The Incorporated Society of Musicians (ISM) is the UK’s professional body for musicians and a nationally recognised subject association for music.

Since 1882, we have been dedicated to promoting the importance of music and protecting the rights of those working in the music profession. We support 9,000 members across the UK and Ireland with our unrivalled legal advice and representation, comprehensive insurance and specialist services.

Our members come from all areas of the music profession and from a wide variety of genres and musical backgrounds. As well as working musicians, our membership also includes recent graduates, part-time and full-time music students, and retired musicians.

We campaign tirelessly in support of musicians rights, music education and the profession as a whole. We are a financially independent not-for-profit organisation with no political affiliation. This independence allows us the freedom to campaign on any issue affecting musicians.
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### Useful links

#### Advice and resources
- ISM
- Sound And Music toolkit
- British Music Collection

#### Publishers and Collecting Societies
- Music Publishers Association
- PRS for Music

#### Competitions and opportunities
- PRS for Music Foundation
- Sound And Music opportunities
- Women In Music Competitions and Opportunities
- The Composer’s Site – American opportunities
- Shooting People – Independent Film (paid subscription)
Welcome to the ISM Composers Pack

Prepared in conjunction with the Composers’ Special Interest Group, Composers’ Round Table meetings and colleagues from across the music industry – including Russells solicitors – this pack has been designed to help composers at any stage in their career understand what they should be on the lookout for when they get offered a commissioning opportunity, publishing agreement or synchronisation deal.

One of the issues our composers have repeatedly raised with us at the ISM is the need for guidance on contracts, including suitable template contracts.

In this pack you will find a wealth of information to help you when you are signing up for something new as a composer, whether it be a commission to write a new work, signing up to a publishing agreement or licensing synchronisation rights.

This Composers’ Pack includes a contract checklist, some basic guidance on what you can do to find opportunities for composers, and four template contracts with reference notes to help you.

Perhaps the most important advice, however, is to make sure you are a member of a professional body – such as the ISM – that can help you as you face the challenges of professional composing.

Remember, it always pays to get legal advice on any contract you are offered to make sure you fully understand the terms you are signing up to.

All ISM members get legal help and advice from the ISM in-house team, legal expenses insurance, public liability insurances and guidance and advice on a range of other issues relevant to their professional work.

We hope you find this pack useful, and please feel free to distribute it with attribution of course!

ism.org
ISM Composers’ views

Ed Scolding

It’s in a composers’ nature to explore the unknown, to look for what’s not already there, to make something from nothing. So it can feel rather against the grain to try and pin things down at the start of the project, when it’s so fresh with possibilities. But each project involves some ‘unknowns’ that can affect the success overall, and getting these out of the way early on can help make a much more positive environment for exploring the artistic ‘unknowns’.

Working with other people can be a joy and an inspiration. Discussing and agreeing on things like money and deadlines at the start can help avoid situations which are at best embarrassing, and at worst can hurt artistic outcome, reputation, or finances. And the agreements don’t always need to be detailed and technical to be effective – just having a brief but frank discussion about expectations can help clear the air, set a positive tone and give everyone a firm footing. On the other hand, bringing a thorough, professional template contract to the table can give a sense of security and clarity, whether as a concrete agreement or as starting point for discussion, a guide for what might be expected.

It’s not all about money, either. We’ve all done projects with no fee – there are other kinds of value, and sometimes money comes to the project part-way through. Sometimes it’s in this situation that one needs even more clarity about the expectations for a project – the timescales, commitment from other parties etc, so that you know your work is not going to waste.

I’ve had the situation of making assumptions and plunging in without properly discussing and agreeing things, then discovering at the end of a project the other party had quite a different idea of what was going on! A reliable piece of writing is really useful to kick off and guide discussion, bringing everyone onto the same page.

The guides and contracts in this pack are designed to help with a range of different situations, from zero-budget or working with a friend to dealing with international corporations, for commissioning live music, composing for film, signing to a publisher, or whatever new shape of project you create. They suggest the areas you might need to agree, what to seek for each area, and the contracts to establish different kinds of agreement.

Bushra El-Turk

After formal training at University, Conservatoire or otherwise it is as if a Composer ventures out into a jungle. You have the caring orang-utans to give you some good advice on the way, like the mentors you respect, and the hyenas who will present you with the best deal which will promise you a lot, but with nothing at first.

While a composer will have exciting opportunities to collaborate – with the bigwigs but no funds for the composer or with unknowns but no funds at all – it can be all too easy to fall into ditches as far as the law, your rights and your intellectual property concerned.

Written contracts, like the ones contained in this pack, are a useful and a necessary tool for the composer; these template contracts cover crucial elements you may not have thought about which could save your back when facing a collaboration or commission.

www.bushraelturk.com

www.edscolding.co.uk
Remember that moment in *Amadeus* when Leopold Mozart scorns his son’s fanciful ambition? – *There’s no money in Composition!* Wolfgang runs from job to job, composing, performing, teaching, publishing, creating subscription concerts, courting wealthy benefactors, collaborating with librettists and being short-changed by theatres. It is ironic that the composer – the artistic originator, designer, architect of all that Western musicians do – was typically at the bottom of the income chain, while everybody else from diva to cleaner gets paid. And today, it is still true.

The ISM’s excellent new contract templates will directly benefit composers of high reputation. For others, they will serve as an ideal from which to negotiate. It is difficult for emerging and less famous composers to turn down interest from a publisher - who will hopefully bring wider circulation, prestige and permanence, investment and career development, and negotiate commissions. But contractual agreements cannot predict the future, or trump the vicissitudes of taste. Remember too that self-published composers retain certain advantages – instant printing and availability, immediate revision / rearrangement of own tunes, flexible fees, and (for what it’s worth) undivided royalties. Publication needs to match your target market.

As for commission contracts, my experience and that of many colleagues suggests that Austerity has hit hard. There is little money, public or private, kicking around for commissions, and performers / promoters are often too hard pressed themselves to bid for it. Mozart continues to supply repertoire for free. Thus we currently find ourselves writing for very little, or gratis – for friendship, for pupils, to raise profile, to serve community, to create bonds, to fulfil an imaginative dream, self discovery. We are slaves to our inspiration: we use it or lose it. It’s unfair, it’s unsustainable; a major culture in a wealthy nation deserves better.

What does it mean to be a professional in the creative industries? Is it about attitude and mind-set? Is it to do with payment and workload? Or is it about our actions? Having graduated from my undergraduate studies in composition two years ago I have been questioning what it means to be a professional composer and musician.

One of the main transitioning factors from student to professional composer is taking on more responsibilities whilst trying to earn a living doing what you love to do. Whilst being a student, money used to seem like a dirty word, but it is an important aspect that needs to be considered if you want to continue composing. Something that really helped me to talk about fees was to do some basic calculations and work out what was needed to cover basic living costs (e.g. pay rent, bills, food) in order to work out how much my time was worth. Any composer knows that it is not possible to predict how many hours a piece of music will take to create but you can start to work out roughly how long the piece may take, and whether the fee is in line with what you need in order to cover your basic living costs. Of course money is not always the most important aspect for a composer, but your time is valuable and you need to ensure that you are not getting exploited for your time and skills. After doing these calculations I felt much more able to make informed decisions when accepting or declining work, or asking to alter the fees or negotiate other benefits.

Being ‘professional’ doesn’t have to mean being paid professional rates, but I think it is about having the mind-set to be informed, realistic and in control of your own work and finances. The ISM guide is perfect for early career composers who are entering the professional world and dealing with these issues for the first time. The guide helps you to consider all the relevant aspects of a contract, thus helping you make an informed decision before signing on the dotted line.

www.geoffpoole.co.uk

www.kirstydevaney.co.uk
What to watch out for in a publishing contract (a summary of the Composers publishing checklist)

1. Assignment or licence of rights: Make sure you know who will own the rights in your work, and who will benefit from any licences.

2. Term of the agreement (plus the Rights or Retention Period): How long is the contract going to last? And what rights will you or your publisher retain after the contract is terminated?

3. Your royalties / percentage of revenue: Are you getting a fair share of payment? PRS for Music rules mean you get at least 50% of PRS royalties but how are you going to split the remainder? Get some advice!

4. How do royalties get calculated? Is it based on the money made ‘at source’ or on a ‘receipts’ basis (which would allow the Publisher to deduct costs (including overseas publishing costs) before calculating your share).

5. When are you going to receive payment? We recommend that you should receive royalty payments at least four times a year (quarterly).

6. Are you consenting to all sorts of exploitation? Your music could be used in films or rearranged and sampled. This can be great, but make sure you know whether you will have any say in how your music will be used.

7. Making the most of your music: Are there any obligations on your publisher to maximise your income? Or on you to help promote your work?

8. Reversion of rights: If your music is going nowhere, will you be able to get the rights back? Get some expert legal advice.

9. Right to assign to a different publisher: Could your rights end up elsewhere with a less helpful publisher than the one you originally signed up for?
Composers publishing checklist

Checklist of key issues for composers to consider before signing any publishing agreement.

