

Music Composition Commission

Personal Services Contract

THIS AGREEMENT made this _____ day of _____, _____, by and between _____ (Author) and _____ (Composer) [and _____ (Lyricist)] (hereinafter collectively the "Songwriter") for the creation of certain music by the Composer [and certain lyrics by the Lyricist], to be used in and as an integral part of a certain copyrighted Play presently entitled _____ (Play) written by the Author.

In consideration of the mutual covenants and Agreements herein, the parties agree as follows:

1. The Author hereby engages the Songwriter to create an original musical composition (Song) to be used in and merge into the Play and all productions thereof on the live speaking stage, whether First Class or Secondary (as those terms are commonly known in the industry), professional or amateur.
2. The Songwriter shall complete and submit the Song to the Author for approval not later than _____. The Songwriter shall provide the Song in the form of a demonstration recording, as well as a hard copy [lead sheet consisting of the melody line, lyrics, and chord symbols] [complete musical arrangement for _____ including the melody line, bass line, key and rhythm designations, lyrics and chord symbols in a form suitable for professional publication].
3. Copyright to the Song shall be the sole property of the Songwriter and/or his heirs, assigns, and/or beneficiaries and shall extend for the term, including renewals, of copyright as provided under United States laws now in effect or as enacted or amended on a future date.
4. The Song shall merge with the Play upon the [Approval by the Author] [the press opening of the first production of the Play]. Upon Merger the Song shall become such an integral part of the Play that it cannot become divisible from it.
5. Notwithstanding the foregoing Paragraph 4, the copyright to the Play shall belong solely to the Author, his heirs and assigns for the term, including renewals, of Copyright as provided by United States laws now in effect or as enacted or amended on a future date.
6. This Agreement shall be binding upon the Heirs, Assigns, Creditors, and Beneficiaries of the respective parties hereto.
7. Nothing contained herein is intended or shall be construed as intending or creating a Collaboration between the Parties hereto and the Songwriter shall not be entitled to or make claim for any interest in the copyright of the Play.
8. Nothing contained herein is intended or shall be construed as intending or creating a work for hire or employment for hire relationship between the Author and the Songwriter.
9. Without the consent of the Author and without payment of a royalty or fee to Him, the Songwriter shall have the unrestricted right to publish, use, distribute, or license for

performance the composition in any and all media, whether now known or hereinafter discovered, including on the live speaking stage, except in any other play or theatrical production which might be in competition with the Play, which may be defined as _____.

10. Without the consent of the Songwriter the Author shall have the sole right to publish, use, distribute, or license the Play (including the Composition after it has merged with the Play) on the live speaking stage or in any media whatsoever, whether now known or hereinafter discovered, whether or not a royalty, fee, or other compensation shall be paid to [him] [her] by the licensee.

A. In all instances in which the Author shall earn royalties or other fees or other financial compensations from the Play either directly from his/her licensee or from a Licensing Agent for the Play, the Author shall remit to the composer and/or lyricist a Song Royalty, according to the following formula:

_____ dollars per performance to the Composer;

_____ dollars per performance to the Lyricist.

[Alternate

_____ % of the Author's royalty, fee, or compensation to the Composer;

_____ % of the Author's royalty, fee, or compensation to the Lyricist.]

B. The Author shall remit all said payments to the Composer and/or Lyricist not later than seven (7) business days after his receipt of same from his Licensee or Licensing Agent, together with a written accounting of same. However, the Author shall first have the right to deduct (offset) any advance fees paid under Paragraph 13 of this Agreement to the Composer and/or Lyricist against such royalties until all such advance fees are fully earned out.

11. (A) The Author shall have the sole right to publish or authorize others to Publish the Play (including the lyrics and/or music of the Composition, after said Composition has merged with the Play), in any media now known or hereinafter discovered and without the consent of the Composer and/or the Lyricist.

(B) In the event the Composition is published with the Play, the Author shall pay or cause the Publisher of the Play to pay to the Composer a royalty of _____ for each copy of the Play sold [the sum of _____ % of the Author's royalties per copy of the Play sold]. Said payments shall be due and payable by the [Author within seven (7) business days of the Author's receipt of same] [by the Publisher upon the same royalty payment schedule as the Publisher shall pay royalties to the Author] together with a written accounting of same. Said royalties shall first be offset against any prior payments made by the Author to the Songwriters under Paragraph 13 of this Agreement.

(C) In the event any publisher of the Play shall pay to the Author an advance against royalties for the publication of the Play, which publication shall contain the Musical Composition, the Author shall pay to the Songwriters a royalty of _____ % of said Author's Advance. The Author shall pay said royalties within seven (7) days of receipt of his own Advance Royalties from the Publisher. Said royalties shall first be offset by any prior payments made by the Author to the Songwriters under Paragraph 13 of this Agreement.

12. (A) Notwithstanding Paragraph 11 of this Agreement, the Songwriter may publish or cause others to publish the Song as a separate Musical Composition in any media

whatsoever, whether now known or hereinafter discovered, without the consent of and without payment of any royalties or fees to the Author. All royalties, fees, or other compensation which the Songwriter may earn under any contracts for the Publication of the Song shall be his sole property and the Author shall have no claim thereon, except those of a creditor in the ordinary course of business.

(B) In any contracts the Songwriter may make with any third party publisher he shall do nothing to impair the rights of the Author to publish or cause to be published the Song as part of the publication of the Play, and/or to license the use of the Song as part of production of the Play on the live speaking stage.

(C) In any contracts the Author may make with any third party publisher in connection with the Publication of the Play, the Author shall do nothing to impair the rights of the Songwriter to publish, or cause to be published, the Song as an Independent Musical Composition.

