al precedente art.10.1, nulla Le sarà da noi dovuto sia in considerazione del particolare scopo che si intende perseguire attraverso la produzione degli speciali fonogrammi qui considerati, sia perchè (e di ciò ci diamo atto) il corrispettivo a Lei riconosciuto per lo sfruttamento fonomeccanico delle opere (così come precisato al precedente art.6.4.) è stato determinato nei convenuti importi anche in considerazione della particolare utilizzazione delle opere indicata nel titolo di questo art. 10.

**Art.11 - Particolari licenze di utilizzazione delle opere**

- 11.1. Noi potremo concedere a terzi, in ogni paese del mondo, licenze anche esclusive, di utilizzare direttamente o di consentire a terzi di utilizzare le opere, complete o incomplete (congiuntamente e/o disgiuntamente, musiche ed eventuali testi letterari), come motivo principale, secondario o musica di sottofondo di film (a lungo e/o a corto metraggio) diversi da quello indicato sub n. 1 delle premesse, di spettacoli teatrali, di spettacoli radiofonici e televisivi, di documentari, di telefilm, di spot pubblicitari (radiofonici, televisivi e cinematografici) per la promozione di prodotti commerciali, di imprese commerciali, di Associazioni e di Enti (pubblici e privati) e per la pubblicità in genere, nonché di altre forme di rappresentazione anche se qui non specificate.
- 11.2. Nell'ipotesi di concessione di dette licenze, noi Le pagheremo:
- per le opere prive di testi letterari una percentuale del 40% (quaranta per cento) sulle somme nette (al netto, cioè, delle voci fiscali, e, per l'estero, anche delle altre voci previste sub precedente art. 8.4.) da noi incassate a fronte della licenza;
  - per le opere con testi letterari, una percentuale del 20% (venti per cento) sulle somme nette (al netto, cioè, delle voci fiscali e, per l'estero, anche delle altre voci previste sub precedente art. 8.4.) da noi incassate quale corrispettivo della licenza
- 11.3. In considerazione di quanto sopra pattuito, sarà riservata all'autore del testo letterario (se esistente), nei casi di cui alla lett. "b" dell'art. 11.2, una percentuale, in suo favore, del 20% (venti per cento) della somma da noi incassata quale corrispettivo della licenza.

**Art.12 - Eventuali utilizzazioni dei testi letterari delle opere in canzonieri, in riviste e in pubblicazioni giornalistiche o librerie in genere**

- 12.1. Noi potremo consentire a terzi, gratuitamente o dietro corrispettivo, l'utilizzazione dei testi letterari delle opere (se esistenti) attraverso i mezzi indicati nel titolo di questo articolo.
- 12.2. Nessun particolare corrispettivo Le sarà da noi dovuto per le utilizzazioni di cui al precedente art.12.1, atteso che quello a Lei riconosciuto per effetto del patto di cui all'art.5.1, e', per patto espresso, comprensivo anche del compenso dovutoLe per le utilizzazioni qui considerate.

**Art.13 - Particolare corrispettivo per lo sfruttamento del diritto di pubblica esecuzione delle opere attuato in occasione della proiezione del film nei paesi in cui non viene corrisposto il compenso separato come quello di cui al terzo comma dell'art. 46 L.d.A. e in quelli ove manchi una rappresentanza della SIAE**

Quale corrispettivo - totale e definitivo - per gli sfruttamenti indicati nel titolo di questo articolo, noi ci obblighiamo a pagarLe l'importo di Euro 3.500,00 (tremilacinquecento/00) al lordo delle ritenute di legge.

**Art.14 - Sue particolari obbligazioni**

- 14.1. Lei si obbliga:
- I. a non usare per altre opere elementi o parti (ivi compresi i titoli) di quelle che Lei comporrà in esecuzione di questo contratto;
  - II. a rilasciarci, dietro nostra semplice richiesta, le dichiarazioni, gli atti e i documenti necessari e idonei a provare, in caso di contestazione, i diritti cedutici con questo contratto;
  - III. nell'ipotesi che la legge di uno Stato facesse dipendere la protezione, il rinnovo o la proroga dei diritti di autore da eventuali dichiarazioni, impegni o documentazioni, a porre in essere tutto quanto Le venisse in ipotesi da noi richiesto per gli scopi qui considerati;
  - IV. a compilare la c.d. "riduzione" delle opere al fine di consentire il loro deposito presso la SIAE;
  - V. a consegnarci entro il termine di 15 (quindici) giorni dal completamento delle opere le partiture delle stesse;
  - VI. Lei si obbliga, infine, a compilare il programma musicale del film, prescritto dal regolamento della Società Italiana Autori ed Editori (SIAE), indicando i titoli dei singoli brani musicali e a consegnarlo al nostro ufficio edizioni.
- 14.2. Lei ci conferma la Sua obbligazione di comporre, se da noi richiesto, oltre agli arrangiamenti delle opere, altri arrangiamenti di temi musicali contenuti nelle stesse (temi che di comune accordo sceglieremo), con l'utilizzazione dei quali possano essere da noi realizzate registrazioni fonografiche di una durata complessiva tale da consentire, con il loro abbinamento con registrazioni delle musiche originali di commento, la produzione di un compact disc (CD) di normale durata (45').

**Art. 15 - Conferimento dell'incarico di cui al n. V delle premesse - Concessione delle autorizzazioni di cui al n. 2 dell'art. 80 Lda - Diritti da Lei riconosciuti - Cessione in nostro favore del Suo diritto ai compensi di cui agli artt. 73 e 73 bis Lda**

- 15.1. Noi Le conferiamo l'incarico di rendere Sue prestazioni artistiche nella qualità indicata al n. V delle premesse per la realizzazione delle registrazioni delle opere.
- 15.2. Lei accetta il predetto incarico e si obbliga a rendere le Sue prestazioni artistiche presso lo studio o gli studi di registrazione che Le indicheremo, nei giorni e nelle ore che saranno stabiliti di comune accordo tra noi.
- 15.3. Lei ci concede in esclusiva tutte le autorizzazioni ed i diritti di cui all'art. 80 n. 2 Lda e ci riconosce:
- a. il diritto esclusivo di riversare le registrazioni nella colonna musicale del film e di/o far diffondere e/o utilizzare le stesse insieme con il film in occasione di qualsiasi sfruttamento dello stesso (quali, ad esempio, la proiezione in pubblico, la riproduzione su videogrammi e la trasmissione per televisione);
  - b. il diritto esclusivo di riversare le registrazioni o parti di ognuna di esse nella colonna musicale di parti del film scelte per la presentazione al pubblico del film stesso;
  - c. il diritto esclusivo di riversare le registrazioni o parti di ognuna di esse in colonne musicali di altri film a lungo e a corto metraggio (diversi da quello indicato al n. I delle premesse), di spettacoli tea-

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trali, di spettacoli radiofonici e televisivi, di documentari, di telefilm, di spot pubblicitari (radiofonici, televisivi e cinematografici) per la promozione di prodotti commerciali, di imprese commerciali, di Associazioni e di Enti (pubblici e privati) e per la pubblicità in genere, nonché di altre forme di rappresentazione anche se qui non specificate;

d. il diritto esclusivo di diffondere le registrazioni o parti di ognuna di esse con l'impiego di qualsiasi mezzo di diffusione a distanza, quali la telefonia, la radiodiffusione, la televisione e altri mezzi analoghi;

e. il diritto esclusivo di riversare le registrazioni o parti di ognuna di esse su fonogrammi anche accoppiandole con altre registrazioni;

f. il diritto esclusivo di duplicare le registrazioni e di porre in commercio e/o di far porre in commercio i fonogrammi contenenti le registrazioni stesse o parti di ognuna di esse;

g. il diritto di riprodurre le registrazioni o parti delle stesse su fonogrammi di sonorizzazione.

15.4. Lei ci cede – e noi acquisiamo – il Suo diritto ai compensi di cui agli artt. 73 e 73 bis L.da, verso il corrispettivo dell'importo previsto al successivo art. 15.6.

15.5. Ci diamo reciprocamente atto che, salvo quanto convenuto al successivo art.6, a cagione della particolare natura delle opere che saranno da Lei create per il commento musicale del film, noi riprodurremo su fonogrammi solo quelle registrazioni che in base alla richiesta del mercato potranno essere obiettivamente ritenute suscettibili di conveniente sfruttamento commerciale attraverso la produzione e la messa in commercio di fonogrammi. Conseguentemente, qualora non dovessimo riprodurre le registrazioni su fonogrammi e porre e/o far porre in commercio gli stessi, nessuna pretesa potrà da Lei esserci avanzata: ciò sia perchè, come del resto già precisato, nessuna obbligazione noi abbiamo assunto in proposito nei Suoi confronti, sia perchè, nel determinare l'entità della somma di cui alla lett. "b" del successivo n. 4.9., abbiamo tenuto conto anche del fatto che le registrazioni potranno non essere da noi utilizzate attraverso la loro riproduzione su fonogrammi.

15.6. Quale corrispettivo delle prestazioni che Lei renderà nella qualità indicata al n. V delle premesse, per le autorizzazioni di cui all'art. 80 n.2 Lda da Lei concesseci, per il riconoscimento, in nostro favore, dei diritti di cui all'art. 15.3., e per la cessione in nostro favore del Suo diritto ai compensi di cui agli Artt. 73 e 73 bis Lda, noi ci obblighiamo:

a) a realizzare a nostre totali spese, con musicisti che noi sceglieremo e con le prestazioni che Lei renderà in esecuzione di questo contratto, le registrazioni e a riversarle e/o a farle riversare nella colonna musicale;

b) a pagarle, presso la nostra sede e a presentazione di Sua fattura sottoposta a IVA, la somma di Euro 5.000,00 (cinquemila/00) al lordo delle ritenute di legge, di cui Euro 860,00 (ottocentosessanta/00) per le attività da Lei prestate nella sala di incisione.

15.7. Il corrispettivo relativo alle attività da Lei prestate in sala di incisione, di cui alla lettera "b" del precedente punto 15.6 sarà assoggettato a contribuzione ENPALS.

#### **Art. 16 - Pubblicità e promozione**

16.1. Lei espressamente ci autorizza a svolgere la pubblicità delle opere. All'uopo Lei ci cede il diritto (che noi potremo trasferire a terzi) di usare pubblicamente, in ogni paese del mondo, il Suo nome, la Sua fotografia e altra Sua immagine su cataloghi editoriali e discografici, su etichette e con-



tenitori di fonogrammi, su dépliant e su qualsiasi materiale propagandistico direttamente connesso con la predetta pubblicità.

16.2. Lei ci riconosce la facoltà di riversare riproduzioni frammentarie delle opere su fonogrammi destinati alla promozione delle opere stesse.

**Art.17 - Termini per i pagamenti previsti agli Artt. 5.1., 6.1. n. 1, 13 e 15.7**

17.1. Le somme da noi dovuteLe in esecuzione dei patti di cui agli articoli indicati nel titolo di questo art.16 Le saranno da noi corrisposte, dopo la sottoscrizione del presente contratto, entro 15 (quindici) giorni lavorativi dalla presentazione di idonea documentazione fiscale da Lei emessa.

17.2. Qualora Lei non dovesse consegnarci le partiture delle opere entro il termine convenuto al n. V dell'art. 14.1., noi potremo far realizzare le stesse a Sue spese. In tal caso, noi avremo la facoltà di detrarre le somme che noi pagheremo a terzi per detta realizzazione da quelle da noi dovuteLe a saldo per effetto del patto di cui all'art. 16.1.

**Art.18 - Termini per i pagamenti delle percentuali convenute in Suo favore**

18.1. I pagamenti delle somme dovuteLe per gli sfruttamenti economici delle opere rispetto ai quali sarà conferito mandato alla SIAE, saranno eseguiti direttamente dalla detta mandataria.

a. Al di fuori dei casi previsti al comma che precede, noi Le invieremo semestralmente (entro il 1 aprile per i proventi incassati nel semestre che scade il 31 dicembre del precedente anno ed entro il 1 ottobre per i proventi incassati nel semestre che scade il 30 giugno dello stesso anno) il rendiconto delle somme dovute in virtù dei patti contenuti in questo contratto. Contestualmente all'invio di ogni singolo rendiconto noi provvederemo al pagamento di quanto dovutoLe.

18.2. I pagamenti delle somme dovuteLe non superiori a Euro 150,00 (centocinquanta/00) saranno eseguiti presso la nostra sede. Al momento di detti pagamenti, Le saranno consegnati i relativi rendiconti. Del pari, Le saranno consegnati presso la nostra sede i rendiconti relativi ai semestri nei quali nessuna somma dovesse maturare in Suo favore.

**Art.19 - Definitività dei corrispettivi**

Le obbligazioni come sopra da noi assunte costituiscono il corrispettivo - totale e definitivo - dei diritti ceduti e riconosciuti, degli obblighi da Lei assunti e delle garanzie da Lei prestato.

**Art.20- Domicili**

Ai fini di questo contratto (ivi compresa la notifica di atti giudiziari e stragiudiziali) Lei elegge il Suo domicilio nel luogo in cui indirizziamo questa lettera e noi eleggiamo il nostro domicilio in Milano, Via Berchet 2.

**Art.21 - Competenza in caso di controversia giudiziaria**

L'A.G. di Milano sarà competente in via esclusiva a decidere tutte le controversie relative a questo atto.

**Art.22 - Forma convenzionale per patti aggiunti o in deroga a questo contratto**

Qualsiasi patto che modifichi e/o che integri questo contratto dovrà essere formato, a pena di nullità, per iscritto.

Informativa ex D. Leg. n. 196/2003 relativa all'utilizzo dei dati forniti

Lei riconosce, anche ai sensi e per gli effetti dell'art. 13 del D. Leg. 196/2003, che i dati personali acquisiti

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in esecuzione e/o in occasione del presente accordo potranno essere da noi trattati, con o senza l'ausilio di mezzi elettronici, per le finalità connesse allo svolgimento della nostra attività economica, ed in tali limiti possono essere comunicati a terzi. La prevalenza dei trattamenti di cui sopra risponde ad obblighi contrattuali, contabili e fiscali ed in tali limiti il conferimento deve ritenersi necessario. Lei potrà esercitare i diritti di cui all'art. 7 del D. Leg. 196/2003, che dichiara di ben conoscere. Titolare dei trattamenti di cui sopra è BMG RICORDI MUSIC PUBLISHING S.p.A. Responsabile del trattamento è il Dottor Roberto Curti.

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La preghiamo di restituirci una copia di questa lettera da Lei sottoscritta in segno di accettazione e, ai sensi e per gli effetti di quanto previsto all'art. 1341 C.C., con la specifica sottoscrizione dei seguenti articoli: 3.1 e 3.2; 3.5; 5.7; 5.8; 6.4; 8; 9; 10; 11; 14.1; 14.2., 15 e 21.

BMG Ricordi Music Publishing S.p.A.

Per accettazione:

[Redacted signature]

[Redacted signature and stamp]

Io sottoscritto accetto e approvo specificamente, ai sensi e per gli effetti dell'art. 1341 C.C., le clausole relative:

- alla cessione in esclusiva di tutti i miei diritti d'autore sulle opere e sugli arrangiamenti (art.3.1 e 3.2);
- al tacito rinnovo della durata della cessione del diritto di pubblicare le opere e gli arrangiamenti per le stampe (art.3.5.);
- al diritto, a Voi riconosciuto, di riprodurre o meno per le stampe le opere e alle conseguenze derivanti dall'esercizio di detto diritto (art.5.7.);
- alla rinuncia da me manifestata all'art.5.8.;
- al diritto, a Voi riconosciuto, di riprodurre su fonogrammi solo determinate opere o alla rinuncia da me manifestata (art.6.4.);
- ai trasferimenti a terzi dei diritti di utilizzazione economica delle opere - concessioni di licenze per gli sfruttamenti economici delle stesse (art.8);
- all'eventuale sfruttamento dei titoli delle opere (art. 9);
- all'utilizzazione delle opere attraverso la loro riproduzione su fonogrammi di sonorizzazione (art. 10);
- alle particolari licenze di utilizzazione delle opere (art.11);
- alle obbligazioni da me assunte all'art. 14.1;
- all'obbligo da me assunto all'art. 14.2..
- alla concessione in esclusiva delle autorizzazioni di cui all'art. 80 n. 2 Lda (art. 15.3)
- al riconoscimento in Vostro favore dei diritti esclusivi di cui all'art. 15.3
- alla facoltà a Voi riconosciuta di riprodurre o meno le registrazioni delle opere e alle conseguenze derivanti dall'esercizio di detto diritto 15.4
- al foro esclusivo (art. 21).

MAE

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En Valencia, a 1 de diciembre de 2009

## **REUNIDOS**

D. XXXXXXXXXXXXXXXX, quien actua en nombre y representación, en su condición de Administrador de DIGITAL CINE MEDIA S.L., , con domicilio social en Valencia, XXXXXXXXXXXXXXXX y CIF.BXXXXXXXX, a quién en adelante denominaremos **LA PRODUCTORA CINEMATOGRAFICA.**

**Y DE OTRA, D. XXXXXXXXX**, mayor de edad, actuando en su propio nombre y derecho, con NIF: XXXXXXXXX, domiciliado en Alicante, XXXXXXXXXXXXXXXX en adelante **EL COMPOSITOR.**

## **MANIFIESTAN**

I.- Que la PRODUCTORA CINEMATOGRAFICA tiene en proyecto realizar una obra cinematográfica provisionalmente titulada “EL DIOS DE MADERA”, dirigida por D. Vicente Molina Foix.

II.- Que la PRODUCTORA CINEMATOGRAFICA está interesada en contratar los servicios de EL COMPOSITOR para la creación, arreglos y dirección musical de la partitura compuesta especialmente para la banda sonora original de la obra audiovisual.

III.- Que EL COMPOSITOR está en disposición de prestar los servicios requeridos por la PRODUCTORA CINEMATOGRAFICA en los términos y condiciones previstos en el presente contrato.

IV.- Que el marco jurídico de aplicación para el presente contrato es el Real Decreto Legislativo 1/1996, de 12 de Abril que aprueba el Texto Refundido de Propiedad Intelectual, y sus posteriores modificaciones.

Ambas partes se reconocen competencia y capacidad de derecho necesaria para celebrar el presente contrato civil de acuerdo con las siguientes:

## **ESTIPULACIONES**

### **PRIMERA.- OBJETO DEL CONTRATO**

Por el presente contrato, LA PRODUCTORA CINEMATOGRAFICA contrata los servicios profesionales y la cesión de determinados derechos de EL COMPOSITOR, el cual se compromete a crear, arreglar, dirigir la grabación de las músicas originales y la ejecución y materialización de la partitura necesarios (contratación de copistas, contratación de músicos y ejecutantes, alquiler de salas de grabación, etc...) para

completar el proceso de grabación y mezclas finales de la Banda Sonora Original necesarias para la obra cinematográfica en los términos que se establecen en este contrato.

## **SEGUNDA.- COMPOSICIÓN DE LAS OBRAS**

El COMPOSITOR, en el desempeño de su cometido y siguiendo las indicaciones del Director-Realizador de la película, tendrá la más amplia libertad en cuanto a la estética, estilo o criterio artístico que quiera aplicar a la composición de su música para la banda sonora de la película.

En el supuesto de que el COMPOSITOR se viera en la necesidad de incorporar en las composiciones y arreglos musicales objeto del contrato, fragmentos aislados de alguna obra protegida, éste se compromete a notificar inmediatamente a la PRODUCTORA CINEMATOGRAFICA tal necesidad. La PRODUCTORA CINEMATOGRAFICA tendrá la facultad de tomar la decisión de incorporar o no los citados fragmentos, haciéndose cargo de la totalidad de los costes que los correspondientes permisos y autorizaciones pudieran generar.

Cualquier música añadida como ilustración en el metraje de la película, bien preexistente o creada especialmente por otro compositor, queda excluida de las condiciones de este contrato y será negociada de manera independiente.

## **TERCERA.- PLAZO DE ENTREGA Y PROPIEDAD DEL MASTER**

La PRODUCTORA CINEMATOGRAFICA recibirá la música definitiva objeto del presente contrato, grabada y mezclada en calidad *ESTÉREO (a 24 bits y 48.000 Hz.)*, el día 11 de enero de 2010, como plazo máximo de entrega. La grabación de la BANDA SONORA ORIGINAL tendrá los requisitos óptimos en cuanto a su calidad técnica se refiere EL COMPOSITOR se compromete con LA PRODUCTORA CINEMATOGRAFICA a tener preparadas las partituras con el suficiente margen de tiempo para que las grabaciones se realicen correctamente -siguiendo las fases técnicas habituales- a fin de que sea viable la entrega en la citada fecha.

EL MASTER DE PRODUCCIÓN se entregará en cualquier soporte que tenga la calidad necesaria y normalmente utilizado en el ámbito profesional, calidad ESTÉREO, 24 bits y 48.000 Hz de resolución.

De acuerdo con lo anterior, entregada la cinta de producción conteniendo la grabación definitiva objeto de este contrato a satisfacción de la PRODUCTORA CINEMATOGRAFICA, ésta será su legítima propietaria y a ella corresponderán todos los derechos de explotación. En particular, la PRODUCTORA CINEMATOGRAFICA será titular de los derechos de distribución (venta, alquiler, préstamo), sincronización de cualquier clase, reproducción, comunicación pública, incluso por emisoras de radio y televisión por cualquier sistema de transmisión. Podrá, por tanto, la PRODUCTORA CINEMATOGRAFICA a su conveniencia, iniciar o cesar la explotación de la BANDA SONORA ORIGINAL por sí o por terceros, conforme a las condiciones establecidas en este contrato de composición firmado con el autor Luis H. Ivars para la cesión de derechos.

## **CUARTA.- CESIÓN DE DERECHOS Y EXPLOTACIÓN**

El COMPOSITOR cede en exclusiva a la PRODUCTORA CINEMATOGRAFICA, con facultad de cesión a terceros, para todos los formatos (televisión en abierto, vídeo bajo demanda, pago por visión, IPTV, etc) y todas las modalidades de explotación (comunicación al público a través de Internet, vía satélite, retransmisión por cable, IPTV, etc), por tiempo ilimitado y para todo el mundo, los siguientes derechos de explotación (incluyendo los de transformación únicamente para remakes, secuelas, merchandising, etc...):

**REPRODUCCIÓN:** entendiéndose por tal la fijación directa o indirecta, provisional o permanente, por cualquier medio y en cualquier forma, de toda la obra o de parte de ella, que permita su comunicación y la obtención de copias.

**DISTRIBUCIÓN:** entendiéndose por tal la puesta a disposición del público del original o copias de la obra, o parte de ella, en un soporte tangible, mediante su venta, alquiler, préstamo cualquier otra forma de transferencia temporal o definitiva de la posesión de los mismos, incluyendo pero no quedando limitado a, los sistemas de recuperación electrónica (entrega digital), acceso a bancos y bases de datos, Internet, y tanto para su comunicación pública como en el ámbito doméstico. El COMPOSITOR autoriza expresamente al PRODUCTOR para la distribución de copias para su utilización en el ámbito doméstico, o mediante su comunicación pública a través de radiodifusión.

**COMUNICACIÓN PÚBLICA:** entendiéndose por tal todo acto por el cual una pluralidad de personas pueda tener acceso a la obra son previa distribución de ejemplares a cada una de ellas. La puesta a disposición del público de obras, por procedimientos alámbricos o inalámbricos, de tal forma que cualquier persona pueda acceder a ellas desde el lugar y el momento que elija.

**DOBLAJE Y SUBTITULADO:** de la obra cinematográfica a cualquier idioma o dialecto.

No se comprenden en las anteriores cesiones y autorizaciones los siguientes derechos, los cuales el autor expresamente se reserva:

El derecho de copia privada reconocido en el artículo 25 de la Ley de Propiedad Intelectual.

El derecho a percibir de quienes exhiban públicamente la obra audiovisual un porcentaje de los ingresos procedentes de dicha exhibición pública de conformidad con lo previsto en el artículo 90.2 y 90.3 de la Ley de Propiedad Intelectual.

El derecho a percibir la remuneración que proceda de acuerdo con las tarifas de la entidad de gestión correspondiente, por la exhibición o transmisión debidamente autorizada de la obra audiovisual por cualquier procedimiento, sin exigir pago de un precio de entrada, todo ello de conformidad con lo previsto en el artículo 90.4 del Texto Refundido de la Ley de propiedad Intelectual.

El derecho a utilizar de forma independiente las composiciones musicales objeto del presente contrato en ejecuciones musicales, emisiones por radio o televisión, producción de fonogramas, distribución digital, etc. Los frutos económicos que pudiesen generarse de esta explotación independiente de la banda sonora irán íntegramente al COMPOSITOR, renunciando la PRODUCTORA expresamente a los derechos que pudiesen corresponderle como propietaria del máster.

