

BMI Music Publishing Agreement

THIS MUSIC PUBLISHING AGREEMENT is made on ____/____/____, between Richard Bibbee, dba Interludes with Impact Publishing 21636 Kelso Dr., Hagerstown, Maryland, 21742 (hereinafter "Publisher"),

and _____, (hereinafter "Owner").

Whereas, the Owner owns and controls certain musical compositions which is referred to as Musical Work throughout the document;

Whereas, Publisher is engaged in the business of music publishing and has certain facilities and services available to it for the administration and exploitation of musical works; and

Whereas the Owner desires to grant the Publisher right to publish and control the Musical Work and further desires to appoint Publisher to act as exclusive administrator of the Musical Work and Publisher is willing to accept such ownership, control, and appointment.

NOW THEREFORE, in consideration of the conditions and covenants contained in this Agreement, the parties agree as follows:

1. Description of Musical Work. The Owner owns and controls the Musical Work more completely described as:

2. Grant of Rights. The Owner hereby, assigns, transfers and delivers to the Publisher the sole and exclusive right to administer, control, use, exploit, and otherwise deal in and for the Musical Work, all of which Publisher agrees to do according to best business practices generally prevailing in the music publishing industry. The above grant includes by way of example but not limitation:

(a) The sole and exclusive right to print, publish, vend, and sell in all forms, printed editions of the Musical Work, to authorize others to do so, and to collect all fees and royalties becoming due for the musical work;

(b) The sole and exclusive right to make and authorize others to make electrical, transcription, mechanical, synchronization, dramatic, and commercial uses of the Musical Work and to collect all fees and royalties becoming due for the musical work;

(c) The sole and exclusive right (subject to the rights heretofore granted by Owner to the performing rights societies with which Owner is affiliated) to publicly perform the Musical Work for profit and to collect all fees and royalties becoming due for the musical work;

(d) The sole and exclusive right to prosecute, defend, and settle any third party action or claim relating to the Musical Work and the respective rights of Owner and Publisher therein. No such action shall, however, be settled without the prior consent of Owner, such consent not to be unreasonably withheld; provided, however, that such consent shall not be required if Owner is then in breach of a material representation, warranty, or obligation of Owner set forth in this Agreement; **and**

(e) The sole and exclusive right to enter into agreements with related or unrelated third parties for the so-called "sub publication" of the Musical work throughout the Territory and to collect all fees and royalties becoming due thereunder.

3. Representations and Warranties of the Parties.

Owner represents and warrants to Publisher that:

- (a) It has the full right, power, and authority to enter into this Agreement and to grant to Publisher all rights purported to be granted to Publisher;
- (b) The Owner has full rights over the Musical Work and is protectable by copyright in the Territory, and the administration, control, use, and exploitation thereof by Publisher will not subject Publisher to liability of any kind to any third party;
- (c) the owner represents that the Musical Work has not heretofore been published,
- (d) there are and will be no liens or encumbrances upon the Musical Work and Owner has not heretofore and will not hereafter solicit or accept any advance from any third party which would in any manner diminish the monies available to Publisher for the use, administration, or exploitation of the Musical Work.

Publisher represents and warrants to Owner:

- (a) Publisher is, and will be during the term, active in the U.S. and, through licensees or collection agents or societies elsewhere in the Territory, in the business of music publishing; and
- (b) Publisher has the full right, power, and authority to enter into this Agreement and to grant to Owner all of the rights purported to be granted to Owner.

4. Compensation

Advance Amount

The Publisher shall pay an amount of **\$1.00** as an advance fully creditable against royalties to be paid hereunder.

Payment of Royalty.

Publisher agrees to pay the Owner, during the original term and any renewals of the copyright throughout the world, **NET royalties** (Gross royalties after deduction of normal operating expenses) with respect to the administration and protection of the Musical Work, as follows:

 50 % to publisher and 50 % to the writer/composer

Publisher shall render to Owner a written statement of account and expenses incurred as to the royalties becoming due to Owner under this Agreement within ninety (90) days after the expiration of each calendar year that Publisher's rights in the Musical Work shall persist.

Each such statement shall be accompanied by payment of the amount (if any) shown to be due

Each such statement shall be an account stated, final and binding and not subject to any objection for any reason whatsoever by Owner, unless Publisher shall have received written notice of objection specifying the items objected to and the factual and contractual basis of objection from Owner within a reasonable period from the date of any such statement, then that portion of the statement not objected to shall be an account stated as aforesaid.

5. Books and Records.

Owner may cause such of Publisher's books of account to be inspected and abstracted at Owner's expense by a certified public accountant as shall be necessary to verify the accuracy of any accounting statement rendered to Owner which has not become an account stated as provided, however, that:

- (a) No more than one such inspection shall be permitted in any calendar year;

(b) Owner may not appoint an accountant to conduct any such inspection who is then directly or indirectly (in the latter instance through the firm by which he is then employed) engaged in another inspection of Publisher's books of account or who proposes to conduct such inspection on a contingent fee basis;

(c) No more than one (1) such inspection may be made of Publisher's books of account as to any six (6) month calendar period;

(d) No inspection shall be permitted to any accountant who refuses to confirm to Publisher in writing not to disclose the results of his audit report, except to Owner and as may be required in the prosecution of any legal proceedings commenced thereon; and

(e) Owner shall have no right of audit or inspection other than as permitted and restricted.

6. Term.

This Agreement shall be effective as of the date first set forth above and, **shall expire** ____/____.

This Agreement shall be automatically renewed for successive < ___ year(s) > periods upon the same terms, conditions, and covenants herein contained, **unless either party gives 60 days written notice of termination to the other party prior to the date of expiration of their intent not to renew.**

Notwithstanding the foregoing, this Agreement shall be earlier terminated by mutual agreement of the parties or either party may terminate the Agreement by providing a 60 written notice to the other party.

