

*VERSION 2B*

*It is important that the parties understand the scope of this agreement: The Composer (as Contractor) licenses only the non-exclusive use of the music score in the production to the Producer in perpetuity. Contractor retains 100% owner-ship of copyright in the compositions and master recordings comprising the music score. If the Production is a revenue sharing assignment then use the other*

*MODEL CONTRACT V2A.*

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

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

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

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

(the "Producer")

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

(the "Contractor")

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

## **WITNESSES THAT:**

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

The Producer wishes to engage the services of the Contractor to create and deliver the music score for the Production and to license the non-exclusive right to record the music score in synchronization or in timed relation with the Production, and the Contractor desires to provide the services and license the rights requested by the Producer, in accordance with the terms and conditions of this agreement (the "Agreement").

*In certain cases, the Producer and Contractor may agree to an exclusive license. In such cases, Contractor will not be able to license the Music Score (i.e. compositions and masters) to other parties. As this will limit the Contractor's ability to exploit the Music Score to the fullest extent possible, a premium fee should apply. Additionally, the Contractor should seek to limit the period of exclusivity to a reasonable duration.*

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

### **1. Engagement**

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

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

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

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

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

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

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

## **2. Obligations of the Contractor**

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

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

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

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

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

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

- 2.3. Payment of Music Score creation costs. Unless otherwise specified in this Agreement, Contractor shall pay all Music Score production costs, including studio fees; arranging and copying costs; payroll service costs; musician and other performer fees and costs of any other services rendered in relation to the production of the Music Score. Such payments shall include all expenses incurred by the Contractor in relation to the creation of the Music Score, including the acquisition of all rights in and to the results and proceeds of services required from third parties in connection with the use, re-use and other exploitation of the Music Score. Contractor is not responsible for the acquisition of any rights related to musical material not created by the Contractor which Producer may wish to use in the Production, such as, but not limited to, existing songs which Producer may wish to have Contractor incorporate into the Music Score, whether in whole or in part, new or existing recording, re-arrangement, orchestration, or other adaptation.

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

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

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

*[OPTIONAL FOR UNION GIGS:]*

- 2.5. Payment of performer fees, etc. Contractor shall pay, in connection with the creation of the Music Score, all fees and/or other costs due pursuant to any applicable industry agreement that is in force at the time of execution of this Agreement. Such fees include but are not limited to musician and/or singer session fees; so-called “fringe payments” payable to the AFM, ACTRA, UDA or

other guilds or unions having jurisdiction; music score copying costs; arranging and orchestration expenses; studio expenses and recording media costs. However, Contractor's obligations in this respect are limited to those uses of the Music Score specifically described in this Agreement.

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

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

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

- 2.6. Lay-in costs. For greater certainty, Contractor shall not be responsible for any costs relating to the "lay-in" or "conform" of the completed Music Score into the playback medium to be used in the final mix.
- 2.7. No liability after delivery. After delivery of the completed Music Score as described in Schedule A to Producer, Contractor shall have no obligation to store or otherwise retain the Music Score or any portion thereof. If any such materials are left in the possession of Contractor after delivery, they shall be solely and entirely at Producer's risk, and Contractor shall not be liable for any loss, damage or destruction of such materials, however caused, including as a result of negligence by Contractor.

### **3. Obligations of the Producer**

- 3.1. Delivery of Locked Cut. Producer shall deliver to the Contractor, not less than [NUMBER OF DAYS OR WEEKS] prior to the mix date indicated in Schedule A, an approved final edited version (the "Locked Cut") of the Production in the format indicated in Schedule A. (This clause shall not apply in cases where the Contractor's services are limited to the provision of a pre-score library of music cues.)
- 3.2. Additional costs for changes. In the event that the Producer modifies the Production after delivery of the Locked Cut, and such modifications require the Contractor to make substantial changes to the Music Score, the Producer shall pay to the Contractor all additional charges resulting from those changes. Such changes may include, but are not limited to, additional composition, re-arranging, re-recording sessions, or engagement of additional musicians and

other performers and service providers, including a music editor or engineer.