En todo caso, el COMPOSITOR renuncia al derecho de prohibir el ejercicio de los anteriores derechos de explotación para el supuesto en que las remuneraciones objeto de reserva no fuesen debidamente pagadas por las personas o entidades obligadas al pago de conformidad con la Ley.

No se comprenden en las anteriores cesiones y autorizaciones, los rendimientos económicos que puedan corresponder al autor por el derecho de Comunicación Pública, Reproducción y distribución en formato DVD o análogo, Reproducción en forma gráfica y en soportes sonoros y Transformación, que serán calculados y recaudados de conformidad con las tarifas y convenios establecidos por la Sociedad General de Autores y Editores, a la que pertenece, percibiendo el autor dichos rendimientos a través de la mencionada entidad de gestión.

El COMPOSITOR reconoce en este acto, que la PRODUCTORA CINEMATOGRAFICA, como propietaria de la grabación de la banda sonora original, podrá vender, ceder o licenciar a terceros la explotación de la citada grabación, con el objeto de ser reproducida, distribuida y comunicada públicamente en cualquier soporte y por cualquier medio de explotación, para todos los formatos y por tiempo ilimitado. Todo ello, sin perjuicio de las autorizaciones o licencias que los usuarios tengan que solicitar y sin perjuicio de las percepciones que por derechos de autor de la composición musical le correspondan al COMPOSITOR y que le serán abonadas por la Entidad de Gestión de Derechos de Autor de la que el COMPOSITOR sea socio.

El COMPOSITOR autoriza expresamente a la PRODUCTORA CINEMATOGRAFICA sin contraprestación adicional, la utilización de los temas de la banda sonora original en cualquier acción promocional que realicen de la obra cinematográfica tales como anuncios publicitarios, cuñas radiofónicas, página web, etc...

Ambas partes acuerdan que el Autor tendrá la posibilidad de sacar al mercado y explotar comercialmente el fonograma de la banda sonora de la obra audiovisual según sus criterios. Esta posibilidad se le concede sin contraprestación alguna y en exclusiva a contar desde un mes antes del estreno de la obra audiovisual, y podrá contar con fotografías, el cartel promocional y el nombre de la película para dicha explotación.

#### **QUINTA.- CONTRAPRESTACIÓN**

Como contraprestación por los servicios profesionales contratados, La PRODUCTORA CINEMATOGRAFICA abonará a EL COMPOSITOR la cantidad a tanto alzado de **XXXXXXXXXX EUROS** (XXXXXXX €), según el siguiente calendario:

- \* **XXXX euros**, a la firma del contrato,
- \* **XXXX euros**, a la entrega de materiales el 11 de enero de 2010
- \* **XXXX euros**, a la obtención de la copia estándar en 35mm de la película (fecha aproximada 12 de febrero de 2010).

Dichas cantidades serán abonadas previa presentación de las correspondientes facturas por parte de EL COMPOSITOR, soportando las retenciones legalmente exigibles a cuenta del IRPF.

Así mismo la PRODUCTORA abonará al COMPOSITOR los desplazamientos, dietas y alojamientos fuera de su ciudad de residencia motivados por la prestación de los servicios contratados, incluyendo los actos de promoción, siempre y cuando la productora crea necesario dichos desplazamientos y actos de promoción.

#### **SEXTA.- DERECHOS DE IMAGEN**

El COMPOSITOR autoriza a la PRODUCTORA el uso de su imagen personal, fotografía, retrato e imagen física, reproducida o generada por cualquier medio, incluso por medio de procedimientos informáticos; su biografía, así como expediente profesional, tanto para fines de promoción, explotación y comercialización de la obra cinematográfica, como aquellas otras de las que esta sea obra antecedente.

#### **SÉPTIMA.- UTILIZACIÓN DE FRAGMENTOS**

El COMPOSITOR autoriza expresamente a la PRODUCTORA la utilización de secuencias o fragmentos de la obra cinematográfica con el objeto de utilizarlas bien aisladamente, bien para su incorporación en otras obras y/o grabaciones audiovisuales, incluso con fines publicitarios o de formación de antologías de cualquier tipo o clase.

#### **OCTAVA.- TÍTULOS DE CRÉDITO Y DERECHO MORAL**

En los títulos de crédito y publicidad de la obra audiovisual deberá constar la mención siguiente:

Música compuesta y dirigida por LUIS IVARS

El derecho moral de EL COMPOSITOR sobre la música de la película sólo podrá ser ejercido sobre su versión definitiva.

#### **NOVENA.- CESIÓN A TERCEROS**

La PRODUCTORA se reserva el derecho de ceder y/o transferir a terceros los derechos que por este contrato se le ceden.



## **DÉCIMA.- GARANTÍAS**

Por medio del presente acto EL COMPOSITOR manifiesta y garantiza:

- Que las composiciones musicales y arreglos objeto del presente contrato presentarán las condiciones artísticas y técnicas necesarias para su sincronización en la obra cinematográfica “EL DIOS DE MADERA”, de aproximadamente cien minutos de duración.
- Que las composiciones musicales y arreglos objeto del presente contrato serán creaciones originales de EL COMPOSITOR, y de la exclusiva autoría de éste.
- Que El COMPOSITOR se hace por tanto responsable, ante la PRODUCTORA CINEMATOGRAFICA y ante terceros, de cualquier reclamación relativa a la originalidad de la composición musical y se compromete, expresamente, a indemnizar a la PRODUCTORA CINEMATOGRAFICA por todos los daños y perjuicios que se causen u originen por este motivo, y ello a salvo del derecho de resolución de este contrato por parte de la PRODUCTORA CINEMATOGRAFICA de conformidad con lo dispuesto en la cláusula siguiente.

## **UNDÉCIMA.- RESOLUCIÓN DEL CONTRATO**

El presente contrato podrá ser resuelto, mediante notificación por correo certificado con acuse de recibo de la parte con derecho a resolver dirigida a la otra parte.

**POR LA PRODUCTORA CINEMATOGRAFICA:**

1. Cuando resulte falta o inexacta, total o parcialmente, cualquiera de las declaraciones y garantías otorgadas por el COMPOSITOR a la PRODUCTORA CINEMATOGRAFICA en la cláusula anterior.
2. Cuando el COMPOSITOR no cumpla los plazos de entrega estipulados en el presente contrato, salvo que el retraso se deba a causa no imputable a su persona.
3. Cuando el COMPOSITOR incurra en cualquier otro incumplimiento de cualquier estipulación del presente contrato.

**POR EL COMPOSITOR:**

1. Cuando la PRODUCTORA CINEMATOGRAFICA no cumpliera las condiciones establecidas en la estipulación primera.
2. Cuando la PRODUCTORA CINEMATOGRAFICA no cumpliera con el compromiso de realizar alguno de los pagos previstos en la estipulación quinta el presente contrato, perdiendo las cantidades ya entregadas, sin derecho a devolución por parte del COMPOSITOR.

Lo establecido en los apartados anteriores se entiende estipulado sin perjuicio de lo previsto en el artículo 1.124 del Código Civil.

**DUODÉCIMA.- DURACIÓN DE LOS DERECHOS Y AMBITO TERRITORIAL**

Los derechos de explotación de las composiciones y arreglos de la música original a que se refiere este contrato se ceden por el COMPOSITOR a la PRODUCTORA CINEMATOGRAFICA de forma exclusiva y por tiempo ilimitado.

Los derechos de explotación a que se refiere el párrafo primero de esta cláusula se podrán ejercitar por la PRODUCTORA CINEMATOGRAFICA en todo el universo.

**DÉCIMOTERCERA.- TRIBUNALES**

Las partes se someten expresa y voluntariamente a los juzgados y tribunales de Barcelona para resolver cualquier controversia que pueda plantearse con la interpretación y aplicación del presente contrato, con expresa exclusión de cualquier otro fuero que pudiera corresponder.

En prueba de conformidad, las partes firman por duplicado en la fecha y lugar arriba indicado.

EL COMPOSITOR

LA PRODUCTORA CINEMATOGRAFICA

## CONTRATO DE ENCARGO DE OBRA Y CESIÓN DE DERECHOS

En VALENCIA, a 14 de Mayo de 2011.

### REUNIDOS

De una parte SOROLLA FILMS S.A. con CIF [REDACTED] y con domicilio social en Valencia 46002, [REDACTED] representada en este acto por D. ANTONIO MANSILLA JIMÉNEZ, mayor de edad, con DNI [REDACTED], en calidad de ADMINISTRADOR (en adelante y conjuntamente **LOS COPRODUCTORES**).

De una parte MALTES PRODUCCIONES, S.L. con CIF [REDACTED] y con domicilio social en Valencia 46001, [REDACTED], representada en este acto por D. PAU VERGARA BELINCHÓN, mayor de edad, con DNI 44853277B, en calidad de ADMINISTRADOR (en adelante y conjuntamente **LOS COPRODUCTORES**).

**Y DE OTRA:** D. [REDACTED], en su propio derecho, mayor de edad, con N.I.F nº. [REDACTED], en nombre y representación de **Hachelius S.L.** con CIF nº [REDACTED], señalan como domicilio a efectos de notificaciones el ubicado en Alicante, en la calle [REDACTED] (en adelante, **EL AUTOR**).

Las partes intervienen con la capacidad legal necesaria y suficiente para contratar y obligarse conforme a los términos y condiciones de este Contrato, la cual a la fecha de firma del presente no le ha sido modificada, limitada o revocada de manera alguna, por lo que

### EXPONEN

I.- Que EL AUTOR es un profesional independiente que tiene como actividad principal, entre otras, la prestación de servicios de composición de obras musicales, la ejecución e interpretación musical, la dirección de grabación y mezclas de las mismas, para lo que cuenta con la organización e infraestructura técnica y humana necesaria.

II.- Que entre las distintas actividades que constituyen el objeto social de LOS COPRODUCTORES, y de acuerdo con sus estatutos sociales, figura, entre otras, la prestación de servicios dentro de los procesos de producción de toda clase de obras audiovisuales y desean encargar a EL AUTOR la composición, interpretación, producción, orquestación, arreglos, grabación y mezclas de ciertas obras musicales originales para ser incluidas y fijadas como músicas de cabecera y accesorias en la obra audiovisual que van a producir,

III.- Que EL AUTOR desea suscribir el presente Contrato con LOS COPRODUCTORES para componer, interpretar y grabar las músicas originales de cabecera y accesorias que LOS COPRODUCTORES les encargue (en adelante, **LAS OBRAS MUSICALES**).

IV.- Que LOS COPRODUCTORES desean llevar a cabo la incorporación de LAS OBRAS MUSICALES resultantes en una obra audiovisual de género ficción, de aproximadamente 90 minutos de duración, titulada provisional o definitivamente, "**EL CAPITAN TRUENO Y EL SANTO GRIAL**" (en adelante, **LA OBRA**).

V.- Que las partes se encuentran facultadas para firmar este Contrato de **ENCARGO DE OBRA MUSICAL Y CESIÓN DE DERECHOS** y lo llevan a efecto conforme a las siguientes

### ESTIPULACIONES

#### PRIMERA.- OBJETO.

1.1- En virtud del presente Contrato, LOS COPRODUCTORES encargan al AUTOR la creación original y desarrollo de las composiciones musicales con/sin letra de 45 minutos de duración neta, para ser sincronizada en LA OBRA, así como su ejecución e interpretación musical, y la grabación de la misma en un soporte fonográfico o máster al fin de incorporar el mismo en LA OBRA, en su material promocional y productos derivados, todo ello siempre bajo la coordinación, instrucciones y directrices que LOS COPRODUCTORES puedan realizar al respecto para adecuar el encargo a los objetivos de la producción de LA OBRA.

1.2.- EL AUTOR acepta el encargo y se compromete personalmente a realizar las siguientes actividades a favor de LOS COPRODUCTORES:

- Creación de composiciones, o arreglos musicales de sus composiciones, de/sobre los temas musicales de LA OBRA en los plazos marcados por LOS COPRODUCTORES y dirigidos en exclusiva por EL AUTOR.
- Dirección de la grabación, en exclusiva por EL AUTOR, de/sobre los temas musicales de LA OBRA, en los plazos marcados por LOS COPRODUCTORES.
- Dirección de las mezclas, en exclusiva por EL AUTOR, de/sobre los temas musicales de LA OBRA en los plazos marcados por LOS COPRODUCTORES.
- Entrega de los másters en que se recojan las composiciones o arreglos musicales de sus composiciones de/sobre los temas musicales de LA OBRA en los plazos marcados por LOS COPRODUCTORES.
- Coordinar la labor de todos los profesionales y/o técnicos que dependan de la actuación del mismo, y, en especial, la del ingeniero de sonido de la grabación y de las mezclas de la música. Dichos profesionales deberán colaborar con LOS COPRODUCTORES, quienes asumen la autoridad máxima y responsabilidad de la parte artística y técnica de LAS OBRAS MUSICALES realizadas para LA OBRA.

EL AUTOR pondrá todos los medios, tanto técnicos como humanos necesarios, para la consecución de los servicios mencionados en el párrafo anterior, sin que le corresponda por ello otra contraprestación más que la recogida en el presente Contrato.

1.3.- Asimismo, EL AUTOR, cede en este acto todos los derechos de Propiedad Intelectual sobre LAS OBRAS MUSICALES a fin de posibilitar a LOS COPRODUCTORES la explotación mundial de la misma por todo el tiempo permitido en el Real decreto Legislativo 1/1996, de 1 de abril, por el que se aprueba el texto refundido de la Ley de Propiedad Intelectual (la "Ley") en exclusiva y con facultad de cesión a terceros en exclusiva, incluyendo el derecho para editar, adaptar, arreglar, grabar y sincronizar LAS OBRAS MUSICALES para ser incorporadas o incluidas en LA OBRA.

1.3. Es también objeto del presente Contrato la autorización a LOS COPRODUCTORES para que lleve a cabo la Comunicación Pública (según dicho término se define en la Ley de Propiedad Intelectual, en adelante la "Ley") de la interpretación de LAS OBRAS MUSICALES realizadas por LA OBRA, por todo el tiempo permitido en la Ley.

## **SEGUNDA.- DURACIÓN.**

2.1.- El presente Contrato entrará en vigor a la fecha de su firma y terminará en la fecha de la entrega definitiva de LAS OBRAS MUSICALES por parte del AUTOR. A pesar de que el presente contrato se pacta para la realización de una obra determinada, su ejecución, aunque limitada en el tiempo, es en principio de duración incierta. Por ello, el contrato finalizará cuando concluya la labor del AUTOR en LA OBRA, que le ha sido encomendada en virtud del presente contrato, con el nivel de calidad exigido por LOS COPRODUCTORES.

La duración del presente Contrato, en lo que a la realización de LAS OBRAS MUSICALES se refiere, se pacta durante el periodo de musicalización de LA OBRA y de los productos promocionales de la misma. EL AUTOR deberá concluir LAS OBRAS MUSICALES a satisfacción de LOS COPRODUCTORES conforme al siguiente calendario de plazos:

- 25 de Julio composición completada ( 9 semanas)
- 26, 27 y 28 de Julio grabación Orquesta ( 3 días)
- 29 de Agosto edición, recordings y mezclas estudio (15 días)

LOS COPRODUCTORES irán entregando los copiones de trabajo al AUTOR a medida que estén disponibles. En aquellas secuencias donde los VFX sean imprescindibles para la composición ( monstruo, globo y rayo de la secuencia final) los productores trataran de proporcionarlo lo antes posible al compositor. El último copión deberá estar a disposición del AUTOR como mínimo 15 días antes de la fecha de entrega estipulada. Cualquier retraso en la entrega de los materiales por parte de LOS COPRODUCTORES, conllevará una revisión de la fecha de entrega establecida para el 9 de agosto 2011.

2.2.- Las estipulaciones del presente Contrato, con intención expresa o implícita de que continúen en vigor tras el momento de resolución o vencimiento del mismo, se mantendrán en vigor y continuarán vinculando a ambas conforme a lo estipulado, especialmente la referente a la CESIÓN DE DERECHOS.



2.3.- Si por cualquier motivo, ajeno a la voluntad de las partes, se decidiera por LOS COPRODUCTORES suspender o terminar la producción de LA OBRA, el presente Contrato se entenderá igualmente suspendido o terminado sin derecho por parte del AUTOR a recibir compensación alguna por este concepto. No obstante el AUTOR recuperará todos los derechos sobre las OBRAS MUSICALES objeto de este contrato si se finalizase o suspendiese el Contrato y este no se reanudara en un periodo máximo de seis (6) meses.

Sin perjuicio de la perpetuidad de los derechos cedidos en el presente que permanecerán en vigor en los términos expuestos en la cláusula CUARTA siguiente, el presente Contrato entrará en vigor a la fecha de su firma.

### **TERCERA.- CONTRAPRESTACION.**

3.1. Como contraprestación por la composición y arreglos de las OBRAS MUSICALES objeto de este contrato, así como por la cesión de derechos de explotación sobre LAS OBRAS MUSICALES y LA OBRA prevista en el mismo, LOS COPRODUCTORES abonarán al AUTOR la cantidad bruta de 25.000 € (veinticinco mil Euros), más el IVA correspondiente. A las cantidades a facturar se les aplicarán las retenciones e impuestos que resulten vigentes en cada momento y serán abonadas en los treinta (30) días siguientes a la recepción de la correspondiente factura.

3.2.- El pago se hará mediante talón nominativo a la vista/transferencia, contra la presentación de la factura correspondiente, de acuerdo con el siguiente calendario de pagos y siguiendo las indicaciones acordadas en la cláusula anterior 3.1:

- SEIS MIL DOSCIENTOS CINCUENTA EUROS(6.250.-€) a la firma del presente contrato según la estipulación 3.1.
- SEIS MIL DOSCIENTOS CINCUENTA EUROS(6.250.-€) a la aprobación de las músicas por parte de LA PRODUCTORA.
- SEIS MIL DOSCIENTOS CINCUENTA EUROS(6.250.-€) a la fecha de inicio de la grabación de LAS OBRAS MUSICALES
- SEIS MIL DOSCIENTOS CINCUENTA EUROS (6.250.-€) a la entrega del máster previa aceptación de LA PRODUCTORA.

3.3.- La retribución pactada en este Contrato incluye la retribución por la cesión de los derechos de Propiedad Intelectual contempladas en el presente Contrato para todas las modalidades de explotación que de LAS OBRAS MUSICALES y de LA OBRA pueda ejercitar LOS COPRODUCTORES. Los derechos de autor que se generen por la explotación de la obra será gestionado a través de la Sociedad General de Autores y Editores según la normativa vigente y los contratos generales con las entidades de radiodifusión por lo que LOS COPRODUCTORES no tendrán que hacer en ningún caso desembolso económico alguno.

3.4.-EL AUTOR pondrá todos los medios, tanto técnicos como humanos necesarios, para la consecución de los servicios mencionados en la cláusula 1.1., sin que le corresponda por ello otra contraprestación más que la recogida en el presente Contrato.

Los costes de producción de la grabación y mezcla de LAS OBRAS MUSICALES, que se determinarán en el anexo 1, serán a cargo de la productora.

Si en el proceso de producción de LAS OBRAS MUSICALES surgieran imprevistos ajenos a la voluntad y profesionalidad del AUTOR los gastos extras que pudieran generarse correrán a cargo de LOS COPRODUCTORES. En todo caso, cada gasto que exceda del presupuesto inicial requerirá la autorización expresa por parte de LOS COPRODUCTORES.

### **CUARTA.- NATURALEZA MERCANTIL**

4.1.- La prestación para la realización de las obras contratadas tiene naturaleza mercantil y se efectuará conforme a los propios medios con los que cuente EL AUTOR.

### **QUINTA.- CESIÓN DE DERECHOS**

5.1. LOS COPRODUCTORES en virtud de contar con todos los derechos dimanantes de LAS OBRAS MUSICALES en tanto que EL AUTOR compondrá y grabará músicas originales de cabecera y accesorias, las partes aceptan que LOS COPRODUCTORES son, desde su entrega de conformidad, los únicos y exclusivos propietarios de LAS OBRAS MUSICALES realizadas en cumplimiento del presente contrato y de las mismas incorporadas y fijadas en LA OBRA, libres de toda carga, correspondiéndole sobre las mismas a LOS COPRODUCTORES la cualidad de productores fonográficos y titulares de todos los derechos exclusivos de

explotación sobre LAS OBRAS MUSICALES sobre la grabación de la misma y sobre LA OBRA en las que se fijarán éstas.

5.2. En virtud de lo anterior, EL AUTOR cede en exclusiva a LOS COPRODUCTORES, con facultad de cesión a terceros en exclusiva, los derechos de fijación, reproducción, distribución, transformación, comunicación pública y puesta a disposición de LAS OBRAS MUSICALES que realice en virtud del presente contrato, de la grabación de las mismas y de LA OBRA que incorpore dichas músicas en orden a su explotación televisiva, incluyendo de forma enunciativa y no exhaustiva, la televisión por ondas hertzianas, por cable, vía satélite – en todos los casos tanto analógico como digital-, TV previo pago, pay per view, TV codificada, TV en abierto, o cualquier otra modalidad de emisión, transmisión o retransmisión, ya sea digital o analógica, cinematográfica, y en general a través de todas las modalidades de comunicación pública previstas en el artículo 20.2 de la Ley de Propiedad Intelectual, videográfica, en formato videocasete, laserdisc, videodisc, CDI, CDI-DV, CDRom, DVD, vídeo a la carta, bajo demanda o casi bajo demanda u otros que pudieran crearse, telefonía móvil, Internet y cualquier otra tecnología de comunicación a través de banda ancha móvil o fija, discográfica o impresa, a través de merchandising, productos derivados y nuevas tecnologías, y por cualquier otro medio de explotación.

En virtud de la cesión a LOS COPRODUCTORES del derecho de transformación efectuado en el presente contrato, LOS COPRODUCTORES por sí mismos o por medio de terceros, podrán llevar a cabo arreglos en LAS OBRAS MUSICALES así como una y sucesivas obras derivadas de las mismas, consistentes en traducciones, adaptaciones, revisiones, actualizaciones, arreglos y cualesquiera otras transformaciones basadas en LAS OBRAS MUSICALES y/o en las derivadas sucesivamente, autorizando EL AUTOR a LOS COPRODUCTORES, en exclusiva, con facultad de cesión a terceros en exclusiva, durante el tiempo de vigencia de los derechos de autor reconocido en la Ley de Propiedad Intelectual y para todo el mundo, la explotación de las obras derivadas llevadas a cabo directamente por LOS COPRODUCTORES o a través de terceros, mediante su fijación, reproducción, distribución, transformación, comunicación pública y puesta a disposición, en igual forma y modalidades de explotación que se reconoce a LOS COPRODUCTORES en el presente contrato sobre LAS OBRAS MUSICALES.

No obstante lo anterior, LOS COPRODUCTORES no podrá sincronizar LAS OBRAS MUSICALES objeto de este contrato con otras obras audiovisuales o publicitarias distintas de aquella para la que fueron creadas sin el consentimiento expreso del COMPOSITOR.

EL AUTOR cede a LOS COPRODUCTORES en exclusiva, con facultad de cesión a terceros en exclusiva, la facultad de explotar, por sí mismos o a través de terceros, LAS OBRAS MUSICALES objeto de este Contrato en ediciones musicales y fonográficas, en cualquier soporte y modalidad de explotación por el periodo máximo previsto en la legislación vigente, con un ámbito geográfico mundial y sin que por este concepto se derive ningún tipo de participación económica a favor de EL AUTOR.

Si en el plazo de 6 meses a partir del estreno de la película, LOS COPRODUCTORES, no hubiesen procedido, por sí mismos o a través de terceros, a la explotación de la banda sonora, el AUTOR podrá llevar a cabo dicha explotación aislada por sí mismo o a través de terceros interesados, respetando en todo momento los derechos de LOS COPRODUCTORES como propietarios del máster. LOS COPRODUCTORES se comprometen en dicho caso a proveer al AUTOR del material gráfico necesario para el arte final del producto, que podrá ser explotado en formato físico o a través de descargas digitales en tiendas on line de descarga legal. Los gastos derivados de esta puesta a disposición del material gráfico correrán a cargo del AUTOR.

La anterior cesión de derechos se realiza para todo el mundo y hasta el paso de LAS OBRAS MUSICALES a dominio público, e incluye los derechos de reproducción en vídeo, distribución mediante la puesta a disposición de videocopias, de la obra audiovisual que incorpore LAS OBRAS MUSICALES para su utilización en el ámbito doméstico, mediante venta, préstamo, alquiler y comunicación pública. La cesión de derechos de comunicación pública se entiende realizada para todos los actos relacionados en el artículo 20.2 del Real Decreto Legislativo 1/1996 por el que se aprueba el Texto Refundido de la Ley de Propiedad Intelectual.

