

**Composer Commission Agreement**

This **COMPOSER COMMISSION AGREEMENT** (the “**Agreement**”) dated as of \_\_\_\_\_ (the “**Effective Date**”) is entered into

**BETWEEN:** \_\_\_\_\_, a(n) individual/corporation/organization with the address of \_\_\_\_\_ (“**Commissioner**”)

**AND:** \_\_\_\_\_, an individual with the address of \_\_\_\_\_ (“**Composer**”)

*Commissioner and Composer are collectively the “Parties” and each of the Parties is a “Party”.*

**WHEREAS**, Commissioner is a \_\_\_\_\_ and Composer is a music composer;

**AND WHEREAS**, Commissioner desires to commission a Musical Work to be composed by the Composer, and Composer wishes to compose the Musical Work, subject to the details outlined herein;

**NOW THEREFORE**, in consideration of the mutual obligations and representations contained herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

**1. Commission.**

- 1.1. Composer shall compose and deliver to Commissioner the original and complete Musical Work in accordance with Schedule “A” and the provisions of this Agreement. “Musical Work” means the original and complete performance score (the “**Performance Score**”) and references to Musical Work in this Agreement shall include the Composer-approved parts to be produced and delivered by Commissioner pursuant to paragraph 3.2 below.
- 1.2. The Musical Work shall be provided on a non-exclusive basis, subject only to the Exclusive Performance Period set out in section 5.1.

**2. Financial Compensation.**

- 2.1. Commissioner shall pay to Composer in consideration of the Musical Work and the Rights (as defined below) granted herein for the fee of \_\_\_\_\_ (the “**Compensation**”) plus **[HST/GST]** if applicable.
- 2.2. Commissioner shall pay Composer the Compensation on the following payment schedule:
  - a) \$ \_\_\_\_\_ (50% of the Compensation) plus **[HST/GST]** upon execution of this Agreement;
  - b) \$ \_\_\_\_\_ (20% of the Compensation) plus **[HST/GST]** upon \_\_\_\_\_;
  - c) \$ \_\_\_\_\_ (20% of the Compensation) plus **[HST/GST]** upon \_\_\_\_\_; and
  - d) \$ \_\_\_\_\_ (10% of the Compensation) plus **[HST/GST]** within \_\_\_\_\_ days of final delivery of the Musical Work.

The Compensation, or any installment of the Compensation, shall be non-refundable.

### 3. Delivery.

- 3.1. Composer shall complete the Musical Work and deliver the Performance Score to Commissioner by the Delivery Date set out in Schedule "A".
- 3.2. The copying of parts for the performance of the Musical Work is the sole responsibility of the Commissioner; however, the Composer has the right to inspect and either approve or disapprove the parts before the first rehearsal. Any disapproved portion of the parts must be amended to Composer's reasonable satisfaction, which shall not unreasonably be withheld. If Composer does not respond within thirty (30) days of receipt of the parts, approval shall be deemed provided.
- 3.3. Composer shall provide Commissioner with a right of meaningful consultation with respect to potential changes to the Musical Work. For clarity, Composer shall have no obligation to make any changes to the Musical Work as delivered as a result of such meaningful consultation or otherwise.

### 4. Term.

- 4.1. The term of this Agreement (the "**Term**") shall commence on the Effective Date and continue until the expiry of the Exclusive Performance Period or any extension thereof.

### 5. Rights and Obligations of Commissioner.

- 5.1. The Commissioner agrees to stage no less than \_\_\_\_\_ performances of the Musical Work during the period of \_\_\_\_\_ following delivery of the Performance Score to the Commissioner, during which time Commissioner has exclusive performance rights (the "**Exclusive Performance Period**"). Coordination of performance dates is the sole responsibility of the Commissioner.
- 5.2. In the event that the Commissioner wishes to extend the Exclusive Performance Period, the Commissioner may by mutual written agreement with the Composer extend its rights for a further period of \_\_\_\_\_ weeks/months, upon payment of \$\_\_\_\_\_ plus [HST/GST] if applicable, which, for clarity, is in addition to the Compensation set out in section 2. For clarity, the payment of such additional fees must be paid in advance of the commencement of the extended Exclusive Performance Period, and if not paid, the extension of the Exclusive Performance Period is not effective.
- 5.3. The Commissioner agrees to make all Commissioner-owned or controlled recordings (audio, visual, or audio-visual) of the Musical Work available to Composer in the highest quality file formats or configurations available to Commissioner.
- 5.4. Archival: Commissioner may record a Musical Work performance for archival purposes. The resulting recording may only be performed privately. For clarity, these rights include neither a mechanical license for reproduction of master recordings embodying the Musical Work, nor a synchronization license for use in relation to audio-visual works.
- 5.5. The Composer shall receive upon request two complimentary tickets for the first performance. Commissioner must inform Composer of when it will be with sufficient time to plan to attend.