This checklist is intended to give you some suggestions as to the kind of issues composers should look out for when considering a publishing agreement. It is not a substitute for legal advice and composers are strongly advised to take legal advice before signing any publishing agreement. ISM members can obtain legal advice on publishing contracts direct from the ISM’s in-house legal team (Telephone: 020 7221 3499 or email: legal@ism.org)

1. Assignment or licence of rights
Composers must be clear whether the publishing contract they are being asked to sign is an assignment or a licence. In broad terms, a licence will allow the composer to retain greater control over their work than an assignment. A licence simply gives a publisher permission to deal with the copyright work in various specified ways. An assignment transfers rights previously held by the composer to the publisher (either permanently or for a fixed term – see point 2 below). The template agreement in this Pack is in the form of an exclusive licence of rights.

2. Term of the agreement (plus the Rights or Retention Period)
A key question to be asked is how long the contract will last and, where there is an assignment of rights to the publisher, how long the publisher’s rights in the composer’s work will continue (sometimes called the Rights or Retention Period). Sometimes the term of the contract will coincide with the Rights Period. However, in an exclusive publishing deal, (where a composer typically assigns all the rights in his or her work over to a publisher for a fixed period of say 3-5 years) the Rights or Retention Period may be considerably longer than the term of the contract – and may even be for the whole term of copyright (meaning that the rights in the work may never revert to the composer).

3. Royalties/percentage of revenue to be retained by publisher/advance payments
A key element in any publishing contract is how revenue derived from the work will be split between composer and publisher. This is principally a matter for negotiation between composer and publisher. The ISM strongly advises composers to take expert advice to ensure that they are getting a fair deal. Composers should also be aware that PRS rules ensure that at least 50% of royalty income from PRS must be paid directly by PRS to the composer. How the remaining 50% of PRS income is split between composer and publisher is a matter for negotiation. Sometimes composers are offered an advance by the publisher at the point that a publishing deal is agreed, which is then recoupable from the composer’s share of revenue. Whether an advance is payable and how much that advance will be, will form an important part of the negotiations.

4. Calculation of revenue (‘at source’ or ‘receipts’ basis)
It is preferable that the composer’s royalties should be based on revenue ‘at source’ rather than calculated on a ‘receipts’ basis – this will avoid the composer’s royalties being reduced by fees paid to overseas sub-publishers. If the ‘receipts’ basis is used, composers should ensure that there is a limit on the percentage of revenue that can be paid to overseas sub-publishers (typically 10-20%).

5. Accounting provisions for payment of royalties
Composers need to consider when they will receive income from their works. It is clearly preferable that payments should be made on a quarterly basis, supported by a detailed account of revenue received and any deductions made.
6. Composer’s consent to certain types of exploitation of the work – for example:
   a) any material alterations or adaptations to the work
   b) any synchronisation licence for film/music/tv
   c) any licence to sample

The composer may want to include provisions in the publishing contract stipulating that certain types of exploitation of the work are not permitted unless the publisher has first obtained specific authorisation from the composer. Clauses of this kind will give the composer greater control over the use of the work. However, publishers may be reluctant to give the composer a veto over uses that could prove to be commercially lucrative.

7. Publisher’s obligations: “best endeavours to exploit the Compositions for the benefit of the Composer”

A good publishing contract should make it clear that the publisher is going to do everything it can to promote the composer’s work. The ISM recommends that, in addition to any specific contractual provisions, an obligation to use “best endeavours to exploit the compositions for the benefit of the composer” should also be included, to make it absolutely clear that the composer can expect the publisher actively to promote the work throughout the lifetime of the publishing agreement (and during any Rights/Retention Period, if that is longer).

8. Re-assignment/reversion of rights where no exploitation/no royalties

The ISM recommends that, in any publishing agreement, there should be a provision allowing the composer to terminate the agreement and for all rights to revert to the composer in the event that agreed goals are not achieved by the publisher (for example a recording contract or synchronisation licence) within an agreed timescale or where no (or very low) income is being generated by the publisher. Obviously the precise drafting of a re-assignment/reversion of rights clause will vary from contract to contract. This is another area where the composer should seek detailed legal advice.

9. Right to assign to a different publisher

Publishing contracts sometimes include a clause providing that the publisher’s rights under the contract can be assigned to a third party publisher. Often there is no requirement that the composer consent to such an assignment. Composers need to pay careful attention to any clauses of this type – such a clause could result in the composer ending up with a publisher very different to the one they originally contracted with.
Composition commission template

From: [FULL LEGAL NAME OF COMMISSIONING PARTY] of [address] (“we”, “us”);

To: [COMPOSER NAME] of (“you”)

Dated:

Dear [NAME OF COMPOSER]

This letter (“Agreement”) sets out the terms on which we have agreed to engage you and you have agreed to render to us your services as composer and arranger in respect of the forthcoming performances (“Performances”) by [name of orchestra or ensemble] (“Orchestra”) the details of which are set out in the Schedule attached to this Agreement. Capitalised terms used and not defined below shall have the meanings given to them in the Schedule.

1. ENGAGEMENT AND DELIVERY

1.1 We engage you to compose for us a new, original piece of music in accordance with the specifications set out in the Schedule (“Work”) and to deliver to us the score (“Score”) for the Work (including all orchestral and choral parts) in electronic format by the delivery date set out in the Schedule.

1.2 If for any reason it becomes apparent that you will not be able to deliver the Work to us by the agreed delivery date you shall promptly notify us in writing and we will have the option (acting reasonably) to agree with you in writing a new delivery date for the Work or to notify you in writing that we wish to terminate your engagement (and if we do so the balance of the Fee payable under clause 2.1.2 shall not be payable to you).

2. FEE

2.1 We shall, following our receipt of an invoice from you, pay you the sum of [amount in words] [£amount in figures] plus VAT if applicable (“Fee”) as follows:

2.1.1 Fifty per cent (50%) within seven (7) days of execution of this Agreement (which shall be non-returnable); and

2.1.2 The balance within seven (7) days of your delivery to us of the Work.

2.2 We shall pay the Fee by bank transfer to a bank account specified by you.

3. RIGHTS

3.1 Copyright: As between you and us, the copyright and all other rights in the Work and the Score shall remain vested in you. You shall be free to deal with the Work and the Score subject only to the rights granted to us under this Agreement and the restrictions set out below.

3.2 Changes to the Work and/or the Score: We shall not be entitled to make any changes to the Work or the Score without your prior written consent. If we wish you to make any changes to the Work or the Score following delivery to us we shall notify you in writing providing details and if you (at your discretion) agree to make such proposed changes we shall pay you an additional fee (to be agreed at the time).

3.3 Licence: Licence: In consideration of full payment to you of the Fee and for the other consideration contained in this Agreement you hereby grant us a licence to reproduce (at our sole cost) physical and/or electronic copies from the Score for the purposes of the Orchestra rehearsing the Work (“Parts”), and a licence to perform the Work at the Performances at the Venue on the Dates. We shall not be entitled to record the Performances or otherwise exploit the Work or use the Score or Parts. Following completion of the Performances we shall promptly at your direction (and at our sole cost) return all Parts and copies of the Score to you or, at your request, destroy them and delete any electronic copies (and ensure that all Orchestra members do the same).
3.4 Rights of PRS: We acknowledge that as you are a member of the Performing Right Society ("PRS") the performing right in the Work is controlled by and subject to the rights of the PRS and the grant of rights to us under clause 3.3 is subject to the Venue obtaining and paying for all applicable PRS licence fees for the Performances of the Work.

3.5 Exclusivity: Subject to clause 3.4, you agree not to grant any third party the right to perform the Work in public until after the Dates.

3.6 Credit and copyright notice: We acknowledge that you have asserted your right to be identified as the composer of the Work and the Score and we shall procure that all programmes and publicity materials relating to the Performances credit you prominently as the composer of the Work and include any additional information you provide us with. All physical and electronic copies of the Score reproduced by us shall bear a standard copyright notice including the following wording: Copyright [Name of Composer] [2019] All rights reserved.

3.7 Name, photo and biography: We shall be entitled to use your name, approved professional name, approved photograph and approved biography solely in connection with our use of the Work and Score under this Agreement and promotion of the Performances. Materials supplied by you shall be deemed approved but you will have the right to approve in writing any use of your photo. We shall not use such materials so as to suggest you promote or endorse any third party product or service or for advertising our business generally.

4. WARRANTIES

4.1 You warrant that you have the full right and authority to enter into this Agreement and to render your services to us and to the best of your knowledge and belief the Work will not infringe any third party copyright, and you hereby indemnify us against all costs, claims, demands, proceedings and damages, including our own legal costs, howsoever arising, in respect of any breach of this warranty.

4.2 We warrant that we have the full right and authority to enter into this Agreement and we shall comply with all of its terms and we shall indemnify you against any action, claim, proceeding, demand, loss, damage or injury or any costs or reasonable legal expenses incurred by you as a result of any breach or alleged breach by us or the Orchestra of our obligations under this Agreement.

5. GENERAL

5.1 This Agreement sets out the entire agreement between us in connection with the subject matter hereof and may not be amended other than by written agreement signed by both of us.

5.2 All notices under or in connection with this Agreement shall be sent to the address for the party shown above or such other address notified by such party from time to time.

5.3 No person who is not a party to this Agreement shall derive any benefit or have any entitlement or claim in relation to this Agreement by virtue of the Contract (Rights of Third Parties) Act 1999.

5.4 We shall not be entitled to assign or licence our rights under this Agreement and we shall remain primarily liable to you at all times in respect of our obligations under this Agreement.