5.3.- EL AUTOR obtendrá los derechos de explotación sobre las aportaciones de terceros que, en su caso, se incluyan en LAS OBRAS MUSICALES a fin de garantizar el ejercicio pacífico de los derechos que ceden en virtud de la presente Estipulación, dejando absolutamente indemne a LOS COPRODUCTORES ante cualquier reclamación, de cualquier índole que pudiera surgir a este respecto.

5.4.- LOS COPRODUCTORES adquieren igualmente la plena propiedad de los soportes originales en que se graben LAS OBRAS MUSICALES desarrollada por EL AUTOR sobre la base del presente contrato. Asimismo, LOS COPRODUCTORES podrán en cualquier medio explotar LAS OBRAS MUSICALES en publicidad, *merchandising* y promoción de LA OBRA.

5.5.- 5.5.- Quedan reservados derechos de remuneración sobre LAS OBRAS MUSICALES del AUTOR que son recaudados por la entidad de gestión correspondiente, y los derechos morales en los términos de la vigente Ley de Propiedad Intelectual. Todo ello, sin afectar a la cesión a LOS COPRODUCTORES de los derechos exclusivos de explotación de LAS OBRAS MUSICALES.

No se entienden cedidos por EL AUTOR los derechos morales incluidos en el artículo 14 de la Ley 1/1996, de Propiedad Intelectual, entre otros, los derechos de divulgación, paternidad, integridad, retirada y acceso al ejemplar único o raro de la obra. No se entenderán cedidos los derechos que la ley 1/1996, de Propiedad Intelectual, concede al AUTOR con carácter de irrenunciables, y que serán gestionados por la entidad de gestión colectiva a la que pertenezca EL AUTOR.

Sin perjuicio de lo anterior, por la cesión y ejercicio de los derechos patrimoniales de explotación objeto de este contrato, el AUTOR se reservará el contenido económico de los derechos de autor que se generen por la distribución en vídeo y en formato multimedia y por la comunicación pública de la obra que son gestionados a través de la Sociedad General de Autores y Editores según la normativa vigente y los contratos generales con las entidades de radiodifusión por lo que LOS COPRODUCTORES no tendrá que hacer en ningún caso desembolso económico alguno.

En cualquier caso, la reserva de derechos a favor del AUTOR no limita la facultad de LOS COPRODUCTORES para contratar con terceros, sin necesidad de autorización expresa del AUTOR, de acuerdo con lo dispuesto en el presente contrato.

#### **SEXTA.- UTILIZACIÓN O EXPLOTACIÓN DE LA MÚSICA.**

6.1. LOS COPRODUCTORES se reservan la facultad de utilizar o no, total o parcialmente, LAS OBRAS MUSICALES en LA OBRA en función de las necesidades de la producción y postproducción.

#### **SÉPTIMA.- CONDICIONES DEL ENCARGO.**

7.1.- EL AUTOR se compromete a realizar LAS OBRAS MUSICALES objeto del presente Contrato con sus propios medios y de forma diligente, atendiendo a las sugerencias de LOS COPRODUCTORES para la prestación de sus servicios. EL AUTOR asume la obligación de indemnizar a LOS COPRODUCTORES de cuantos daños y perjuicios pudieran ocasionarse a los mismos por el incumplimiento de las obligaciones que él asume en virtud del presente contrato y, en concreto, de las que se deriven de la entrega de LAS OBRAS MUSICALES fuera de los plazos establecidos por LOS COPRODUCTORES.

En concreto, EL AUTOR se encargará de la ejecución, dirección de la grabación y la entrega completa de los masters de LAS OBRAS MUSICALES que contengan la música compuesta.

En el supuesto de que LOS COPRODUCTORES se retrasen en el cumplimiento del calendario de pagos establecido en el apartado 3.1 y no se proceda a regular la situación en un periodo máximo de sesenta (60) días, LOS COPRODUCTORES no podrán usar LAS OBRAS MUSICALES hasta la completa satisfacción de los pagos establecidos al AUTOR.

7.2.- EL AUTOR será responsable ante LOS COPRODUCTORES del cumplimiento de cuantas obligaciones sean establecidas por la Ley para la contratación del personal que provea, especialmente, aquellas referentes a la Seguridad Social, Prevención de Riesgos Laborales, Seguridad e Higiene y las correspondientes en materia fiscal según la legislación vigente, así como de entregar copia a LOS COPRODUCTORES de cuanta documentación acreditativa de tales aspectos le sea requerida por ésta.

7.3.- EL AUTOR se hará cargo de recabar la necesaria cesión de los derechos de Propiedad Intelectual de cuantos participen en LAS OBRAS MUSICALES las composiciones objeto del presente Contrato, eximiendo a LOS COPRODUCTORES de cualquier responsabilidad al respecto a un posible incumplimiento de esta obligación.

7.4.- EL AUTOR se compromete a estar a disposición de LOS COPRODUCTORES para realizar, durante el periodo de producción y montaje de LA OBRA, el desarrollo, modificaciones o adaptaciones de LAS OBRAS MUSICALES que la propia producción exija hasta la terminación de LA OBRA.

Cuando por negativa injustificada del AUTOR, o por causa de fuerza mayor, éste no pueda completar sus aportaciones, LOS COPRODUCTORES quedarán facultados para utilizar las partes del trabajo ya realizadas hasta la total realización de LA OBRA en su versión definitiva.

7.5.- EL AUTOR se compromete a que la realización de la creación intelectual que se le encarga y que esta se acomode a las características de la obra audiovisual así como a las indicaciones que le haga el Director o LOS COPRODUCTORES en consideración a ellas y a los objetivos de la Producción. EL AUTOR se obliga a llevar a efecto en su composición las modificaciones o supresiones que LOS COPRODUCTORES le soliciten, siempre que éstas estén justificadas por las características de la obra audiovisual.

Si al ser sincronizada a la obra audiovisual la obra musical, se estimase oportuno por parte de LOS COPRODUCTORES efectuar una serie de modificaciones sobre la misma para su ajuste a la obra audiovisual, EL AUTOR se obliga a efectuar dichas modificaciones.

7.6.- LOS COPRODUCTORES no vienen obligados a utilizar la obra musical creada por EL AUTOR, de modo que, no obstante la entrega de materiales y haberse procedido al pago de las cantidades pactadas, podrá acordarse por aquella prescindir de la mencionada obra en todo o parte.

7.7.- EL AUTOR se obliga a entregar las composiciones musicales objeto del presente contrato en los plazos que razonablemente fijen LOS COPRODUCTORES, y, a más tardar dentro de los plazos señalados en la estipulación segunda.

LOS COPRODUCTORES deberán otorgar su aceptación expresa a cada una de las músicas entregadas por EL AUTOR en el plazo de veinte (20) días desde la recepción. Si en ese plazo LOS COPRODUCTORES manifiestan sus reservas, EL AUTOR deberá enmendar los defectos o modificar LAS OBRAS MUSICALES, siguiendo el criterio razonable de LOS COPRODUCTORES.

#### **OCTAVA. - RESPONSABILIDADES Y GARANTÍAS.**

8.1.- EL AUTOR se compromete a estar al día de sus cotizaciones al Régimen de Autónomos de la Seguridad Social, eximiendo expresamente a LOS COPRODUCTORES de toda responsabilidad ante cualquier reclamación derivada del incumplimiento por EL AUTOR de dichas obligaciones y garantizando a LOS COPRODUCTORES su completa indemnidad por esos conceptos. LOS COPRODUCTORES podrán exigir al AUTOR, en cualquier momento, la acreditación del cumplimiento de las obligaciones expuestas y, en concreto, el alta en el Régimen de Trabajadores Autónomos y el pago de las correspondientes cuotas.

A pesar de lo anteriormente expuesto, LOS COPRODUCTORES podrán retener de las facturas pendientes de pago del AUTOR las cantidades correspondientes, ante reclamaciones del fisco o de la Seguridad Social.

8.2.- EL AUTOR será único responsable ante LOS COPRODUCTORES, así como ante terceros, de cualquier incumplimiento relacionado con los dos párrafos precedentes, así como de las actividades llevadas a cabo por el personal que provea, eximiendo expresamente a LOS COPRODUCTORES de responder de cualquier daño que éstos puedan causar por culpa o negligencia, o reclamación en relación con los servicios que EL AUTOR pudiera encargar a éste.

8.3.- EL AUTOR se compromete a no utilizar de ningún modo obras actualmente protegidas, a excepción de aquellas cuyos derechos de transformación hayan sido adquiridos por LOS COPRODUCTORES y su adaptación constituya el objeto de su colaboración.

EL AUTOR responderá ante LOS COPRODUCTORES de la autoría y originalidad de las composiciones musicales fruto de su creación intelectual frente a cualquier reivindicación o reclamación extrajudicial que pueda presentarse por terceros, incluyéndose cualquier reclamación por plagio.

8.4.- EL AUTOR se compromete a efectuar la inscripción de LAS OBRAS MUSICALES objeto del presente Contrato en el Registro de Propiedad Intelectual y a entregar a LOS COPRODUCTORES la documentación correspondiente cuando la obtenga.

En este sentido, EL AUTOR manifiesta que no ha contraído ni contraerá compromisos o gravámenes de ningún tipo que atenten contra los derechos que corresponden a terceros.

No obstante, EL AUTOR protegerá y mantendrá indemne a LOS COPRODUCTORES contra toda reivindicación judicial o extrajudicial que tuviera relación con la legitimidad de la composición musical creada en virtud del presente acuerdo y/o con motivo de la cesión de los derechos objeto de este Contrato en las condiciones establecidas en el mismo.

8.5.- EL AUTOR deberá mantener indemne a LOS COPRODUCTORES por todos los conceptos previstos en esta estipulación, corriendo con todos los gastos de cualquier clase que se deriven del incumplimiento o cumplimiento defectuoso de las obligaciones así asumidas por EL AUTOR. En todo caso, si LOS COPRODUCTORES fuesen demandados y se viera obligada a personarse en el proceso, LOS COPRODUCTORES podrían repetir cualquier cantidad derivada de tal reivindicación (a título enunciativo, multas, indemnizaciones, gastos judiciales, honorarios de abogados y procuradores) al AUTOR, siempre que exista una resolución firme que condene a LOS COPRODUCTORES.

EL AUTOR se obliga a no realizar ningún acto susceptible de impedir o dificultar el pleno y pacífico ejercicio de los derechos de explotación cedidos a LOS COPRODUCTORES en virtud del presente Contrato.

#### **NOVENA.- DEDICACIÓN A LA OBRA Y PROMOCIÓN.**



9.1.- EL AUTOR declara que no ha contraído compromiso alguno anterior que le impida el cumplimiento de las obligaciones que a su cargo se establecen en las cláusulas del presente contrato, comprometiéndose, además, a no adquirir en un futuro obligaciones que le impidan el cumplimiento del mismo. Si EL AUTOR incumple este pacto, abonará a LOS COPRODUCTORES los daños y perjuicios ocasionados o que en su caso se le pudieran ocasionar.

9.2.- EL AUTOR se compromete a prestar toda su colaboración profesional para cualquier actividad relacionada con la promoción y lanzamiento publicitario de LA OBRA a la que sea convocado por LOS COPRODUCTORES, sin que ello dé lugar a ninguna clase de retribución complementaria. En todo caso los gastos de viajes y manutención en el caso de desplazamientos fuera de la ciudad de residencia del AUTOR correrán a cargo de LOS COPRODUCTORES siempre que LOS COPRODUCTORES acepten por escrito previamente este hecho en cada caso.

#### **DÉCIMA.- NOTIFICACIONES.**

10.1.- Toda notificación necesaria a los efectos del presente contrato, se hará de manera escrita y que conste de manera fehaciente a las direcciones que respectivamente constan en el encabezamiento del presente Contrato.

#### **UNDÉCIMA.- RESOLUCIÓN.**

11.1.- Por la suspensión/ resolución de los contratos que LOS COPRODUCTORES pueda mantener con terceras partes para la explotación de LA OBRA o por cambios en la política de producción, LOS COPRODUCTORES podrá suspender/ resolver el presente Contrato, sin que se derive por ello ninguna otra obligación para LOS COPRODUCTORES que la mera comunicación de dicha suspensión o extinción a EL AUTOR.

11.2.- El incumplimiento por una de las partes de alguna de las obligaciones que se asumen por este Contrato, facultará a la otra parte para resolverlo unilateralmente y exigir de la incumplidora la correspondiente indemnización por daños y perjuicios, salvo que el incumplimiento sea susceptible de subsanación, en cuyo caso, se enviará notificación escrita a la parte incumplidora, en la que se le comunicarán los detalles del incumplimiento y el requerimiento para que sea subsanado, pudiéndose en este último supuesto resolver el Contrato si el incumplimiento no queda subsanado en el plazo de siete (7) días naturales desde la recepción de la notificación.

11.3.- Cuando, por negativa injustificada del AUTOR o por cualquier otra causa que impidiera cumplir las obligaciones pactadas, éste no completara sus aportaciones LOS COPRODUCTORES podrán utilizar las partes de las composiciones musicales ya realizadas hasta ese momento por EL AUTOR para completar la banda sonora de LA OBRA con la colaboración de terceros hasta obtener una versión definitiva de LA OBRA sin necesidad de autorización expresa del AUTOR.

11.4.- Sin perjuicio de las causas legales, el incumplimiento del plazo de entrega estipulado u otra cualquiera de las obligaciones esenciales asumidas en el presente Contrato por parte del AUTOR serán causa de resolución del presente Contrato por parte de LOS COPRODUCTORES y facultará a LOS COPRODUCTORES a designar libremente otra persona para que realice dichas funciones en su sustitución.

11.5.- Asimismo, la falta de una calidad mínima en las composiciones y grabaciones realizadas, ponderada según el leal entender de LOS COPRODUCTORES y de acuerdo con los trabajos anteriormente realizados por EL AUTOR, facultará igualmente a LOS COPRODUCTORES para resolver el presente Contrato y utilizar las composiciones ya creadas para LA OBRA.

11.6.- La resolución del Contrato se llevará a cabo por parte de LOS COPRODUCTORES sin perjuicio de su derecho a reclamar adicionalmente la correspondiente indemnización por daños y perjuicios al AUTOR.

11.7.- Será causa de resolución del presente Contrato por parte del AUTOR, el incumplimiento de LOS COPRODUCTORES en relación con el pago de la remuneración pactada u otra cualquiera de las obligaciones asumidas en el presente Contrato.

#### **DUODÉCIMA.- TÍTULOS DE CRÉDITO.**

12.1.- En los títulos de crédito en los capítulos que forman LA OBRA, LOS COPRODUCTORES incluirán el nombre del COMPOSITOR en la misma forma y tiempo en pantalla al del guionista de la siguiente manera:

*"Música Original  
Luis Ivars"*

#### **DECIMOTERCERA.- CONFIDENCIALIDAD.**

13.1.- EL AUTOR se compromete a no comunicar a terceras personas información acerca del contenido del presente Contrato, y en general cualquier información relativa a documentos, negocios, cuentas, finanzas, transacciones, know how o cualquier otro aspecto relacionado con la actividad de LOS COPRODUCTORES sin su expresa autorización.

#### **DECIMOCUARTA.- VALIDEZ DEL CONTRATO**

14.1.- La nulidad o ineficacia de cualquiera de las estipulaciones del presente contrato no conllevará la nulidad o ineficacia del mismo ni la de aquellas estipulaciones que no se vean afectadas por los supuestos de nulidad o ineficacia sobrevenida, salvo que este hecho determine un desequilibrio sustancial de las prestaciones.

#### **DECIMOQUINTA.- ELEVACIÓN A PÚBLICO Y REGISTRO**

15.1.- El presente contrato podrá ser elevado a escritura pública, en cualquier momento, a petición de cualquiera de las partes contratantes o ser inscrito en cuantos registros sean necesarios, siendo los gastos derivados de dicha elevación a público por cuenta del solicitante.

#### **DECIMOSEXTA.- DATOS PERSONALES**

16.1. De conformidad con lo establecido en la Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos de Carácter Personal, EL AUTOR queda informado de que los datos personales que se recogen por el presente contrato serán objeto de tratamiento automatizado y serán incorporados a ficheros responsabilidad de LOS COPRODUCTORES con la finalidad de llevar a cabo la gestión y operatividad de la relación contractual y su utilización en futuros procesos de encargo, convocatoria o selección.

16.2. Se informa igualmente de que los titulares de los datos tendrán la posibilidad de ejercitar los derechos de acceso, rectificación, cancelación y oposición, dirigiéndose a LOS COPRODUCTORES, cuyos domicilios a efectos de notificaciones figura en el encabezamiento del presente contrato, siempre y cuando los mismos no sean necesarios para el mantenimiento y cumplimiento de la relación contractual y/o de las obligaciones derivadas de la misma.

#### **DECIMOSEPTIMA.- JURISDICCIÓN Y LEGISLACIÓN APLICABLE**

17.1.- El presente contrato se regirá, en todo caso, por lo establecido en la Legislación Española aplicable en la materia objeto del mismo.

17.2.- Para la resolución de las discrepancias pudieran surgir de la interpretación de las disposiciones de este contrato las partes, renunciando expresa e irrevocablemente a cualquier otro fuero que pudiera corresponderles en virtud de sus domicilios presentes o futuros, y acuerdan someterse a los Juzgados y Tribunales de VALENCIA Capital.

Y en prueba de conformidad con cuanto antecede y con voluntad de obligarse, las partes firman el presente documento en triplicado ejemplar en el lugar y fecha expresada en el encabezamiento.

EL AUTOR:

SOROLLA FILMS S.A.

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D. Luis Ivars (Hachelius SL)

D. Antonio Mansilla

VERTRAG

zwischen dem

Filmorchester [REDACTED]  
[REDACTED]

vertreten durch

[REDACTED]  
Vereinsvorsitzender und Intendant

- AUFTRAGGEBER -

und

[REDACTED]  
[REDACTED]

vertreten durch

[REDACTED]

- AUFTRAGNEHMER -

wird folgendes vereinbart:

Art der Verpflichtung:

[REDACTED]  
Komposition einer neuen Filmmusik für Sinfonieorchester (synchroneingerichtete Partitur) und Betreuung der Einspielung mit dem [REDACTED] Filmorchester [REDACTED]

Zeit/Datum:

1. Ablieferung der 1. Partiturohälfte bis zum [REDACTED]
2. Ablieferung der 2. Partiturohälfte bis zum [REDACTED]
3. 1. Produktion vom [REDACTED]
4. 2. Produktion vom [REDACTED]

Produktionsort:

Studio des [REDACTED] Filmorchester [REDACTED]  
[REDACTED]

Vergütung:

Der Auftraggeber zahlt dem Auftragnehmer pauschal ein Honorar von

[REDACTED] --DM

(in Worten: [REDACTED] Deutsche Mark)

Versteuerung erfolgt durch den Auftragnehmer in den USA

Fälligkeit  
der Vergütung:

1. Rate in Höhe von 50% des Gesamthonorars durch Überweisung nach Beendigung der ersten Produktionshälfte
2. Rate in Höhe von 50% des Gesamthonorars durch Überweisung nach Beendigung der zweiten Produktionshälfte



Besondere  
Vereinbarungen:

Der Auftraggeber garantiert und übernimmt folgende Leistungen:

1. die Kosten für zwei Hin- und Rückflüge (Los Angeles - Berlin), Business class.
2. entsprechendes Hotelzimmer
3. Bei jeder Aufführung des Films - im Fernsehen oder als Live-Aufführung - muß in der Namensnennung aufgeführt sein :

Musik: [REDACTED]

Rechtsübertragung:

Mit vollständiger Bezahlung zu den in diesem Vertrag aufgeführten Bedingungen überträgt [REDACTED] dem Filmorchester [REDACTED] e.V. ein nicht-exclusives, weltweites Synchronisationsrecht an der Musik und an der originalen Aufnahme der Musik, die der Komponist gemäß diesem Vertrag für die volle Vertragserfüllung (einschließlich möglicher Verlängerungen) geschrieben hat und die Gegenstand nur der Rechte ist, die von der Australian Performing Right Association Ltd. und vergleichbaren Vereinigungen und Körperschaften in anderen Ländern vertreten wird. [REDACTED] behält sich das Copyright und/oder andere Rechte an der Musik des Komponisten vor.

Zahlungsempfänger:

[REDACTED]

Sonstiges:

- a) Gerichtsstand ist, soweit zulässig für alle gegenwärtigen Ansprüche aus diesem Vertrag, Berlin.
- b) Dieser Vertrag enthält alle Vereinbarungen die über seinen Gegenstand getroffen wurden. Mündliche Nebenabreden bestehen nicht. Änderungen und Ergänzungen bedürfen der Schriftform. Dies gilt auch für den Verzicht dieses Formerfordernis.
- c) Die Unwirksamkeit von Teilen dieses Vertrages berührt die Wirksamkeit des Vertrages im übrigen nicht. Die Parteien verpflichten sich, an die Stelle des unwirksamen Teiles des Vertrages eine solche wirksame Bestimmung zu vereinbaren, die dem gewollten Zweck der Parteien am nächsten kommt.



Auftragnehmer



Auftraggeber

# CONTRAT DE COMMANDE D'UNE OEUVRE MUSICALE ENREGISTREE

## ENTRE LES SOUSSIGNES :

[REDACTED] S.A. au capital de [REDACTED], dont le siège social est situé [REDACTED] edex, immatriculée au Registre du Commerce et des sociétés sous le numéro [REDACTED], représentée par sa Directrice Générale Adjointe, Madame [REDACTED]

ci-après « LE PRODUCTEUR »

d'une part,

Et : [REDACTED]

ci-après « L'AUTEUR-COMPOSITEUR »

d'autre part,

## EN PRESENCE DE :

[REDACTED] au capital de [REDACTED] dont le siège social est situé [REDACTED] immatriculée au Registre du Commerce et des Sociétés de [REDACTED] sous le numéro [REDACTED] et représentée par son gérant, [REDACTED]

Ci-après « Le PRODUCTEUR DELEGUE »

## ETANT PREALABLEMENT EXPOSE CE QUI SUIVIT :

Le producteur envisage de produire le film intitulé « [REDACTED] » pour lequel il souhaite confier à l'Editeur le soin de produire et à l'Auteur-Compositeur le soin d'écrire et d'interpréter la musique originale.

## A CET EFFET IL A ETE CONVENU CE QUI SUIVIT :

### ARTICLE 1 – OBJET

Le Producteur commande au Producteur Délégué qui accepte :



- le soin de faire composer une musique originale destinée à illustrer l'œuvre audiovisuelle intitulée [REDACTED], réalisée par [REDACTED]. Cette musique est ci-après dénommée l'œuvre.
- l'écriture de l'œuvre et sa fixation sur support,
- la livraison de l'enregistrement définitif mixé de l'œuvre,
- l'interprétation de l'œuvre et/ou la direction de son enregistrement,

L'Editeur et l'Auteur-Compositeur cèdent au Producteur les droits afférents à l'exploitation de l'œuvre, tels que définis par le présent contrat.

## ARTICLE 2 – CARACTERISTIQUE DE LA COMMANDE

L'Editeur et l'Auteur-Compositeur s'engagent à ce que l'oeuvre musicale, objet des présentes soit conforme aux caractéristiques énoncées par le Producteur.

X La durée de l'œuvre fournie sera d'environ [REDACTED] le Producteur se réservant la faculté d'utiliser tout ou partie de l'œuvre en fonction des nécessités de la post-production et d'adjoindre éventuellement d'autres musiques.

L'éditeur et l'Auteur-Compositeur acceptent de procéder aux modifications qui lui seraient éventuellement demandées par le Producteur, compte tenu de la nature, de la destination de l'œuvre et des exigences des partenaires du Producteur.

## ARTICLE 3 – ENREGISTREMENT

X 3.1 en exécution du présent contrat, l'Editeur et l'Auteur-Compositeur s'engagent à fournir au Producteur au plus tard le [REDACTED], l'enregistrement définitif sur support [REDACTED] mixé de l'œuvre ou tout autre support en accord avec le PRODUCTEUR, conformément au calendrier de post-production suivant :

- \* Le [REDACTED] : remise des maquettes musique pour projection diffuseur
- \* Le [REDACTED] : remise de l'enregistrement définitif mixé au Producteur

Le Producteur disposera d'un délai de 5 jours à compter de la présentation par l'Editeur et l'Auteur-Compositeur de l'enregistrement (maquette et/ou musique définitive mixée) pour le refuser, l'accepter ou demander des modifications.

L'Editeur et l'Auteur-Compositeur disposeront d'un délai de 3 jours à compter de cette demande pour remettre l'enregistrement sur support [REDACTED] modifié et mixé, et le Producteur d'un nouveau délai de 2 jours à compter de cette remise ou accepter ce nouvel enregistrement.