- 5.6. Advertising: The Commissioner may authorize one or more radio and/or television presentation of excerpts not to exceed two minutes, from the performance of the Musical Work, solely for promotional purposes to promote performances of the Musical Work.
- 5.7. Promotion: The Commissioner shall have the right to make a finished, edited recording of excerpts of its performance of the Musical Work for purposes such as, but not limited to, demonstrating the nature of the work, and showing it to potential sponsors, donors, and investors. The Commissioner will guarantee that the recording will remain under its control, and may not be used for the public at large or commercially.
- 5.8. In any instance where a third party wishes to record the performance, the Commissioner shall:
  - a) inform the Composer;
  - b) inform the third party that the Composer is the copyright owner of the Musical Work, and inform them of how to contact the Composer; and
  - c) not permit such a recording without prior written approval from the Composer.
- 5.9. The Composer shall be notified of the time and place of all rehearsals of the performance of the Musical Work and shall have the right to attend them. If the Commissioner can show reasonable cause for asking the Composer not to attend a particular rehearsal, the Composer shall comply.
- 5.10. When it is agreed by the Commissioner and the Composer that the Composer will attend a workshop or reading, the following fees shall apply:
  - a) For a half day workshop, the Composer shall receive a fee of not less than \$ \_\_\_\_\_;
  - b) For a full day workshop, the Composer shall receive a fee of not less than \$ \_\_\_\_\_;
  - c) When the Composer attends four or more days of workshops in one week, a weekly fee of not less than \$ \_\_\_\_ shall apply.
- 5.11. When the Composer must travel more than 50 KMs from their place of residence to attend a workshop or reading, the Commissioner will provide overnight accommodation and roundtrip air or other available and appropriate transportation.
- 5.12. The Commissioner may request the Composer to make personal appearances and give personal interviews for purposes of publicity. Any direct and reasonable expenses incurred by the Composer in making such appearances and giving such interviews shall be reimbursed by the Commissioner upon presentation of suitable receipts.
- 5.13. In the event that the Composer performs in the Musical Work, or directs the Musical Work, or does any tasks other than that of Composer in connection with a performance of the Musical Work, then all rights and obligations in connection with any of those roles shall be dealt with by way of separate contract with no effect on any of the rights and obligations under this Agreement. Any such additional obligations will be performed by the Composer concurrently with Composer's obligations contained herein. Notwithstanding the above, it is understood and agreed that the Commissioner shall not be liable for duplicate payment of travel, accommodation, per diems and other related expenses.

## **6. Copyright.**

- 6.1. Composer shall be the author and first owner of copyright in the Musical Work. As between Composer and Commissioner, the copyright and all other rights in the Musical Work shall remain vested in Composer. Composer shall be free to deal with the Musical Work subject only to the rights granted to Commissioner under this Agreement and the restrictions set out herein. Commissioner shall not be entitled to make any changes to the Musical Work or the Performance Score without the prior written consent of Composer. Composer reserves all other rights not specifically granted herein. For clarity, Composer shall have no financial obligations or any obligation to credit the Commissioner including without limitation with respect to any exploitation, promotion, or performance of the Musical Work following the Exclusive Performance Period.
- 6.2. Licence: In consideration of full payment to Composer of the Compensation and for the other consideration contained in this Agreement, Composer hereby grants to Commissioner a licence to reproduce (at Commissioner's sole cost) physical copies of the Musical Work to the extent necessary for the Commissioner to rehearse the Musical Work and to perform the Musical Work for audiences during the Exclusive Performance Period.

## **7. Royalties.**

- 7.1. Composer is entitled to One Hundred Percent (100%) of the so-called writer's share and One Hundred Percent (100%) of the so-called publisher's share of performance rights royalties in the Musical Work. Composer is also entitled to all other royalties related to the Musical Work, apart from the master recordings of the Musical Work recorded by Commissioner. For clarity, Commissioner is not entitled to any writing or publishing royalties with respect to the Musical Work.
- 7.2. Commissioner (and not the venue where the Musical Work is to be performed) shall be responsible for payment of all applicable performance rights fees and tariffs for the performances of the Musical Work at the applicable rates, including without limitation, to SOCAN as per SOCAN's guidelines.

## **8. Name and Likeness.**

- 8.1. Commissioner shall have the right to use and display Composer's name, likeness, biography, voice and recordings thereof (all of which, apart from Composer's name, shall be subject to Composer's prior written approval), solely for advertising, publicizing any live performances of the Musical Work by Commissioner.

## **9. Credit and Name of Musical Work.**

- 9.1. Composer shall have final approval of the name of the Musical Work.
- 9.2. Composer shall be accorded the following: "**Composed by** \_\_\_\_\_" or such other similar credit format as requested in writing by Composer in writing upon delivery of the Musical Work. For clarity, all uses of the Musical Work, including in print, digital and any other form of

communication must include such credit.

