

SCGC Model Deal Memo (License Version)

VERSION 3B

It is important that the Composer understands the scope of this agreement: The Composer (as Contractor) keeps the ownership of music score but is licensing it to the Producer to use in all forms and version of the Production.

If the Production is a revenue sharing assignment then use the other DEAL MEMO V3A.

THE WORD DOCUMENT VERSION OF THIS DEAL MEMO 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.

While not as commonly used this deal memo is meant for projects that will take a long time to complete or those that require a lot of back and forth negotiations. The deal memo gives both parties a signed document that allows work to proceed while the main contract continues to be hammered out. The deal memo is NOT a substitute for the actual contract.

Subject: Composer Deal Memorandum

Project: _____ (Current Title of Project) (the “Production”)

Duration/Episodes: _____ (Projected Duration of Project x No. Episodes, if applicable)

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.

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

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

Date: _____

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 the model contract agreement.

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.

The parties agree to execute a long form agreement incorporating the following material terms at a later date TBD. The parties agree to negotiate all additional terms in good faith and in a timely manner.

Engagement: Producer agrees to engage Contractor to compose, arrange, orchestrate, produce and deliver an original score and master soundtrack recording (collectively the "Music Score"), timed for synchronization with the picture version of the Production provided by the Producer. The Producer acknowledges and agrees that 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.

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

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

Fee: In consideration of the rights granted and services to be 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 following 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:

- (a) \$ _____, representing _____ % of the total fee, on commencement of Contractor's provision of services;
- (b) \$ _____, representing _____ % of the total fee, on [delivery or other date or milestone agreed by the parties]; and
- (c) \$ _____, representing _____ % of the total fee, on the earliest of [date or delivery and acceptance of the Music Score in its entirety]

Costs: 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 or music editors, Producer shall be responsible for, and pay to the Contractor, any additional costs incurred.

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.

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.

[OPTIONAL FOR UNION GIGS:]

Performer Fees: 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. Contractor's obligations in this respect are limited to those uses of the Music Score specifically described in the long form agreement TBD.

For clarity, this clause means that while the Producer may be paying for additional per-formers, 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.

Grant of Rights: Contractor agrees to license to Producer, in perpetuity and throughout the universe, the non-exclusive right to use, include and record the Music Score in synchronization with the Production and to reproduce, exhibit, publicly perform, broadcast, retransmit and otherwise use or exploit all or any part of the Music Score in connection with the exploitation of the Production 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. The parties agree that Contractor will retain all right, title and interest in and to the Music Score, including, without limitation, all copyright.

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.. If the Production is a revenue sharing assignment then use the other DEAL MEMO V3A.

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

Composer Credit: 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).

IN WITNESS OF WHICH this agreement has been executed by the parties as of the date written above.

(Producer Name)
PRODUCER

(Composer Name)
COMPOSER