

Santa Cruz Public Libraries Music Licensing Agreement

This Music License Agreement (herein after the "AGREEMENT") is made effective this _____ day of _____, 20____,

BETWEEN: The Santa Cruz City-County Library System (A.K.A. Santa Cruz Public Libraries, herein after "SCPL"), a Joint Powers Authority duly formed and organized in accordance with the law of the state of California, with its Administrative Headquarters located at:

117 Union Street
Santa Cruz, CA 95060

AND: _____, (herein after "LICENSOR"), an individual/musical group, with a mailing address of:

And an email address of:

And a telephone number at:

Taxpayer Identification Number (ALSO fill out attached W-9 form)

WHEREAS, the LICENSOR is the holder of the copyright to an album or collection of musical compositions identified herein and SCPL is a public library which wishes to make available the music of LICENSOR to library cardholders in the SCPL system (herein after, "PATRONS").

RECITALS

- A. LICENSOR represents and warrants to SCPL that he/she/it is the sole and exclusive owner of certain musical compositions which are described in Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter referred to as "COMPOSITIONS").
- B. LICENSOR represents, warrants and agrees that COMPOSITIONS submitted will not violate or infringe upon the rights of any third party, including copyright, trademark, privacy, publicity or other personal or proprietary rights; or contain libelous, defamatory or otherwise unlawful material. LICENSOR represents and warrants that he/she/it has all legal rights necessary to license the COMPOSITIONS. LICENSOR hereby acknowledges and agrees that SCPL shall, at all times, possess the right to refuse to include and/or to cause the removal of any or all of the COMPOSITIONS for any reason and at its sole discretion.
- C. SCPL maintains a physical presence at 117 Union Street, Santa Cruz, CA 95060, as well as 10 branches throughout Santa Cruz County, a mobile branch called the Bookmobile, as well as a website accessible through the World Wide Web, which site is currently <http://www.santacruzpl.org> (subject to change).
- D. SCPL wishes to obtain a license to use the COMPOSITIONS in connection with its website and to provide access to SCPL's PATRONS. LICENSOR wishes to grant SCPL such a license subject to the terms and conditions set forth in this AGREEMENT. LICENSOR understands that for the pendency of the term defined herein, SCPL intends to make COMPOSITIONS available for download to its PATRONS, and after the pendency of the term defined herein, SCPL intends to make COMPOSITIONS available as an archived resource for its PATRONS to access but not download.
- E. LICENSOR represents and warrants that it has full and unrestricted power and authority to enter into this AGREEMENT and to grant SCPL the license to use the COMPOSITIONS as set forth in this AGREEMENT.

NOW THEREFORE, in consideration of the promises and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged by the parties, and for other good and valuable consideration, each intending to be legally bound hereby, do promise and agree as follows:

1) **GRANT OF LICENSE FOR DOWNLOAD**

- a) LICENSOR hereby grants to SCPL the non-exclusive right and license to make the COMPOSITIONS available to SCPL and its PATRONS for a period of two (2) years following execution of this AGREEMENT for permanent download.

- b) Once any COMPOSITION is downloaded by any PATRON, the license is perpetual to that PATRON. SCPL will provide written warning to PATRONS not to copy and provide the COMPOSITION to others, but SCPL cannot and will not be responsible for ensuring such activity does not occur.
 - c) The license granted herein shall be royalty-free (other than the one-time licensing fee set forth herein and shall last for a period of two (2) years following execution of this AGREEMENT, after which the license to make the COMPOSITIONS available for PATRON download will be terminated.
 - d) LICENSOR hereby grants SCPL the non-exclusive right and license to make the COMPOSITIONS available to SCPL and their PATRONS in perpetuity as a non-downloadable electronic historical archive.
 - e) SCPL will use its best efforts to prevent download from the electronic historical archive via technical computer programming of the content management system in which the historical archive is housed, but SCPL cannot and will not be responsible for ensuring that PATRONS do not succeed in such downloading despite SCPL's best efforts.
 - f) SCPL is granted herein the right to synchronize, use samples of, and integrate the COMPOSITIONS in SCPL's website and include the COMPOSITIONS in connection with Flash presentations, applets, page loads, online video presentations, content management systems, and any other use that integrates the COMPOSITIONS into the design or content of SCPL's website, in order to promote the service.
 - g) LICENSOR hereby grants SCPL the right to use the name of the LICENSOR and the composer and artists involved in the COMPOSITIONS in connection with SCPL's website. LICENSOR represents and warrants that it has the full right and permission to grant such licenses and permissions from all such individuals.
- 2) **COMPENSATION FOR LICENSE**
- a) In consideration of the license granted herein, SCPL agrees to pay a one-time license fee to LICENSOR in the following amount: \$50 for COMPOSITIONS consisting of 4-5 songs, \$75 for COMPOSITIONS consisting of 6-8 songs, \$100 for COMPOSITIONS consisting of 9 or more songs.
 - b) Such license fee shall be due and payable within thirty (30) days following execution of this AGREEMENT and receipt of the COMPOSITIONS in a format acceptable to SCPL. The right to use the COMPOSITIONS shall commence immediately upon execution of this AGREEMENT.
- 3) **TERM OF LICENSE**
- a) This license agreement shall be effective upon execution of this AGREEMENT by both parties.
 - b) The license granted hereunder to use the COMPOSITIONS within the scope and terms set forth herein shall be perpetual, though the COMPOSITIONS shall only be made available for PATRONS to download for the two (2) years following execution of this AGREEMENT.
- 4) **REPRESENTATIONS AND WARRANTIES.** LICENSOR makes the following representations and warranties to SCPL, which representations and warranties shall

apply during the term of this AGREEMENT and shall continue to apply following the termination of this AGREEMENT. LICENSOR shall indemnify and hold SCPL, the SCPL Joint Powers Authority Board, the City of Santa Cruz, along with the officers and employees, past, present, and future, of each, harmless from and against any and all claims, suits, threats, demands, actions, damages, including attorneys' fees and defense costs, relating in any way to the representations and warranties of LICENSOR made herein, and/or connected to this AGREEMENT.

