**Production Agreement**

**Concert Information**

|  |  |
| --- | --- |
| Date: |  |
| **Organisation** |
| Organisation Name: |  |
| Organisation Registered Company Number (if applicable): |  |
| Organisation Address |  |
| **Production Company** |
| Production Company Name: |  |
| Production Company Registered Company Number: |  |
| Production Company Address: |  |
| **Concert Details (for a Concert Series continue on the next sheet)** |
| Concert Date: |  |
| Concert Venue: |  |
| Concert Repertoire: |  |
| Ensemble Details: |  |
| Concert Budget: |  |

This Agreement is executed as follows and is delivered for the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 on the date stated above.

Signed for and on behalf of **ORGANISATION**

by

|  |  |  |
| --- | --- | --- |
|  | (Signature) | in the presence of this witness |
|  | (Full Name) |  | (Witness' Signature) |
|  | (Position) |  | (Full Name) |
|  |  |  | (Address) |
|  |  |  |

Signed for and on behalf of **PRODUCTION COMPANY**

by

|  |  |  |
| --- | --- | --- |
|  | (Signature) | in the presence of this witness |
|  | (Full Name) |  | (Witness' Signature) |
|  | (Position) |  | (Full Name) |
|  |  |  | (Address) |
|  |  |  |

|  |
| --- |
| **Concert Details** |
| Concert Date: |  |
| Concert Venue: |  |
| Concert Repertoire: |  |
| Ensemble Details: |  |
| Concert Budget: |  |
| **Concert Details** |
| Concert Date: |  |
| Concert Venue: |  |
| Concert Repertoire: |  |
| Ensemble Details: |  |
| Concert Budget: |  |
| **Concert Details** |
| Concert Date: |  |
| Concert Venue: |  |
| Concert Repertoire: |  |
| Ensemble Details: |  |
| Concert Budget: |  |
| **Concert Details** |
| Concert Date: |  |
| Concert Venue: |  |
| Concert Repertoire: |  |
| Ensemble Details: |  |
| Concert Budget: |  |

**Background**

1. The Organisation undertakes activities including presenting orchestral concerts.
2. The Organisation wishes to commission the Production Company to produce the Concert(s) and the Production Company agrees to accept such commission pursuant to the terms of this Agreement.
3. Where more than one Concert is listed in the Concert Information the Production Company has made an election by notice in writing to HM Revenue & Customs pursuant to section 1217Q(4) of the Corporation Tax Act 2009 for the Concert(s) to be treated as a concert series.

**Agreed Terms**

# Interpretation

## The following definitions apply in this Agreement:

**Business Day**: a day other than a Saturday, Sunday or public holiday in Scotland when banks in Edinburgh are open for business.

**Commissioning Fee:** the fee payable by the Organisation to the Production Company pursuant to Clause 2.6 (including VAT, where applicable).

**Concert(s):** the orchestral concert or concerts identified at ‘Concert Details’ in the Concert Information.

**Concert(s) Budget:** the budgeted cost of producing and performing the Concert(s) detailed at ‘Concert Budget’ in the Concert Information.

**Concert(s) Costs:** the actual costs of producing and performing the Concert(s).

**Intellectual Property Rights:** any current or future intellectual property rights, including copyrights, trade and service marks, trade names, rights in logos and get-up, inventions, confidential information, trade secrets and know-how, registered designs, design rights, patents, all rights of whatsoever nature in computer software and data, data base rights, all rights of privacy and all intangible rights and privileges of a nature similar or allied to any of the foregoing, in every case in any part of the world and whether or not registered; and including all granted registrations and all applications for registration all renewals, reversions or extensions, the right to sue for damages for past infringement and all forms of protection of a similar nature which may subsist anywhere in the world.

**Organisation**: the organisation identified at ‘Organisation’ in the Concert Information.

**Production Company:** the private limited company identified at ‘Production Company’ in the Concert Information.

**Reclaimable Sum:** such sum as is payable to the Production Company pursuant to section 1217RI of the Corporation Tax Act 2009.

**VAT**: value added tax.

## Any reference to Clauses or parties is to the clauses of and parties to this Agreement.

## Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

# Commission

## The Organisation hereby commissions the Production Company to produce the Concert(s). In consideration of payment of the Commissioning Fee the Production Company agrees to produce the Concert(s) in accordance with the provisions of this Agreement (as varied by agreement between the parties from time to time).