5.5 This Agreement (and any non-contractual disputes arising out of it) shall be governed by the laws of, and subject to the jurisdiction of, the courts of England and Wales [Scotland] [Northern Ireland]

OR: [Any disputes arising in respect of this Agreement shall be settled through arbitration through an agreed organisation or individual. The parties reserve the right to issue legal proceedings where a matter has not been finally resolved by arbitration to the satisfaction of both parties, in which case the governing law and jurisdiction shall be those of [England and Wales] [Scotland] [Northern Ireland].]
Please sign below to acknowledge your acceptance of the terms of this Agreement.

…………………………………………………………………………………………………………
On behalf of [COMMISSIONING PARTY]

Read and agreed

…………………………………………………………………………………………………………
[COMPOSER]

SCHEDULE
Specification for the Work: [length / general description]
Delivery deadline: [insert date]
Details of Performances:
Dates: [insert dates]
Venue: [insert name and address of venue]
Composition commission
reference notes

These notes are for reference purposes only. Access to the Composition Commission template and these notes does not constitute the provision of legal advice by either the ISM or its partners. Those using the contract and these notes do so strictly on the basis that no liability, in relation to the use of the contract or the notes, is accepted by the ISM or its partners.

You are strongly advised to seek independent legal advice before entering into any contract. ISM full and student members are entitled to free legal advice in relation to the use of these template contracts from the ISM legal team.

This contract may be used by Composers where they have been commissioned to compose a piece of music and deliver a score to a third party for a specified number of performances by an Orchestra (or any ensemble or individual) at a Venue and on Dates specified in the Schedule.

The copyright in the Work remains the Composer’s property and the Composer is free to deal with their rights in the Work except that the Composer agrees not to grant a third party the right to perform the Work until after the agreed dates for the performances. After the performances the licensee should return all physical copies of the Score or destroy them (at the Composer’s direction), and delete any electronic copies.

No rights are granted to record the performances or otherwise exploit the Work (for example streaming or webcasting). If any additional rights are requested or a potential licensee wishes to amend any of the terms of this contract you should seek expert advice before agreeing terms.

Notes to individual clauses:

Clause 3.1 Composer retains ownership of all rights in the composition, and licences to the orchestra only the specific exclusive rights to create and copy orchestral parts from the score and to perform the work on the agreed dates (clauses 3.3 and 3.5).

Clause 3.2 If the commissioning party requests composer to make changes/alterations to the composition after it has been delivered, they will pay the composer an additional fee to be agreed at the time. (On the other hand, the composer is often expected to bear the cost of any post-delivery alterations that he/she chooses to make).

Clause 3.3 The orchestra will bear the cost of making the orchestral parts, and the right to copy them from the Score is included in the Fee. Composer keeps the orchestral parts and Score after the performances.

Clause 3.4 Composer must make sure that s/he is registered with PRS, if this has not already been done, in order to receive the performance licence income relating to the performances. If Composer is unregistered, he/she will receive all of the licence income; if Composer has a publisher, it will be divided 50/50 with the publisher. (Often, the publisher will agree to give half of their share to the composer, so that composer ultimately receives 75% of the PRS income).

Clause 3.6 The Composer’s moral rights are: (i) the right to be credited as the composer (ii) the right to object to any arrangement or treatment of the composition which could damage his/her reputation (iii) the right to object to false attribution (ie being named as the composer of a work that he/she did not write)

The first of those rights does not arise automatically but must be asserted in order to come into existence. The second and third rights arise automatically. Some types of music publishing contract will require the composer to waive some or all moral rights. This is however much less common in classical music publishing, and therefore clause 3.6 asserts the first right, and does not waive the second and third rights.

Clause 4

Clause 4.1 This is a standard warranty for a composer or author or any other creator of original content. Composer guarantees that the work is original; if the commissioning party has to settle an infringement claim because the Composer had incorporated some unauthorised third party material into the composition, Composer agrees to cover all resulting costs and damages incurred by the commissioning party.

Clause 4.2 The commissioning party gives a matching warranty and indemnity to the Composer.

Clause 5.5 Use the alternative clause where the commissioning party and performances are in a (non-UK) EU member state. A possible consequence of Brexit could be that it will become difficult to enforce in the UK a court order for damages, late fees and debts obtained in a court in an EU member state. If this is concern, then the alternative arbitration clause should be used, since an award obtained through arbitration can be enforced internationally. Please select the UK country in which you are resident and delete the others.

© Incorporated Society of Musicians, 4-5 Inverness Mews, London W2 3JQ, T: 020 7221 3499
Publishing agreement template

THIS AGREEMENT is made this day of 2019

BETWEEN

1. [NAME OF PUBLISHER] [a company registered in England and Wales with company number [company number], whose registered office is at [Publisher’s registered office address] (“Publisher”); and

2. [COMPOSER’S NAME] of [Composer’s address] (“Composer”).

IT IS AGREED:

1. DEFINITIONS

1.1 In this Agreement the following terms shall have the following meanings

“Collection Period” means a period of one (1) year following the expiry of the Retention Period.

Composition(s) means those musical compositions (music and/or lyrics) written or composed by the Composer in whole or in part (and if in part to the extent of such part written by the Composer), set out in the Schedule. Where only one title is specified in the Schedule then reference to “Composition(s)” in this Agreement shall be construed as “Composition”.

“Territory” means the world and the universe.

“Retention Period” means a period commencing on the date of this Agreement and ending on [insert end date – this should be 31 December or 30 June in a given year].

2. RIGHTS AND APPROVALS

2.1 In consideration of the advance, royalties and other consideration contained in this Agreement the Composer hereby exclusively licences to the Publisher for the Retention Period throughout the Territory the entire copyright and all other rights of whatever kind and nature in the Composition(s) (including those rights referred to in clause 2.3 and all rental and lending rights, making available rights and rights of communication to the public) subject always to the Composer’s rights of approval under clause 2.4.

2.2 If the Composer is a member of the Performing Right Society or any similar performing right society in the Territory (“Society”) the rights granted by the Composer under this Agreement are subject to the rights of the Society arising by virtue of the Composer’s membership of the Society but including the Composer’s reversionary interest in such rights expectant upon the determination by any means of the rights of the Society.

2.3 The Publisher shall be entitled to exploit the Composition(s) by any and all music publishing means and methods and the rights vested in the Publisher shall include the exclusive right in respect of the Composition(s) (or any of them) throughout the Territory (or in any part of the Territory) during the Retention Period, but subject always to the Composer’s rights of approval under clause 2.4:

2.3.1 to register the copyright in the Composition(s) in the Composer’s name and the Publisher’s name;

2.3.2 to administer, collect and receive during the Retention Period and the Collection Period one hundred percent (100%) of moneys arising from the exploitation of the Composition(s) before the Retention Period (solely to the extent not already collected by the Composer or any third party on the Composer’s behalf) and during the Retention Period (including one hundred per cent (100%) of the so-called “Publisher’s Share” of performance income);

2.3.3 to record and/or reproduce the Composition(s) and to grant non-exclusive licences authorising others to record and/or reproduce the Composition(s) by means
of mechanical or digital reproduction or otherwise on all forms of sound carrier now known or hereafter invented and on all forms of audio visual devices now known or hereafter invented;

2.3.4 to synchronise the Composition(s) or to grant licences authorising others to synchronise the Composition(s) with any and all audio-visual media now known or hereafter invented (including advertisements);

2.3.5 to use the titles of the Composition(s);

2.3.6 to make arrangements, adaptations and translations of the Compositions provided that the copyright in any such arrangements, adaptations and translations shall vest in the Composer and be exclusively licensed to the Publisher under the terms of this Agreement;

2.3.7 to print and publish (and licence others to print and publish) the Composition(s) as sheet music in any form provided that a copyright notice shall be included in all cases in substantially the following form: “© [Name of Composer] [Year of first publication] [Used by permission];

2.3.8 to distribute reasonable numbers of printed copies of the Composition(s) (including orchestrations) within the entertainment industry free of royalty (to the extent that the Publisher does not receive any payment) for the purpose of promoting the Composition(s);

2.3.9 to allow the Composition(s) to be reproduced in the press or printed in books or albums or in any multimedia format (such as but not limited to electronic press kits) or in periodicals for the purpose of review;

2.3.10 subject to any and all rights of the applicable Society to license the public performance, broadcast and transmission of the Composition(s) in live venues and in any and all audio and audio-visual media now known or hereafter invented including by way of digital streaming on the internet and/or via mobile applications and to licence the Composition(s) for inclusion in a cable programme service;

2.3.11 subject to any and all rights of any applicable rental and lending right societies throughout the Territory to license the rental and lending of the Composition(s);

2.3.12 to grant licences to dramatise the Composition(s) and licence the use and performance of dramatic versions of the Composition(s) (so called “grand rights”);

2.3.13 to make literary versions of the Composition(s) and to print publish and sell literary versions of the Composition(s); and

2.3.14 to use and publish and permit others to use and publish the Composer’s approved name and professional name, approved photograph or other approved likeness and approved biographical material and the titles of any and all of the Composition(s) solely in connection with the promotion and exploitation of the Composition(s) under this Agreement.