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

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

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

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

#### **4. Grant of Rights**

- 4.1. License. Contractor hereby licenses to Producer, in perpetuity and throughout the universe, the following non-exclusive rights:
  - (a) To use, include and record the Music Score, in whole or in part, in synchronization or timed relation with:

(i) the Production, for this and subsequent cycles; and/or

(ii) any trailers, advertisements, websites or excerpts thereof for the Production;

and to reproduce, exhibit, publicly perform, broadcast, retransmit and otherwise use or exploit all or any part of the Music Score for the purposes of or in connection with the exploitation, advertising and/or promotion of the Production and/or any of the broadcasters thereof, by any and all means, and in any and all languages and in any and all manner and media of communication now known or in the future developed;

(b) To use Composer's name, approved photograph, approved likeness and approved biography in promoting or exploiting the Production, and any or all parts of the Music Score; and

(b) To permit any third party to do any of the foregoing.

*It is important that the parties understand the scope of the above grant: In this agreement, the Composer (as Contractor) licenses only the non-exclusive use of the music score in the production to the Producer in perpetuity. Contractor retains 100% ownership of copyright in the compositions and master recordings comprising the music score. This is for cases where the budget does not meet the workload asked of the composer. If the Production is a more mainstream revenue sharing assignment then use the other Model Contract v2a.*

**4.2 Retention of Rights.** Subject to the rights licensed to Producer in Section 4.1, Contractor hereby retains all rights, title and interest in and to the Music Score, including, without limitation, all copyright.

**4.3 No Soundtrack Album Rights.** For greater certainty, no rights are licensed under this Agreement to Producer to distribute, sell or otherwise exploit any audio-only soundtrack albums or other audio-only albums or records of any kind embodying all or any of the Music Score. If Producer wishes to distribute, sell or otherwise exploit any such album or record, Contractor agrees to negotiate in good faith with Producer the terms and conditions of an agreement for the use of the Music Score for such purpose.

## **5. Contractor's fee for services**

**5.1** In consideration of the rights granted and services rendered by the Contractor pursuant to this Agreement, the Producer shall pay to the Contractor the total amount of CDN \$\_\_\_\_\_ plus HST and any other applicable taxes, to be paid in accordance with the payment schedule set out in attached Schedule B. Producer

agrees that Contractor's invoices shall be payable within ten (10) business days of receipt by Producer.

## **6. Representations, Warranties and Indemnities**

6.1 Contractor hereby represents, warrants and covenants that:

- (a) Contractor has the full right and authority to enter into this Agreement and grant this license to Producer;
- (b) Subject to Producer's obligations under sections 3.2 and 3.3 above, all payments required to be made by Contractor to any third parties providing services for the composition and/or production of the Music Score as specified in this Agreement have or will be made by Contractor;
- (c) The Music Score is wholly original and is not taken from or based upon any other musical or dramatic works; nor does it contain compositions which are in the public domain, with the exception of arrangements based on public domain material and used with the prior approval of the Producer or its designee, and which do not in any way infringe on the copyright or any other rights of any person, firm or corporation; and
- (d) Contractor has not committed any act, by grant or otherwise, which does or will impair the rights licensed to, or interfere with the use and enjoyment of the Music Score by, Producer in this Agreement.

6.2 The Producer hereby represents, warrants and covenants that:

- (a) Producer has the authority to enter into and perform its obligations under this Agreement; and
- (b) Nothing in the Locked Cut of the Production, as delivered to the Contractor, exposes or shall expose the Contractor to any legal or other liabilities of any kind.

