

# Commission Contract - Musical Work

## Definitions

**Commission:** A contractual relationship entered into by a Commissioner with a Composer, for a predetermined fee, to cause a Musical Work to be written.

**Contract:** The form that includes the negotiable clauses pertinent to this Agreement to be completed and signed by the Composer and Commissioner.

**Performance Score:** The copy of the Composer's score that shall be agreed by the Commissioner and the Composer as fulfilling the terms of the Commission Contract. While it is understood that acceptance of the final score shall be considered binding in terms of the commission, the Composer may make further revisions to the score in consultation with the Commissioner and in accordance with standard working practice.

## Clauses

When signed by both parties, this Contract with all modifications constitutes a legal binding Agreement.

No clause in this Contract may be deleted or altered without the mutual consent of both parties.

Agreement made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

between \_\_\_\_\_ (hereinafter called the Composer)

\_\_\_\_\_

\_\_\_\_\_ (address of Composer)

And \_\_\_\_\_ (hereinafter called the Commissioner)

\_\_\_\_\_

\_\_\_\_\_ (address of Commissioner)

WHEREAS the Commissioner wishes to commission the Composer to write a Musical Work of

approximately \_\_\_\_\_ duration and presently entitled \_\_\_\_\_

(hereinafter called the Musical Work) with the following instrumentation:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_;

IT IS HEREBY AGREED AS FOLLOWS:

1. Commission Schedule

The Commissioner shall make payment of a commission fee of \$\_\_\_\_\_ to be paid in the following manner:

- a) 50% on the signing of this agreement;
- b) 50% within twenty-one (21) days of receipt by the Commissioner of the final score.

In consideration of the payment of the commission fee as outlined above, the Composer grants to the Commissioner the exclusive option on all performances of the Musical Work from the time of signing this Agreement to no later than \_\_\_\_\_ months from the date of payment as outlined in clause 1(b) above. The Composer further warrants that no other rights to the Musical Work shall be sold, licensed, assigned, or disposed of by any means, from the time of signing this Agreement to the closing of this period, without the Commissioner's prior written consent.

## 2. Royalties

Royalties shall be paid by the Commissioner to the Society of Authors and Music Publishers of Canada (SOCAN) at the applicable SOCAN rate.

## 3. Extension of the Right to Perform

In the event that the Commissioner does not perform the Musical Work in the time period set out in Clause 1, or that the Commissioner wishes to extend the time period set out in Clause 1 of this Contract, the Commissioner may by mutual agreement with the Composer extend its rights for a further period of \_\_\_\_\_ months at a time, upon payment of \$\_\_\_\_\_.

All prior sums paid to the Composer to hold the rights to the Musical Work shall be considered non-refundable fees.

## 4. Score and Parts

The Composer is required to produce for the Commissioner a legible performance score. The copying of parts for performance is the sole responsibility of the Commissioner; however, the Composer has the right to inspect and approve the parts before the first rehearsal.

## 5. Creative Decisions

All creative decisions are at the sole discretion of the Composer.

## 6. Copyright

No clause in any section of this Agreement or individual Contract contained herein shall be deemed to override the conditions of copyright as laid down by current Canadian law.

## 7. Rehearsals

The Composer shall be notified of the time and place of all rehearsals of the performance of the Musical Work, and shall have the right to attend all rehearsals of the said Musical Work. It is understood and agreed that if the Commissioner can show reasonable cause for asking the Composer not to attend a particular rehearsal, the Composer shall comply.

When it is agreed by the Commissioner and the Composer that the Composer will attend a Workshop or

Reading, the following fees shall apply:

- a) For a half day Workshop, the Composer shall receive a fee of not less than \$50.00;
- b) For a full day Workshop, the Composer shall receive a fee of not less than \$80.00;
- c) When the Composer attends four or more days of Workshops in one week, a weekly fee of not less than \$400.00 shall apply.

When the Composer must leave their ordinary place of residence to attend a Workshop or Reading, the Commissioner will provide accommodation and roundtrip air or other available and appropriate transportation. It is understood between the parties that the use of the most economical and mutually convenient reasonable accommodation and transportation (especially as regards air travel) is the spirit and intention of this clause. If either party subsequently changes the accommodation or travel arrangements for any reason, that party shall be responsible for any additional costs.

The Commissioner may request the Composer to make personal appearances and give personal interviews for purposes of publicity. Any direct and reasonable expenses incurred by the Composer in making such appearances and giving such interviews shall be reimbursed by the Commissioner upon presentation of suitable receipts.

#### 8. Tickets

The Composer shall receive upon request two complimentary tickets for the first performance.

#### 9. Additional Roles for the Composers

In the event that the Composer performs in the Musical Work, or directs the Musical Work, or does any tasks other than that of Composer in connection with the performance of the Musical Work, then all rights and obligations in connection with any of those shall be dealt with by way of separate contract without prejudice to any of the rights and obligations under this Agreement. Any such additional obligations will be performed by the Composer concurrently with his obligations contained herein. Notwithstanding the above, it is understood and agreed that the Commissioner shall not be liable for duplicate payment of travel, accommodation, per diems and other related expenses.