2.4 Notwithstanding anything to the contrary in this Agreement, the Publisher shall not, without the Composer’s prior written approval (on a case by case basis) grant (or permit any third party to grant) any licence for any of the following:

2.4.1 any use of the title of any Composition(s), except: (i) in connection with such Composition(s); (ii) for audio and/or audio-visual products and/or services incorporating any Composition(s); and/or (iii) other than for the purposes of promoting, exploiting and/or administering any Composition(s); and any new title or change to the title of Composition(s);

2.4.2 the making of any material arrangements or adaptations of the Composition(s) and translations of the Composition(s) (except where such arrangements, adaptations or translations are made in accordance with the rules, regulations and practices of any local collecting society which are not within the Publisher’s reasonable control);

2.4.3 the grant of any “first use” mechanical licences of the Composition(s) except to the Composer or their authorised licensee;

2.4.4 (subject only to blanket licences in the Territory) the synchronisation or other use of any Composition(s) with any commercial, film, television programme, computer programme, video-game or other audio-visual production it being understood that no approval shall be required for the synchronisation or other use of any Composition(s) in any promotional video made by the Composer or their authorised licensee in order to promote any of the Composer’s recording(s) of Composition(s) and in commercials for records or videos produced by the Composer’s authorised licensee featuring the Composer’s recordings or promotional videos;

2.4.5 the inclusion of any Composition(s) as a sample in a third-party composition;

2.4.6 the use of any Composition(s) in any so-called “premium record” or covermount;

2.4.7 the use of any Composition(s) in or on so-called merchandise products to be made available for commercial sale (other than records in all formats featuring the Composer’s performances);

2.4.8 the use of any Composition(s) in any sponsorship, endorsement or other commercial tie-up or in
connection with politics, religion, the military or arms, pharmaceuticals, narcotics, tobacco, alcohol, violence, pornography, the fur trade or personal hygiene products;

2.4.9 the making of literary versions of the Composition(s) and/or printing, publishing or selling literary versions and/or sheet music and/or typographical arrangements of the Composition(s); and

2.4.10 the making of a dramatico-musical work of the Composition(s) and/or use of the Composition(s) in a dramatico-musical work and/or the granting of a so-called “grand rights” licence in respect thereof.

Requests for approval from the Publisher shall be sent by email to an email address specified by the Composer and approval provided or refused by the Composer by email shall be sufficient evidence of such approval having been provided or refused.

2.5 The Publisher acknowledges that the Composer may, as a condition of entering into a recording, production or sample agreement be required to accept specific provisions in relation to the payment of mechanical royalties and in relation to the grant of licences (including synchronisation licences) and, provided that the grant of such licence is on reasonable commercial terms and is not unlawful or contrary to any local society rule or regulation and provided that the Composer delivers to the Publisher a copy of the relevant extracts from each such agreement, then the Publisher shall abide by such provisions and promptly grant (or procure the grant of) any licences requested by the Composer’s authorised licensees without making any deductions from moneys payable to the Composer under this Agreement.

3. ADVANCE AND ROYALTIES

3.1 As a precondition to the grant of rights by the Composer under clause 2 the Publisher must pay to the Composer [insert advance in words] pounds (£TBC) plus VAT if applicable following execution of this Agreement and the Composer’s submission of a valid invoice, by way of an advance which is directly and identifiably attributable to Procured Synchronisations where the synchronisation licence in question has been procured directly and identifiably by efforts of the Publisher or its agents under this Agreement, after the following deductions only:

(a) local bona fide arm’s length performing rights or mechanical rights societies’ commissions or fees (or the equivalent thereof, including commissions or fees charged by the Harry Fox Agency and the Canadian Musical Rights Reproduction Agency Ltd); and

(b) VAT and any other taxes properly required to be deducted in any part of the Territory; and

(c) any amounts paid by way of remuneration to arrangers, adaptors and translators such deductions being subject to the Composer’s prior written approval or in accordance with local society rules or regulations or in accordance with statute in each instance.

For the avoidance of doubt:

any costs or expenses incurred by the Publisher in providing its services under this Agreement (including moneys payable to third party licensees, sub-publishers or agents) shall be the sole responsibility of the Publisher (except as expressly provided under sub clauses (a), (b) and (c) above); and

moneys which are received by the Publisher which are net of any retained amounts by any third party licensees, sub-publishers or agents in respect of its share shall be grossed up by such netted amount in computing the Composer’s share of At Source Revenue.

3.2 The Publisher shall account to the Composer for the following royalties on an “At Source Revenue” basis meaning one hundred per cent (100%) of gross earnings received by or credited to the Publisher or its licensees at the source of exploitation which is directly and identifiably attributable by title to the use and/or exploitation of the Composition(s) and/or the rights granted under this Agreement, after the following deductions only:

(a) performance income: the Composer will receive the so-called “Composer’s Share” directly from the Society and the Publisher shall collect the so-called “Publisher’s Share” and account to the Composer for sixty per cent (60%) of At Source Revenue except where such income is directly and identifiably attributable to Procured Synchronisations where the Publisher shall account for fifty per cent (50%) of At Source Revenue in lieu of sixty per cent (60%).

If the Composer is not a member of the Society then the performing rights in the Composition(s) shall be administered by the Publisher and the Publisher shall be entitled to collect the Composer’s Share and the Publisher’s Share and shall account and pay to the Composer one
hundred per cent (100%) of the Composer’s Share without any deduction or set-off and irrespective of whether the Composer’s royalty account is recouped.

4. ACCOUNTING

4.1 The Publisher shall keep complete and accurate books and records of account relating to the exploitation of the Composition(s) under this Agreement and shall account to the Composer by email clearly showing the calculation of royalties due to the Composer and the source of exploitation on a title by title basis twice yearly within ninety (90) days from 30 June and 31 December in each year and at the same time pay any sums shown to be due by bank transfer. Notwithstanding the foregoing if at any time the Publisher accounts quarterly to any of its composers it shall account quarterly to the Composer under this Agreement. The Publisher shall use all reasonable endeavours to minimise any such deductions. The Publisher shall provide the Composer with a certificate or other evidence of any such deduction or set-off and provide such assistance as may be reasonably necessary for the Composer to reclaim such deductions or withholding and obtain a tax credit for it. If the Publisher subsequently receives a tax credit it shall credit the Composer’s royalty account with a proper share of same.

4.2 The Publisher shall be entitled to deduct or authorise the deduction of any sums which may be demanded from it or its licensees by governments or other fiscal authorities of the respective countries throughout the Territory in which the Composition(s) are exploited provided that the Publisher shall use all reasonable endeavours to minimise any such deductions. The Publisher shall provide the Composer with a certificate or other evidence of any such deduction or withholding and provide such assistance as may be reasonably necessary for the Composer to reclaim such deductions or withholding or obtain a tax credit for it. If the Publisher subsequently receives a tax credit it shall credit the Composer’s royalty account with a proper share of same.

4.3 In the event that the Publisher does not receive payment in the United Kingdom or it receive payment anywhere in the Territory in a currency other than sterling which, by reason of currency or other governmental regulations or restrictions, it cannot convert into sterling it will notify the Composer and the Publisher or its designee shall deposit to the Composer’s credit in a depository selected by the Composer in the country in which such sums are held the portion of such sums representing the applicable royalties payable to the Composer.

4.4 At any time within three (3) years after any royalty statement is rendered under this Agreement the Composer shall have the right to appoint an independent chartered accountant to examine the Publisher’s books and records with respect to such statement. Such examination shall be commenced within three (3) months after the date of such notice and not more than one (1) such examination shall be carried out in any calendar year. Such examination shall be made on reasonable written notice during the Publisher’s normal business hours at the place where the Publisher maintains its books and records necessary to verify the accuracy of the statement or statements specified in the Composer’s said notice. If any such examination reveals an underpayment in the sums which should have been paid to the Composer during the period covered by such examination the Publisher shall forthwith pay such underpayment to the Composer. If such underpayment is in excess of ten per cent (10%) of the sums which should have been paid to the Composer then in addition the Publisher shall forthwith reimburse the Composer with the costs of such examination (excluding travel, subsistence and accommodation costs).

4.5 The Publisher shall not construct its affairs so as to artificially reduce royalties payable to the Composer under this Agreement. The Publisher shall not cross-collateralize royalties and moneys payable to the Composer or costs incurred (or unrecouped balances) under this Agreement against royalties and moneys payable to the Composer or costs incurred (or unrecouped balances) under any other agreement.

5. PUBLISHER’S OBLIGATIONS

5.1 The Publisher shall use its best endeavours to exploit the Composition(s) for the benefit of the Composer throughout the Territory during the Retention Period and to procure the accurate registration of copyrights and the collection of all moneys arising from the exploitation of the Composition(s) under this Agreement.

5.2 The Publisher warrants that all third party licences entered into by it in respect of the Composition(s) shall be on a bona fide arms’ length commercial basis on the most favourable terms the Publisher is reasonably able to negotiate at the time.

5.3 Notwithstanding anything contained herein, if in the case of any Composition(s) there has not taken place in any part of the Territory at any time within two (2) years from the date of this Agreement:

(i) the issue of a mechanical licence of such Composition(s) for a bona fide commercial fee;

(ii) the publication of such Composition(s) in printed form for a bona fide commercial fee distributed in reasonable commercial numbers through normal retail outlets in the UK or USA for sale to the public;

(iii) the grant of a licence for the synchronisation of such Composition(s) for a bona fide commercial fee; or

(iv) the performance of such Composition(s) in public for a bona fide commercial fee;

then the Composer shall be entitled to give notice in writing at any time after the date of the expiry of the said two (2) year period specifying the Composition(s) which have not been so exploited.