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

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

## **7. Termination**

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

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

## **8. Contractor's Credit**

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

## **9. General Provisions**

9.1 Assignment. Producer may assign the benefit of the rights specifically licensed in this Agreement in whole or in part to any person, firm or corporation. Such assignment shall relieve Producer of its obligations hereunder provided the assignee agrees to assume such obligations, and Producer and Assignee agree to no-

tify Contractor forthwith in writing of such assignment. Such notice to Contractor shall include a copy of the assignment agreement, including a full description of the parties.

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

9.3 Notwithstanding section 9.2 above, Contractor shall have the right to assign Contractor's right to receive compensation pursuant to the terms of this Agreement.

9.4 Notice. All notices shall be in writing and, if mailed by prepaid first class registered mail at any time other than during a discontinuance of postal services due to strike, lockout or otherwise, shall be deemed to have been given on the fifth (5th) business day after its posting or, if hand delivered, on the business day following such hand delivery, and if delivered by facsimile, email or other electronic communication, on the date as evidenced by the notice of transmission. Notices shall be addressed to the addresses set out on the first page of this Agreement. Any party may give notice in writing to the other party of a change of its address for the purpose of this section.

9.5 Successors and Assigns. This Agreement shall inure to the benefit of and be binding on the parties to it and, to the extent permitted in this Agreement, their respective heirs, executors, administrators, successors and assigns.

9.6 Jurisdiction. This Agreement shall be construed in accordance with the laws of the Territory/Province of \_\_\_\_\_ and the laws of Canada.

9.7 Entire Agreement. This Agreement sets forth the entire agreement between the parties, and no modification, amendment or waiver of any of the provisions of it shall be valid unless in writing and signed by the parties.

9.8 Limitation of Remedies. Provided that Contractor has received all payments due from Producer under Section 6.1 of this Agreement, the rights and remedies of Contractor in the event of a breach of this Agreement by Producer shall be limited to a recovery of damages in an action at law, and in no such event shall Contractor be entitled by reason of any such breach to terminate this Agreement or to enjoin or restrain the distribution, broadcast or other exploitation of the Production or exploitation in any form of the Music Score.

*Any legal action for breach of contract can only be for monetary damages, not to stop the production from being broadcast or distributed - with one exception: failure to fully pay the Composer all due payments.*

9.9 Further Documents, etc. Both Contractor and Producer agree to execute all further documents and do all acts and things as may be reasonably necessary to carry out the terms of this Agreement.

9.10 Arbitration. All disputes, differences and matters of interpretation arising under or in connection with this Agreement shall be referred to binding arbitration by a single arbitrator under the Commercial Arbitration Act of [province or territory].

9.11 Promotional Copies. Producer will provide Contractor with one copy of the Production containing the Music Score as mixed for either theatrical release or broadcast, in a mutually agreed upon format, for the Contractor's professional and private use only. It is agreed that such professional use may include extracting excerpts for the purpose of creating a promotional reel, as that term is generally understood in the film and television industry, but neither the copy of the Production nor any excerpts therefrom shall be used for any other purpose except with Producer's prior written consent. It is also agreed that Contractor may use the Music Score in isolation (i.e. not synchronized as part of the Production) for professional and private promotional use. Without Producer's prior written consent, no promotional use shall take place until after the Production has been released or broadcast.

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

For Production Company:

For Contractor:

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

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

Name of Signing Officer:

Name of Signing Officer:

\_\_\_\_\_

\_\_\_\_\_

Position of Signing Officer:

Position of Signing Officer:

\_\_\_\_\_

\_\_\_\_\_

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

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

## Schedule A

### **Specifications, Due Dates and Additional Credit (if any)**

#### 1. Specifications

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

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

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

*The following tracks and stems:*

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

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

A current example follows:

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

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

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

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

#### 3. Additional credit information if applicable:

## **Schedule B**

### **Contractor's Fee – Payment Schedule**

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

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

## Schedule C

### ***LETTER OF INDUCEMENT***

I acknowledge and agree that:

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

Dated this     day of     , 20\_\_:

Signed, Sealed and Delivered  
In the presence of:

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Witness

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[CONTRACTOR]