COMMISSIONED ORIGINAL MUSIC AGREEMENT

This Commissioned Original Music Agreement (“the **Agreement**”) is made the [DATE] ("the **Effective Date**"):

BETWEEN

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“**Customer**”);

and

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Vendor**”).

(each a “**Party**”).

This document is to set out formally an agreement between Customer and Vendor under which Vendor has been hired by Customer to provide musical compositions and recordings for Customer (“the **Deliverable**”) as set out in Schedule A for uses including, but not limited to, a sports and / or marching arts performance (“the **Purpose**”).

1. Vendor agrees to deliver to Customer by the date set out in the Schedule A to this Agreement (“Delivery Date”), and in such form and on such media as shall be mutually agreed by the parties.

1. Vendor recognises that time is of the essence in developing and supplying the Deliverable. This will require Vendor not to engage in other commitments which might adversely affect the supply of the Deliverable on the Delivery Date.

1. No work shall be considered properly delivered and approved (“**Approved**”) unless both it has been submitted to Customer and has been approved by Customer in writing. In the event that Customer rejects any Deliverable it may in its sole discretion give Vendor the opportunity to revise and resubmit all or parts of it. Customer may Approve or reject any Deliverable in its sole reasonable discretion.

1. Any fees payable to Vendor shall be paid by Customer within 30 days of receipt of an undisputed invoice from Vendor for such fees. Sales or other value added tax (“**Sales Tax**”) on any fees will be paid by Customer only on presentation of a valid Sales Tax invoice.

1. The parties acknowledge and agree that Deliverables created by Vendor in the performance of this Agreement are works commissioned by Customer and that consequently all rights in all media now known or hereafter invented, including without limitation copyright and all rights of reproduction, adaptation, licensing and other commercial exploitation in any Deliverable, or designs, inventions or improvements relating to the Deliverable (whether Approved or not) created by Vendor shall belong exclusively to Customer from the moment of creation. To the extent that any such rights shall not vest in Customer automatically Vendor hereby grants and assigns to Customer all rights therein to hold the same absolutely for exploitation in all media now known or hereafter invented. Vendor irrevocably waives all rights (including moral rights if applicable) in respect of the Deliverable and any underlying work to which Vendor is now or in the future entitled. In the event that no Deliverable has been Approved by the Delivery Date set out in the Schedule, Customer shall pay to Vendor on demand the sum of USD $1.00 in consideration of this assignment and waiver, without prejudice to any rights or remedies that Customer may have in relation to Vendor’s non-performance or otherwise. For further securing to Customer the rights assigned in the Deliverable Vendor agrees that Vendor will at Customer’s request and expense do all such further things and execute all such further documents as Customer may from time to time require for the purposes of confirming Customer’s title to the rights in the Deliverable in any part of the world.
2. Vendor warrants that all work carried out under this Agreement shall be wholly original, that Vendor is the sole, absolute, unencumbered, legal and beneficial owner(s) of the copyright in the Deliverable, that the Deliverable contains no elements owned or controlled by a third-party,that Vendor has the necessary rights to grant the assignment of ownership of such submissions and Deliverable in clause 5 above, that Vendor has not entered into any arrangement which might conflict with this Agreement, that Vendor will provide services to the best of Vendor’s technical and artistic skills and abilities and shall perform services to the highest professional standards in accordance with Customer’s reasonable requirements and reasonable directions from time to time in willing co-operation with others.
3. Vendor acknowledges that the Purpose and any and all related materials and information in any form ( “**Confidential Information**”) are confidential. Vendor will hold all such materials and information in confidence and take all reasonable steps necessary to preserve its confidentiality. Neither Vendor nor any of Vendor’s employees or agents will (without Customer’s express authority in writing) directly or indirectly disclose any information about the Purpose to any third party, or duplicate or use any materials provided by Customer to Vendor for any purpose whatsoever other than as necessary to fulfil the terms of this Agreement. Vendor’s obligations under this clause 7 shall survive the termination of this Agreement for any reason whatsoever.