#### 10. Billing

The Composer will be credited as follows:

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The Commissioner shall make the following acknowledgements in the house program on behalf of the Composer:

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The Commissioner shall cause the Composer to receive billing as the author of the Musical Work on a separate line immediately preceding, or following the title of the Musical Work in all programs, houseboards, billboards, advertising, throwaways and paid announcements of the Musical Work. No

names except the name of the performing organization and the name of the performer may be larger or more prominent than the Composer's name. There shall be no exceptions to the foregoing without the Composer's consent.

When biographies are present in the program, the Commissioner shall include a biography of the Composer. Such biography shall have been approved by the Composer, and it is the Composer's responsibility to provide such information to the Commissioner.

#### 11. Credits

The Composer agrees to credit the Commissioner as having been the performer of the Premiere performance of the Musical Work in the house program of future performances as follows:

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In the case of a Premiere or Commission Contract, the Composer agrees to include in any future contract that:

- a) in any publication, performance, or electronic performance of the Musical Work, the Commissioner of the Premiere performance shall be credited appropriately; and
- b) in any publication of the Musical Work, the Premiere Commissioner shall be credited, provided that such performance has taken place prior to the publication of the Musical Work; the Composer may, with reasonable justification, request the Commissioner of the Premiere performance to waive this clause.

When requested, subsequent performances shall acknowledge, in the house program, the Commissioner of the Premiere performance.

#### 12. Promotion Without Permission

The Commissioner will obtain permission from the Composer prior to announcing in promotional or marketing materials under its control that it intends to produce or is considering producing a specific Musical Work by the Composer.

#### 13. Audio and Video Recording

Archival: The Composer agrees that the Commissioner may record the performance of the Musical Work for archival purposes. The resulting recording may only be Musical Worked in private, for reference purposes such as, but not limited to, private screening for promotion of future performances.

Advertising: The Commissioner shall have the right to authorize one or more radio and/or television presentation of excerpts not to exceed two minutes, from the performance of the Musical Work.

Promotion: The Commissioner shall have the right to make a finished, edited recording of excerpts of the performance of the Musical Work for purposes such as, but not limited to, demonstrating the nature of the work, and promoting it to potential sponsors, donors, investors and performance sponsors. The Commissioner will guarantee that the recording will remain under its control, and may not be broadcast commercially.

Other Uses: The use or preparation of recorded material by the Commissioner in a format different from those contemplated in this clause is prohibited without the permission of the Composer.

In any instance where a third party wishes to record the performance, the Commissioner shall:

- a) inform the Composer; and
- b) inform the third party that the Composer is the copyright owner of the Musical Work, and inform them of how to contact the Composer.
- c) not permit such a recording without written agreement from the Composer.

#### 14. Agreement Binding

This Agreement shall be binding upon, and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

#### 15. Assignment

Neither the Commissioner nor the Composer shall assign this Agreement or any part thereof to any third party without the prior written consent of the other.

#### 16. Clause Headings

The clause headings in this Agreement shall not affect, qualify or amplify the content of the clauses.

#### 17. Interpretation

This Agreement shall be subject to and interpreted according to the laws of the Province in which the Commissioner's offices are located.

#### 18. Force Majeure

If the performance of the obligation of either party is delayed or interrupted or prevented by reason of an act of God, fire, flood, war, public disaster, strikes or labour difficulties, governmental enactment, regulation or order, illness of a principal performer in the Musical Work (certified by a doctor), or any other cause beyond either party's control, such party shall not be liable to the other therefor. Notwithstanding the above it is understood and agreed that whenever possible liability for the performance of any obligation herein shall not be terminated but merely suspended for a period of time based on the duration of the event that caused the delay, interruption, or prevention and the effects thereof, following which time the provisions of this Agreement shall continue.

#### 19. Not a Partnership

This Agreement shall not in any way constitute or be deemed to constitute a partnership between the parties hereto. Neither party shall incur any debts or make any commitments for the other.

#### 20. Representations and Warranties

The Composer represents and warrants:

- a) that the Composer is the sole owner of the copyright of the Musical Work;
- b) that the Composer retains the copyright to the Musical Work and all other rights of any nature whatsoever therein except those specifically granted to the Commissioner in this Agreement;

- c) the Composer is free to and has the authority to enter into this Agreement, and has the exclusive right to grant the rights granted hereunder, and has not entered into any other agreement granting to any other party rights in conflict with those dealt with herein;
- d) that in the event that any claim or action for infringement of copyright is brought against the Commissioner in connection with the performance and performance rights granted hereunder, the Composer undertakes to indemnify the Commissioner and hold it harmless against such claim or action, provided that any such claim or action does not arise from a change made in the Musical Work by or at the direction of an agent or servant of the Commissioner without the consent of the Composer.

The Commissioner shall notify the Composer forthwith in writing of the receipt by the Commissioner of notice of the commencement of any claim or action together with the particulars thereof and no claim or action shall be compromised or settled without the Composer's concurrence.

#### 21. Payment Disputes

Royalties: In the event of any dispute as to programming of the Musical Work for any given period of time, the Composer is entitled to have all the related books of account of the Commissioner examined independently at his/her own expense, upon advance notice in writing to the Commissioner.

#### 22. Notices

All notices herein provided for shall be delivered personally or sent by registered mail to the addresses specified in this contract. Either party shall by like notice specify any change of address.

IN WITNESS WHEREOF, the parties hereto have executed the present Agreement.

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Composer

\_\_\_\_\_  
GST #

\_\_\_\_\_  
GST #

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date