5.4 If none of the uses referred to in clause 5.3 has in fact taken place prior to receipt of such notice and does not take place in respect of such Composition(s) within a further period of three (3) months from the date of receipt of such notice by the Publisher, then with effect from the expiration of such three (3) month period all rights granted to the Publisher in
respect of such Composition(s) shall automatically revert to the Composer without the need for further formality.

6. WARRANTIES AND INDEMNITY

6.1. The Composer warrants that:

6.1.1 The Composer is entitled to enter into this Agreement and make the grant of rights contained in this Agreement free of all claims and encumbrances;

6.1.2 The Composition(s) are new and original and will not to the best of the Composer’s knowledge and belief infringe the rights of any third parties;

6.1.3 Promptly following execution of this Agreement the Composer will deliver true and accurate details of each Composition(s) to the Publisher together with a manuscript copy of the lyrics (if any); and

6.1.4 The Composer will at the Publisher’s expense (and subject to the Composer being afforded the opportunity to take legal advice thereon), do such further things and execute all such further instruments as the Publisher may from time to time reasonably require including without limitation all directions to the Society and other documents for the purpose of confirming the terms of this Agreement;

6.2 The Composer indemnifies the Publisher against any liability, loss or damage (including reasonable legal costs) suffered by the Publisher from a third party claim which arises directly as a result of a proven breach of the Composer’s obligations or warranties in this Agreement provided that such liability, loss or damage (and reasonable legal costs) are adjudicated pursuant to an adverse final judgment in a court of competent jurisdiction or settled with the Composer’s prior written approval (not to be unreasonably withheld).

7. LEGAL PROCEEDINGS

The Publisher shall have the right (and obligation) to take such action as is reasonably necessary either in the Publisher’s or in the Composer’s name or in both names against any third party to protect all rights and interests acquired under this Agreement provided that any action in the Composer’s name shall be subject to the Composer’s prior written approval and the Publisher must as a precondition to prosecuting any such action provide the Composer with a specific written indemnity against costs. Subject to the foregoing the Composer agrees to cooperate with the Publisher at the Publisher’s expense in any dispute or litigation concerning the rights and interests acquired by the Publisher under this Agreement. If the Publisher recovers on a judgment or as a result of any settlement its reasonable and proper expenses (including reasonable legal fees) then the balance of any recovery shall be divided between the Composer and the Publisher in accordance with clause 3. Any shortfall in costs shall be borne by the Publisher.

8. TERMINATION

8.1 The Composer may terminate the Retention Period and Collection Period with immediate effect by written notice to the Publisher if:

8.1.1 the Publisher enters into liquidation (other than a voluntary liquidation for the purposes of a bona fide reconstruction or reorganisation), the Publisher is subject to a winding up petition, the Publisher makes any composition with all or any class of its creditors, or any trustee, administrator or receiver is appointed to take over all or a substantial part of the Publisher’s assets and is not discharged within thirty (30) 30 days; or

8.1.2 the Publisher fails to render any accounting or any related payment when due under this Agreement or is otherwise in material breach of this Agreement and such failure or breach continues for thirty (30) days after the Publisher’s receipt of written notice from the Composer specifying such failure or breach and requiring its remedy; or

8.1.3 royalties of less than one hundred pounds (£100) are paid to the Composer or credited to the Composer’s royalty account during any two (2) consecutive half yearly periods (as shown by the Publisher’s accounting statements for such periods).

8.2 If the Composer terminates the Retention Period and Collection Period under clause 8.1 all rights granted to the Publisher shall automatically revert to the Composer without the need for further formality.

8.3 Following the expiry of the Retention Period by effluxion of time all rights granted by the Composer shall automatically revert to the Composer without the need for further formality subject only to the Publisher’s right to collect income arising during the Retention Period for the Collection Period.

9. GENERAL

9.1 All notices (unless otherwise provided in this Agreement) shall be sent by courier or by recorded delivery mail with proof of delivery to the parties’ addresses on page 1 (or such other addresses as may be notified by the parties from time to time) and shall be deemed served on the date signed for by the recipient party.

9.2 The Publisher may not without the Composer’s prior written approval assign this Agreement in whole or in part save that it shall without the Composer’s approval be entitled to assign this Agreement to any parent, subsidiary, associated or affiliated company of the Publisher or to any other company with which the Publisher may merge or which acquires a controlling interest in or a substantial portion of its business or catalogue provided that as a pre-condition of any such
assignment the applicable assignee must enter into a direct
covenant in writing with the Composer to fulfill the
Publisher’s obligations under this Agreement (which must be
acceptable to the Composer having taken legal advice
thereon). Any purported assignment by the Publisher which
does not fulfill the conditions specified in the previous
sentence shall be void ab initio.

9.3 No failure or delay by any party in exercising its rights under
this Agreement will operate as a waiver of that right nor will
any single or partial exercise by either party of any right
preclude any further exercise of any other right. Any
modification or variation to this Agreement must be in writing
and signed by the parties hereto.

9.4 Each party confirms that this Agreement sets out the entire
agreement and understanding between the parties and that
it supersedes all previous agreements, arrangements and
understandings between them. Nothing in this Agreement
excludes any liability for fraud or misrepresentation.

9.5 No person who is not a party to this Agreement shall derive
any benefit or have any entitlement or claim in relation to
this Agreement by virtue of the Contract (Rights of Third

9.6 This Agreement (and any non-contractual disputes arising out
of it) shall be governed and construed in accordance with the
laws of England and any legal proceedings that may arise out
of it are subject to the exclusive jurisdiction of the English
courts SAVE THAT either party shall be entitled to apply for
the remedies of injunction, specific performance and/or other
equitable relief for any threatened or actual breach of the
terms of this Agreement in any applicable country outside
of England.

The above terms have been read and agreed by each of the parties set out below.

Signed by
____________________________________________________
For and on behalf of
[PUBLISHER]

[COMPOSER]

SCHEDULE

Composition(s)

<table>
<thead>
<tr>
<th>TITLE</th>
<th>COMPOSER’S % INTEREST</th>
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[Clearly state the title(s) and your interest here]
Publishing agreement reference notes

These notes are for reference purposes only. Access to the Publishing Agreement and these notes does not constitute the provision of legal advice by either the ISM or its partners. Those using the contract and these notes do so strictly on the basis that no liability, in relation to the use of the contract or the notes, is accepted by the ISM or its partners.

You are strongly advised to seek independent legal advice before entering into any contract. ISM full and student members are entitled to free legal advice in relation to the use of these template contracts from the ISM legal team.

This agreement is intended to be used by composers who do not have a current exclusive publishing agreement who wish to exclusively licence the copyright and related rights in a single musical composition or compositions (Composition(s)) to a publisher for a set period of time.

Publishers will often in the first instance, seek an assignment of copyright (and sometimes also ask for this to be for the full period of copyright). However, unless a substantial advance is being offered there is no justification for an assignment of copyright and composers should use this format (and limit the Retention Period to a specific number of years).

The agreement is drafted broadly in accordance with current industry practice from the Composer’s perspective with rights of approval over certain uses which are customarily agreed by publishers. If a publisher asks to amend any of the terms of this agreement you should seek expert advice from a solicitor specialising in music business agreements.

The numbers below correspond to footnote numbers in the agreement itself.

Clause 1.1 Collection Period – This is the period after the Retention Period during which the Publisher is entitled to collect income arising during the Retention Period.

Clause 1.1 Retention Period – This is the rights period during which the Publisher will exclusively control the copyright in the Composition. Depending on the size of the advance offered this may typically be anything from 1 to 15 years.

Clause 2 Rights and Approvals – The rights granted and approvals given reflect the standard industry position where an agreement has been negotiated on behalf of a Composer. You should read these carefully to make sure you understand what rights are being granted and which steps a publisher may only take with your prior written approval. If no advance or only a low advance is being offered, consider reserving completely certain rights (such as “grand rights”).

Clause 2.1 Rights of the PRS – The drafting of this clause assumes that the Composer is a member of the PRS and that the rights being granted by the Composer are subject to the rights controlled by the PRS. If you are not a member of PRS (or a similar organisation anywhere in the world) you should join.

Clause 2.3.2 In the final sentence, “performance income” refers to the licence income (generally collected and paid out by PRS) due when a copyright work is performed in public. Public performance refers not only to a live gig, but also refers to a broadcast or digital transmission such as streaming and inclusion in a cable programme service. PRS allocates the income it collects 50/50 between publisher and composer, and pays it to each directly. The expression “100% of the Publisher’s share” therefore refers to the publisher’s 50% split. A publisher will often agree to give some, or as much as half, of their share to the composer, so that the true split of performance income can be as much as 75/25 in the composer’s favour.

Clause 2.3.12 “Grand rights” is a particular type of performance right in relation to any fully-staged use of a musical composition. “Fully-staged” means a theatrical or staged production with costumes, scenery, lighting, choreography, stage direction. “Grand rights” are not administered by PRS, and so a licence must always be obtained direct from the publisher or composer. By contrast, a semi-staged performance on a concert platform, with minimal costume and no sets or special lighting, would often not require a grand rights licence and could instead be licensed through PRS.

Clause 2.4 In this clause, composer’s rights of approval are listed; these are rights granted to the publisher which can only be exercised with the composer’s approval.
Clause 3.1 Advance – If no advance is being paid you should put £1.00 and the Retention Period should be limited to 1-3 years.

