

SPECIMEN



- c) the expression "the Publisher" includes the publisher mentioned in the preamble here above, his successors and assigns;
- d) the expression "the territory" means the Republics of South Africa, Botswana and Namibia and the Kingdoms of Lesotho and Swaziland.
- e) the singular includes the plural and the masculine gender the feminine.

3/ A publisher in this specimen Deed of Assignment has the right to transfer any or all of the Rights to another publisher.

4/ Territory of operation of Publisher.

2. Subject to the provisions of Clause 14 hereof, the composer hereby assigns the whole of his copyright, present, future or contingent whatsoever and wheresoever, in the following work, hereinafter referred to as "the work":

Refer to 2/

Title :

Music by :

Words by :

Translation by :

Description of work :

This assignment shall be valid only for countries which are members of the International Union for the Protection of Literary and Artistic Works (the Berne Union) or have adhered to the Universal Copyright Convention.

The right to reproduce or in any manner include the work in a videotape cassette, an electronic video recording cassette or a similar device is specifically excluded from this assignment.

5/ Since sound & film recordings are often dealt with separately it is important to note that this specimen Deed of Assignment includes the right to reproduce not only on audio sound carriers but also on film carriers.

3. The said assignment is made to and in favour of the Publisher to have, to hold and to exercise the said copyright throughout the world.

4. a) The Publisher shall pay to the Composer a royalty of ten per cent (10%) of the retail selling price of all printed copies of the work sold by or on behalf of the Publisher and paid for in all countries; provided that, if the Publisher arranges any agency for the sale of his edition of the work in any country outside the territory, the royalty payable to the Composer in respect of sales in such a country shall be five per cent (5%);

6/ Assignment of musical works can be made for specific territories or regions. The specimen assignment provides for the rights to be assigned for the whole world.

7/ Print copy royalties like any other royalties are negotiable.

- b) no royalty shall be payable to the Composer on the following:
- i) printed copies distributed to the trade and the musical profession for the purpose of propagating and popularising the work;
  - ii) professional copies of the work, whether in its original form or as orchestral arrangements;
  - iii) reproductions of the work or any portion thereof in any newspaper, magazine or other periodical;
  - iv) any copies of the work that remain on hand and are declared by the Publisher to be unsaleable;

8/ Exclusions for royalty calculations need to be clearly defined and where necessary quantified or negotiated.

5. Subject to the provisions of the clauses 6 and 7 hereof, all royalties other than from the sale of printed copies, received by the Publisher in respect of the work shall, after deduction of the costs of collection and of such monies as may have been paid by the Publisher to any person or firm for the furtherance and exploitation of the mechanical reproduction of the work, be divided in the proportion of fifty per cent (50%) to the Composer and fifty per cent (50%) to the Publisher.
6. Subject to the provisions of clause 7 hereof, if the Publisher arranges for the publication of the work in any country outside the territory, the Publisher shall pay the Composer fifty per cent (50%) of all royalties, other than from the sale of printed copies, received by the Publisher from such country.
7. If the Composer and/or the Author of the words (if any) is/are a member/s of the Southern African Music Rights Organisation Ltd (hereinafter called SAMRO), all royalties in respect of the public performance, broadcasting and diffusion of the work shall be divided and paid out in accordance with the rules and regulations of SAMRO in force at the time.
8. Statements of royalties, made up to each half-yearly period ending 30 June and 31 December in any year, shall be rendered by the Publisher to the Composer within 90 days after the end of every such period.
9. If two or more Composers/Authors are involved, any royalties payable to them by the Publisher under this Agreement shall be paid to them in the following proportions:
10. Subject to the provisions of clause 14 hereof, the Composer:
- i) warrants that he is the owner of the copyright in the work and that, if he is not the author of the words (if any), he has obtained the permission of the owner of the copyright in the words for their inclusion in the work and in this agreement;
  - ii) warrants that the work is an original work and does not infringe any copyright or other right of any individual, firm, company or corporation;
  - iii) authorises the Publisher to take all reasonable steps at his discretion to protect, defend or maintain the title and/or copyright in the work; and
  - iv) agrees to indemnify the Publisher in respect of all loss, injury or damage, including all legal costs or expenses, occasioned to or incurred by the Publisher in consequence of any breach of this warranty.
11. Subject to the provisions of clause 14 hereof, the Publisher shall be entitled to assign the copyright in the work, either wholly or in part.
12. This agreement shall be interpreted according to the laws of the Republic of South Africa.
- 9/ The split for mechanical reproduction royalties between composer and a publisher is negotiable.
- 10/ The split of royalties from the publication outside the territory stated is also negotiable.
- 11/ The period of accounting for the submission of statements for royalties due can vary from publisher to publisher.
- 12/ If there is more than one author/composer involved in a musical work it is important to note that these rights holders need to agree on the division of fees between them. If no division is stated equal contribution is assumed.
- 13/ It is important to note that a copyright owner gives a legal **warranty** regarding specific aspects of the musical work including originality, permission to use lyrics, and the rights belonging to others which may have been included in a specific work assigned to the publisher. The signatory of this specimen Deed of Assignment **indemnifies** the publisher for any breaches of this warranty.
- Refer to 2/ and 3/**

- 13. Any dispute arising between the parties hereto in connection with the interpretation and/or application of this agreement shall be referred to an arbitrator for settlement in accordance with the provisions of the Arbitration Act No. 42 of 1965. If the parties cannot agree upon the choice of a single arbitrator, each of them shall be entitled to choose one arbitrator.
- 14. If the Composer is a member of SAMRO, the performing, broadcasting, and diffusion rights in the work for all parts of the world are vested in SAMRO, and this Agreement shall be interpreted subject to the prior rights of SAMRO.

14/ Dispute Resolution Mechanism.

Signed for and on behalf of:

As witnesses:

1 .....

.....  
The Composer

2 .....

.....  
The Publisher

**General Comment**

Some publishers include a rider to the publication agreement which undertakes to return the rights acquired in terms of the Deed of Assignment should the publisher not be successful in securing a commercial release/ film synchronisation, other type of exploitation within a specific period of time (months/years).