3.2 L'Auteur-Compositeur prendra en charge l'organisation de l'enregistrement, à savoir notamment le choix des interprètes (musiciens et chanteurs) et de l'ingénieur du son, et la réservation du studio.

L'Auteur-Compositeur prendra en charge les droits d'auteur, factures de studio et salaires musiciens ainsi que tout frais nécessaires à l'enregistrement.

Les frais d'enregistrement comprennent l'ensemble des dépenses concourant à la réalisation de la bande originale du film, notamment : musiciens, chef d'orchestre, location et transport des instruments et des musiciens, frais d'orchestration, fournitures techniques, location des studios d'enregistrement de l'œuvre, frais de séjour des artistes et des musiciens, charges sociales et fiscales accessoires, etc.

#### ARTICLE 4 – CESSION DES DROITS DE L'AUTEUR-COMPOSITEUR

4.1 Sous réserve de la cession des droits d'exploitation de l'œuvre à la SACEM, l'Editeur et l'Auteur-Compositeur cèdent au Producteur à titre non exclusif, pour le monde entier et pour la durée de protection du droit d'auteur qui commencera à courir le jour de la signature des présentes, les droits d'exploitations principales et secondaires ci-après définis :

Exploitations Principales (Droits audiovisuels) :

- Le droit d'enregistrer ou de faire enregistrer en tout ou partie de l'œuvre, sur tous supports audiovisuels en tous formats et par tous les procédés.
- Le droit de tirer de ces enregistrements autant de copies qu'il sera nécessaire pour l'exploitation de l'œuvre audiovisuelle, sur tous les supports, en tous formats.
- Le droit de mettre ou faire mettre en circulation ces originaux, doubles ou copies, pour la télédiffusion et les exploitations secondaires ci-après prévues.
- Le droit de représenter en tout ou partie l'œuvre audiovisuelle (tant en version originale qu'en version doublée ou sous-titrée) à laquelle sera incorporée l'œuvre, par télédiffusion quel que soit le mode d'exploitation utilisé (voie hertzienne terrestre, satellite, câble, vidéo...), par radiodiffusion, par représentation cinématographique, par réseau informatique via Internet, par vidéogramme (CD, CD-ROM, DVD, DVD-ROM) tant dans le secteur commercial que non commercial, public ou privé.

Exploitations secondaires :

- Le droit de représenter l'œuvre en tout ou partie, sur tous supports, en vue de la promotion de l'œuvre audiovisuelle
- Le droit de reproduire ou faire reproduire, sous quelque forme que ce soit, au nombre d'exemplaires qu'il jugera bon, l'œuvre sur vidéogrammes (la fixation de toute synchronisation d'images et de sons reproduisant l'(les) oeuvre(s), quel qu'en soit le support, pellicule optique ou magnétique, bande ou fil magnétique, support numérique et informatique, et quel qu'en soit le procédé), que le Producteur aura le droit de fabriquer ou de faire fabriquer, de vendre ou faire vendre sous telle rubrique, étiquette ou marque de son choix, dans le monde entier et pour tout usage privé ou exécution publique y compris la radiodiffusion, la télévision.



- Le Producteur et tout ayant cause aura la faculté de réaliser des doublages en langue étrangère de l'œuvre accompagnée de paroles incluses dans l'œuvre audiovisuelle, sous réserve de l'accord, conformément aux usages professionnels, des auteurs-compositeurs ou de leurs ayants-cause (éditeurs ou sous-éditeurs).

#### ARTICLE 5 – DROITS D'EXPLOITATION APPARTENANT A L'AUTEUR-COMPOSITEUR EN TANT QU'ARTISTE INTERPRETE ET/OU DIRECTEUR D'ORCHESTRE

Agissant en sa qualité d'Artiste-Interprète, et/ou Directeur d'Orchestre ayant dirigé les séances d'enregistrement de l'œuvre, l'Auteur-Compositeur autorise par l'effet des présentes, de façon non exclusive, le Producteur à fixer, reproduire et communiquer au public sa prestation enregistrée, dans les mêmes conditions d'étendue et de destination que celles fixées à l'article 4 ci-dessus. Cette autorisation est consentie pour la durée du droit voisin, ses prolongations et pour le monde entier.

#### ARTICLE 6 – REMUNERATION

6.1 – Le budget de production de l'œuvre mixage compris, a été établi d'un commun accord entre les parties et arrêté à un montant forfaitaire de : [REDACTED] euros) réparti comme suit :

[REDACTED]

Le budget de production comprend l'ensemble des dépenses concourant à la composition et à l'enregistrement de la musique originale du Téléfilm, notamment : la rémunération de l'Auteur Compositeur, la rémunération des musiciens et autres artistes-interprètes, les frais d'orchestration, d'enregistrement et de location des studios, les frais de déplacement et de séjour des artistes, des musiciens et les charges sociales.

6.2 L'Auteur-Compositeur percevra :

- Une rémunération qui sera versée directement par la SACEM ou par ses affiliés à raison de l'exécution publique ou de la reproduction de l'œuvre dans le monde entier.

6.3 L'Auteur-Compositeur percevra directement des Sociétés de gestion collective concernées, tant en sa qualité d'Auteur qu'en sa qualité d'Artiste interprète chef d'orchestre) la part des droits qui lui est reconnue par la législation française au titre de la rémunération pour copie privée des droits voisins.

Cette rémunération devra couvrir la totalité des besoins nécessaires à la réalisation de la musique originale du film [REDACTED] à savoir la commande d'écriture et l'ensemble des frais d'enregistrement.

#### ARTICLE 7 – GÉNÉRIQUE

Le nom de l'Auteur-Compositeur apparaîtra au générique de début sur carton seul dans des caractères choisis par le réalisateur et producteur, sous réserve de m'accord du diffuseur et de la façon suivante :

**Musique Originale**  
[REDACTED]

Editions : [REDACTED]

#### ARTICLE 8 – GARANTIE

L'Auteur-Compositeur s'engage à ce que l'œuvre qu'il composera soit entièrement originale et garantit le Producteur contre tout recours ou action qui pourrait être exercé contre ce dernier en raison de l'exploitation de son oeuvre.

L'Editeur garantit le Producteur contre tout recours de participants ou de tiers quels qu'ils soient.

#### ARTICLE 9 – CESSION

Le producteur aura la faculté d'associer tout tiers de son choix à l'exercice de ses droits, notamment dans le cadre d'accord de coproduction.

Il pourra également rétrocéder à tout tiers le bénéfice et les charges du présent contrat. Il en informera l'Auteur-Compositeur et l'Editeur par écrit.

Le Producteur devra imposer à tout cessionnaire le respect des obligations découlant de la présente convention.

Toutefois, l'Editeur et l'Auteur-Compositeur acceptent expressément que pour les besoins de l'exploitation de l'œuvre à l'étranger, l'œuvre soit utilisée en partie ou remplacée.

#### ARTICLE 10 – EDITION MUSICALE

L'Auteur-Compositeur signe simultanément aux présentes avec l'Editeur un contrat de cession et d'édition d'œuvre musicale qui confère à l'Editeur, dans les termes en usage dans la profession, le droit d'exploitation de l'œuvre musicale objet des présentes. A cet effet, l'Auteur-Compositeur fournira à l'Editeur tous les éléments musicaux (feuille de timbre dûment complétée, partitions, etc.), nécessaires aux formalités d'enregistrement auprès des sociétés d'auteurs.

L'éditeur se réserve le droit de céder une partie de ces droits à quelqu'un de son choix, il en informera le producteur et l'auteur Compositeur.

#### ARTICLE 11- CONDITIONS GENERALES

Le nom de l'Auteur-Compositeur devra figurer au générique début de l'œuvre audiovisuelle et devra être accompagnée de la mention « Musique Originale de [REDACTED]

Editions : [REDACTED]

» ou toute autre mention équivalente, accompagnée de la mention de l'Editeur original.

Le Producteur s'engage également à mentionner le nom de l'Auteur-Compositeur et/ou l'Editeur au recto de la pochette des éventuels programmes reproduisant l'œuvre.

L'Auteur-Compositeur autorise le Producteur à utiliser ses noms, photos éléments biographiques pour la publicité de l'œuvre audiovisuelle.

Dans l'hypothèse où il ne serait pas procédé en tout ou partie aux exploitations prévues par le présent contrat, l'Auteur-Compositeur et l'Editeur ne sauraient prétendre à de quelconques rémunérations ou indemnités autres que les sommes réglées en exécution des présentes.

#### ARTICLE 12-RESILIATION

Faute d'exécution par l'Auteur-Compositeur et/ou l'Editeur de l'une quelconque de ses obligations telles qu'elles résultent des présentes, le Producteur pourra, à son seul gré, après simple mise en demeure par Lettre recommandée AR restée sans effet dans les 8 jours de sa présentation, considérer le présent contrat comme purement et simplement résilié aux torts et griefs de l'Auteur-Compositeur et/ou l'Editeur sous réserve de tous dommages et intérêts complémentaires.

#### ARTICLE 13 – ATTRIBUTION DE JURIDICTION

Toutes contestations portant sur l'exécution du présent contrat seront réglées conformément aux lois françaises, les tribunaux de Paris étant seuls compétents.

Fait à [REDACTED] le [REDACTED] 2012

En trois exemplaires

Pour LE PRODUCTEUR

Pour L'EDITEUR

Pour L'AUTEUR-COMPOSITEUR

## PARTIES

(**'the Producer'**)

(**'the Contractor'**).

## INTRODUCTION

- A. The Producer is making a feature film provisionally entitled \_\_\_\_\_ ('the \_\_\_\_\_')
- B. The Contractor is exclusively entitled to the services of \_\_\_\_\_ ('the Composer') under a contract of service.
- C. The Producer wishes to engage the Contractor to perform (and to ensure the Composer performs) the Services upon the terms and conditions contained in this Agreement.

## IT IS AGREED

### 1. DEFINITIONS

In this Agreement, including the Introduction, unless the context otherwise requires:

**'Agreement'** means this agreement.

**'APRA'** means the Australasian Performing Right Association Limited.

**'Claim'** means any claim, action, suit, proceedings, cause of action, liability, cost, loss, damages, demand and judgment of whatever kind or nature incurred or suffered by or brought, made or recovered against any person at law or in equity or under any statute or otherwise.

**'Clearances'** means valid and binding consents and clearances in writing, in form and substance approved by the Producer, that the Producer deems necessary to enable the Producer and its assignees and licensees to exercise any of the Rights in accordance with this Agreement, including Musician's Releases signed by all musicians who perform the Original Music embodied on the Master.

**'Completion Agreement'** means any agreement(s) or deed(s) to be entered into by the Producer with the Completion Guarantor.

**'Completion Guarantor'** means \_\_\_\_\_ or any other replacement completion guarantor appointed for the Film.

**'Composer Recordings'** means the parts of the Master embodying the Original Music that are included in the Soundtrack Album.

**'Delivery Materials'** means:

- (a) rough 'demo' recordings of the Music for consideration by the Producer as and when reasonably required by the Producer;
- (b) the Master (if not pre-mixed, to be delivered by no later than a<sup>l</sup> \_\_\_\_\_ or, if pre-mixed, to be delivered by no later than a<sup>r</sup> \_\_\_\_\_). The Master must be on Digital Audio Tape / eight (8) track DA88 (or such files agreed), with time codes approved by the



The Master is to be a stereo mix, and with some elements discrete, or such other technical specifications as determined by the Producer in its sole discretion. Sessions to be at 48khz;

- (c) all the Clearances by no later than the start of the mix for the Film;
- (d) one (1) set of music cue sheets for the Music in a form approved by the Producer by no later than seven (7) days after completion the final mix for the Film;
- (e) if requested by the Producer, a version of the Master conforming in all respects to the requirements of the Producer for the purposes of delivery to the distributor or licensee of a Soundtrack Album by the dates required by the Producer.

'Fee' means the sum of (being for the Original Music and for Recording Costs) payable as follows:

- (a) 20% within five (5) business days of the date of signature by all the parties of this Agreement;
- (b) 40% on delivery of first set of rough 'demo' recordings;
- (c) 30% on delivery of the Master;
- (d) 10% on completion of the Services, including the delivery to and acceptance by the Producer of all other the Delivery Materials (including music cue sheets).

**'Film'** means the cinematograph film referred to in paragraph A of the Introduction and includes where the context admits all parts, prints, copies and versions whether differentiated by reediting, cutting, dubbing, sub-titling or otherwise and whether embodied in any article or thing now devised or hereafter devised including film in gauges, video-tape, video-cassette, video-disc, laser-disc and CD-ROM, DVD and the like and, except in clause 5, references to the Film includes reference to any advertisements, film clips, trailers and other promotions in connection with the Film (including 'in context' and 'out of context' and on film, television, radio and internet).

**'Final Music'** means the final original music for the Film (reproduced in the Film as delivered to the investors in the Film).

**Force Majeure** means the prevention or interruption of the production of the Film because of a fire, earthquake, flood, epidemic, accident, explosion, casualty, strike or labour stoppage or threat thereof, lockout, riot, civil disturbance, terrorist act, act of a public enemy, embargo, war, act of God, or death, disability or incapacity of a principal cast member or director of the Film, or failure or delay of any transportation agency, laboratory or any other furnisher of essential supplies, equipment or other facilities which such failure or delay is of no fault of Producer or is beyond Producer's control, or by any municipal, state or federal ordinance or law, by any legally constituted authority, whether municipal, state or federal, or by the issuance of any executive or judicial order or other event or cause of the nature of force majeure beyond Producer's or Completion Guarantor's control.

**'Letter of Inducement'** means the letter of inducement to be signed by the Composer annexed to this Agreement as Schedule 2.

**'Making-Of Film'** means any cinematograph film(s) about the making of the Film and/or any prequel, sequel, spin off and remake of the Film.



**'Master'** means each and all of the sound recordings or combination of sound recordings made/produced by the Contractor and the Composer embodying the Music and includes any and all of the results and proceeds of the performances embodied thereon and any and all parts, copies (including Records), versions and adaptations of any of the foregoing.

**'Music'** means the Original Music and the Selected Music.

**'Musician's Release'** means the document headed 'Musician's Release' in the form annexed to this Agreement as Schedule 1.

**'New Technology Rights'** means the exclusive right to use, store and reproduce digitally all or any part of the Film, the Original Music and any other works and subject matter created for the production of the Film with other works or subject matter by means of computer technology or any other technology now known or later brought into existence in any format and delivered through any platform or on-line service and whether or not interactively presented to a user in English or other languages.

**'Original Music'** means any and all of the musical works (including any associated literary works if applicable) written, composed or adapted by the Composer pursuant to this Agreement and otherwise in connection with the Film, and includes any and all cues, parts, copies, versions and adaptations of any of the foregoing.

**'Producer Recordings'** means the tracks that are owned or controlled by the Producer (including the Composer Recordings) which are included in the Soundtrack Album.

**'Producer Royalty'** means those royalties (including any advances) actually received by the Producer in respect of the Soundtrack Album which are attributable to the Producer Recordings, computed, reduced, pro rated and accounted for in the same manner in the agreements with any record company, licensee or distributor after deduction of any third party commissions, costs and expenses (including all recording costs and packaging deductions) incurred in connection with the production, manufacture and release of the Soundtrack Album.

**'Period of Engagement'** means the period of engagement of the Contractor as specified in clause 2.3 or until the date of termination of this Agreement, whichever period ends earlier.

**'Post-Production Schedule'** means the post-production schedule for the Film prepared by the Producer and approved by the financiers of the Film.

**'Records'** means any and all records, discs, tape, paper or other devices now known or hereafter devised in which sounds are embodied (including any and all audio visual devices) and includes any and all parts, copies and versions of any of the foregoing.

**'Recording Costs'** means any and all costs with respect to the performance of the Services (including the composition of the Original Music and the production, completion and delivery of the Delivery Materials), including any and all payments due to the Composer and costs of musicians, recording artists, conductors, arrangers, orchestrators and copyists (including payments to all the foregoing required to enable the Producer and its assignees and licensees to exercise any of the Rights without restriction in accordance with any applicable collective bargaining agreement), equipment hire, studio hire, tape, editing and other similar costs up to and including the 'final mix' of the production master and any other costs incurred in producing the Delivery Materials normally and customarily recognised as recording costs in the film and

**'Rights'** means the rights in respect of or related to the Music, the Master and such other rights granted (or purported to be granted) to the Producer pursuant to this Agreement.

**'Selected Music'** means any musical works (including any associated literary works if applicable) not written or composed by the Composer but selected and approved by the Producer for re-recording by the Contractor or the Composer and/or inclusion in the sound-track of the Film as notified to the Contractor or the Composer by the Producer.

**'Services'** means the services of the Composer as the composer for the Film, being all services customarily performed by a first class composer for a feature film within the Australian film and television industry, including:

- (a) writing, composing, arranging, orchestrating, amending, altering and adapting the Original Music as the Producer may require as feature and background music for synchronisation with the visual images of the Film as part of the sound-track of the Film and for inclusion in advertisements, film clips, trailers and other promotional material in connection with Film;
- (b) making and producing the Master:
  - to a duration required by the Producer, to be approximately forty (40) minutes;
  - (ii) where appropriate, providing the Composer's services as a musician and recording artist;
  - (iii) using third party musicians and recording artists selected by the Contractor in consultation with the Producer;
  - (iv) to a first class technical and commercial standard acceptable to the Producer for synchronisation with the visual images of the Film as part of the sound-track of the Film and do all things necessary for that purpose, including hiring first class recording studios and engaging all necessary studio personnel;
- (c) obtaining all the Clearances;
- (d) delivering all the Delivery Materials to the Producer by the applicable dates specified in the definition of 'Delivery Materials' in clause 1, compliance with each of those dates being of the essence of this Agreement;
- (e) if the Producer wishes to commercially release a Soundtrack Album and if required by the Producer, assisting in the preparation of the Soundtrack Album;
- (f) upon the Producer's reasonable request, attending all meetings concerning the Film including viewing various cuts of the Film;
- (g) at all reasonable times keeping the Producer informed as to the Composer's whereabouts; and
- (h) advising the Producer and keeping the Producer informed of all matters material to the performance of the Services of which the Contractor and the Composer shall become

**'Soundtrack Album'** means any and all sound recordings in any form now known or hereafter devised embodying the Music and/or the Master intended for sale to the public and references to the Soundtrack Album include references to any advertisements, film clips, videos, singles and other promotions in connection with the Soundtrack Album (including on film, television, radio and internet). For the avoidance of doubt, the Soundtrack Album may also embody other music/sound recordings.

**'Subsequent Film'** means any prequel, sequel, spin off and remake of the Film and any Making-Of Film and references to any Subsequent Film includes reference to any advertisements, film clips, trailers and other promotions in connection with the Subsequent Film (including 'in context' and 'out of context' and on film, television, radio and internet).

## 2. ENGAGEMENT

- 2.1 The Producer engages the Contractor to perform (and to ensure the Composer performs) the Services on the terms and conditions specified in this Agreement and the Contractor agrees to such engagement.
- 2.2 The Contractor must perform (and will ensure the Composer performs) the Services:
- (a) diligently, efficiently, conscientiously and professionally and in such a manner as the Producer may in its absolute discretion direct;
  - (b) to the best of the Composer's artistic and technical ability;
  - (c) in accordance with the Post-Production Schedule.
- 2.3 The Contractor must perform (and will ensure the Composer performs) the Services from until delivery to and acceptance by the Producer of all the Delivery Materials on a non-exclusive but first priority basis PROVIDED THAT the Contractor other engagements do not prevent or restrict the Contractor from fully performing all of the Contractor obligations pursuant to this Agreement.
- 2.4 The Contractor shall be solely responsible for the prompt payment of the Recording Costs when due and in no event shall the Producer be liable to pay the Recording Costs. If the Contractor incurs any costs or expenses while performing its obligations under this Agreement (including the Services) in excess of the Fee, the Contractor will be solely responsible for paying such costs.
- 2.5 No purported delivery of any part of the Delivery Materials will be effective unless they are complete in substance and in a form that complies with the provisions of this Agreement.

## 3. REMUNERATION

- 3.1 Subject to this Agreement and to the Contractor duly performing all of its material obligations pursuant to this Agreement, including the due performance of the Services, as inclusive remuneration and as full, equitable and adequate consideration for all Services performed and Rights granted by the Contractor, including in respect of the Composer, the Producer agrees to pay to the Contractor the Fee in the instalments specified in the definition of 'Fee' in clause 1.

3.2 If the Producer requires more than 5 cues from the Composer (Additional Cues') the Producer agrees to pay to the Contractor:

- (a) the sum of for the composition of each additional cue (Additional Cue(s)'); and
- (b) the total sum of in respect of the Recording Costs for the Additional Cue(s), (Additional Cue Fee'), provided that the Additional Cue Fee shall not exceed

The Additional Cue Fee shall be payable on delivery of the Master and all references to 'Fee' in this clause 3 shall include the Additional Cue Fee.

3.3 The Contractor agrees that the Fee is sufficient for the full performance of all of the Contractor's obligations pursuant to this Agreement (including the Services), including payment of all the Recording Costs.

3.4 The Contractor agrees that the Fee is all-inclusive fee (including inclusive of the Recording Costs) and includes a prepayment of the equitable remuneration that the Contractor and the Composer may be entitled to arising from any rental and/or lending rights in any media throughout the world.

3.5 If the Producer releases a Soundtrack Album, the Contractor shall be entitled to:

- (a) a music producer royalty equal to a pro rata share of fifty percent (50%) of the Producer Royalty pro-rated according to the number of Composer Recordings on the Soundtrack Album bears to the total number of Producer Recordings on the Soundtrack Album;
- (b) a mechanical royalty with respect to the Original Music embodied in the version of the Soundtrack Album commercially released calculated at the prevailing industry rate in the applicable territory at the time of the manufacture of the Soundtrack Album.

The Producer will use its reasonable endeavours to procure the record company distributing the Soundtrack Album to account directly to the Contractor in respect of the payment of the royalties specified in this clause 3.5.

3.6 The Contractor must deliver to the Producer all invoices and other accounting records concerning the Recording Costs, promptly upon the Producer's request.

3.7 The Producer will not be entitled to any licence fees collected by APRA and paid to the Contractor and the Composer in respect of the Original Music.

#### **4. OTHER BENEFITS**

4.1 If the Composer assists the Producer in the preparation of the Soundtrack Album, the Producer will pay the pre-approved out-of-pocket expenses incurred by the Contractor or the Composer.

4.2 The Producer shall supply to the Contractor, within a reasonable time following the completion of the Film, one (1) DVD copy of the Film for the Composer's personal portfolio use only.

## 5. CREDIT

5.1 Subject to this Agreement and to the Contractor and the Composer performing all of the Services pursuant to this Agreement to the reasonable satisfaction of the Producer and subject also to a substantial use of the Original Music being made in the soundtrack of the theatrical release version of the Film, if the Film is made the Producer shall, unless otherwise agreed by the Composer, accord the following credit to the Composer on all negative and positive copies of the theatrical release version of the Film delivered by the Producer to distributors and broadcasters appearing in a position and a size and style of lettering as determined by the Producer (in its sole discretion):

« 'Original Music by \_\_\_\_\_ » ('the Composer's Credit')

5.2 The Producer shall not be liable for the neglect or default of any distributor or broadcaster of the Film to accord the Composer credit in accordance with this Agreement where the Producer has correctly notified the distributor or broadcaster of the credit to which the Composer is entitled.

5.3 No casual or inadvertent failure to accord the Composer credit in accordance with this Agreement shall constitute a breach by the Producer of this Agreement.

5.4 If the Composer is not the sole composer of the Final Music, the Composer shall not, unless the Producer otherwise determines, be entitled to the Composer's Credit but rather may be entitled to a shared credit with other composers who contribute to the Final Music as determined by the Producer in its sole discretion following consultation with the Composer.