Clause 3.2 Royalties – The royalty rates specified here reflect the customary percentages offered in commercial publishing agreements. In classical music publishing agreements the rates offered may be somewhat lower. Royalties are calculated “At Source” (i.e. as a percentage of income received at the source of exploitation), as opposed to a “Receipts” basis (where the Publisher pays through a percentage of income received calculated after deduction of sub-publishers’ fees). If a Publisher offers a lower rate or wishes to account on a Receipts basis you should seek expert advice before agreeing terms. If royalties are calculated on a Receipts basis any sub-publishers’ fees to be taken into account in the calculation of royalties should be capped (a typical cap would be at 10-20%).

Clause 3.2.5 Royalties for performance income – The royalty rate for performance income is based on the “Publisher’s Share” of performance income distributed by performing right societies (the Composer should receive the “Writer’s Share” directly from PRS) and is calculated so that the Composer’s overall share of all performance income equates to the main mechanical rate (or applicable rate for Procured Synchronisations).

Clause 4.5 Accounting – “Cross-collateralise” refers to the practice of using royalties under one contract to recoup the advance under another contract. This is a practice that should always be strongly resisted by any composer or artist.

Clause 5 Publisher’s Obligations – This clause sets out the Publisher’s obligations and allows you to compel the Publisher to exploit the Composition(s) if, after a period of time, certain commercial uses have not taken place and (in limited circumstances) to get your rights back.

Clause 8 Termination – This clause allows you to terminate the Retention Period and Collection Period if the Publisher breaches the agreement or fails to account for a minimum amount of royalties over 2 half yearly periods. Publishers may seek to restrict your rights of termination if a substantial advance is being paid.

Clause 9.1 Notices If you have appointed an independent solicitor to advise you then copies of any notices to the Composer should be sent to them.
DATED: _____________ 2019

These Special Terms and the attached General Terms and Conditions (together “the Agreement”) confirm the terms and conditions on which the Licensor shall grant the Licensee a non-exclusive licence during the Term in the Territory to synchronise the Composition(s) in timed relation with the Film.

SPECIAL TERMS

LICENSOR: [NAME and address of Licensor]

LICENSEE: [NAME and address of Licensee: – including company number, where applicable]

FILM: [Name of film or production]

COMPOSITION: [Title(s) of Composition(s)]

LICENSOR’S SHARE: [Licensor’s share of the copyright in the Composition]

USAGE / CONTEXT: [This should describe the use and context within the Film and specify if the use is during the opening or closing titles for the Film]

DURATION OF USAGE: [Insert duration of use in the Film in minutes / seconds of usage]

TERM: [Specify the agreed length of term – for feature films, documentaries and television productions this is usually the life of copyright]

TERRITORY: [Specify the territory – for feature films this is usually the world]

MEDIA: [As incorporated in the Film, in any and all media now known or hereafter devised including theatrical and non-theatrical exhibition, all forms of television, cable and satellite and web broadcasting, streaming and downloads, videograms and DVDs, but specifically excluding any interactive media including any device for which the viewer is invited to manipulate the audio-visual images in a non-linear progression. This includes, solely for the purposes of promoting the Film, in-context trailer use and using excerpts of the in-context trailer or other excerpts from the Film which include the Composition for any so-called ‘making-of’ programme directly related to the Film.]

CREDIT: [Specify the credit here – for example title / written by / published by / All rights reserved / etc.]

LICENCE FEE: [£tbc payable in accordance with the Licensor’s invoice. Favoured Nations Basis with other publishers and owners of sound recordings.] [NB the General Terms and Conditions say that VAT is payable on top of the fee]

THIS AGREEMENT WILL NOT BE VALID UNTIL FULLY EXECUTED BY BOTH PARTIES AND THE LICENCE FEE HAS BEEN PAID IN FULL AND RECEIVED BY THE LICENSOR

Signed by Licensor

______________________________

Signed by Licensee

______________________________

TBC

For and on behalf of TBC

© Incorporated Society of Musicians, 4-5 Inverness Mews, London W2 3JQ, T: 020 7221 3499
Synchronisation licence

General Terms and Conditions

1.1 Subject to the Licensee complying with the terms and conditions contained in this Agreement and in consideration of payment of the Licence Fee and for the other consideration contained in this Agreement the Licensor grants to the Licensee the non-exclusive right to synchronise the Compositions in timed relation with the Film and to reproduce and use the Film incorporating the Compositions in the Media during the Term in the Territory. This Agreement does not confer any right to perform or broadcast the Compositions. Performance or broadcast of the Compositions is subject to the rights of the relevant performing right societies and to payment of their customary fees. All rights in the Compositions not expressly granted under this Agreement (including the right to use the Compositions on any soundtrack album) are reserved to the Licensor.

1.2 All rights granted by the Licensor under this Agreement in and to the Compositions are only in respect of the Licensor’s Administrative Share and the Licensor makes no representations nor grants any rights in respect of any third party’s share in the Compositions.

2. The Licensee agrees, warrants and undertakes that it shall:

(a) not make any change to the lyrics, music or to the character of the music of the Compositions or make or permit any parody of the Compositions or derogatory use of them;

(b) not use the Compositions (or any title) for any purpose separately or independently from the Film;

(c) in its use of the Compositions in the Film not exceed the Duration of Usage and type of Usage specified in the Special Terms and as evidence of this furnish the Licensor free of charge with a DVD copy of the Film and a cue sheet for the Film a minimum of thirty (30) days prior to the first release of the Film;

(d) print or cause to be printed the Credit and all copyright and other notices which the Licensor may reasonably require or as may be required by the relevant laws of any country in the Territory on each positive and negative print of the Film. The size and placement of the Credit shall be no less favourable to the Licensor than the size and placement of the credits of other musical compositions and master recordings used in the Film;

(e) be responsible for obtaining and paying for all clearances, licences, permissions and consents from third parties necessary to use any musical works and master recordings (including the master recording embodying the Compositions) owned or controlled by third parties which are featured in the Film; and

(f) be responsible for obtaining and paying for any and all mechanical and performing right licences necessary to use the Compositions in accordance with this Agreement and any repeat, re-use, re-run and/or residual fees or other payments (if any) arising under any arrangement or collective bargaining agreement with any relevant union or guild.

3.1 The Licensee indemnifies the Licensor from and against all demands, claims (including claims withdrawn or not proceeded with by the claimant), liabilities, losses, damages, costs and expenses whatsoever (including all interest, penalties, legal and other costs and expenses together with value added tax and similar taxes thereon (if applicable) incurred by the Licensor and from and against all actions, suits and proceedings arising from any (direct or indirect) breach or alleged breach by the Licensee of any agreement, undertaking, representation or obligation on its part contained in this Agreement.

3.2 All sums payable by the Licensee pursuant to paragraph 3.1 shall be paid immediately on the Licensor’s demand in full without any deduction, withholding, counterclaim or set off.

3.3 The Licence Fee and all other sums payable under this Agreement are expressed exclusive of VAT which shall be payable by the Licensee subject to submission by the Licensor of a valid VAT invoice.
3.4 Where stipulated in the Special Conditions, the Licensor acknowledges that the Licensor has agreed to the Licence Fee on a “Favoured Nations Basis”, that is, on the basis that no other third party licensor of musical compositions or sound recordings in connection with the Film has or shall receive any greater remuneration than that payable to the Licensor under this Agreement. Notwithstanding the foregoing, if any such third party licensor has received or shall receive any remuneration in excess of the amount of the Licence Fee, the Licensee shall notify the Licensor in writing and promptly pay the Licensor the difference between the Licence Fee and the remuneration paid or payable to such third party following the Licensor’s submission of an invoice for such sum.

4. The Licensor warrants that it has the right to enter into this Agreement and grant to the Licensee the rights set out in it. The Licensor shall indemnify and hold the Licensee harmless from any liability, damages or costs arising out of any breach of the terms of this Agreement by the Licensor pursuant to a final judgment of a court of competent jurisdiction or settlement consented to in writing by the Licensor (such consent not to be unreasonably withheld) provided that the total liability of the Licensor shall not in any event exceed the Licence Fee paid by the Licensee. The Licensee must promptly notify the Licensor of any claim or demand which is inconsistent with the Licensor’s warranty and the Licensee shall at its own cost co-operate fully with the Licensor in the defence of any such claim or demand.

5. Any use of the Compositions not expressly authorised by the Licensor under this Agreement shall constitute an infringement of the copyright in the Compositions in addition to any other rights and remedies which may be available to the Licensor.

6.1 On expiry of the Term all rights granted under this Agreement shall cease and no further use or exploitation of the Compositions in the Film may take place.

6.2 In the event of a default or breach of this Agreement by the Licensee, the Licensor will notify the Licensee in writing of such default or breach and the Licensee shall have ten (10) days from its receipt of such notice in which to cure such default or breach. The Licensor’s rights and remedies in the event of a breach of the terms of this Agreement by the Licensee shall be limited to the right to recover damages, and in no event shall the Licensor be entitled by reason of any such breach to enjoin, restrain or seek to enjoin or restrain the distribution or other exploitation of the Film.

