

AGREEMENT FOR USE OF FOLEY

This Agreement is made on this _____ day of
_____ 20_____

between _____ of _____ ("Foley Artist/Producer")

USE OF PROPERTY

- a) These libraries will be used in an appropriate manner and will be acquired properly.
- b) They will only be used by the purchaser and will not be distributed illegally.
- c) Credit will be given correctly in the description of the work created.
- d) Material will not be claimed as users own work.
- e) Work can be used external use as well as investment, so long as the appropriate

AREAS OF PURCHASE:

- 1) The rights to use the sound libraries in projects/media: £ _____
- 2) Online download fee: £ _____

TOTAL FEE £ _____

2. COPYRIGHT

The copyright and all other rights in the Work to the extent not expressly granted to the Person(s) hereunder shall belong absolutely and be reserved to the Artist or his/her assignee.

3. PERFORMING RIGHT

If the Artist is a member of PRS this contract is subject to the express reservation of the rights in the Work which have been assigned to the PRS.

4. MECHANICAL RIGHT

a) Notwithstanding Clause 2 above and subject to the agreements between the Person(s) and the MCPS or PRS, the Artist will grant a licence to the Person(s) to record and copy the Work only in connection with the Production and publicity and ancillary promotion relating to the Production in the following media only (please delete as appropriate):

- i) television
- ii) non theatrical iii) radio
- iv) theatrical release v) internet vi) computer game vii) DVD/videogram
- viii) ringtones
- ix) advertisement (specify territory) x)
(together hereinafter called "the Media")
throughout the world/in _____ (specify territory) ("the Territory")

Subject to the terms of this agreement, and upon payment in full of the Total Fee the Artist as owner of copyright in the Work will grant to the Person(s) a licence to exploit the Work only in the Media and in the Territory and for the Production specified in this agreement and in accordance with the terms hereof. No further use whatsoever shall be made of the Work without the prior written consent of the Artist.

b) Notwithstanding Clause 2 above, the Artist will negotiate in good faith the terms of a licence to the Person(s) to record and copy the Work on audio and/or audio-visual devices embodying the Production for sale or hire to the public throughout the world on terms to be agreed which terms shall include the payment of royalties based on a rate not less than the appropriate rate published by MCPS.

5. PAYMENT TERMS

a) In consideration of the Sound Libraries, the Person(s) agrees to pay the Artist the Total Fee specified in Clause 1b) as follows
£ _____ / % (_____ per cent) of the Total Fee on commencement of composition of the Work/signature of this Agreement and the balance on delivery of the Work.

b) The Person(s) shall pay the Artist £ _____ per the Libraries used plus expenses.

6. CREDITS

The Artist shall be accorded credit on screen or on air separately in the main credits (subject to Clause 3a of the Terms and Conditions) and, if a licence is granted under Clause 4b (above), on the packaging of all audio and audio-visual devices embodying the Work.

The wording of the credit shall be as follows:

“ _____ ”

7. LAW

This Agreement will be interpreted in accordance with the laws of the United Kingdom and the Courts of Scotland, England and Wales shall be the Courts of Sole Jurisdiction.

8. TERMS AND CONDITIONS

The Terms and Conditions attached, and the Schedule of Recording attached (if applicable) shall form part of this Agreement.

TERMS AND CONDITIONS

1. This Agreement shall ensure to the benefit of and be binding upon the Person(s) and the Artist and their respective successors and assigns. 2. Nothing herein contained shall prejudice the rights of the Artist to receive royalties distributable by the MCPS from licensing agreements on first performance of the Production or any export or other fee or royalty in those instances where the agreement between the broadcaster and MCPS so provides.

3. a) The Artist hereby asserts his/her Moral Right of paternity as defined under s.77 of the Copyright Designs and Patents Act 1988 (as the same may be amended varied or re-enacted) ("the Act").

b) The Artist grants to the Person(S) the right to edit the Work as may be reasonably required in connection with the Production. 4. All monies payable to the Artist under this Agreement are exclusive of all taxes, including VAT, which shall be payable in addition where applicable. The Person(s) will pay all fees and other sums due to the Artist within 28 days of being invoiced by the Artist.