1. Vendor hereby warrants that Vendor shall indemnify and shall continue to keep indemnified Customer its officers, servants, agents, licensees and assigns against all proceedings costs, claims, expenses, awards, judgements, damages and settlements arising directly or reasonably foreseeably as a result of any breach or non-performance by Vendor of this Agreement or any warranty, representation or obligation of Vendor’s under this Agreement.
2. Vendor hereby warrants that Vendor has and will maintain during the term of this Agreement, at its sole cost and expense, commercially sufficient insurance with limits that are appropriate for the execution of this Agreement and of others Vendor’s activities and obligations hereunder, understanding that each occurrence of using music for which there is not appropriate permission may result in damages of up to USD $150,000 plus legal fees and costs.
3. If Customer is in breach of any of its obligations under this Agreement or under statute law or common law, Vendor hereby agrees that Vendor’s rights and remedies will be limited to Vendor’s right to recover damages in an action at law (which Vendor acknowledges shall be an adequate and appropriate remedy) and Vendor hereby agrees that Vendor shall not by reason of any such breach seek to enjoin or restrain the carrying out, promotion, advertising, licensing, distribution, publication, exhibition, development, production, or exploitation of any product and / or performance by or on behalf of Customer anywhere in the world, whether related to the Deliverable or not.
4. Customer has the right to assign the benefit of this Agreement to any third party at its sole discretion.

1. Termination
   1. Without limitation either party may without notice in writing immediately terminate this Agreement if the other party shall be in breach of any of the terms of this Agreement which in the case of a breach capable of remedy shall not have been remedied by the party in breach within twenty one days of receipt by the party in breach of a notice from the other party specifying the breach and requiring its remedy.
   2. Without limitation Customer may by notice in writing immediately terminate this Agreement

* + 1. If Vendor shall be incompetent or guilty of gross misconduct and or any serious persistent negligence in the provision of the services hereunder;
    2. If Vendor shall fail or refuse after written warning to provide the Deliverable reasonably and properly required of it hereunder; or
    3. If any Deliverable or part thereof is not accepted by Customer after a third submission of the Deliverable to Customer provided that Customer shall not unreasonably withhold acceptance.
  1. Customer may terminate this Agreement for convenience by giving notice in writing to Vendor in which case Customer shall remain liable to pay Vendor the amount due for the work in progress towards the Deliverable that is subsequently submitted to and approved by Customer in accordance with Clause 3.
  2. In no event shall Customer be liable to pay any remuneration for outstanding Deliverable or services specified in this Agreement which are no longer required after notice of termination.
  3. Upon termination of this Agreement at Customer’s sole discretion Vendor will return all copies of Confidential Information in Vendor’s possession to Customer or destroy them and promptly confirm their destruction to Customer in writing.
  4. Vendor’s confidentiality obligations under Clause 7 and Customer’s obligations under Clause 3 and 4 will survive termination of this agreement.

1. Vendor is an independent contractor and is solely responsible for the payment of any taxes that may be levied on Vendor’s earnings under this Agreement.

1. This Agreement shall be governed by and construed in accordance with [INSERT YOUR STATE OR COUNTRY HERE] (the “**Legal Jurisdiction**”) law as applied to contracts executed and performed entirely within the Legal Jurisdiction by parties located entirely within the Legal Jurisdiction and the parties submit to the exclusive jurisdiction of the courts of the Legal Jurisdiction. Any litigation or other dispute with respect to this Agreement will take place in the Legal Jurisdiction. The parties consent to personal jurisdiction of and venue in the courts within or having jurisdiction over the Legal Jurisdiction, and waive any objection they might otherwise have had on the basis of the doctrine of *forum non conveniens*.
2. IN WITNESS WHEREOF this Agreement has been signed for and on behalf of the Parties on the dates set forth below.

**FOR AND ON BEHALF OF CUSTOMER:** **FOR AND ON BEHALF OF VENDOR:**

Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Print name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SCHEDULE A

| Deliverable Name:  [INSERT THE TITLE OF YOUR MUSIC] | Required Delivery Date    [DATE] |
| --- | --- |
| Technical Specification of files to be delivered:  [FOR EXAMPLE 48khz 24bit wav file(s) w/ Stems]  Duration:  [FOR EXAMPLE 5 minutes duration]  Creative Specification:  [SET OUT THE AGREED DESCRIPTION OF WHAT THE MUSIC YOU WANT, OR SPECIFICALLY REFERENCE A SEPARATE DOCUMENT, HERE] | Cost |
| TOTAL COST | USD $ |