7. The Licensee may licence or assign the benefit of this Agreement to a third party for the purposes of financing or distributing the Film or broadcasting or transmitting the Film (subject to the terms and conditions of this Agreement and to the third party being expressly bound by the terms and conditions of this Agreement) but not further or otherwise. The Licensee shall remain primarily liable for any failure on the part of its licensees or assignees to comply with this Licence but if any licensee or assignee enters into a direct deed of covenant with the Licensor to comply with the terms of this Agreement and the Licensee’s obligations under it the Licensee shall thereafter remain secondarily liable under this Agreement.

8. This Agreement shall be governed by and construed in accordance with English law and the parties submit to the non-exclusive jurisdiction of the English courts in respect of any dispute (including non-contractual disputes) arising out of this Agreement.

9. This Agreement shall not be valid until fully executed by both parties and the Licence Fee has been paid in full whereupon this Agreement shall constitute the entire agreement between the parties and shall supersede any and all prior agreements and understandings, oral or written, related to such agreement. This Agreement may not be varied except by an instrument in writing signed by both parties.

10. Any notice or other communication given under this Agreement shall be in writing and delivered personally or by courier or sent by first class recorded delivery mail and shall be addressed to the relevant party’s address in the Special Terms or to such other address as the relevant addressee may hereafter by notice substitute. Any such notice or other communication shall be deemed to have been duly given (i) in the case of hand delivery when left with proof of delivery at the relevant address; or (ii) in the case of posting two (2) days after the proven date of posting.

11. No failure or delay by a party to exercise any right or remedy shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12. No warranties or representations shall be deemed to have been made by the Licensor except as expressly set forth above.

13. If any part of this Agreement is judged by a court of competent jurisdiction to be illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any such modification or deletion shall not affect the validity and enforceability of the rest of this Agreement.
14. The parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not party to this Agreement.

15. The Special Terms attached to these General Terms and Conditions are an integral part of this Agreement. In the event of any inconsistency between the Special Terms and these General Terms and Conditions the Special Terms shall prevail. Where only one title is specified in the Composition section of the Special Terms then reference to “Compositions” in these General Terms and Conditions shall be construed as “Composition”. Capitalised terms not defined in these General Terms and Conditions shall have the meanings given to them in the Special Terms.
Synchronisation licence reference notes

PLEASE NOTE:

These notes are for reference purposes only. Access to the Synchronisation Licence and these notes does not constitute the provision of legal advice by either the ISM or its partners. Those using the contract and these notes do so strictly on the basis that no liability, in relation to the use of the contract or the notes, is accepted by the ISM or its partners.

You are strongly advised to seek independent legal advice before entering into any contract. ISM full and student members are entitled to free legal advice in relation to the use of these template contracts from the ISM legal team.

Composers may use this agreement to licence to third parties the non-exclusive right to synchronise a musical work (Composition) in an audio visual production. In this case the audio visual production is stated as being a film, but it could equally be a television programme, commercial, computer application or video game.

This agreement is drafted in accordance with current industry practice. The Special Terms section covers commercial terms which will be specific to each separate agreement. The General Terms and Conditions section covers standard industry provisions which should always stay the same.

Composers wishing to licence master rights for the same purpose should refer to the Master Synchronisation Licence.

[The numbers below correspond to reference numbers in the agreement itself.]

Special Terms/Licensor – If you have an exclusive publishing agreement then consider whether your publisher should be the licensor for the work in question.

Special Terms/Licensee – Make sure you state the full legal name of the licensee, their company number and registered office address.

Special Terms/Film – Be careful to state precisely the name of the production. For example if a television series then state the name of the series and the specific episode, if a film state the full name of the film so it is clear no prequel/sequel rights or repeat use rights (for instance a theme tune for a sitcom) are being granted. Prequel/sequel rights or repeat use rights should be subject to additional fees. If any of these rights are requested you should seek expert advice on option provisions before agreeing terms.

Special Terms/Licensors Administrative Share – If you co-wrote the Composition with someone else and do not control 100% of the copyright in it make sure you state your percentage copyright interest so it is clear that the rights being granted by you are only for your interest.

Special Terms/Use/Context – The licensee should be able to describe the context of the film in which your Composition is used (for example ‘car chase’, ‘football match’ etc). Use in the opening or closing titles normally commands a higher fee.

Special Terms/Duration of use – The licensee should be able to tell you the exact length of time your Composition is used for. If not consider capping the maximum length – for example 20 seconds. A longer use should command a higher fee.

Special Terms/Term – For feature films, documentaries and television productions this is usually the life of copyright. The term of use for Compositions in commercials or endorsements tends to be capped (for example at 1 year) with the Licensee having options to extend the term subject to payment of a fee. If you need to consider option provisions and option fees you should seek expert advice before agreeing terms.

Special Terms/Territory – For feature films, documentaries, television productions and video games this is usually the world. The territory of use for Compositions in commercials or endorsements is often limited in the first instance (for example, to the United Kingdom and Eire) with an option to extend the territory subject to payment of a fee. If you need to consider option provisions and option fees you should seek expert advice before agreeing terms.
Special Terms/Licence Fee/ Favoured Nations Basis / General Terms and Conditions clause 4 – You should always ask for Favoured Nations terms as this means the licensee has to pay you at the same rate as other licensors of musical works and recordings for the production. NB. the licence is not effective until the licence fee has been paid.

General Terms and Conditions clause 2(f) – It is common for licensees to ask for a specific waiver of mechanical royalties. If requested this should be limited to physical formats. We advise seeking expert advice before agreeing the wording of any waiver.

General Terms and Conditions clause 4 – It is customary for licensors (i.e. the person granting the rights) to cap their liability at the total amount of the fee paid. You should strongly resist any attempt to increase your liability.

General Terms and Conditions clause 6.2 – Due to the nature of film and television production and distribution it is customary for the licensor’s (i.e. the person granting the rights) rights in the event of a breach of the agreement by the licensee to be limited to damages rather than being able to terminate the licence outright.
Master synchronisation licence

DATED: ___________ 2019

These Special Terms and the attached General Terms and Conditions (together “the Agreement”) confirm the terms and conditions on which the Licensor shall grant the Licensee a non-exclusive licence during the Term in the Territory to record, reproduce and perform the Masters in timed relation with the Film.

SPECIAL TERMS

LICENSOR: [NAME and address of Licensor]

LICENSEE: [NAME and address of Licensee: – include company number, where applicable]

FILM: [Name of film or production]

MASTER: [Title(s) of masters(s)]

ARTIST: [Details of the artist / professional name]

USAGE / CONTEXT: [This should describe the use and context within the Film and specify if the use is during the opening or closing titles for the Film]

DURATION OF USAGE: [Insert duration of use in the Film in minutes / seconds of usage]

TERM: [Specify the agreed length of term – for feature films, documentaries and television productions this is usually the life of copyright]

TERRITORY: [Specify the territory – for feature films this is usually the world]

MEDIA: [As incorporated in the Film, in any and all media now known or hereafter devised including theatrical and non-theatrical exhibition, all forms of television, cable and satellite and web broadcasting, streaming and downloads, videograms and DVDs, but specifically excluding any interactive media including any device for which the viewer is invited to manipulate the audio-visual images in a non-linear progression. This includes, solely for the purposes of promoting the Film, in-context trailer use and using excerpts of the in-context trailer or other excerpts from the Film which include the Master for any so-called ‘making-of’ programme directly related to the Film.]

CREDIT: [Specify the credit here – for example master title / artist name / copyright 2015 / written by / published by / All rights reserved / etc.]

LICENCE FEE: [£tbc payable in accordance with the Licensor’s invoice. Favoured Nations Basis with other publishers and owners of sound recordings.] [NB the General Terms and Conditions say that VAT is payable on top of the fee]

THIS AGREEMENT WILL NOT BE VALID UNTIL FULLY EXECUTED BY BOTH PARTIES AND THE LICENCE FEE HAS BEEN PAID IN FULL AND RECEIVED BY THE LICENSOR

Signed by Licensor

____________________________________________________

TBC

For and on behalf of TBC

Signed by Licensee

____________________________________________________
Master synchronisation licence

general Terms and Conditions

1.1 Subject to the Licensee complying with the terms and conditions contained in this Agreement and in consideration of payment of the Licence Fee and for the other consideration contained in this Agreement the Licensor grants to the Licensee the non-exclusive right to record, dub and synchronise Masters in timed relation with the Film and to reproduce and use the Film incorporating the Masters in the Media during the Term in the Territory. Recordings must be made from masters supplied by the Licensor specifically for the Film unless agreed otherwise in writing by the Licensor.

1.2 Performance or broadcast of the Masters is subject to performance and broadcast rights controlled by relevant collection societies in the Territory (in the UK currently being PPL) and to payment of their customary licence fees.

1.3 All rights in the Masters not expressly granted under this Agreement (including the right to use the Masters on any soundtrack album) are reserved to the Licensor.