13. [Upon the date of the Author's Approval of the Song] [Upon the date of the merger of the song with the Play as provided in Paragraph 4 above] the Author shall pay to the Songwriter advance royalties in the amount of _____ to the Composer [and _____ to the Lyricist]. Said payments shall be an advance against the royalties provided for in Paragraph 10 (A) above and shall subsequently be recoverable by the Author in the form of offsets against any royalties due and owing under Paragraph 10 (A) and (B) and Paragraph 11 (B) and (C). Until the Author has been fully made whole by the offsets against royalties, no subsequent royalties shall be due to the Songwriter under Paragraph 10 (A) and (B) and Paragraph 11 (B) and (C)

14. In the event [the Author does not approve of the Song submitted to him by the Songwriters] [the Song created by the Songwriter does not merge with the Play as per paragraph 4 above] the Author shall pay to the Songwriter a "kill" fee of _____, which payment shall be compensation in full settlement and release for any efforts, work, or claims by the Songwriter under the terms of this Contract. The Author shall owe the Songwriter no further compensation. The Songwriter shall remain the sole owner of the musical composition so created and shall be free to use same in any other media whatsoever, including any Play or Production which may be in competition with the Play which is the subject of this contract.

15. The Composer [and the Lyricist] hereby represent[s], warrant[s], and guarantee[s] that any and all music [and or lyrics] he [they] submit[s] to the Author, which shall merge into the Play, is [are] unique and original with him [them] and does not infringe upon the statutory or common law rights of others; that he [they] is [are] the sole owner[s] of the music [and/or lyrics] and therefore has [have] the right to convey to the Author the right to merge such music [and/or lyrics] into the Play; and that there are no claims, demands, or encumbrances against the Music [and/or Lyrics], whether alleged or lawful by third parties which would inhibit, limit, or otherwise restrict the use of the Music [and/or lyrics] within the Play or the Author's free and unfettered use of the Play; and/or which would subject the Author and/or his licensees, assignees, to suit and/or judgment. The Composer [and/or] the Lyricist jointly and severally agree to indemnify and hold the Author and/or his Licensees from any claims, suits, demands, judgments made against the Author and/or his Licensees by third parties under this provision, including attorney's fees and/or costs.

16. Author enters into this contract with the undersigned Composer [and lyricist] because of [his] [their] unique talents, abilities, imagination, training, and knowledge of their craft. Therefore this is a Personal Services contract. The [Composer] [and/or the Lyricist] may not assign this Agreement or [his] [their] obligations thereunder to any other party without the written consent of the Author. However, due to the normal production process and/or marketing of the Play, the [Composer] [and/or Lyricist] understand and agree that the Author shall have the unrestricted right to assign his obligations, rights, duties, and covenants hereunder to a third party who shall then undertake the Author's obligations, rights, duties, and covenants. Said assignment shall release and discharge the Author from his obligations, rights, duties, and covenants under this contract without notice to and the consent of the [Composer] [Lyricist], provided that the Third Party consents to pay to the [Composer] [Lyricist] any fees earned prior to the Assignment and owing to [him] [them] by the Author. Nothing herein shall restrict or conflict with the [Composer] [and/or [Lyricist's] right to assign the Copyright to the Song, once completed, to a Publisher for the purpose of publishing the same.

17. Inasmuch as this is not a collaboration or partnership Agreement for the creation of the Play but only an Agreement for the creation of music to be incidental to the action and characters created by the Author in the play, the Composer and/or Lyricist shall have no rights of artistic approval or control over any productions and/or performers, directors, choreographers, music arrangers, or other personnel involved in any production of the Play.

18. All rights to the Composition not expressly given to the Author by the Composer and/or Lyricist in this Agreement are hereby reserved by the Composer and/or Lyricist.

19. The Author may not cause or authorize the recording of the musical composition within the Play by audio, audio visual, or other means whether now existing or hereafter invented without the express written permission of the Songwriters. Notwithstanding the foregoing, the Author may cause or authorize the recording of the Play without the permission of the Songwriters, if the composition is not included in said recording.

20. Although the Author shall retain the unrestricted right to sell, license, or otherwise dispose of the audio and/or audiovisual rights to the Play by any means, whether now existing or hereafter invented, said right shall not include the sale, license, or other disposition of the musical composition contained within the play.

21. In all licenses for Productions of the Play, and/or in all contracts for the Publication of the Play in which the Composition shall be included, the Author shall include terms calling for the Licensee and/or Publisher to give due billing credits to the Composer and/or Lyricist in all media in which the Licensee and/or Publisher shall have control and in which the Author shall receive credit. The Author should use [his] [her] best efforts to require the Licensee and/or Publisher to give billing credits in a form substantially as follows:

“Music by _____ [Lyrics by _____]”

The Author shall use [his] [her] best efforts to require said Composer/Lyricist credits to appear on a line separate from the Author's credit and in a typeface not less than 50% of the size of the typeface of the Author's credit.

22. The laws of the State of _____ shall govern the terms of this Agreement.

23. All notices required hereunder will be addressed to the parties at the addresses printed below their names, until other notice of change of address is given in writing and will be

by certified mail, return receipt requested. Notices so given will be effective on the date of receipt thereof.

24. This document contains the entire Agreement between the parties. No changes, modifications, or alterations thereof will be effective unless contained in a writing signed by both parties.

25. This Agreement is intended to be gender neutral. Terms appearing herein which traditionally refer to a particular gender are used for convenience only and shall be understood and interpreted to refer to the gender of the respective undersigned parties.

In Witness whereof the parties have placed their hands and seals this day and date.

_____ (Author)

_____ (Address)

_____ (Composer)

_____ (Address)

_____ (Lyricist)

_____ (Address)

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Attorney, producer, and playwright Charles Grippo is the author of *Business and Legal Forms for Theater* and *The Stage Producer's Business and Legal Guide*.