- a) LICENSOR is the sole and exclusive owner of the COMPOSITIONS and the copyrights and other proprietary rights contained therein.
- b) The COMPOSITIONS do not infringe upon or violate the copyrights, trademarks, patents, or other proprietary rights of any other party.
- c) LICENSOR has the unrestricted right and power to enter into this AGREEMENT and to license the COMPOSITIONS to SCPL as provided herein.
- d) There are no other agreements, court orders, or the provision of any law or administrative rule that interfere with the LICENSOR's right to license the COMPOSITIONS hereunder.
- e) LICENSOR has obtained all necessary consents, permissions, licenses and other documents from recording companies, composers, musicians, musician unions and other labor unions, copyright owners and others with any interest in the COMPOSITIONS or who performed on the COMPOSITIONS, at LICENSOR's sole cost and expense. LICENSOR will indemnify and hold SCPL, the SCPL Joint Powers Authority Board, the City of Santa Cruz, along with their respective officers, employees, past, present, and future harmless from and against any and all claims, suits, threats, demands, actions, damages, including attorneys' fees and defense costs brought directly or indirectly by any of these parties.

5) COPYRIGHT NOTICES/RETAINED RIGHTS

- a) SCPL shall place on its website a notice of copyright relative to the COMPOSITIONS and credits to the songwriter and artists performing in COMPOSITIONS.
 - b) LICENSOR shall retain the copyright to the COMPOSITIONS and all right, title, and interest in and to the COMPOSITIONS, including the right to publish, distribute, publicly perform, modify, enhance, change, and improve, and all other exclusive rights of the copyright owner, except only for the right of license granted to SCPL hereunder.
 - c) SCPL hereby agrees to and acknowledges the rights retained by LICENSOR hereunder and acknowledges that the LICENSOR shall retain all exclusive rights of the LICENSOR and holder of a copyright.
 - d) LICENSOR shall have the sole right to pursue any party that infringes upon LICENSOR's copyright or other proprietary rights in and to the COMPOSITIONS and shall bear all expenses of prosecuting such infringement actions against third parties. In no way shall SCPL be responsible for policing and prosecuting said rights.
- 6) LICENSOR agrees not to make any claim, institute any suit, or otherwise resort to any legal processes, either legal or equitable, against SCPL, the SCPL Joint Powers

Authority Board, the City of Santa Cruz, along with the officers and employees, past, present, and future, of each for any loss or damage relating in any way to this AGREEMENT. **NO ASSIGNMENT.** Neither this AGREEMENT nor any right, interest, duty, or obligation hereunder may be assigned by the parties hereto.

- 7) **GOVERNING LAW.** In interpreting the terms of this AGREEMENT, the parties agree that the laws of the State of California shall be applicable. All suits permitted to be brought in any court shall be in California.
- 8) **ENTIRE AGREEMENT.** This AGREEMENT contains the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes and replaces all prior discussions, agreements, proposals, understandings, whether orally or in writing, between the parties related to the subject matter of this AGREEMENT. This AGREEMENT may be changed, modified, or amended only in a written agreement that is duly executed by authorized representatives of the parties. If any provision(s) hereof is deemed to be illegal or unenforceable by a court of competent jurisdiction, the enforceability and effectiveness of the remainder of the AGREEMENT shall not be affected and this AGREEMENT shall be enforceable without reference to the unenforceable provision(s). No party's waiver of any breach or accommodation to the other party shall be deemed to be a waiver of any subsequent breach.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT on the dates set forth above, with full knowledge of its content and significance and intending to be legally bound by the terms hereof. **BY SIGNING BELOW, LICENSOR REPRESENTS AND WARRANTS THAT LICENSOR IS THE SOLE AND EXCLUSIVE OWNER OF THE COMPOSITIONS AND ALL COPYRIGHTS AND OTHER PROPRIETARY RIGHTS CONTAINED THEREIN.**

SCPL, by

LICENSOR, by

Janis O'Driscoll
Interim Library Director

(Name)
LICENSOR's Title

EXHIBIT "A"

Printed Name

Album or Song title(s): _____

Artist: _____

Date Released: _____

Songwriters: _____

CD Cover Artwork Artist(s): _____

Genre (Circle One) and/or write in here: _____

- | | |
|------------------|-------------|
| Blues | Hip Hop/Rap |
| Children's | Jazz |
| Classical | Metal |
| Country | Pop |
| Electronic | Punk |
| Folk | Reggae |
| Funk | Rock |
| Gospel/Religious | World |

This is a (check one)

- EP 4-5 songs
- EP 6-8 songs
- LP 9 or more songs