9.3. Composer's credit shall be on a separate line immediately preceding or following the title of the Musical Work in all programs, house boards, billboards, advertising, throwaways and paid announcements of the Musical Work.

9.4. No names except the name of the performing organization and the name of the performer may be larger or more prominent than the Composer's name.

9.5. When biographies are present in the program, the Commissioner shall include Composer's biography.

## **10. Suspension and Termination.**

10.1. Composer may suspend or terminate this Agreement with notice if an event of force majeure (which shall include equipment failure, inclement weather, fire, strike or other labour dispute, flood or other act of God, act of war or insurrection, lawful acts of public authorities (including government lock downs), pandemic (including COVID-19) delays or defaults caused by common carriers, or other events beyond such Composer's control or other circumstance beyond Composer's control which renders Composer unable to perform any or all of Composer's obligations herein.

## **11. Representations and Warranties.**

11.1. Commissioner and Composer each represent and warrant that:

11.1.1. They are free to enter into this Agreement and have the necessary power, capacity and authority to, and is not under any obligation or disability, created by law or otherwise, which in any manner or to any extent prevents or restricts the either of them from entering into this Agreement, from fully and freely performing all of their respective obligations under this Agreement, and/or providing the rights granted in this Agreement; and

11.1.2. Neither Party has not done any act which might, has or will impair the rights conveyed herein;

11.2. Commissioner represents and warrants that Commissioner has obtained independent legal advice with respect to this Agreement or has waived such advice having full knowledge of this right.

11.3. Composer represents and warrants that the Musical Work shall not infringe upon or violate any rights of any third party or offend any statute or law, including any common law or statutory rights of any person, firm, or corporation.

## **12. Indemnification.**

12.1. Composer shall defend, indemnify and hold Commissioner harmless from third party claims, liabilities, damages, costs and reasonable external legal fees arising from any Composer breach

of the representations and warranties in this Agreement. Commissioner shall defend, indemnify and hold Composer harmless from third party claims, liabilities, damages, costs and reasonable external legal fees arising from any Commissioner breach of this Agreement.

### **13. Confidentiality.**

13.1. The terms of this Agreement and any other confidential information about both parties shall be kept secret and confidential, except that the Parties may disclose the terms of this Agreement: (i) to the extent necessary to comply with any law or judicial order; (ii) as part of their normal reporting and review procedures; (iii) to their auditors, counsel, accountants and agents so long as they agree to keep the terms of this Agreement confidential; and (iv) as may be necessary in order to enforce their rights hereunder.

### **14. General.**

14.1. Survival: The following section shall survive any termination or expiration of this Agreement: sections 5.3, 6, 7, 9, 11, 12, 13 and 14.

14.2. Notices: All notices given herein must be in writing and delivered by either personal delivery, overnight courier or by email to the Party at the address listed above or to such other address as a Party advises the other in writing. Notices delivered personally or by email are deemed to have been received when they were delivered, while overnight courier is deemed received two (2) business days after it is sent. As of the Effective Date, email to Commissioner shall be sent to \_\_\_\_\_ and by email to Composer shall be sent to \_\_\_\_\_.

14.3. Independent Contractor: It is hereby understood and agreed that this Agreement is a contract for the provision of independent services by Composer to Commissioner. There is no partnership or employer-employee relationship between Composer and Commissioner, and nothing contained in any part of this Agreement shall be construed to create such a relationship.

14.4. Assignment: Neither Party shall have the right to assign this Agreement or their respective obligations hereunder without the prior written consent of the non-assigning Party.

14.5. Governing Law: This Agreement shall be interpreted and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

14.6. English Language: The Parties acknowledge that they have required this Agreement to be drawn up in the English language. Les parties reconnaissent avoir demandé que le présent contrat soit rédigé dans la langue anglaise.

14.7. Illegality: If there shall exist any conflict between any provision contained herein and any such law or policy, the latter shall prevail; and the provision or provisions herein affected shall be curtailed, limited or eliminated to the extent (but only to the extent) necessary to remove such conflict; and as so modified this Agreement shall continue in full force and effect.

14.8. Entire Agreement. This Agreement shall replace and supersede all previous arrangements, understandings, representations or agreements (written or oral, express or implied) between the Parties with respect to the subject matter herein. This Agreement may be modified only by a written instrument duly executed by the Parties. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

By signing below, the Parties accept and agree to all the terms and conditions of this Agreement.

**("Commissioner")**

**("Composer")**

\_\_\_\_\_  
By:  
Its:

\_\_\_\_\_  
Name:

## Schedule "A"

Specification for the Musical Work: [duration / general description]

Instrumentation: [insert instruments to be used]

Delivery Date: [insert date]

Delivery Format of Performance Score: Electronic, Portable Document Format (i.e. PDF file)

Other Details about the Musical Work:

Details of Performances:

Dates: [insert dates]

Venue: [insert name and address of venue]

MILESTONE SCHEDULE