5. The Artist hereby warrants that:

- a) the Work is/will be an original composition;
- b) the Artist or his/her assignee is/shall be the owner of the copyright thereof;
- c) the Artist is free to enter into this Agreement.
- d) the Artist is a „qualifying individual“ within the meaning of the Act.

6. The Person(s) hereby undertakes:

- a) to supply the Artist with a copy of the Music Cue Sheet and on request the opportunity to check this with a copy of the Production in its final version and the Person(s) undertakes to alter any errors in the Music Cue Sheet promptly and to submit the same to the broadcasting/transmitting authority or distributors of the Production.
- b) to ensure that all copies of the Production, supplied by the Person(s) and its licensees are accompanied by a copy of the Music Cue Sheet and that the appropriate broadcasting/transmitting authority/distributor will be notified of the full details of the Work (Title(s), Duration, Composer and copyright owner) in order that such authority/distributor may fully comply with its obligations in respect of the use thereof to all relevant collection societies including without limitation PRS and MCPS and their affiliates.
- c) upon the reasonable request of the Artist to supply to the Artist full details of all sales of the Production and of any overseas transmissions and any other exploitation of the Production including any version or translation thereof.

7. With the Artists' consent, the Commissioner may assign its interest under this Agreement provided that written notice and full details of the assignment are given to the Artist promptly and the assignee enters into a direct agreement with the Artist.

8. Either party shall be entitled to terminate this Agreement upon written notice with immediate effect in the event that:

- a) the other party is in material breach of any of its obligations hereunder and fails to remedy the relevant breach within 14 days of its receipt of written notice specifying the breach and requiring its remedy; or
- b) the other party becomes insolvent or enters into liquidation or administration or ceases trading or enters into a composition with its creditors.

In the event of termination under this clause, any licenses granted to the Person(s) by the Artist under this contract will terminate automatically and forthwith but without prejudice to rights granted to third parties.

9. Nothing in this Agreement will give rise to a partnership joint venture or relationship of employer/employee between the Person(s) and the Artist.

10. Any notice served pursuant to this Agreement shall be deemed validly served if delivered by hand or sent by first class special delivery post to the relevant address specified above or to such other relevant address as is subsequently notified to the party sending the notice. A courtesy copy of any notice to the Composer shall be sent simultaneously to the Musicians' Union, 30 Snowfields, London SE1 3SU for the attention of the General Secretary.

Signed _____ Composer

Signed Commissioner

NOTES

Introduction

This Specimen Agreement is an example of agreements for the commissioning of television, radio and film music by a composer. This Specimen includes a schedule for use where the composer is also asked to record his music and deliver recordings.

These notes explain some of the clauses in the Commissioning Agreement and the Terms and Conditions. Composers are advised to take professional advice, from an expert in music industry agreements before signing any contract where licences, rights or assignment of copyright are being granted.

The Commission

The Agreement deals primarily with the commission itself. Guideline rates are available from the MU (contact writers@theMU.org).

In addition to commissioning, the producer or commissioner will need to have licences to record, copy and broadcast the original music. These are generally covered by blanket licences explained later.

The producer may also wish to obtain licences for additional exploitation, such as the commercial release of the soundtrack or a DVD of the programme. These, too, are explained later.

Many composers are able to provide other services, in addition to writing the music. These include orchestration, copying the score and parts, conducting, performing, hiring other musicians and recording the soundtrack (live or electronically). Each of these services would attract a separate fee, but composers can provide a quotation on request. A schedule of additional services and fees can be attached to the Agreement, as is the recording schedule to this Specimen Agreement.

Performing Right

If the composer is a member of the Performing Rights Society, the performing right in his/her musical works is automatically assigned to the PRS. The PRS licenses broadcasters and other users and distributes the income generated to composers, publishers and other copyright owners according to the duration and medium of each performance or broadcast.

In order to distribute licence income, the PRS relies on receiving accurate music cue sheets from broadcasters. The cue sheet should include separate titles and timings for each cue (see Terms and Conditions, clause 6a).