## The parties agree that the Production Company shall be the orchestral production company in respect of the Concert(s) and shall:

### be responsible for putting on the Concert(s) from the start of the production process to the finish, including employing or engaging the performers;

### be actively engaged in decision-making in relation to the Concert(s);

### make an effective creative, technical and artistic contribution to the Concert(s); and

### directly negotiate for, contract for and pay for rights, goods and services in relation to the Concert(s).

## The Organisation hereby licenses to the Production Company all such rights (including Intellectual Property Rights), assets and agreements in respect of the Concert(s) as the Organisation owns or has the benefit of.

## All Intellectual Property Rights in respect of the Concert(s) shall belong to the Organisation and accordingly the Production Company hereby assigns to the Organisation (including by way of present assignment of future copyright) all its property, right, title and interest in and to all Intellectual Property Rights in respect of the Concert(s) including all common law rights connected therewith arising under the laws of any jurisdiction throughout the world for the residue of the term of copyright and such rights therein and all revivals renewals and extensions of such rights together with the right to sue for past infringements in respect thereof and recover damages and all other remedies in relation to such rights.

## The Production Company acknowledges and agrees that as between the parties:

### the Organisation shall retain the right of admission to the Concert(s), whether by the sale of tickets for the Concert(s) or the entry into agreements with third parties regarding the presentation of the Concert(s) at premises controlled by such third parties; and

### the Organisation shall be entitled to all receipts and income attributable to the Concert(s), whether from ticket sales, sale of merchandise, sponsorship or otherwise.

## The Organisation agrees to pay the Production Company a commissioning fee equal to the Concert(s) Budget less the Reclaimable Sum provided that in the event that the actual Concert(s) Costs are more or less than the Concert(s) Budget, such commissioning fee shall be adjusted accordingly.

## The Organisation agrees that the Production Company shall be entitled to retain the Reclaimable Sum.

## As between the parties it is agreed that the Organisation shall be responsible for the cashflow of the Concert(s) Costs.

# Warranties

## Each party hereby warrants, represents and undertakes to the other that:

## it is fully entitled to enter into and to perform this Agreement; and

## it shall comply with all laws, statutes, ordinances, rules, regulations and requirements of all governmental agencies and regulatory bodies applicable to the Concert(s).

# Termination

## Either party may terminate this Agreement with immediate effect by giving written notice to the other party if the other party:

### commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of ten Business Days after being notified in writing to do so;

### has a receiver, administrator or an administrative receiver appointed over, or an encumbrancer takes possession of, over all or any part of its undertaking or assets;

### passes a resolution for winding up or a court order is made for its winding-up;

### makes any voluntary arrangement or composition with its creditors or applies to court for protection from its creditors;

### has an administration order made in relation to it or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets; or

### ceases, or threatens to cease, to carry on business.

## On termination of this Agreement for any reason:

### neither party shall have any further obligation to the other under this Agreement except as stated in this Agreement;

### the rights, remedies or obligations of the parties that have accrued or become due before termination shall remain unaffected; and

### any sum then accrued and unpaid shall remain due for payment but neither party shall be required to pay any further sum to the other.

# Assignment and Other Dealings

Neither party shall, without the prior written consent of the other, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

# Third Party Rights

No one other than a party to this Agreement shall have any right to enforce any of its terms.

# No Partnership Or Agency

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other party other than to the extent expressly provided for in this Agreement.

# Variation

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

# Notices

## Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:

### delivered by hand or by prepaid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

### sent by email to its most senior executive officer or such other person notified from time to time.

## Any notice shall be deemed to have been received:

### if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

### if sent by prepaid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or

### if sent by email, on sending subject to the sender not receiving a non-delivery message.

# Entire Agreement

## This Agreement constitutes the entire Agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

## Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

# Remedies

## No failure or delay by either party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

# Counterparts

## This Agreement may be executed in any number of counterparts and by each of the parties on separate counterparts.

## Where executed in counterparts this Agreement shall not take effect until all of the counterparts have been delivered.

# Governing Law and Jurisdiction

## This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Scotland.

## Each party irrevocably agrees that the courts of Scotland shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).