## 6. RIGHTS

6.1 The Contractor irrevocably grants to the Producer the following sole and exclusive licence in and to the Original Music throughout the universe in perpetuity (subject to any prior rights in the Original Music held by APRA):

- (a) to do any act or omission in relation to the Original Music of any kind or extent in the course of and for the purpose of:
  - (i) making the Film and/or any Soundtrack Album in any manner and by any means (including making any versions of the Film in any language) and in generally exercising the Rights, including recording, synchronising, interpolating, reproducing, adapting, translating, changing, arranging, rearranging, revising, altering, adding to and subtracting from the Original Music (and to combine same with other works, sound recordings or cinematograph films at the Producer's discretion);
  - (ii) marketing and otherwise exploiting the Film and/or any Soundtrack Album in any manner and in any and all formats and media now known or hereafter devised, including performing, broadcasting, transmitting, communicating, distributing, marketing and otherwise exploiting the Film and/or any Soundtrack Album;
- (b) to use footage of the Film incorporating the Original Music (Footage') in any other cinematograph film(s) and to exploit the Footage by means of those other cinematograph film(s) in any and all formats and media whether now known or hereafter devised;



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- (d) to exploit the Original Music by exercising the so called 'merchandising rights' in respect of the Film in any and all media whether now known or hereafter devised;
- (e) to authorise any other person(s) to do any of the acts or exercise any of the other Rights described in this clause 6.1.
- 6.2 For the purposes of clause 6.1, any reference to 'the Film' includes any Subsequent Film.
- 6.3 Subject to any prior rights in the Original Music held by APRA, the Contractor is and will be the sole owner of the copyright in the Original Music. Any rights in the Original Music other than the Rights remain vested in the Contractor.
- 6.4 The Producer acknowledges that, if APRA holds any rights in the Original Music, then third parties (including cinemas and broadcasters of the Film) exercising those rights must obtain an appropriate licence from APRA. However, the Contractor agrees that the Producer shall not be liable for the neglect or default of any such third party to obtain such licence from APRA.
- 6.5 The Producer is and shall be the sole and exclusive legal and beneficial owner throughout the universe in perpetuity of all right, title and interest of every kind and nature (including present and future copyright and any other rights now known or hereafter devised) in and to the Master in any and all formats and media now known or hereafter devised absolutely. Without limitation to the foregoing sentence, to the extent that any right, title and interest (including present and future copyright any other rights now known or hereafter devised) in and to the Master may remain vested in the Contractor, the Contractor irrevocably assigns to the Producer all such right, title and interest (including present and future copyright and any other rights now known or hereafter devised) throughout the universe in perpetuity in any and all formats and media now known or hereafter devised without reservation, condition or limitation. The Master shall constitute a work specially ordered or commissioned by the Producer and shall be deemed a 'work made for hire' for the purposes of the copyright laws of the United States of America.
- 6.6 The Contractor irrevocably grants to the Producer the right to use and publish the name, likeness (including the right to photograph and film the Composer and record the Composer's voice) and biography of the Composer in connection with the exploitation, publicity and advertising of the Film, any Soundtrack Album and any exercise of any of the Rights throughout the universe in perpetuity in any and all formats and media now known or hereafter devised and in connection with the corporate and promotion purposes of any investors, financiers and licensees of the Film PROVIDED THAT nothing contained in this clause shall permit the Producer to hold out the Composer as directly endorsing any other product or service.
- 6.7 The Contractor must not (and will ensure that the Composer does not) do, or authorise others to do, any act or omission in relation to the Original Music of any kind or extent without first obtaining the Producer's prior written approval other than by means of a statutory or compulsory licence available pursuant to any laws in any jurisdiction. Without limitation to the foregoing sentence, the Composer must not (and will ensure that the Composer does not) use, licence or otherwise authorise the use of the Original Music in any manner (including reproduction in or synchronisation with any audio-only or audio-visual works, recordings or films (including in any television program, documentary, advertisement or any other form of film) without first obtaining the Producer's prior written approval.

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## 7. WARRANTIES AND INDEMNITY

- 7.1 The Contractor warrants, represents and undertakes to the Producer that (subject to any prior rights in the Original Music held by APRA):
- (a) the Contractor has the full right, power and authority to enter into this Agreement, to grant and assign the Rights to the Producer and to perform (and to procure the Composer to perform) the Services for the Period of Engagement and that no other person's approval or consent is required to give full effect to the terms of this Agreement;
  - (b) the Contractor is not and will not (and will ensure that the Composer will not) be under any obligation or disability which may prevent or restrict the Contractor from fully performing all of the Contractor obligations pursuant to this Agreement;
  - (c) the Composer is and will be the sole author and creator of the Music and the Contractor is and will be the sole maker and producer of the Master and no other person has or will make any contribution to the Music or the Master;
  - (d) the Music and the Master are and will be original in the Composer and have not and will not be copied, adapted or otherwise taken from any other literary, dramatic, musical or other material of any kind, nature or description;
  - (e) all rights of any kind (including copyright) in the Original Music and the other Rights are vested in the Contractor free from encumbrances;
  - (f) the Contractor is the sole and exclusive legal and beneficial owner of all rights (including copyright) in the Original Music and of the other Rights;
  - (g) any exercise of any of the rights of any kind or nature (including copyright) in the Original Music, the Master and any of the other Rights by the Producer and its assignees and licensees will not infringe, violate or breach any rights of any third party;
  - (h) the Contractor and the Composer have not and will not grant, assign, license or otherwise dispose of or encumber any of the rights of any kind or nature (including copyright) in the Original Music, the Master or any of the other Rights in whole or in part in any manner without first obtaining the Producer's prior written approval;
  - (i) the Composer was, and the Contractor will ensure that the Composer will remain, and will remain an Australian citizen and resident during the Period of Engagement and that the Contractor was incorporated in Australia and is and will be owned (directly and indirectly) by persons who are Australian citizens and residents during the Period of Engagement;
- (i) there are no agreements or understandings, whether oral or in writing:
- in relation to the Original Music, the Master or the Rights except the Contractor's agreement with APRA; or
  - (ii) which conflict with the terms of this Agreement or which in any way conflict with, diminish or impair any of the Rights in whole or in part;

- (k) the Contractor will not (and will ensure that the Composer does not) order goods or incur any liability on behalf of the Producer nor pledge the credit of the Producer without the prior written consent of the Producer;
- (l) any exercise of any of the Rights by the Producer and its assignees and licensees will not require any further payment to any third party (including any musician, recording artist or performer) of any royalty, residual or otherwise;
- (m) the Contractor will procure the Composer to sign and date the Letter of Inducement at the same time the Contractor signs this Agreement;
- (n) the employment relationship between the Contractor and the Composer specified in paragraph B of the Introduction will continue during the Period of Engagement;
- (o) the Contractor is solely responsible for payment to the Composer for the Services and for all rights granted by the Composer (including future rental and/or lending amounts);
- (1<sup>0</sup>) the Contractor will effectively discharge all of its obligations (legal or otherwise) arising from the Contractor's engagement by the Producer as an independent contractor under this Agreement and as the Composer's employer including payment of overtime, superannuation and holiday pay and deducting and paying all taxes and payments (including payroll tax and PAYG) on the Composer's behalf and, promptly upon the Producer's request, the Contractor will provide the Producer with proof of such effective discharge to the satisfaction of the Producer;
- (q) the Contractor has and will maintain throughout the Period of Engagement, a valid and up-to-date Workers Compensation insurance policy in respect of the Composer and will promptly produce proof of the maintenance of such insurance upon demand by the Producer.

7.2 The warranties, representations and undertakings given by the Contractor in clauses 7.1(c) and (d) do not apply to any Selected Music approved by the Producer.

7.3 Each party (indemnifying Party) indemnifies and at all times will keep the other party, its officers, directors, shareholders, employees and agents (indemnified Party), indemnified from and against any and all Claims relating to or arising from any breach or non-performance by the Indemnifying Party of any clause of this Agreement. Despite the foregoing, the foregoing indemnity does not apply, in relation to an Indemnified Party, to any Claim settled without the Indemnifying Party's prior written consent.

## **8. TERMINATION**

8.1 The Producer shall, without prejudice to any of the Producer's other rights and remedies at law or in equity or otherwise, be entitled by notice in writing to the Contractor to terminate this Agreement (including the Services) if any of the following events occur:

- (a) following delivery of the rough 'demo' recordings of the Original Music, without giving any reason; or
- (b) the Contractor is in breach of its obligation to deliver each of the Delivery Materials to the Producer by the dates specified in the definition of 'Delivery Materials' in clause 1; or

- (c) without limitation to sub-paragraph (b) above, the Contractor is in breach of any term of this Agreement or wilfully refuses or unreasonably neglects to perform any of the its obligations pursuant to this Agreement (including any wilful refusal or unreasonable neglect by the Composer to perform the Services) except in inconsequential respects (Default') for a period of forty eight (48) hours following written notice from the Producer to remedy the Default; or
- (d) the Contractor is unable to perform any of its obligations pursuant to this Agreement for any reason (including incapacity, illness, injury, mental or physical disability of the Composer or other cause personal to the Composer) for a consecutive or aggregate period of seven (7) days; or
- (e) the production of the Film is delayed or interrupted by any event of Force Majeure for a consecutive or aggregate period of seven (7) days.

## 8.2 On termination of this Agreement:

- (a) the Producer shall only be required to pay the Contractor the remuneration due under this Agreement up to the date of termination;
- (b) all the rights of any kind and nature (including copyright) in the Master and all the other Rights remain vested in the Producer without reservation, conditions or limitation;
- (c) subject to clauses 10 and 12, each party will remain entitled to enforce any Claim against the other arising from any breach of this Agreement that may have occurred before termination;
- (d) the Contractor obligations under clauses 7 and 11 shall continue.

## 9. PROTECTION OF COPYRIGHT

The Contractor authorises the Producer in any country of the world to institute and prosecute any proceedings and to do any acts which the Producer deems expedient (at the Producer's expense) to protect the Film, the Master, any Soundtrack Album or any or all of the Rights and for the recovery of damages and penalties for any infringement and if necessary to use the names of the Contractor and the Composer for such purposes and the Contractor shall give (and will ensure that the Composer gives) the Producer all reasonable assistance (at the Producer's expense) in proving and defending the Film, the Master, any Soundtrack Album and any or all of the Rights.

## 10. REMEDIES

All of the Rights and other benefits and consents assigned and granted by the Contractor to the Producer under this Agreement are irrevocable and not subject to rescission, restraint or injunction under any circumstances. If there is any breach of this Agreement by the Producer, the sole remedy of the Contractor shall be an action at law for damages (if any) and in no event shall the Contractor have the right to injunctive relief or to enjoin or restrain or otherwise interfere with the making, promotion and exploitation of the Film, the Master, any Soundtrack Album or any exercise of any of the Rights by the Producer and its assignees and licensees.

## 11. CONFIDENTIALITY

Subject to clause 11.2, the Contractor must not (and will ensure that the Composer does not) make any statement or announcement or give or supply any information to any person relating to the affairs of the Producer, the terms and conditions of this Agreement, the Film, any Soundtrack Album, the Music, the Master and/or any exercise of any of the Rights by the Producer and its assignees and licensees.

11.2 The Contractor may reveal information:

- (a) if required by law;
- (b) to its solicitors or other professional advisers to obtain advice, where the information is given in confidence';
- (c) which is in or enters the public domain other through any breach of this Agreement; or
- (d) if the Contractor obtains the prior written consent of the Producer.

## 12. NO OBLIGATION

Despite any other provision of this Agreement, the Producer shall be under no obligation to use the Services or to include the Music and the Master in the Film or any Soundtrack Album or to make, promote, distribute or otherwise exploit in any manner the Film, any Soundtrack Album or to exercise, exploit or make any use of the Rights or to continue any of the foregoing if commenced and the Contractor releases and discharges (and has or will procure the Composer to release and discharge) the Producer from any and all claims and causes of action whatsoever by reason of the Producer's failure to use the Services or to include the Music and the Master in the Film or any Soundtrack Album or to make, promote, distribute or otherwise exploit the Film, any Soundtrack Album or to exercise, exploit or make any use of the Rights or to continue any of the foregoing if commenced, including any and all claims and causes of action in respect of any loss of publicity or opportunity to enhance the reputation of the Composer or the Contractor.

## 13. TAXATION

### 13.1 Goods and Services Tax

All payments made and any other consideration passing under this Agreement are exclusive of good and services tax ('GST'). Subject to the supply of a valid GST tax invoice, the recipient of a supply agrees to pay the supplier an amount equal to the GST payable on the value of the supply within 14 days of receipt of the valid GST tax invoice(s) delivered in accordance with this clause.

### 13.2 Other Taxes

The Producer is entitled to deduct and withhold from any consideration due to the Contractor any required payment or taxes as required by any applicable law (existing now or in the future). Without limitation to the foregoing, if the Contractor fails to provide the Producer with an invoice for payments due to the Contractor containing the Contractor Australian Business Number, the Producer will be required to withhold taxation payments as required under the *Tax Administration Act 1953*.



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**14. NOTICES**

Any notice under this Agreement:

- (a) will be in writing and signed by the sender;
- (b) will be addressed to the party at the address specified at the beginning of this Agreement (or the last subsequently notified address);
- (c) will be considered as given under this Agreement:
  - (i) in the case of hand delivery, when delivered to the recipient's address;
  - (ii) in the case of facsimile transmission, when recorded as having been sent on the transmission report unless the recipient notifies the sender within 24 hours that the transmission was incomplete or unreadable;
  - (iii) in the case of registered mail, on the 3<sup>rd</sup> day after the date of posting;

but, if delivery or receipt is after 4pm (on recipient's time) or not on a business day (in the state/place where it is received), the notice shall be considered as given on the next business day in the location of the recipient.

**15. INTERPRETATION**

In the interpretation of this Agreement, including the Introduction, unless the context requires otherwise:

- (a) clause headings will be disregarded;
- (b) words importing the singular include the plural and vice versa;
- (c) where a word or phrase is given a defined meaning, its other grammatical forms have a corresponding meaning;
- (d) the word 'person' includes a natural person, the estate of a natural person, a company, a government, statutory or other authority, an association or joint venture (incorporated or unincorporated), a partnership and a trust;
- (e) a reference to any person or to any party includes that person's or party's executors, administrators, successors or permitted assigns (including any person taking by way of novation);
- (f) references to any statute or statutory provision includes that statute and statutory provision as amended, extended, consolidated or replaced by subsequent legislation and any orders, regulations, instruments or other subordinate legislation made under the relevant statute;
- (g) references to any 'party', 'clause', 'schedule', 'term sheet', 'exhibit' or 'annexure' are references to a party, clause, schedule, term sheet, exhibit or annexure of or to this Agreement and a reference to this Agreement includes any and all schedules, term

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- (h) a reference to any document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
  - (l) as all parties have had the benefit of legal advice concerning this Agreement, no regard will be taken of the party responsible for drafting the Agreement;
  - (i) the word 'includes' in any form is not a word of limitation;
  - (k) a reference to dollars or \$ is a reference to Australian dollars unless the currency of another country is specified;
  - (l) an obligation or a liability assumed by, or a right conferred on, two or more parties binds or benefits all of them jointly and each of them severally;
  - (m) all warranties, representations and undertakings shall, during the term of this Agreement, have the force and effect of conditions;
  - (n) all warranties, representations and undertakings shall survive completion of this Agreement;
  - (o) words and expressions used in this Agreement that are defined in the Copyright Act 1968 (Cth) and that are not separately defined in this Agreement, have the same meanings as in that Act;

where the Contractor or the Composer is granted a right to participate in decision-making or a right of veto or consent or approval or consultation pursuant to this Agreement, this right shall:

- ( ) not be unreasonably withheld or delayed;
- (ii) cease upon termination of this Agreement; and
- (iii) be personal to that person and shall not be capable of assignment or transferral nor shall it be otherwise capable of exercise by any other person (including by that person's estate or agent).

## 16. FURTHER ASSURANCE

Each party will promptly do and perform (and the Contractor will ensure that the Composer does and performs) all further acts and execute and deliver all further documents required by law or reasonably requested by any other party to give effect to this Agreement and the transactions contemplated by it, including those documents the Producer reasonably deems necessary to vest in or confirm to the Producer all the Rights.

## 17. RELATIONSHIP

- 17.1 Nothing contained or implied in this Agreement makes a party the partner, agent or legal representative of another party for any purpose or creates any partnership, agency or trust, and no party has any authority to bind another party in any way, other than as set out in this Agreement.

17.2 The relationship between the Producer and the Contractor is that of principal and contractor, and nothing in this Agreement will be taken as constituting the Producer and any of the officers, directors, shareholders, employees and agents of the Contractor (including the Composer), as being in the relationship of master and servant or employer and employee.

## **18. RIGHT TO ASSIGN OR LICENCE**

The Producer may assign or license the benefits of this Agreement (in whole or in part) including the Services subject to remaining liable for its obligations under this Agreement. This Agreement is personal to the Contractor and cannot be assigned and/or licensed by the Contractor.

## **19. WHOLE AGREEMENT**

19.1 This Agreement comprises the entire agreement between the parties in relation to its subject matter and no earlier agreement, understanding or representation, whether oral or in writing, in relation to any matter dealt with in this Agreement will have any effect from the date of this Agreement.

19.2 This Agreement may only be amended in writing in a further document signed by the parties.

## **20. WAIVER**

20.1 The failure of any party at any time or times to require performance by any other party of any obligation under this Agreement will in no way affect the right of such party to require performance of that or any other obligation under this Agreement.

20.2 Any waiver by any party of any breach of this Agreement will not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself or a waiver of any other right under this Agreement.

20.3 Any waiver, approval or consent given by the Producer under this Agreement will only be effective and binding on the Producer if it is given or confirmed in writing by the Producer.

## **21. COUNTERPARTS**

21.1 This Agreement may be executed in any number of counterparts and by the parties on separate counterparts.

21.2 Each counterpart constitutes an original of this Agreement and together the counterparts constitute one agreement.

## **22. GOVERNING LAW**

22.1 This Agreement is governed by and will be construed in accordance with the laws of Victoria.

22.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this Agreement.

**23. SEVERANCE**

In the event of any clause or any part of a clause of this Agreement being invalid, illegal, unlawful or otherwise incapable of enforcement, that clause or part of a clause shall be deemed to be severed from this Agreement and to be of no force and effect. All other clauses and parts of clauses shall nevertheless prevail and shall remain in full force and effect and no clause or part of a clause shall be construed to be dependent on any other clause or part of a clause unless stated in this Agreement.

**24. COMPLETION GUARANTOR**

The Contractor's rights and powers under this Agreement (and the rights and powers of the Composer) shall be subordinate to the rights and powers of the Completion Guarantor and the terms of the Completion Agreement and the Contractor shall do (and will ensure that the Composer does) all things necessary to enable the Completion Guarantor to complete and deliver the Film.

**25. EFFECTIVE DATE**

By signing this Agreement in the spaces provided below, the parties accept and agree to all of the terms and conditions of this Agreement as of **(Effective Date)**.

**EXECUTED** as an agreement effective on the **Effective Date**

**SIGNED** for and on behalf of

by its authorised representative  
in the presence of:

Name *(please print)*

.....

.....

Witness

.....

.....

Name *(please print)*

**SIGNED** for and on behalf of

by its authorised representative  
in the presence of:

.....

.....

Witness

.....

Name *(please print)*

.....

Name *(please print)*

**SCHEDULE 1: MUSICIAN'S RELEASE**

[attached]



T O :

R E :

.....  
[Titles of song/music recorded]  
.....

I acknowledge receipt of payment in full in respect of my performing services ('Performance' which expression includes any parts and copies) on any and all sound recordings ('the Master' which expression includes any parts, copies, versions and adaptations) which you may (but are not obliged to) incorporate into the sound-track of the feature film provisionally entitled ..... ('the Film' which expression includes any parts, copies and versions and any trailers, co-promotions and advertisements in connection with the Film).

I confirm my authorisation of the initial recording of the Performance. I acknowledge that you are the sole legal and beneficial owner throughout the universe of all right, title and interest (including present and future copyright) in and to the Master and the Performance in any and all formats and media now known or hereafter devised absolutely and the Master and the Performance shall constitute a work specially ordered or commissioned by the Producer and shall be deemed a 'work made for hire' for the purposes of the copyright laws of the United States of America. Without limitation to the foregoing sentence, to the extent that any right, title and interest (including present and future copyright) in and to the Master and the Performance may remain vested in me, I assign to you all such right, title and interest (including present and future copyright) throughout the universe in perpetuity in any and all formats and media now known or hereafter devised. I agree that you are entitled to exploit the Master and/or the Performance throughout the universe in perpetuity in any and all formats and media now known or hereafter devised, including, without limitation, in any cinematograph film(s) (including the Film), records and other audio devices (including any singles or soundtrack album and any promotional film clips in connection with such singles or albums).

I waive all moral or other similar rights in respect of the Master and the Performance that I may be entitled to under the laws of any and all jurisdictions throughout the world in perpetuity. To the extent that the foregoing waiver is not enforceable in any such jurisdiction, I unconditionally and irrevocably consent, for the benefit of everyone throughout the world in perpetuity, to any past, present and future doing of any act or omission in relation to the Master and the Performance of any kind and extent (including the making of any material alterations to the Master and the Performance) in that jurisdiction. I acknowledge that you (and your licensees and assigns) have the right but not the obligation to use, adapt, edit, mix, add to, subtract from, arrange, re-arrange, revise and change the Master and the Performance and to combine the same with other performances and sound recordings of performances of other persons. I acknowledged you do not have any obligation to accord me a credit in respect of the Performance.

I confirm that I have no further claim for any record, royalties and any other payment in connection with any exploitation by you and your licensees and assigns of the Master and/or the Performance.

I represent and warrant that I am not party to any exclusive recording agreement and that I have the right to enter into and perform this agreement free of all third party claims.

SIGNED:

PRINT NAME:

ADDRESS/TELEPHONE:

DATE:

.....  
.....  
.....

**SCHEDULE 2: LETTER OF INDUCEMENT**

**[attached]**

As of the Effective Date

Attn:

Dear =

- COMPOSER

I refer to an agreement proposed to be entered into on or about the date of this letter agreement between (you' or 'your') and (the Contractor') pursuant to which the Contractor agrees to perform (and to ensure that I perform) the Services on the terms and conditions specified in the Agreement (the Agreement'). Unless otherwise stated, terms used in this letter agreement are as defined in the Agreement.

As a material inducement to you to enter into the Agreement and for other good and valuable consideration (the receipt and adequacy of which is acknowledged by me) and in consideration of your execution and delivery of the Agreement, I warrant, represent and undertake to you that:

I have previously entered into an agreement with the Contractor under which the Contractor is and will remain exclusively entitled to my services for at least the Period of Engagement (Employment Agreement').

2. I have read and understand the terms and effect of the Agreement and I consent to and ratify the execution and delivery by the Contractor to you of the Agreement.
3. The Contractor has the full right, power and authority to enter into the Agreement, to grant the Rights to you and to perform (and to procure me to perform) the Services in accordance with the terms of the Agreement and I confirm that I have previously granted to the Contractor under the Employment Agreement all of the Rights granted (or purported to be granted) to you under the Agreement.
4. I will fully perform all of the Services and discharge all of the obligations contained in the Agreement to be performed and discharged by me or which the Contractor has undertaken to procure me to perform and discharge and I guarantee to you the full performance by the Contractor of its obligations pursuant to the Agreement.
5. If any one or more of the following events occur: (a) the Contractor ceases to be entitled to my services; or (b) you are entitled to terminate the Agreement; or (c) the Contractor is wound up, dissolved or otherwise ceases to exist or for any other reason whatsoever fails, is unable, neglects or refuses to duly discharge its obligations under the Agreement, then I agree if required to do so by you to continue to perform the Services to you in all respects for the balance of the Period of Engagement as though I was a party to the Agreement in place of the Contractor and to enter into a further agreement on those terms set out in the Agreement as you (in your sole discretion) may reasonably require (but not in any event imposing any more onerous obligations on me in respect of the subject matter thereof).

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6. Unless I am substituted for the Contractor in accordance with paragraph 5 above, I will look solely to the Contractor for the remuneration for the Services performed under the Agreement and this letter agreement and for the reimbursement of any expenses incurred by me and not in any event to look to you for such remuneration or reimbursement or any part thereof. The termination, suspension or modification of the Employment Agreement will not operate to diminish my liability or obligations to you and notwithstanding any dispute which may arise between myself and the Contractor (including for any breach of the Employment Agreement by the Contractor), I undertake to continue to fulfil my obligations to you under the Agreement and this letter agreement for so long as you continue to fulfil your obligations to the Contractor pursuant to the Agreement.
  7. In the event of any breach or threatened breach of any obligation to be performed or discharged by the Contractor or me under the Agreement and/or this letter agreement, then you shall be entitled to legal and equitable relief against me without the necessity of first resorting to or exhausting any rights or remedies at law or in equity or otherwise which you may have against the Contractor.
  8. You are and shall be the sole and exclusive legal and beneficial owner throughout the universe in perpetuity of all right, title and interest of every kind and nature (including present and future copyright and any other rights now known or hereafter devised) in and to the Master in any and all formats and media now known or hereafter devised absolutely pursuant to the Agreement. To the extent that any right, title and interest of every kind and nature (including present and future copyright and any other rights now known or hereafter devised) in and to the Master may remain vested in me, I assign to you all such right, title and interest (including present and future copyright) throughout the universe in perpetuity in any and all formats and media now known or hereafter devised without reservation, condition or limitation. I irrevocably grant to you all of the rights, authorisations and consents that may be required at law or otherwise to enable you to fully exercise all of the rights of every kind and nature (including copyright) in the Original Music and the other Rights in the same manner and to the same extent as is granted (or purported to be granted) by the Contractor to you under the Agreement without restriction.
  9. I waive all moral or other similar rights in respect of the Original Music that I may be entitled to under the laws of any and all jurisdictions throughout the world in perpetuity. To the extent that the foregoing waiver is not enforceable in any such jurisdiction, I unconditionally and irrevocably consent, for the benefit of everyone throughout the world in perpetuity, to any past, present and future doing of any act or omission in relation to the Original Music of any kind and extent (including the making of any material alterations to the Original Music and by exercising any of the Rights) in that jurisdiction notwithstanding that such conduct may amount to derogatory treatment of the Original Music within the meaning of the Copyright Act 1968 (Cth).
  10. I waive all moral or other similar rights in respect of any of the Master that I may be entitled to under the laws of any and all jurisdictions throughout the world in perpetuity. To the extent that the foregoing waiver is not enforceable in any such jurisdiction, I unconditionally and irrevocably consent, for the benefit of everyone throughout the world in perpetuity, to any past, present and future doing of any act or omission in relation to the Master of any kind and extent (including the making of any material alterations to the Master and by exercising any of the Rights) in that jurisdiction notwithstanding that such conduct may amount to derogatory treatment of the Master within the meaning of the Copyright Act 1968 (Cth).
  11. I acknowledge that the statements, waivers and consents contained in this paragraph and in paragraphs 9 and 10 have been fully considered and given freely by me and have not been obtained by you as a result of any applied duress or any false or misleading statement to me.