The BBC, Channel 4 and ITV all have blanket licence agreements with the PRS covering the public broadcast of music on TV and radio.

Independent local and national radio stations have similar blanket licence agreements with the PRS.

The public showing of films including music is covered by licences taken out in cinemas.

Mechanical Right

Most composers have, either directly or through their publisher, appointed the Mechanical Copyright Protection Society as their sole agent for licensing the mechanical right (i.e. the right to copy the Work in any mechanical form such as magnetic tape or CD). Membership of the collecting society PRS for Music, of which MCPS now belongs, is recommended to all composers.

MCPS licenses record companies, broadcasters and other users to make mechanical copies and distributes the income generated to composers, publishers and other copyright owners according to the duration and medium of each copy.

In order to distribute licence income, MCPS relies on receiving accurate music cue sheets from broadcasters. The cue sheet should include separate titles and timings for each cue (see Terms and Conditions clause 6a).

ITV and Channel 4 have a blanket licence agreement with MCPS under which payment is made to mechanical rights owners for each transmission of a programme (both in-house and independent productions), covering the mechanical copying of music for that transmission.

The blanket licence between the BBC and MCPS is slightly different. It covers only non-commissioned music in inhouse and independent productions, when payments are made by MCPS to mechanical rights owners for each

transmission. For commissioned music in in-house productions, the BBC buys the right to record and copy the music in connection with the programme within the commissioning fee.

Composers who are members of PRS assign the 'synchronisation right' for films to the PRS (rather than the MCPS, even though it is part of the mechanical right). The PRS appoints the composer as agent to negotiate use of the 'synchronisation right' in films. Negotiation may be handled by the composer's publisher.

Videogram / DVD / DTO

DVD / Download to Own (DTO), also still known as video or videogram in some agreements, is a common form of secondary exploitation of films and TV programmes. The DVD / DTO or 'video right' is part of the mechanical right, licensed on behalf of composers and publishers by the MCPS. The MCPS publishes minimum royalty rates for DVD sales. In some cases it is more advantageous for the composer and producer to negotiate a buy-out. However, composers should seek professional advice (from an expert in music industry agreements) before agreeing a buy-out.

Payment

It is suggested that 50% should be paid in advance, usually on signature of the agreement, and the balance paid on delivery of the commissioned music.

Credits

Credits are normally governed by guidelines set by the broadcasters subject to some discretion on the part of the producer. In exceptional cases, a composer may be able to negotiate on screen credits of a particular size or type.

Law

This Agreement is drawn up under English law. However, if one of the parties is based in Scotland, it is possible to amend clause 7 so that the Agreement is interpreted in accordance with the laws of Scotland and the courts of Scotland are the courts of jurisdiction.

Right of Paternity

The moral right of paternity (i.e. the right to be identified as author of a musical work) must be asserted in writing before it is effective. Clause 3a of the Terms and Conditions asserts the right of paternity. However, the right of paternity does not apply to the incidental inclusion of music in a broadcast. Credits for composers are therefore governed by the editorial guidelines of the broadcasters and by contractual arrangements (see paragraph on Credits).

Right of Integrity

Although the composer retains the moral right of integrity (i.e. the right not to have a music work subjected to derogatory treatment), the composer gives the producer complete freedom to edit the music for use in the programme.

Breach of Contract

Clause 8 of the Terms and Conditions is a standard clause to allow termination of the contract in the event of a material breach. A composer who suspects that the Agreement has been breached is advised to seek professional advice (from an expert in music industry agreements) immediately, and before taking any action (which may amount to a breach by the composer).

Qualifying Individual

A qualifying individual is defined in the Copyright, Designs and Patent Act 1988 (section 206) and includes British and European Community citizens among others.

Programme Sales

Programme sales should be notified automatically to PRS for Music and MCPS by the broadcaster. Clause 6c enables the composer to obtain details of sales if necessary.

The MU provides a contract advisory service whereby any commissioning contract can be vetted, free of charge, by specialist music industry solicitors. Contact your MU Regional Office to take advantage of this free service for members.