2. The Licensee agrees, warrants and undertakes that it shall:

(a) not make any change to the Masters, the lyrics, music or to the character of the music embodied on the Masters or make or permit any derogatory use of the Masters;

(b) not use the Masters (or any title) for any purpose separately or independently from the Film;

(c) in its use of the Masters in the Film not exceed the Duration of Usage and type of Usage specified in the Special Terms and as evidence of this furnish the Licensor free of charge with a DVD copy of the Film and a cue sheet for the Film a minimum of thirty (30) days prior to the first release of the Film;

(d) print or cause to be printed the Credit and all copyright and other notices which the Licensor may reasonably require or as may be required by the relevant laws of any country in the Territory on each positive and negative print of the Film. The size and placement of the Credit shall be no less favourable to the Licensor than the size and placement of the credits of other musical compositions and master recordings used in the Film;

(e) be responsible for obtaining and paying for all clearances, licences, permissions and consents from third parties necessary to use any musical works and master recordings (including the musical and/or lyrical compositions embodied on the Masters) owned or controlled by third parties which are featured in the Film; and

(f) be responsible for obtaining and paying for any and all performance and broadcast licences from relevant collection societies in the Territory necessary to use the Masters in accordance with this Agreement and any repeat, re-use, re-run and/or residual fees or other payments (if any) arising under any arrangement or collective bargaining agreement with any relevant union or guild.

3.1 The Licensee indemnifies the Licensor from and against all demands, claims (including claims withdrawn or not proceeded with by the claimant), liabilities, losses, damages, costs and expenses whatsoever (including all interest, penalties, legal and other costs and expenses together with value added tax and similar taxes thereon (if applicable)) incurred by the Licensor and from and against all actions, suits and proceedings arising from any (direct or indirect) breach or alleged breach by the Licensee of any agreement, undertaking, representation or obligation on its part contained in this Agreement.

3.2 All sums payable by the Licensee pursuant to paragraph 3.1 shall be paid immediately on the Licensor’s demand in full without any deduction, withholding, counterclaim or set off.

3.3 The Licence Fee and all other sums payable under this Agreement are expressed exclusive of VAT which shall be payable by the Licensee subject to submission by the Licensor of a valid VAT invoice.

© Incorporated Society of Musicians, 4–5 Inverness Mews, London W2 3QJ, T: 020 7221 3499
3.4 Where stipulated in the Special Conditions, the Licensor acknowledges that the Licensor has agreed to the Licence Fee on a "Favoured Nations Basis", that is, on the basis that no other third party licensor of musical compositions or sound recordings in connection with the Film has or shall receive any greater remuneration than that payable to the Licensor under this Agreement. Notwithstanding the foregoing, if any such third party licensor has received or shall receive any remuneration in excess of the amount of the Licence Fee, the Licensee shall notify the Licensor in writing and promptly pay the Licensor the difference between the Licence Fee and the remuneration paid or payable to such third party following the Licensor’s submission of an invoice for such sum.

4. The Licensor warrants that it has the right to enter into this Agreement and grant to the Licensee the rights set out in it. The Licensor shall indemnify and hold the Licensee harmless from any liability, damages or costs arising out of any breach of the terms of this Agreement by the Licensor pursuant to a final judgment of a court of competent jurisdiction or settlement consented to in writing by the Licensor (such consent not to be unreasonably withheld) provided that the total liability of the Licensor shall not in any event exceed the Licence Fee paid by the Licensee. The Licensee must promptly notify the Licensor of any claim or demand which is inconsistent with the Licensor’s warranty and the Licensee shall at its own cost co-operate fully with the Licensor in the defence of any such claim or demand.

5. Any use of the Masters not expressly authorised by the Licensor under this Agreement shall constitute an infringement of the copyright in the Masters in addition to any other rights and remedies which may be available to the Licensor.

6.1 On expiry of the Term all rights granted under this Agreement shall cease and no further use or exploitation of the Masters in the Film may take place.

6.2 In the event of a default or breach of this Agreement by the Licensee, the Licensor will notify the Licensee in writing of such default or breach and the Licensee shall have ten (10) days from its receipt of such notice in which to cure such default or breach. The Licensee’s rights and remedies in the event of a breach of the terms of this Agreement by the Licensor shall be limited to the right to recover damages, and in no event shall the Licensor be entitled by reason of any such breach to enjoin, restrain or seek to enjoin or restrain the distribution or other exploitation of the Film.

7. The Licensee may licence or assign the benefit of this Agreement to a third party for the purposes of financing or distributing the Film or broadcasting or transmitting the Film (subject to the terms and conditions of this Agreement and to the third party being expressly bound by the terms and conditions of this Agreement) but not further or otherwise. The Licensee shall remain primarily liable for any failure on the part of its licensees or assignees to comply with this Licence but if any licensee or assignee enters into a direct deed of covenant with the Licensor to comply with the terms of this Agreement and the Licensee’s obligations under it the Licensee shall thereafter remain secondarily liable under this Agreement.

8. This Agreement shall be governed by and construed in accordance with English law and the parties submit to the non-exclusive jurisdiction of the English courts in respect of any dispute (including non-contractual disputes) arising out of this Agreement.

9. This Agreement shall not be valid until fully executed by both parties and the Licence Fee has been paid in full whereupon this Agreement shall constitute the entire agreement between the parties and shall supersede any and all prior agreements and understandings, oral or written, related to such agreement. This Agreement may not be varied except by an instrument in writing signed by both parties.

10. Any notice or other communication given under this Agreement shall be in writing and delivered personally or by courier or sent by first class recorded delivery mail and shall be addressed to the relevant party’s address in the Special Terms or to such other address as the relevant addressee may hereafter by notice substitute. Any such notice or other communication shall be deemed to have been duly given (i) in the case of hand delivery when left with proof of delivery at the relevant address; or (ii) in the case of posting two (2) days after the proven date of posting.

11. No failure or delay by a party to exercise any right or remedy shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12. No warranties or representations shall be deemed to have been made by the Licensor except as expressly set forth above.
13. If any part of this Agreement is judged by a court of competent jurisdiction to be illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any such modification or deletion shall not affect the validity and enforceability of the rest of this Agreement.

14. The parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not party to this Agreement.

15. The Special Terms attached to these General Terms and Conditions are an integral part of this Agreement. In the event of any inconsistency between the Special Terms and these General Terms and Conditions the Special Terms shall prevail. Where only one title is specified in the Master section of the Special Terms then reference to “Masters” in these General Terms and Conditions shall be construed as “Master”. Capitalised terms not defined in these General Terms and Conditions shall have the meanings given to them in the Special Terms.
**Master synchronisation licence reference notes**

**PLEASE NOTE:**

These notes are for reference purposes only. Access to the Master Use Licence and these notes does not constitute the provision of legal advice by either the ISM or its partners. Those using the contract and these notes do so strictly on the basis that no liability, in relation to the use of the contract or the notes, is accepted by the ISM or its partners.

You are strongly advised to seek independent legal advice before entering into any contract. ISM full and student members are entitled to free legal advice in relation to the use of these template contracts from the ISM legal team.

Composers may use this agreement to licence to third parties the non-exclusive right to synchronise a master recording or recordings (*Master(s)*) in an audio visual production. In this case the audio visual production is stated as being a film, but it could equally be a television programme, commercial, computer application or video game.

This agreement is drafted in accordance with current industry practice. The *Special Terms* section covers commercial terms which will be specific to each separate agreement. The *General Terms and Conditions* section covers standard industry provisions which should always stay the same.

Composers wishing to licence rights in musical compositions for the same purpose should refer to the Synchronisation Licence.

The numbers below correspond to footnote numbers in the agreement itself.

**Special Terms/Licensor** – If you have an exclusive recording agreement then consider whether your record company should be the licensor for the recording in question.

**Special Terms/Licensee** – Make sure you state the full legal name of the licensee, their company number and registered office address.

**Special Terms/Film** – Be careful to state precisely the name of the production. For example if a television series then state the name of the series and the specific episode, if a film state the full name of the film so it is clear no prequel/ sequel rights or repeat use rights (for instance a theme tune for a sitcom) are being granted. Prequel/ sequel rights or repeat use rights should be subject to additional fees. If any of these rights are requested you should seek expert advice on option provisions before agreeing terms.

**Special Terms/Use/Context** – The licensee should be able to describe the context of the film in which the Master is used (for example ‘car chase’, ‘football match’ etc). Use in the opening or closing titles normally commands a higher fee.

**Special Terms/Duration of use** – The licensee should be able to tell you the exact length of time the Master is used for. If not consider capping the maximum length – for example 20 seconds. A longer use should command a higher fee.

**Special Terms/Term** – For feature films, documentaries and television productions this is usually the life of copyright. The term of use for Masters in commercials or endorsements tends to be capped (for example at 1 year) with the Licensee having options to extend the term subject to payment of a fee. If you need to consider option provisions and option fees you should seek expert advice before agreeing terms.

**Special Terms/Territory** – For feature films, documentaries, television productions and video games this is usually the world. The territory of use for Masters in commercials or endorsements is often limited in the first instance (for example, to the United Kingdom and Eire) with an option to extend the territory subject to payment of a fee. If you need to consider option provisions and option fees you should seek expert advice before agreeing terms.

**Special Terms/Licence Fee/ Favoured Nations Basis / General Terms and Conditions clause 3.4** – You should always ask for Favoured Nations terms as this means the licensee has to pay you at the same rate as other licensors of musical works and recordings for the production. NB. the licence is not effective until the licence fee has been paid.
General Terms and Conditions clause 4 – It is customary for licensors (i.e. the person granting the rights) to cap their liability at the total amount of the fee paid. You should strongly resist any attempt to increase your liability.

General Terms and Conditions clause 6.2 – Due to the nature of film and television production and distribution it is customary for the licensor’s (i.e. the person granting the rights) rights in the event of a breach of the agreement by the licensee to be limited to damages rather than being able to terminate the licence outright.