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12. All of the rights and other benefits and consents assigned and granted by me to you under this letter agreement are irrevocable and not subject to rescission, restraint or injunction under any circumstances. If there is any breach of this letter agreement by you, my sole remedy shall be an action at law for damages (if any) and in no event shall I have the right to injunctive relief or to enjoin or restrain or otherwise interfere with the making, promotion and exploitation of the Film, the Master or any Soundtrack Album or any exercise of any of the rights granted by me under this letter agreement or the Rights by you and your assignees and licensees.
  13. All of the warranties, representations, undertakings and covenants given by the Contractor in the Agreement concerning me are true and correct and are deemed to have been given to you by the Contractor and I jointly and severally as though I was a party to the Agreement.
  14. I will promptly do and perform all further acts and execute and deliver all further documents required by law or reasonably requested by you to give effect to this letter agreement and the transactions contemplated by it.
  15. This letter agreement continues to operate despite the termination, for any reason, of the Agreement or the cessation, for any reason, of the Employment Agreement.
  16. This letter agreement shall be governed by the same rules of interpretation as set out in the Agreement. Clauses 11 — 25 of the Agreement shall apply to this letter agreement as if set out in full pursuant to the terms of this letter agreement.

Yours sincerely,

.....  
The Composer

Acknowledged and agreed for and on behalf of

.....  
Authorised Representative

# Composer's Agreement —

Parties

---

**MACLEAY WILLIAM**

LAW OFFICES

SYDNEY SUITE 2.07  
46A MACLEAY  
STREET POTTS POINT  
NSW 2011 TEL (+61 2)  
9326 0522 FAX (+61 2)  
9332 2095

MELBOURNE LEVEL  
8 91 WILLIAM  
STREET MELBOURNE  
VIC 3000 TEL (+61 3)  
9629 4144 FAX (+61 3)  
9620 0069



## COMPOSER AGREEMENT

THIS AGREEMENT is made the                    day of

BETWEEN:

AND:

### BACKGROUND

- A. The Producer is the producer of the Series.
- B. The Lender agrees to provide the services of the Composer to compose, arrange, and record the Music and produce the Master, on the terms set out in this Agreement.

### AGREEMENT

#### **1. DEFINITIONS**

##### **1.1** In this Agreement:

“AMCOS” means the Australasian Mechanical Copyright Owners Society Ltd;

“APRA” means the Australasian Performing Right Association Ltd;

“Composer” means

“Delivery Dates” means:

Ep 1:	10 June, 2011
Ep 2:	23 June, 2011
Ep 3:	4 July, 2011
Ep 4:	14 July, 2011
Ep 5:	27 July, 2011
Ep 6:	4 August, 2011
Ep 7:	16 August, 2011
Ep 8:	24 August, 2011
Ep 9:	1 September, 2011
Ep 10:	9 September, 2011
Ep 11:	19 September, 2011
Ep 12:	27 September, 2011
Ep 13:	6 October, 2011

“Episode” means each episode of the 13 part series being approx 44 minutes in duration (1 commercial hour).

“Fee” means a total of— comprising: per Episode = (original score) and per Episode (use of existing Opening and Closing Title Themes);

“Final Cut Delivery Dates” shall be the date that the Producer delivers each final cut episode to the Composer which dates shall be as follows:

Ep 1:	26 May, 2011
Ep 2:	9 June, 2011
Ep 3:	22 June, 2011
Ep 4:	1 July, 2011
Ep 5:	13 July, 2011
Ep 6:	26 July, 2011
Ep 7:	3 August, 2011
Ep 8:	15 August, 2011
Ep 9:	23 August, 2011
Ep 10:	31 August, 2011
Ep 11:	8 September, 2011
Ep 12:	16 September, 2011
Ep 13:	26 September, 2011

“Series” means the 13 x 1 hour television series entitled or any excerpt from, or edited version of, it;

“Soundtrack Album” means any record featuring the Master which is commercially released, including any soundtrack album or commercial or promotional single or compilation record released in association with the Series.

“Master” means any master sound recording of the Music, produced by the Composer;

“Music” means the musical works, inclusive of lyrics (if any), agreed between the Producer and the Lender, suitable for use in the soundtrack for each episode of the Series, in the opinion of the Producer; and

“PPCA” means the Phonographic Performance Company of Australia Ltd.

## **2. DELIVERY**

**2.1** Producer will deliver the final cut of each Episode to the Lender in accordance with the Final Cut Delivery Dates as defined.

**2.2** The Lender shall deliver to the Producer, on the Delivery Dates (time being of the essence):

- (a) the Music and the Master for each Episode, embodied on a disc, hard-drive or other form approved by Producer, of first class professional quality in suitable form for embodying on the soundtrack of the Series and for exploitation as incorporated in the Series, by any means and in any media now known or devised in the future;
- (b) a music cue sheet giving details of the duration of the Music in the Series; and
- (c) all Performer Clearances referred to in Clause 3(d).

**2.3** If a Soundtrack Record is to be released at a date to be determined, the Lender shall deliver to the Producer a fully sequenced and mastered soundtrack on such date as reasonably requested by the Producer.

### **3. OTHER OBLIGATIONS**

**3.1** The Lender will:

- (a) obtain the approval of Producer for major themes and their duration prior to the commencement of the production and recording of the Master;
- (b) ensure that the Composer complies with all reasonable directions and requests of Producer in relation to the Music and Master including without limitation directions and requests which relate to matters of artistic taste or judgment;
- (c) ensure that the Composer is present at and supervises the editing, mixing and dubbing of the Master on the soundtrack of the Series and comply with the reasonable directions of Producer in this regard including any changes or modifications to the Music or Master reasonably required by Producer. In this regard, Producer will give Composer the first option to make any changes but if Composer is not available or Producer finds the changes unacceptable Producer has the right to employ someone else to make the changes;
- (d) obtain clearances from all musicians who perform the Music which is recorded on the Master in the form attached to this Agreement as Annexure 'A' ('Performer Clearance'); and
- (e) upon signature of this Agreement, deliver an Inducement Letter executed by the Composer in the form attached to this Agreement as Annexure 'B'.

**3.2** The parties acknowledge that the pre-existing opening and closing title themes will be used in the Series, that these title themes will form part of the Music and the sound recording of these title themes will be a Master for the purposes of this Agreement. Payment for use of these title themes (both Music and Master) is incorporated in the Fee. Should the Producer request any substantial amendments to the title themes, an additional fee may be negotiated with the Lender in order that the Composer may make such amendments.

### **4. RECORDING COSTS**

**4.1** The Lender will be solely responsible for organising and doing all things necessary to make the Master including, without limitation, providing or hiring studio and recording facilities, all equipment, software and materials used for composition, sampling, recording, mixing, and engaging all necessary studio personnel, music editor, and musicians, music copying or part writing or orchestration, all local travel and attendance at all spotting sessions, recording sessions and mixing sessions, but excluding third party music clearances in

respect of any third party musical works or sound recordings incorporated in the Series at the direction of the Producer.

- 4.2** The Lender acknowledges that the Fee is sufficient and full payment to cover all of the costs set out in Clause 4.1, the provision of the Composer's non-exclusive services, the granting of all rights hereunder, and the costs of completing and delivering all the materials specified in paragraph 3. The Fee shall not include the cost of a full symphonic recording session.
- 4.3** The Lender shall be responsible for, and have approval over, the content of any Soundtrack Record, including selection and sequencing of tracks and overseeing the mastering of the Soundtrack Record and shall consult the Producer in all such matters. The Producer shall be responsible for direct third party costs to do with the compiling and mastering of the Soundtrack Record and all such costs must be approved in writing by the Producer prior to such costs being incurred, such approval not to be unreasonably withheld. The Producer will consult with the Lender in relation to the cover art, in inner sleeve artwork, and credits for any Soundtrack Record.

## **5. GRANT OF RIGHTS**

**5.1** In further consideration of the Fee, the Lender grants to the Producer an exclusive licence, throughout the Universe for the duration of copyright, subject to any prior rights vested in APRA and affiliated associations, the right:

- (a) to reproduce and edit the Music, and to incorporate the same in the soundtrack of the Series;
- (b) to do with the Music, by means of the Series, the following:
  - (i) broadcast the Series by means of free to air television, pay television, satellite television;
  - (ii) exhibit the Series in cinemas, theatres, institutions and other places of performance;
  - (iii) exhibit the Series in aeroplanes, trains, ships and any other form of transport;
  - (iv) transmit the Series or part thereof via the Internet, world wide web, online delivery and video-on-demand
  - (v) communicate the Series to the public;
  - (vi) combine the rights set out at 5.1(b) to 5.1(b)(v) in any manner;
  - (vii) make, sell, lease and hire copies of the Series, on video cassette, DVD, or any video disc which may be played back by the use of a playback device and which are intended for hire or sale to the public for home use; and

- (viii) exploit the Series by any and all media now known or hereafter devised
- (c) embody the Music in any and all audio-visual or audio only commercial advertisements and promotions or trailers for the Series and to cause such advertisements and trailers to be exhibited, broadcast, or transmitted, for the purpose of advertising and promoting the Series in all media now known or hereafter devised;
- (d) embody the Music in films about the production of Series (“making of films”) and to cause such making of films to be exhibited, broadcast, or transmitted in all media now known or hereafter devised;
- (e) embody the Music in any remake, sequel or spin off of the Series, provided that the Producer will pay the Lender:
  - (i) \$ per episode for further seasons, sequels, remakes or spin-offs of the Series, or format sales, where the title Music is used (provided that where such use is outside of Australia in a production with a budget that is greater than that of the Series, the payment will be increased commensurately, and further, that if Screentime negotiates a price for the title Music that is higher than this minimum fee the benefit (less 25% commission and 5% for expenses) will be passed on to the Lender); and
  - (ii) where incidental, underscore or other Music is re-used, a further fee will be negotiated in good faith, having regard to the production budget, but not to exceed a rate equivalent to use of AMCOS production music;
- (f) to record, reproduce and exploit the Music by means of any record, device or by any other means or method now known or devised in the future in the form of a Soundtrack Record, including without limitation, to manufacture, distribute, sell and advertise the Soundtrack Record by any means now known or devised in the future; to release the Soundtrack Record under any trade marks, trade names or label; to perform the Soundtrack Record publicly; and to broadcast, transmit or communicate the Soundtrack Record; provided the Lender shall have the right to produce, or to approve the content of, the Soundtrack Record, and subject to the payment of the Royalty set out in clause 6.3 below to the Lender.
- (g) to use the name, approved photograph, approved likeness and approved biographical details of the Composer in conjunction with the exploitation or promotion of the Music and/or the Composer in association with the Series;
- (f) sub-licence any or all the above rights in association with the Series to other parties; and

For the avoidance of doubt, any and all rights in the Music not specifically granted to the Producer hereunder are reserved by the Lender.

- 5.2 The Composer is a member of APRA and is entitled to register his interest as author of the Music and accordingly receive all royalties directly from APRA in respect of the public performance of his Music.
- 5.3 The Lender assigns all rights in the Master, including all copyright in the Master and all title to the disc or other audio format embodying the Master, to the Producer.
- 5.4 The Lender will deliver the Master to the Producer on or before the Delivery Dates.
- 5.5 For the avoidance of doubt, the Composer is entitled to register his interest for the performer's share for the public performance of the Master with PCCA, or similar collecting society and accordingly receive all royalties directly from PCCA, or similar, in respect of the performer's share of the public performance of the Master.
- 5.6 The Lender shall have the right to include excerpts of the Master on any "show reel" for the purposes of promoting the Composer's professional services, without payment to or approval from the Producer.
- 5.7 The Producer shall have the right, royalty-free, to incorporate the Music and Master in association with excerpts from the Series or with other visuals in any DVD, download-to own, or other audio-visual release of the Series but shall not incorporate the Music and/or Master as audio-only in any such releases without the express permission of the Lender.
- 5.8 The parties agree to negotiate in good faith should the Producer wish to use the Music in any way other than in, or in relation to, the Series (or any remake, sequel or spin off of the Series).

## **6. PAYMENT**

- 6.1 Subject to the due compliance by the Lender and the Composer with the terms of this Agreement (and the Inducement Letter) and in full consideration for the rights granted, licensed and/or assigned by the Lender to the Producer under this Agreement, the Producer will pay the Lender the Fee. The Fee will be payable as follows:
  - (a) on signing of the contract;
  - (b) on delivery and acceptance of Masters for Episode 1 to 3;
  - (c) on delivery and acceptance of Masters for Episode 4 to 6;
  - (d) on delivery and acceptance of Masters for Episode 7 to 9; and
  - (e) on delivery and acceptance of Masters for Episode 10 to 13
- 6.2 All amounts payable under this Agreement are exclusive of goods and services tax which shall be paid in addition to any amount specified as payable, but only on receipt of a valid tax invoice requesting such payment.



**6.3** If all or part of the Master of the Music is included in a Soundtrack Record, or if the Producer commercially exploits its rights in the Music and the Master on audio-only record (by the manufacture and sale of audio-only recordings including without limitation, vinyl records, CDs, tapes, digital downloads) then:

- (a) the Producer will pay or cause to be paid to the Lender (as applicable) an artist's royalty equal to thirteen percent (13%) and a producer's royalty equal to three percent (3%) of the PPD of full priced albums (Royalties);
- (b) the following will apply in respect of the calculation of the royalties payable to the Lender under paragraph 6.3 (a):
  - (i) royalties will be pro-rated according to the amount that the number of Masters bear to the total number of royalty-bearing tracks on the Soundtrack Record; and
  - (ii) the royalties payable to the Lender will be calculated, based, pro-rated, and reduced in the same manner as Producer's royalty is calculated, based, pro-rated and reduced in its agreements with any record company, licensee or distributor;
- (c) the Producer will pay the above amounts and account to the Lender in the same manner and on the same basis that it is paid and accounted to by the record company, licensee or distributor as the case may be. Each Royalty Statement will be accompanied by payment of the Royalties shown to be due to the Lender. The Producer will provide the Lender at the request with copies of relevant documentation to assist the Lender to obtain any tax credits available to it in respect of Withholding Taxes. For a period of three years after receipt of any payment by the Lender, the Lender may appoint an accountant or royalty examiner, on giving 30 days written notice to Producer (but not more than once per year) to audit the books of Producer during usual business hours but only insofar as those books relate to the receipt of income from the Masters of the Music and the calculation of amounts payable to Composer under this clause. If any examination reveals a shortfall between Royalties paid by Producer to the Lender and Royalties due to the Lender in excess of both 5% and \$1500, the Producer will pay the auditor's reasonable fees of the examination and pay the shortfall to the Lender.

**6.4** The inclusion of all or part of the Master in any other audio only release for sale to the Public, shall be subject to the mutual agreement of the Lender and the Producer, and the Royalties payable shall be as outlined in Clause 6.3.

## **7. CREDIT**

**7.1** The Producer will provide the Lender with an end-credit on the Series in accordance with standard industry practice, subject to network approval.

This credit shall be in the same form and in the same position as the other Heads of Department and read "Composer –

7.2 The Producer will use reasonable endeavours to obtain a credit for the Composer on the front cover of the first release of a Soundtrack Album.

7.3 The Producer shall use reasonable endeavours to procure that the distributors and broadcasters of the Series accord the Composer credit in accordance with this Agreement on all prints of the Series issued by them but the Producer shall not be liable for the neglect or default of any distributor or broadcaster provided that the Producer has notified the distributor or broadcaster of the credit to which the Composer is entitled. In the event of a failure by any distributor or broadcaster to accord credit to the Composer as aforesaid, the Producer shall use its reasonable endeavours to remedy such failure.

## **8. WARRANTIES**

8.1 The Lender warrants that:

- (a) the Music is the Composer's original work;
- (b) it owns all rights, including copyright, in the Master, and that the Master is free from all encumbrances, charges and debts;
- (c) neither the Music nor the Master infringes the rights of any third party, by way of any uncleared sample, or in any other way whatsoever;
- (d) no performances by any person other than the Composer have been incorporated in the Master except for those which may have been expressly pre-approved in writing by the Producer;
- (e) all rights (which are necessary for the Producer to enjoy the rights granted to it pursuant to Clause 5 unencumbered) in the Music and Master (including any performances by musicians or any contribution to the Music by other composers) have been cleared by the Composer at the Composer's own cost;
- (f) there are no restrictions that prevent the Composer from granting the rights under this Agreement, and that by granting the rights, it is not in any way violating the rights of any third party; and

the Lender agrees to indemnify the Producer against any breach of these warranties. The indemnities set out in this clause shall be limited to damages, losses, costs and expenses arising out of any claim which is adjudicated to final judgment by a court of competent jurisdiction or which is settled with the Lender's prior written consent.

## **8. TERMINATION**

8.1 A breach of this Agreement will not be a material breach giving the other party the right to terminate unless the innocent party has served written notice on the other party (such notice must be clearly headed "Breach of Agreement – Notice to Cure") specifying such breach and requiring the same to be remedied within five days and then that breach is not remedied within such period.

**9. GENERAL**

- 9.1** This Agreement constitutes the entire agreement between the parties relating to the matters set out in this Agreement and cannot be altered except in writing signed by both parties.
  
- 9.2** The Producer may assign this Agreement and/or any of its rights under this Agreement to any person in its sole discretion.
  
- 9.3** The indemnity contained in this Agreement is a continuing obligation and will survive the termination or conclusion of this Agreement.
  
- 9.4** No right under this agreement will be deemed to be waived except by notice in writing signed by both parties and no failure to enforce any clause of this Agreement, nor any forbearance, delay or indulgence granted by one party to the other will be construed as a waiver of that party's rights under this Agreement.
  
- 9.5** The remedies of the Lender and the Composer in respect of this Agreement are limited to the right to recover damages at law. Under no circumstances are the Lender and Composer entitled to seek an injunction against the Producer or any third party or to restrain the exploitation of the Series or the Soundtrack Album for Series or trailers and promotions for the Series.
  
- 9.6** The parties enter this Agreement as independent contractors and not as employer and employee, or in any other capacity.
  
- 9.7** This Agreement will be governed by and construed in accordance with the laws of New South Wales and the parties hereby submit to the jurisdiction of the courts of New South Wales.

EXECUTED as an agreement on the date first appearing.

SIGNED on behalf of \_\_\_\_\_ )  
 ) \_\_\_\_\_  
 ) Signature

in the presence of: \_\_\_\_\_ )

\_\_\_\_\_  
Witness

SIGNED on behalf of \_\_\_\_\_ )  
 ) \_\_\_\_\_  
 ) Signature

in the presence of: \_\_\_\_\_ )

\_\_\_\_\_  
Witness



ANNEXURE 'A'

PERFORMER'S AGREEMENT AND RELEASE

I, .....  
*[Name of Performer]*

of .....  
*[Address of Performer]*

in consideration of ('Producer') paying me the sum of, *[as minimum, \$1.00]* agree as follows:-

1. **I will provide** my services as a performer to the Producer for the recording session(s) conducted and organised by for and on behalf the Producer

on .....  
*[Date]*

at .....  
*[Place]*

or any extended or substituted sessions.

**I Assign** to the Producer all rights I may have in relation to master sound recordings of my performances made during the recording session referred to above ('Master') including without limitation all rights arising pursuant to Part XIA of the Copyright Act 1968.

**I Consent** to the recording of my performances being used for the production of the Master and to the use of the Master in all media and by any means now known or yet to be devised in perpetuity throughout the world including without limitation as part of the soundtrack of cinematograph films and on a soundtrack album and records.

**I Consent** to the Producer (and its successors in title, licensees, assignees and persons authorised by the Producer) doing any act or omitting to do any act comprised in any or all of my moral rights (including my rights of attribution of authorship and integrity of authorship), arising out of or in connection with the use, reproduction, synchronisation and performance of the Master and the use in any other manner and in any media now known or devised in the future, regardless of whether such conduct amounts to derogatory treatment.

**I Acknowledge** that the Producer (and the Producer's licensees and assigns) have the right but not the obligation to use, adapt, edit, mix, add to, subtract from, arrange, re-arrange, revise and change the Master or any part thereof and to combine the same with other performances and Master of performances of other persons.

**I Acknowledge** that the Producer is the sole owner of all rights in the Master and as the sole owner of such Master the Producer (and its licensees and assigns) are exclusively entitled to exploit the Master and to receive all the proceeds of such exploitation.

**SIGNED** by **THE PERFORMER** in the )  
presence of:- )  
 )  
 )  
 )  
 )

.....  
Signature

.....  
Signature of Witness

.....  
Print Name of Witness

.....  
Date



## **Inducement Letter**

**[Date]**

In consideration of, and as an inducement to, (“the Producer”) entering into the composers agreement relating to the film (“the Agreement”) with (“the Lender”), I hereby agree as follows:

1. I warrant that the Lender is exclusively entitled to provide my services and grant rights originating from me, as required under the Agreement. I agree to be bound by the terms of the Agreement (including, without limitations, any warranties made or any services to be provided or rights to be granted by me).
2. I acknowledge that, except where I am substituted as a party to the Agreement in accordance with Clause 4 below, the Lender will be solely liable to make all payments to me in consideration for the services provided and rights granted under the Agreement, and hereby release the Producer from any liability in this regard. The Lender will also be solely responsible for providing me with workers compensation insurance, making superannuation contributions on my behalf, deducting taxes from my remuneration and complying with all other obligations imposed on employers by law.
3. If the Lender fails to properly observe and perform any of its obligations or conditions under the Agreement, I will immediately ensure performance of such obligations or conditions.
4. If during the term of the Agreement, the Lender fails or is unable to make my services available, or in the event of the entry of the Lender into any scheme of arrangement, receivership, voluntary administration or liquidation, I may, at the option of the Producer, be substituted as contracting party to this Agreement in place of the Lender so that the Producer will have all the rights, privileges, advantages and benefits it would have had under this Agreement had I been the party to the Agreement responsible for those services and obligations from the date of execution.
5. I hereby indemnify the Producer from and against all actions, suits, claims, demands, losses, liabilities, damages, costs and expenses which may be made or brought against or suffered or incurred by the Producer as a result of breach by either myself or the Lender of our warranties or obligations under either the Agreement or this letter. The indemnities set out in this letter shall be limited to damages, losses, costs and expenses arising out of any claim which is adjudicated to final judgment by a court of competent jurisdiction or which is settled with the Lender’s prior written consent.
6. I unconditionally and irrevocably consent, for the benefit of the Producer and its licensees and assigns throughout the world, to the making of any material alterations to any of the results and proceeds of my services in connection with

the Series (including the Music and the Master) throughout the world without restriction. I will not make any claim that any action of the Producer is an infringement of any of my moral rights or similar rights.