7. Indemnification.

Each party shall indemnify and hold the other harmless from any loss, damage, or expense arising from a breach by the indemnifying party of any of its representations or warranties contained in this Agreement.

Prompt written notice of any claim to which the foregoing indemnity relates shall be given by the indemnified party to the indemnifying party and the indemnifying party shall have the right to participate in the defense thereof with counsel of its choosing at its expense.

7a) Arbitration

If a dispute arises, between the parties, the parties have agreed to submit to binding arbitration to resolve the Dispute before seeking involvement of Attorneys. The parties mutually consent to the resolution by arbitration of all claims and controversies that either may have against each other relating to, resulting from, or in any way arising out of this Music Publishing agreement and will waive their right to litigate these issues in court and instead will resolve their Dispute through binding arbitration in Hagerstown, Maryland.

7b) Required Notice. Either party may initiate arbitration by serving or mailing a written notice to the other party at the address stated herein. The written notice must specify the claims asserted against the other party. Notice of any claim sought to be arbitrated must be served within the limitations period established by applicable federal or state law.

7c) Arbitration Procedure. After a demand for arbitration has been made pursuant to Section 2 of this agreement the party demanding arbitration shall file a demand for arbitration with the American Arbitration Association. The parties agree to enter arbitration through the American Arbitration Association and abide by the Commercial Arbitration Rules of the American Arbitration Association. Arbitration proceedings shall be completed within 120 days from the date an arbitrator is appointed. This time may be extended by the arbitrator in the interests of justice. The parties may agree to extend this time in writing. The parties agree not to bring any disputes between each other on a collective or class basis; rather, the parties agree to bring such disputes in arbitration on an individual basis only.

7d) **Arbitrator.** The arbitration shall be conducted by one arbitrator. If the parties cannot agree on the selection of an arbitrator within 20 days of commencement of an arbitration proceeding by service of a demand for arbitration, the arbitrator will be selected by the American Arbitration Association pursuant to the terms of this agreement. The arbitrator shall have at least 1-5 years of experience, and will have served at least 6-10 times as an arbitrator prior to this Dispute. The arbitrator's decision will be final and binding. The arbitrator shall issue a written Arbitration Agreement (Rev. 133C9DA) arbitration decision revealing the essential findings and conclusions upon which the decision and/or award is based. A party's right to appeal the decision is limited to grounds provided under applicable federal or state law.

7e) **Governing Law.** The laws of the State of Maryland will be applied in the Arbitration proceedings, without regard to principles of conflict of laws.

7f) **Award.** The parties agree to abide by any award issued by the arbitrator and the judgement of any court with jurisdiction may be entered on the award.

7g) **Arbitration Costs** The costs of the arbitration will be split by the parties unless otherwise determined by the arbitrator. The parties will be responsible for their own litigation fees. The arbitrator may award any fees or costs to the prevailing party pursuant to applicable statutes or case law in the jurisdiction.

7h) **Miscellaneous.** Except as expressly modified herein, the original contract remains unchanged and continues in full force and effect. In the event that any provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal and enforceable as though the invalid, illegal or unenforceable parts had not been included in this Agreement. Neither party will be charged with any waiver of any provision of this Agreement, unless such waiver is evidenced by a writing signed by the party and any such waiver will be limited to the terms of such writing. Any modifications to this portion of the Arbitration agreement must be in writing and notarized.

8. Attorney's Fees.

(In the event of Arbitration failing for any reason, the Original Terms of this agreement outside of Provision 7 , will remain in force.)

In litigation between Owner and Publisher, the prevailing party shall be entitled to recover from the other attorneys' fees in addition to any and all other costs and awards.

9. Relationship of Parties.

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership, joint venture, agency, or employer/employee relationship between the parties.

No third person is intended to be a third party beneficiary hereof.

10. Amendment and Waivers.

Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived only by a writing signed by the party to be bound thereby.

11. Non-waiver.

The failure of any party to enforce at any time any of the provisions of this Agreement shall not be construed to be a waiver of the right of such party thereafter to enforce any such provision.

12. Severability.

If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement will continue in full force and effect.

13. Notices.

Notices which either party desires or is required to give to the other shall be in writing, sent postage prepaid, certified or registered mail, return receipt requested, and shall be addressed in the addresses of the parties in the beginning of the Agreement. The date of mailing shall be the date of the giving of notice.

14. Entire Agreement.

This Agreement constitutes the entire understanding between the parties. It shall not be modified except in writing signed by both of the parties.

15. Assignment.

A party may not assign any of its rights or obligations under this Agreement without the prior written consent of the other parties. This Agreement shall be binding upon and inure to the benefit of the each party and its respective successors and permitted assigns.

16. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be an original as regards to any party whose signature appears thereon and all of which together shall constitute one and the same instrument.

This Agreement shall become binding when one or more counterparts of it, individually or taken together, bear the signature of each of the parties. Each party shall execute and deliver to the other and to third persons such other and further instruments and correspondence as shall be reasonably required to effectuate the intents and purposes hereof.

17. Headings

Headings and titles in this Agreement are for reference purposes only and do not constitute part of this Agreement and are of no legal force or effect.

18. Governing Law

This Agreement shall be governed by the laws of the State of Maryland.

19. Signatories

This Agreement shall be signed by on behalf of Richard Bibbee, dba Interludes with Impact Publishing by Richard Bibbee, its Owner,

and on behalf of _____ by _____.

The Agreement is effective as of ____/____/____.

PUBLISHER:

Richard Bibbee,
dba Interludes with Impact Publishing

By:

Richard Bibbee, Owner

OWNER:

By _____ Owner