Yours sincerely,

---

29 May 2013

THIS AGREEMENT made on 29 May 2013, between the British Broadcasting Corporation of Portland Place LONDON W1A 1AA (hereinafter referred to as the "BBC") of the one part and....., ( hereinafter referred to as "the Composer" ) of the other part

WHEREAS

- (i) BBC is contemplating the production of but does not undertake to produce a programme or series for transmission (or recording for the purposes of such transmission) primarily by means of but not limited to the terrestrial broadcasting whose preliminary title is set out in the Schedule hereto ("the Programme")
- (ii) BBC has asked the Composer to render to BBC services the descriptions of which are set out in the Schedule hereto and the Composer has agreed to render such services on the terms and conditions set out hereinafter

NOW IT IS HEREBY AGREED AS FOLLOWS

1. For the consideration set out in the Schedule ("the Consideration") the Composer agrees to render services as set out in the Schedule and grants to the BBC its successors, licensees and assigns
  - (i) the right to record the music contained in the Sound Master referred to in the Schedule and to transmit (or cause to transmit) and use the same primarily in connection with the Programme (and for ancillary promotions and publicity for (a) all BBC Public Services funded by Licence revenue as defined in the Royal Charter (b) world audiovisual/audio exploitation (including but not limited to standard and non-standard world television/radio uses and online exploitation of any kind) PROVIDED THAT in respect of inclusion on audio devices/videograms of any nature for world exploitation payment will be of royalties at the appropriate rate agreed by the BBC and Mechanical Copyright Protection Society Limited ("MCPS") for audio/video usage of music as may be in force at the time of distribution. For the avoidance of doubt, it has been agreed with MCPS that any videogram exploitation in respect of the territories of USA and Canada shall not attract the premium agreed between the BBC and MCPS in respect of existing music.
  - (ii) the right to transmit or cause to transmit and use any artist's work of realisation contained in the Sound Master for all rights and purposes throughout the world. Any artist performing on a conventional instrument or vocalist should be contracted under current BBC agreements with the relevant union as appropriate.
2. The Composer hereby warrants and undertakes:
  - (i) that the music contained in the Sound Master referred to in the Schedule will be new and original and will not infringe the copyright or any other rights vested in any other person firm or corporation.

- (ii) that the Composer will be the unencumbered owner of the copyright in the musical work referred to in the Schedule and hereby gives all necessary consents in connection with the performances of the musical work as contained in the Sound Master and will supply to the BBC a Sound Master free of any/all encumbrances. Composer further warrants and undertakes that he/she is free to enter this agreement and has the right to grant all the rights expressed to be granted herein
- (iii) that notwithstanding his responsibility for creating the Sound Master as referred to in the Schedule, BBC is the owner of the copyright in the Sound Master (and insofar as any assignment from the composer to the BBC may be necessary in this regard Composer agrees that such assignment is hereby made for the full period of copyright throughout the universe).
- (iv) that the Composer will be solely responsible for any payments in respect of hire of music studios or musical instruments and relevant studio personnel or payments for material that may be required in connection with the making of the Sound Master referred to in the Schedule. A maximum sum of £5,000.00 is set aside within the Consideration outlined herein for the costs associated with the use of studios (including for mixing), and is payable on provision of invoices. For the avoidance of doubt, any underspend on this sum is not payable to the Composer.
- (v) that the Composer will be solely responsible for any payments for any arranging and/or orchestrating and/or copying of the music in connection with the making of the sound Master referred to in the Schedule
- (vi) that the Composer will inform BBC Music Copyright of the details of musicians used in the recording of the Sound Master so that contracts may be issued by BBC and payments may be calculated and deducted from the Consideration herein provided. The Composer undertakes to supply names of all the musicians involved in recording sessions prior to release of final payment due on completion as outlined in the Consideration below.
- (vii) that no claims shall be made against the BBC by the Composer or any person firm or corporation deriving title from the Composer in respect of the hire (if any) of the music contained in the Sound Master referred to in the Schedule
- (viii) to indemnify and keep the BBC indemnified from and against all and any claims, costs, damages, expenses, actions suffered or incurred by BBC arising out of any breach of the above warranties

For the avoidance of doubt, it is acknowledged that the Composer shall remain the copyright owner of the musical work referred to in the Schedule and that the BBC obtains no interest in such copyright by reason of this agreement.

3. The Composer hereby waives all moral rights or so called droit moral which he/she may own in the original musical work referred to in the Schedule as the author including without limitation any rights under Sections 77 and 80 of the Copyright Designs and Patents Act 1988. (Where the signatory of this agreement is not the Composer the signatory hereby agrees to procure from the Composer the moral rights waiver described above which waiver shall be deliverable to the BBC in writing if so requested by the BBC). Notwithstanding the above moral rights waiver the BBC acknowledge that according to their normal practice the Composer shall be identified but any inadvertent failure by the BBC (or its licensees and assigns) to identify the Composer shall not be a breach of this agreement.
4. The Composer shall procure that if any insofar as the right to record the Music in timed relation to or in synchronisation with a film is vested in the Performing Rights Society ("PRS") by virtue of the Composer's membership of PRS then such right shall be licensed exclusively by the PRS to the BBC provided that prior to the theatrical exhibition of the Programme in the United States of America the BBC shall apply for or shall procure that its distributor shall apply to the PRS for a licence for such use and Composer agrees to procure that the PRS shall grant such a licence.
5. The BBC shall be at liberty to utilise the services of any other persons to compose, write, orchestrate, arrange or adapt any music for the Programme (or for any subsequent programmes that are derivative of the original Programme) and to include any pre-existing music and/or recording whether in addition to or in substitution for the musical work to be provided by the composer under this agreement.

#### THE SCHEDULE

##### THE PROGRAMME:

THE SERVICE: To provide a Sound Master (which expression shall mean a fully mixed recording of broadcast quality) of music as required in connection with the Programme which shall include original music provided by the Composer and performed by professional musicians the hire of whom shall be the Composer's responsibility. For the avoidance of doubt the hire of any music studios or musical instruments in connection with the Composer's provision of the services listed under this Schedule shall also be the responsibility of the Composer.

THE CONSIDERATION: £----- (excluding VAT) subject to full compliance by the Composer with the obligations described herein where (a) a sum of £----- is solely attributed to payments made separately via BBC Music Copyright for performance elements (including but not limited to multi-use buy-outs for musician sessions, fixing fees, portorage) and (b) a sum of £----- is solely attributed to costs associated with the use of external studios, and that (c) any other payments made by the BBC on behalf of the Composer, such payments being the responsibly of the Composer as described herein, shall be deducted.

For the avoidance of doubt, any savings made under (a) or (b) above shall not be payable to the Composer.

The fee of £----- (£----- minus musicians costs to be invoiced and paid via BBC Music Copyright) will be payable as follows:-

- (i) £----- payable upon signature of this agreement
- (ii) £----- payable on satisfactory completion of all the services hereunder, delivery to and acceptance of the Sound Master by the BBC, provide that should the payments as provided under (a) in the Consideration above exceed £----- the fee shall be reduced accordingly. Any underspend on the studio costs as outlined under (b) above shall be deducted from this final payment; similarly, in the event that any monies are paid separately by the BBC in respect of (c) above, these will also be deducted from this final payment. Final payment will only be released upon provision of a spreadsheet including names of musicians and studio invoices.

The BBC shall be entitled to vary/amend/cancel any of the above payments in the event that the Composer is unable to render any services under this contract for whatever reason.

Signed..... Dated .....  
By for and on behalf of the Composer

Signed.....Dated.....  
By for and on behalf of BBC



# **LETTER OF AGREEMENT**

BETWEEN: ----- **PRODUCTIONS LTD.**

hereinafter referred to as "the Producer"

AND: **Composer (name)**  
**(Address)**

hereinafter referred to as "the Composer"

In consideration of the mutual promises and conditions contained in this Agreement the Producer and the Composer agree as follows:

1. The Composer shall compose and record as an independent contractor, and not as an employee for hire, a musical score for a documentary television series titled "-----", and referred to in this Agreement as "the Program".
2. The Composer shall deliver a fully completed and mixed sound track recording, referred to in this Agreement as "the Recording" of the score.
3. The Composer grants the Producer and its successors and assigns the license throughout the world, in perpetuity, to synchronize the recording of the score in timed relation with the Program and with "trailers" for the promotion of the Program. This is a license to record with the Program only, and does not authorize the manufacturing or selling of mechanical contrivances capable of reproducing the score in whole or in part independently of the Program. Notwithstanding anything else contained herein, or in any agreement between the Composer and third parties, including any performance rights societies, this license includes the unlimited right to broadcast and exhibit in all media whatsoever and in all territories whatsoever, the Program, including all "trailers" from the promotion of the Program, as synchronized together with the score, and no further payment in connection with the score shall be required to be made by the Producer, its successors or assigns, or by distributors of the Program and their successors and assigns, other than as set forth herein.
4. The Composer shall deliver to the Producer a score of up to 60 minutes, on digital or magnetic tape on or before \_\_\_\_\_ for the final mix. If the Producer makes substantial changes in the scheduling, the Composer will guarantee best efforts to accommodate said schedule.
5. The Composer shall retain the copyright in the Score and in the Recording in whole or in part and either separate from the Program or as incorporated with the Program. In the event Composer wishes to produce a record production of the Score, Producer shall have first right of refusal for that eventual record production. The Composer waives all "moral" or analogous rights he may have in the Score and the Recording.
6. Subject to Paragraph #3 hereof, performance of the musical score either separately or as part of the sound track of the Program in whole or in part shall be subject to any rights assigned by the Composer of the score to the performing rights society of which he is a member. Furthermore, performance shall be subject to license by the performing rights society or any societies that may be affiliated with the society of which the Composer is member in accordance with the laws of the country in which the music may be performed, either separately or as part of the sound track of the Program.
7. Any changes to the score, including change of title, require the consent of the Composer, subject to the

Producer's right to rearrange segments of the score, as used in the Program, and to mix the score with other elements of the sound track of the Program.

8. The Composer consents to the use of the Composer's name and likeness in connection with the advertising and publicity of the Program.
9. The Composer undertakes, within reasonable limits, to rewrite the musical score and the instrumentation until the Producer is satisfied.
10. The Composer shall provide as necessary and pay for the following:
  - a) the services of an arranger
  - b) the services of an orchestrator
  - c) the services of musicians
  - d) the services of a copyist
  - e) the services of a conductor
  - f) the services of a recording engineer
  - g) the services of any other party necessary to aid in the production of the recorded version of the score
  - h) the cost of recording materials
  - i) the cost of recording studio facilities and services

The Composer shall not be responsible for costs of acquiring mechanical and/or synchronization rights for existing copyrighted music.

11. The Producer agrees to pay the Composer the total sum of -----, if applicable, payable as follows:
  - a) 50% on signing
  - b) 50% on delivery
12. The Composer warrants that:
  - a) he has full right and power to make this Agreement
  - b) the recording and the musical score that is embodied in the recording are the exclusive and original work of the Composer
  - c) there exists no adverse claim to the score or the recording of the score
  - d) the license granted by this Agreement does not violate the rules and regulations of any labour union or guild and that the license will not infringe the right of any person
  - e) the score has not been published or exploited in any form anywhere in the world.
13. The Composer shall indemnify and save harmless the Producer against all claims, suits, demands and liabilities of any kind or nature arising out of any aspect of this Agreement.
14. Upon release, if the Program contains the score as composed by the Composer, the Producer shall, at Producer's discretion, give credit on all videotape versions of the Program, which credit shall read substantially as follows:

Original Music



15. Composer agrees to provide the Producer with a complete and accurate cue sheet (as the term is

understood to mean in the industry) detailing the musical content and the duration of the music contained in the Program on delivery of the Recording.

16. Should the assignment stated in this Agreement be curtailed, postponed or cancelled, this Agreement may be terminated at once by the Producer, in which case payment to the Composer shall be made based upon the value of the score done as of the date of termination, which value shall be mutually agreed upon by the Composer and the Producer.
17. The proper law of this Agreement is the law of the Province of British Columbia and this Agreement shall be governed by and construed in accordance with the laws of the said Province and the courts of the said Province shall have exclusive jurisdiction over the subject matter of this Agreement.
18. The Composer shall execute, acknowledge and deliver to the Producer such further documents, instruments and assurances as the Producer may reasonably require in order to (a) convey to, vest in and secure in the name of the Producer all of the rights herein granted; and (b) confirm the waiver of all of the rights herein waived.
19. The Composer's rights and remedies in the event of any breach of this Agreement by the Producer shall be limited to remedies to recover monies due and in no event will the Composer be entitled to equitable or injunctive relief or to enjoin, restrain or interfere with the exhibition or distribution of the film.
20. This Agreement shall be binding upon the parties and their successors and assigns in interest and represents the entire understanding between both parties.

Dated this 1<sup>st</sup> day of September, 2013

---

Composer

---

Producer,  
----- Ltd.

**ANNEXURE B:  
GEMA's Royalty Rate Schedules**

# Royalty Rates Schedule VR-OD 4

**for the use of works in GEMA's repertoire in film- and video-on-demand services and products via download and/or streaming**

Net amounts plus value added tax at the statutory rate

## **I. Scope of Application**

The following royalty rates apply exclusively:

1. To the use of works and rights in GEMA's repertoire in the film- and video-on-demand range of products, which are downloads of film or video works as defined under Section II, Sub-section 3 by the end user via Internet services or mobile-based services. The term "download" refers to the permanent as well as the temporary storage of a film or video work on the end user's storage medium.
2. To film- and video-on-demand range of products, if and in so far as the service to be licensed offers film and video works that use GEMA's repertoire for downloads and for playback via a playback medium by the end user, without the end user being able to make a permanent copy (streaming). In terms of this royalty rate schedule, the term "streaming" also includes the possibility of making a temporary copy on the end user's storage medium, whereas the copy must be limited to thirty (30) days and also have a limited playback time of forty-eight (48) hours once the playback has been started.

The end user is the person who uses the fee-based or free-of-charge film- or video-on-demand range of products for personal use.

This rate does not apply in particular to music videos and unadulterated videos of live concerts that are not covered by Section II, Sub-section 3, g).

## **II. Royalties**

### **1. Royalty fee obligation**

A royalty fee becomes obligatory when:

- a) Music works in GEMA's repertoire are reproduced in databases, documentation servers, or similar storage media (e.g., servers).
- b) Music works in GEMA's repertoire are made available to the public.
- c) Music works in GEMA's repertoire are transmitted.
- d) A music work in GEMA's repertoire in a film or video work is downloaded by an end user.
- e) A subscription is purchased and the subscription offers downloads of film and video works that contain music works in GEMA's repertoire; a royalty fee becomes obligatory even if the end user has not performed a corresponding download of the film and video works.

## 2. Standard royalty fee and minimum royalty fee

The following royalty fee percentages for the use of works in GEMA's repertoire are in reference to the assessment criteria and exclude the statutory sales tax. The percentage rates and royalty rates take into account a flat rate and a previously prorated music percentage.

Nr.	Category	Download to own		Streaming	
		Standard royalty fee (in %)	Minimum royalty fee (in euros)	Standard royalty fee (in %)	Minimum royalty fee (in euros)
1	Feature film	3.15	00.165	2.6	00.055
2	Series (long) (per episode)	3.0	00.049	2.5	00.0235
3	Short film	3.12	00.021	2.6	00.008
4	Series / show / reality show (short) (per episode)	1.33	00.018	1.1	00.006
5	Show / reality show (long) (per episode)	1.75	00.075	1.5	00.025
6	Concert film / music formats (if it is series: per episode)	5.4	00.3135	4.5	00.1045
7	Documentary film / documentation (if it is a series: per episode)	2.1	00.0225	1.75	00.0087
8	Advice program, news coverage, news reports (if it is a series: per episode)	1.2	00.01	1.0	00.0022
9	Clips (if it is a series: per episode)	1.5	00.005	1.25	00.0011

## 3. Terminology

The categories of film and video works named under Section 2 are regardless of the country where the film and video works were produced and their original language version, and are defined in terms of this rate as follows:

- a) **Feature film:** a feature film or television film with a fictitious plot, or which simulates reality and serves to entertain. A feature film has a minimum running time of sixty (60) minutes. Animated films and children's films are included in the definition of "feature film." Typical examples are first-run feature films (cinema films), D2V ("direct-to-video"), MOTW ("movie of the week" / television films), and so-called mini-series, whereas for compensation purposes an individual film in a mini-series counts as one feature film (a mini-series consists of several television films, outlines a self-contained plot, and as a rule does not consist of more than twelve (12) individual films. The category "short film" applies when the running time is less than sixty (60) minutes.
- b) **Series (long):** a television program that consists of several individual program segments and is, in reference to this rate, exclusively a fictional program. The individual program segments are called episodes. The episodes form seasons, based on the annual or semi-annual premiere broadcasts of the new episodes. Accordingly, they are always a series format with a script and a director (so-called "scripted entertainment"). The "series (long)" has a minimum running time of forty (40) minutes and less than sixty (60) minutes. If the running time is less than forty (40) minutes, than the category "series (short)" applies, and if the running time is more than sixty (60) minutes the category "feature film" applies. The royalty fee is for an

individual episode. Typical examples for the category "series (long)" are comedy series, dramas, and animated programs.

- c) Short film: a short film is a feature film with a minimum running time of ten (10) minutes and a running time less than sixty (60) minutes.
- d) Series (short) / show (short) / reality show (short):
  - aa) The definition of a "series (short)" is the same as the definition of a "series (long)"; however, the running time in the category "series (short)" is at least ten (10) minutes but less than forty (40) minutes. The royalty fee is for an individual episode. Typical examples are sitcoms, soap operas, telenovelas, and animated programs.
  - bb) A "show (short)" is a television program that consists of several individual segments, seasons, and episodes, or consists of only one individual segment that does not have a continuation. As a rule, a presenter in front of an audience hosts the broadcast. The running time of a "show (short)" is at least ten (10) minutes and less than forty (40) minutes. The difference to a "series (short)" is that a "show (short)" is always a program without a script or stage directions (so-called "unscripted entertainment"). If the running time is longer, then the category "show (long)" applies. With a series, the royalty fee applies to each individual episode. Typical examples are game and talk shows.
  - cc) The definition of "show (short)" applies to the category "reality show (short)," whereupon the format attempts to portray reality with the participants. In addition, "scripted reality" formats are defined as "reality TV" (i.e., reality TV where a reality show is only simulated – the scenes are performed by amateur actors and actresses and they have a director, a so-called "docusoap"). The category "reality show (short)" has a minimum running time of ten (10) minutes and a running time less than forty (40) minutes. With a series, the royalty fee applies to each individual episode.
- e) Show (long) / reality show (long):
  - aa) For the category "show (long)," the definition of the category "show (short)" applies; however, the running time of "show (long)" is at least forty (40) minutes.
  - bb) The definition of the category "reality show (long)" is the same as the category "reality show (short)"; however, the minimum running time of the category "reality show (long)" is forty (40) minutes.
- f) Documentary film / documentation: a non-fictional film or a non-fictional episode in a series. The attempt is made to capture an actual event, whereas the circumstances as a rule are based on journalistic and/or scientific research. Fundamentally, no actors or actresses are involved and the sequences shown are commented on verbally. Interviews can be another part of the documentation. The minimum running time is ten (10) minutes. Typical examples are documentations from the areas of politics, history, lifestyle, nature, and the environment (films about animals or nature). With a series, the royalty fee applies to each individual episode.
- g) Concert film / music formats: a documentation, feature film, or show where the focus is on the music. The minimum running time is ten (10) minutes. With a series, the royalty fee applies to each individual episode. A concert film is to be differentiated from an unadulterated live recording of a concert, and features an editorial news report that goes beyond an



unadulterated playback. Depending upon the platform product, an unadulterated live recording of a concert is subject to the music-on-demand rates VR-OD 7 to 9.

h) Advice program, news coverage, news report:

The umbrella term "advice program, news coverage and news report" covers non-fictional and educational formats where the focus is on a solution to a certain problem and news reports and presentations that are reported directly. The formats can also be offered as a series. The minimum running time is ten (10) minutes. Typical themes for an advice program are consumer rights, finances, travel, automobiles, fashion, education, health, and family issues. Sports are a typical subject for news coverage / news reports. With a series, the royalty fee applies to each individual episode.

i) Clips: The umbrella term "clip" refers to fictional and non-fictional films, episodes in a series, and audio-visual sequences, which are shorter than ten (10) minutes. The category includes formats with and without a script or a director (scripted and unscripted entertainment). With a running time of ten (10) minutes or more, the respective appropriate next higher category applies. A clip is different from a music video; depending upon the platform product, the music-on-demand rates VR-OD 7 to 9 apply. Typical examples of clips are mobile television series, informational films, gossip reports and lifestyle reports.

If it is not possible in an individual case to clearly classify a format, then the royalty rate for the category that has the most similarities with that format applies.

#### **4. Assessment basis**

The assessment is based on all of the causally determined net earnings from the film and video use (gross earnings minus the value added tax), and is therefore in particular based on the following:

- The net end user price for the respective download and the subscription, i.e. the respective fee paid by the end user minus the sales tax. It is hereby clarified that the net end user price for a subscription is without any deductions and is independent of the number of downloads performed.
- Separately financed or calculated nonmonetary perquisites and services in return, such as, for example, transmission fees, and fees from advertising, sponsoring, barter transactions, compensation transactions, and gifts. This also applies to foreign income, as far as these involve the business operation of the licensing service in Germany.

#### **5. Pro Rata calculation / reporting**

- a) If the licensed service does not exclusively offer products that are found under the applications in the present range of rates, then this will be appropriately taken into account in accordance with Section 4. It is still possible that in this manner income deducted as part of the required licensing (if such a licensing is in fact required) of the remaining products offered by the licensing service covered by this rate can be included in the calculation.
- b) If film and video works contain music works for which GEMA does not administer the rights of use or administer a share of the rights of use and these music works are used as part of

the licensing service, this will be taken into account proportionately in the calculation of the royalty fee in accordance with the present terms.

- c) With regard to the extent of reporting, it is hereby clarified that the licensee shall not solely report the film and video work but report the music works that are in the film and video work, including all of the appropriate information on the authors.

### **III. General Terms and Conditions**

#### **1. Extent of the granting of rights**

- a) The granting of rights for the business operation of a licensing service is restricted to the right according to Paragraph 16 of the German Copyright Act (UrhG) to reproduce works in GEMA's repertoire, and the right according to Paragraph 19a of the German Copyright Act (UrhG) to make works in GEMA's repertoire available to the public. In this manner, as part of the business operation of the licensing service – providing that a legal licensing has taken place – the following can be done:
  - Works in GEMA's repertoire can be placed in databases, documentation systems, or in similar types of storage media (e.g., servers).
  - Works in GEMA's repertoire can be made available to the public.
  - Works in GEMA's repertoire can be saved as a download on an end device by an end user for the end user's personal use.
  - Works in GEMA's repertoire can be reproduced temporarily, without the possibility of storing them permanently, for the purpose of playing the work one time on the end user's playback device.
  - Works in GEMA's repertoire can be saved as a restricted copy on an end device for the end user's personal use.
- b) The granted rights of use cannot be transferred to a Third Party.
- c) The granted rights do not include other rights, in particular the right to adapt and the right to combine works in GEMA's repertoire with works from other genres, and it does not include the rights to the range of products of dramatico-musical works, either of a complete work or an excerpt of a work, or of larger segments (so-called "grand rights"), as well as the graphic rights, the musical notation rights, and the lyric rights.
- d) The moral rights of the author cannot be violated. Alterations to a music work in order to use it in a film- or video-on-demand product, in particular the abridgement of a work, must satisfy the contingent demands of Paragraphs 14 and 39 of the German Copyright Act (UrhG). In so far as the use of the works in GEMA's repertoire is done directly or indirectly for advertising purposes, the service provider of the licensing service must obtain in matters involving the moral rights of the author the corresponding permissions separately.

#### **2. Timely acquisition of the right of use**

The rights subject to the royalty rate are only considered to be granted if permission from GEMA is granted before use, in particular before works in GEMA's repertoire are placed in databases, documentation systems, or in similar types of storage media.

### **3. Rights of a Third Party**

The rights of a Third Party – for example, in the case of using scores for which royalties have been paid.– shall not be affected.

### **4. Territory validity**

This rate is valid for use and for corresponding products in Germany and for the German market.

### **5. Umbrella agreementt**

The members of organisations that have signed a joint contract with GEMA for the present royalty rates will be granted a joint contract rebate for the respective royalty rates after the hereunto relevant individual contract has been signed.

### **6. Validity Period**

The royalty rates are valid as of January 1, 2011.

**Note: In case of doubt regarding the meaning of the wording within the present document the respective German version of VR OD 4 shall be decisive.**

## **Royalty Rates Schedule VR-OD 7**

### **for the use of works from GEMA's repertoire for downloading single titles and albums as well as for limited subscriptions**

Net amounts plus value added tax at the statutory rate

#### **I. Scope of Application**

The following royalty rates apply exclusively to the use of works and rights in and to GEMA repertoire within the scope of Music-on-Demand offers, which involve the downloading of audio works of music and/or of music videos (in particular music video clips, concert recordings) – hereinafter collectively referred to as “musical works” – by the end user via internet-based or mobile services.

Downloading describes both the ultimate storage and the production of a restricted copy (tethered download) of a musical work on a storage medium of the end user. The copy is restricted in that playing is tied to a particular time. The end user is that person, who makes use of the Music-on-Demand offer for private purposes with or without a fee.

In particular streaming uses as well as ringtone melodies and dial tone background melodies shall be excluded from the scope of application of this Tariff.

#### **II. Royalties**

##### **1. Obligation to pay royalties**

The obligation to pay royalties is incurred:

- a) by the reproduction of musical works from GEMA's repertoire in databases, documentation servers or similar storage media (e.g. server computers),
- b) by making musical works from GEMA's repertoire available to the public,
- c) by transmitting musical works from GEMA's repertoire,
- d) by the actual call-down of a musical work from GEMA's repertoire by the end user or
- e) by the conclusion of a subscription, under which musical works are provided for calling

## **GEMA Tariff for the use of works from GEMA's repertoire for downloading single titles and albums as well as for limited subscriptions**

down, even if there has been no corresponding call-down of musical works by the end user.

### **2. Standard royalty for the downloading of single titles and albums**

The standard royalty amounts to 10.25 % of the computation basis.

Within the meaning of this Tariff, an "album" is defined as a compilation of any number of single titles, which is created by a record label itself or, if created by the licensee, was approved by a record label. Single titles compiled into bundles, playlists or the like by the end users themselves shall be excluded from the definition of album for the purposes of this Tariff.

### **3. Minimum royalty for the downloading of single titles and albums**

The minimum royalty for each musical work and/or album called down by the end user amounts to

#### **Amount in Euro**

0.091	per single title
0.0875	for each title in an album with 2 to 7 musical works,
0.075	for each title in an album with 8 to 12 musical works,
0.0725	for each title in an album with 13 to 15 musical works,
0.0625	for each title in an album with 16 and 17 musical works and
0.0563	for each title in an album with 18 or more musical works.

Notwithstanding the above, full units comprising 26 titles each shall be remunerated at EUR 0.0563 for albums that were not compiled by a record label. The remuneration for works exceeding such 26 tracks shall be calculated at the graduated minimum royalty rates given above.

The above minimum royalty rates apply to musical works with a playing time of up to 10 minutes. If the playing time of the musical work is longer than 10 minutes, the minimum royalty relating to the respective musical work is increased by one fifth for each additional minute.

### **4. Royalty provisions for "limited subscriptions"**

#### *a) Definition of term*

A "limited subscription" shall be deemed to exist when the end user obtains for a particular, possibly recurring, period of time a fixed contingent of specific call-down options, with which he/she can either call down only musical works that can be freely selected ("homogeneous subscriptions") or other contents (e.g. games, applications) or audiovisual contents ("heterogeneous subscriptions") by way of downloading.

## **GEMA Tariff for the use of works from GEMA's repertoire for downloading single titles and albums as well as for limited subscriptions**

### *b) Standard royalty for limited subscriptions*

The standard royalty for limited subscriptions amounts to 10.25 % of the computation basis.

Notwithstanding the above, the standard royalty rate for the calendar year 2012 (to serve as a test phase) shall amount to 9.225 % of the computation basis. During the test phase, GEMA will collect and analyse further information about the business model, and in particular about user behaviour, substitution effects among the services offered and intensity of usage.

### *c) Minimum royalty for limited subscriptions*

The minimum royalty for limited subscriptions shall be subject to the provisions under **Section 3**.

## **5. Computation basis**

The computation basis shall be all net revenue (gross revenue less value added tax at the applicable rate) accruing through the use of music and therefore in particular

- the net end-user price for the respective call-down of a musical work or album and/or the subscription, i.e. the respective amount paid by the end user less value added tax, and
- separately financed or calculated monetary benefits and considerations, such as for example transmission and provision fees, or payments arising from advertising, sponsoring, barter, compensation or gift transactions. The same shall also apply to foreign revenue, provided it relates to the operation of the service to be licensed in Germany.

## **6. Pro rata calculation**

- a) In the event that the service to be licensed does not solely contain offers falling within the scope of application of the present Tariff, this shall be taken into consideration on a pro rata basis in determining the computation basis as per Section 5, notwithstanding the fact that the revenue deducted in this way can be used within the scope of any licensing that may be necessary for other offers of the service to be licensed, which do not fall under this Tariff.
- b) In the event that musical works, in which GEMA holds no or only pro rata exploitation rights, are used within the scope of the service to be licensed, this shall be taken into account on a pro rata basis in the calculation of the royalty in compliance with the above provisions.

## **7. Audio samples**

In case the service to be licensed grants the end user the possibility to call down excerpts of works from GEMA's repertoire up to 90 seconds in length by streaming for the purpose of promoting the sale of downloads and without the possibility of ultimate storage on a storage medium of the end user (so-called audio samples), the following royalty provisions shall apply:

## **GEMA Tariff for the use of works from GEMA's repertoire for downloading single titles and albums as well as for limited subscriptions**

- for a service to be licensed with up to 1 million individual downloads    EUR 187.50 / annum
- for a service to be licensed with up to 10 million individual downloads    EUR 625.00 / annum
- for a service to be licensed with over 10 million individual downloads    EUR 2,500.00 / annum.

Notwithstanding the above, the service to be licensed remains obliged to provide clarification pursuant to Section III. 1. d).

### **III. General Provisions**

#### **1. Scope of grant of rights**

- a) The grant of rights for the operation of the service to be licensed shall be restricted to the right pursuant to Art. 16 UrhG (German Copyright Act) to reproduce works from GEMA's repertoire, and the right arising from Art. 19a UrhG to make works from GEMA's repertoire available to the public. Within the scope of operation of the service to be licensed, the following uses may be covered, subject to proper licensing:
  - Incorporating works from GEMA's repertoire into databases, documentation systems or similar storage media (e.g. server computers),
  - Making works from GEMA's repertoire available to the public,
  - Storing works from GEMA's repertoire as a download on terminal equipment for private use by the end user.
- b) The exploitation rights granted may not be transferred to third parties.
- c) The grant of rights shall not cover any other rights, in particular arrangements and the right to combine works from GEMA's repertoire with works of other types, nor offers of dramatico-musical works, either in their entirety, as a cross-section, or major parts thereof (so-called "Grand Rights"), nor shall it cover graphic rights or rights in the sheet music or text-related images.
- d) The moral rights of authors may not be violated. Any alterations to a work with a view to using it in the Music-on-Demand offer, in particular by abridging the work, must comply with any requirements of Articles 14 and 39 of the German Copyright Act (UrhG). Where works from GEMA's repertoire are used directly or indirectly for advertising purposes, the relevant authorisations must be obtained separately by the service provider of the service to be licensed, insofar as moral rights of authors are involved.



## **GEMA Tariff for the use of works from GEMA's repertoire for downloading single titles and albums as well as for limited subscriptions**

### **2. Acquisition of authorisation for use in due time**

The rights forming the subject of this Tariff shall only be deemed to have been granted, if GEMA's authorisation was obtained prior to commencement of use, i.e. in particular before the works from GEMA's repertoire were incorporated into databases, documentation systems or similar storage media.

### **3. Rights of third parties**

Rights of third parties, for example in the case of using scores for which royalties have been paid, shall remain unaffected.

### **4. Territorial scope**

This tariff shall apply to acts of usage and corresponding offers, which are made within Germany and/or for the German market.

### **5. General agreement**

Members of organisations, which have concluded a general agreement with GEMA for the above royalty rates, are granted a general-agreement discount on the respective royalty rates upon conclusion of the relevant individual agreement.

### **6. Period of validity**

The royalty rates shall apply to the period from 1 January 2012.

**[www.gema.de](http://www.gema.de)**

## **Royalty Rates Schedule VR-OD 8**

### **for the use of works from GEMA's repertoire within the scope of streaming offers subject to a fee (so-called "unlimited subscriptions")**

Net amounts plus value added tax at the statutory rate

#### **I. Scope of Application**

The following royalty rates apply exclusively to the use of works and rights in and to GEMA repertoire within the scope of Music-on-Demand offers, when and if the service to be licensed offers in return for a fee audio works of music and/or of music videos (in particular music video clips, concert recordings) from GEMA's repertoire – hereinafter collectively referred to as "musical works" – for a particular recurring period of time for the purpose of calling down and playing by the end user using a playing medium, without the end user being able to produce a permanent copy (downloading). This Tariff also covers such services, in which the end user can in addition to playing the musical works also produce a copy with restricted scope of use (so-called tethered download), thus enabling the end user to play the musical work without having constant access to the Internet. The copy is restricted in that playing is tied to the subscription period and in addition to individual pieces of equipment or equipment groups.

The end user is that person, who makes use of the Music-on-Demand offer for private purposes in return for a fee.

In particular dial tone background melodies and streaming offers involving no fee for the end user shall be excluded from the scope of application of this Tariff.

#### **II. Royalties**

##### **1. Obligation to pay royalties**

The obligation to pay royalties is incurred:

- a) by the reproduction of musical works from GEMA's repertoire in databases, documentation servers or similar storage media (e.g. server computers),
- b) by making musical works from GEMA's repertoire available to the public,

## **GEMA Tariff for the use of works from GEMA's repertoire within the scope of streaming offers subject to a fee (so-called "unlimited subscriptions")**

- c) by transmitting musical works from GEMA's repertoire,
- d) by the actual call-down of a musical work from GEMA's repertoire by the end user or
- e) by the conclusion of a subscription, under which musical works are provided for calling down, even if there has been no corresponding call-down of musical works by the end user.

### **2. Standard royalty for unlimited subscriptions**

The standard royalty amounts to 10.25 % of the computation basis.

### **3. Minimum royalty for unlimited subscriptions during the test period from 1 January to 31 December 2012**

For a test period lasting from 1 January 2012 to 31 December 2012 the minimum royalty for unlimited subscriptions shall initially amount to

- for single platforms EUR 0.75 per month and per end customer and
  
- for multiple platforms EUR 1.25 per month and per end customer.

In this context, a "single-platform subscription" shall be deemed to be a subscription offer, within the scope of which the end customers are granted the possibility of accessing musical works against payment of a non-usage-related royalty, such that for the duration of the subscription and subject to continued payment of the non-usage-related royalty the end customer has the possibility to access the musical works provided for call-down by the service to be licensed exclusively via terminal equipment that is primarily and predominantly used from a fixed base (e.g. PC, laptop, tablet PC, stationary home consumer electronics, e.g. set-top box, stand-alone players or the like) and use of musical works is possible only by way of streaming. Usage of musical works by way of simultaneous use on more than one terminal device must be excluded.

In this context, a "multiple-platform subscription" shall be deemed to be a subscription offer, which does not fall under the above definition of the single-platform subscription; i.e. the term shall cover in particular subscription offers, within the scope of which the end customer is granted the possibility of accessing musical works against payment of a non-usage-related royalty, such that for the duration of the subscription and subject to continued payment of the non-usage-related royalty the end customer has the possibility to access the musical works provided for call-down by the service to be licensed via terminal equipment that is primarily and predominantly used from a fixed base and/or via terminal equipment that is primarily and predominantly used from a mobile base (e.g. PC, laptop or the like and MP3 players, mobile telephones or the like) and/or simultaneous use of musical works is possible on more than one playing or storage medium, e.g. by playing or by storage limited to the duration of the subscription (so-called "tethered download").

## **GEMA Tariff for the use of works from GEMA's repertoire within the scope of streaming offers subject to a fee (so-called "unlimited subscriptions")**

These provisions shall initially apply to a period restricted to the 2012 calendar year. During this test phase, GEMA will collect and analyse further information about the business models, and in particular about user behaviour, substitution effects among the services offered and intensity of usage and revise and/or reformulate the royalty provisions on the basis of its findings.

### **4. Computation basis**

The computation basis shall be all net revenue (gross revenue less value added tax at the applicable rate) accruing through the use of music and therefore in particular

- the net end-user price for the respective call-down and/or subscription, i.e. the respective amount paid by the end user less value added tax, and
- separately financed or calculated monetary benefits and considerations, such as for example transmission and provision fees, or payments arising from advertising, sponsoring, barter, compensation or gift transactions. The same shall also apply to foreign revenue, provided it relates to the operation of the service to be licensed in Germany.

### **5. Pro rata calculation**

- a) In the event that the service to be licensed does not solely contain offers falling within the scope of application of the present Tariff, this shall be taken into consideration on a pro rata basis in determining the computation basis as per Section 4, notwithstanding the fact that the revenue deducted in this way can be used within the scope of any licensing that may be necessary for other offers of the service to be licensed, which do not fall under this Tariff.
- b) In the event that musical works, in which GEMA holds no or only pro rata exploitation rights, are used within the scope of the service to be licensed, this shall be taken into account on a pro rata basis in the calculation of the royalty in compliance with the above provisions.

## **III. General Provisions**

### **1. Scope of grant of rights**

- a) The grant of rights for the operation of the service to be licensed shall be restricted to the right pursuant to Art. 16 UrhG (German Copyright Act) to reproduce works from GEMA's repertoire, and the right arising from Art. 19a UrhG to make works from GEMA's repertoire available to the public. Within the scope of operation of the service to be licensed, the following uses may be covered, subject to proper licensing:
  - Incorporating works from GEMA's repertoire into databases, documentation systems or similar storage media (e.g. server computers),

## **GEMA Tariff for the use of works from GEMA's repertoire within the scope of streaming offers subject to a fee (so-called "unlimited subscriptions")**

- Making works from GEMA's repertoire available to the public,
  - Temporarily reproducing works from GEMA's repertoire without the possibility of ultimate storage to play the work once on the playing medium of the end user
  - Storing works from GEMA's repertoire as tethered download and hence as restricted copy on a terminal device for private use by the end user.
- b) The exploitation rights granted may not be transferred to third parties.
- c) The grant of rights shall not cover any other rights, in particular arrangements and the right to combine works from GEMA's repertoire with works of other types, nor offers of dramatico-musical works, either in their entirety, as a cross-section, or major parts thereof (so-called "Grand Rights"), nor shall it cover graphic rights or rights in the sheet music or text-related images.
- d) The moral rights of authors may not be violated. Any alterations to a work with a view to using it in the Music-on-Demand offer, in particular by abridging the work, must comply with any requirements of Articles 14 and 39 of the German Copyright Act (UrhG). Where works from GEMA's repertoire are used directly or indirectly for advertising purposes, the relevant authorisations must be obtained separately by the service provider of the service to be licensed, insofar as moral rights of authors are involved.

### **2. Acquisition of the authorisation for use in due time**

The rights forming the subject of this Tariff shall only be deemed to have been granted, if GEMA's authorisation was obtained prior to commencement of use, i.e. in particular before the works from GEMA's repertoire were incorporated into databases, documentation systems or similar storage media.

### **3. Rights of third parties**

Rights of third parties, for example in the case of using scores for which royalties have been paid, shall remain unaffected.

### **4. Territorial scope**

This tariff shall apply to acts of usage and corresponding offers, which are made within Germany and/or for the German market.

### **5. General agreement**

Members of organisations, which have concluded a general agreement with GEMA for the above royalty rates, are granted a general-agreement discount on the respective royalty rates upon conclusion of the relevant individual agreement.

## **GEMA Tariff for the use of works from GEMA's repertoire within the scope of streaming offers subject to a fee (so-called "unlimited subscriptions")**

### **6. Period of validity**

The royalty rates shall apply to the period from 1 January 2012. The provisions on the minimum royalty shall initially apply exclusively to the test period up to 31 December 2012.

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## **Royalty Rates Schedule VR-OD 9**

### **for the use of works from GEMA's repertoire within the scope of ad-funded streaming offers**

Net amounts plus value added tax at the statutory rate

#### **I. Scope of Application**

The following royalty rates apply exclusively to the use of works and rights in and to GEMA's repertoire within the scope of Music-on-Demand offers, if and in so far as the service to be licensed allows the end user the possibility to access audio music works and/or music videos (in particular music video clips and live concert recordings) in GEMA's repertoire – hereafter collectively referred to as "musical works" – via Internet services or mobile-based services and to playback these music works by means of a playback medium, without being able to save a restricted-use file (a so-called tethered download) or a permanent file.

The end user is that person, who makes use of the Music-on-Demand offer for private purposes.

In particular dial tone background melodies and other streaming uses involving a fee for end users shall be excluded from the scope of application of this Tariff.

#### **II. Royalties**

##### **1. Obligation to pay royalties**

The obligation to pay royalties is incurred:

- a) by the reproduction of works from GEMA's repertoire in databases, documentation servers or similar storage media (e.g. server computers),
- b) by making musical works from GEMA's repertoire available to the public,
- c) by transmitting musical works from GEMA's repertoire to a third party or
- d) by the actual call-down of a musical work from GEMA's repertoire by the end user.

##### **2. Standard royalty for ad-funded streaming services**

The standard royalty amounts to 10.25 % of the computation basis.



# GEMA Tariff for the use of works from GEMA's repertoire within the scope of ad-funded streaming offers

## 3. Minimum royalty for ad-funded streaming services

The minimum royalty shall amount to

- in case of high interactivity of the service EUR 0.00375 per stream,
- in case of medium interactivity of the service EUR 0.002 per stream and
- in case of low interactivity of the service EUR 0.00025 per stream.

High interactivity of the service to be licensed shall be deemed to apply when the end user has extensive control over the selection of the music, in particular when the end user can select the song, album, or artist.

Low interactivity of the service to be licensed shall be deemed to apply when the end user has only very limited control over the selection of music; in this respect the maximum permissible range is that the end user can determine the beginning, intervals and continuation and, if applicable, skipping to the next song in a playlist, which is specified by the service to be licensed but is not visible to the end user.

Medium interactivity is when, in accordance with the terms listed above, neither a high nor a low interactivity shall be deemed to apply.

The above minimum royalty rates apply to musical works with a playing time of up to 10 minutes. If the playing time of the musical work is longer than 10 minutes, the minimum royalty relating to the respective musical work is increased by one fifth for each additional minute.

## 4. Special provision for new services

- a) If a service is offered in Germany for the first time (excluded from this are in particular a service that has changed its name or when there is an alteration in an already existing service), then the licensee has the possibility before the service becomes active to select in the first year of operation – in deviation from the minimum set royalty rates listed under II. 3 for the following flat rates – one of these options, based on the estimated and expected number of streams:

streams per year	high / medium interactivity	low interactivity
Up to 200 million streams per year	125,000 euros	25,000 euros
Up to 400 million streams per year	375,000 euros	75,000 euros
Up to 800 million streams per year	750,000 euros	150,000 euros
Up to 1.2 billion streams per year	1.25 million euros	250,000 euros
Up to 1.6 billion streams per year	1.75 million euros	350,000 euros
Up to 2 billion streams per year	2.25 million euros	450,000 euros

## **GEMA Tariff for the use of works from GEMA's repertoire within the scope of ad-funded streaming offers**

Evidence of the validity of the licensee's prognosis must be presented to GEMA in the form of reliable and significant documents – such as, for example, business plans, market analyses, or other appropriate material. If the service is already operating outside of the Federal Republic of Germany, then the appropriate reference data must be presented as the essential foundation for the prognosis and must take into account the distinctive features of the national market. In addition, the prognosis must be confirmed in writing by an expert, independent Third Party, in particular by a certified public accountant or registered auditor.

If the actual number of streams in the first year exceeds the prognosis by more than 30 percent, then the licensee does not have the possibility in the second year of operations of selecting an option under b). If this is deemed to be the case, then as of the second year the royalty specifications for rates under II. 2. and 3. shall apply.

b) If a service is offered in Germany for the first time (excluded from this are in particular a service that has changed its name or when there is an alteration in an already existing service), then before the beginning of the second year of operations the licensee has the possibility of – in deviation from the set minimum royalty rates under II. 3. for the following flat rates – of selecting for the second year, based on the forecasted number of streams, one of these options:

streams per year	high / medium interactivity	low interactivity
Up to 200 million streams per year	250,000 euros	25,000 euros
Up to 400 million streams per year	750,000 euros	75,000 euros
Up to 800 million streams per year	1.5 million euros	150,000 euros
Up to 1.2 billion streams per year	2.5 million euros	250,000 euros
Up to 1.6 billion streams per year	3.5 million euros	350,000 euros
Up to 2 billion streams per year	4.5 million euros	450,000 euros

Evidence of the validity of the licensee's prognosis must be presented to GEMA in the form of reliable and significant documents – such as, for example, business plans, market analyses, or other appropriate material. The reference data from the first year of the service's operations are to be used as the essential foundation for the prognosis.

c) If the licensee selects the option of one of the flat rates listed under a) and b) as part of the minimum royalty rates, then the standard royalty rate set under II. 2. increases from 10.25 percent to 12 percent of the assessment base. The increase is not restricted; it applies to the entire assessment base.

d) The licensee is obligated at the end of the first year and at the end of the second year, respectively, to notify GEMA in writing within a period of two months whether the licensee waives the options listed under a) and b). If the licensee waives an option, then the royalty rates under II. 2. and 3. shall apply.

## **GEMA Tariff for the use of works from GEMA's repertoire within the scope of ad-funded streaming offers**

e) The special provisions in 4. a) and b) make allowance for the special features of the set-up period for this business model with ad-funded streaming. The licensee only has the possibility of exercising the corresponding royalty option when the licensee, after the phase covered in the special provisions in 4. a) and b) ends, agrees to undertake one of the following:

- To accept the standard royalty rates listed under 3., or
- To deposit in an escrow account the royalty rates listed under 3. in accordance with Paragraph 11 of the Law on the Administration of Copyright and Neighboring Rights (UrhWG), or
- To cease using the works and rights in GEMA's repertoire, and thus to act overall in a legal manner.

### **5. Computation basis**

The computation basis shall be all net revenue of the service to be licensed (gross revenue less value added tax at the applicable rate) accruing through the use of music and therefore in particular separately financed or calculated monetary benefits and considerations, such as for example transmission and provision fees, or payments arising from advertising, sponsoring, barter, compensation or gift transactions. The same shall also apply to foreign revenue, provided it relates to the operation of the service to be licensed in Germany.

### **6. Pro rata calculation**

- a) In the event that the service to be licensed does not solely contain offers falling within the scope of application of the present Tariff, this shall be taken into consideration on a pro rata basis in determining the computation basis as per Section 4, notwithstanding the fact that the revenue deducted in this way can be used within the scope of any licensing that may be necessary for other offers of the service to be licensed, which do not fall under this Tariff.
- b) In the event that musical works, in which GEMA holds no or only pro rata exploitation rights, are used within the scope of the service to be licensed, this shall be taken into account on a pro rata basis in the calculation of the royalty in compliance with the above provisions.

## **III. General Provisions**

### **1. Scope of grant of rights**

- a) The grant of rights for the operation of the service to be licensed shall be restricted to the right pursuant to Art. 16 UrhG (German Copyright Act) to reproduce works from GEMA's repertoire, and the right arising from Art. 19a UrhG to make works from GEMA's repertoire available to the public. Within the scope of operation of the service to be licensed, the following uses may be covered, subject to proper licensing:
  - Incorporating works from GEMA's repertoire into databases, documentation systems or

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- similar storage media (e.g. server computers),
  - Making works from GEMA's repertoire available to the public,
  - Transmitting works from GEMA's repertoire to the end user
  - Temporarily reproducing works from GEMA's repertoire without the possibility of ultimate storage to play the work once on the playing medium of the end user
- b) The exploitation rights granted may not be transferred to third parties.
- c) The grant of rights shall not cover any other rights, in particular arrangements and the right to combine works from GEMA's repertoire with works of other types, nor offers of dramatico-musical works, either in their entirety, as a cross-section, or major parts thereof (so-called "Grand Rights"), nor shall it cover graphic rights or rights in the sheet music or text-related images.
- d) The moral rights of authors may not be violated. Any alterations to a work with a view to using it in the Music-on-Demand offer, in particular by abridging the work, must comply with any requirements of Articles 14 and 39 of the German Copyright Act (UrhG). Where works from GEMA's repertoire are used directly or indirectly for advertising purposes, the relevant authorisations must be obtained separately by the provider of the service to be licensed, insofar as moral rights of authors are involved.

### **2. Acquisition of the authorisation to use works in due time**

The rights forming the subject of this Tariff shall only be deemed to have been granted, if GEMA's authorisation was obtained prior to commencement of use, i.e. in particular before the works from GEMA's repertoire were incorporated into databases, documentation systems or similar storage media.

### **3. Rights of third parties**

Rights of third parties, for example in the case of using scores for which royalties have been paid, shall remain unaffected.

### **4. Territorial scope**

This tariff shall apply to acts of usage and corresponding offers, which are made within Germany and/or for the German market.

### **5. General agreement**

Members of organisations, which have concluded a general agreement with GEMA for the above royalty rates, are granted a general-agreement discount on the respective royalty rates upon conclusion of the relevant individual agreement.

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### **6. Period of validity**

The royalty rates shall apply to the period from 1 January 2012.

**[www.gema.de](http://www.gema.de)**