

Specimen Document Notes: TV Commissioning Agreement

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A TV Commissioning Agreement is the legally binding document by which a **Composer** is commissioned by a TV production company ('**Company**') and agrees to write compositions and generally also record those compositions for a TV programme. The Company needs an agreement under which it acquires the synchronisation rights to use the composition/s and master/s ('**Works**') in its TV programme(s) ('**Programme**') for broadcast and other agreed exploitation, usually throughout the world. Such agreement normally licenses or assigns the rights on a non-exclusive basis but in some cases the rights may be licensed or assigned on an exclusive basis. If possible, the rights should be licensed, on a non-exclusive basis.

The Company will enter into agreements with financiers or banks and perhaps also with the broadcaster that is to transmit the Programme. Those agreements will influence the rights that the Company needs to take from the Composer and the obligations it will need to impose on the Composer. If unusual terms are required, the Composer should ask for a warranty that such terms have been imposed and are required under the relevant third party agreement signed by the Company.

A brief explanation of the clauses

Parties

The Composer should make sure that it is clear who the other contracting party is - eg: is it an individual or perhaps a company? (If it is a company, then Composer should check it is validly registered at Companies House).

Clause 1: Definitions

The Composer must be clear exactly which Works the Composer is delivering to Company, and that Company owns all the necessary rights in the Programme. Try to avoid agreeing an artistic standard for delivery – the Works should only need to be of a technical standard suitable for broadcast of the Programme. If the Company has specific needs though, make sure all the details are agreed and set them out in clear terms so it is clear what has to be achieved and by when.

1b) and c) If Composer is limiting the use that the Company can make of the Works, then add

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that here; eg. only for use in a particular scene (and say which scene).

Clause 2: Services

The Composer's services are non-exclusive, during such period as it takes to complete the compositions and masters (if both are being delivered) – but the Company will probably need the first call on Composer's services during some period and Composer needs to agree when that will be. Add it to this clause. First call generally means that the Composer can do other work at the same time as providing their services for the Programme, as long as it does not interfere with their obligations to the Company.

It is important for Composer to agree an end date for delivery of the Works to the Company so that it is clear exactly when the Composer's obligations end.

Composer should agree with the Company at the outset, exactly what the Composer is obliged to write/record and whether Composer has to engage musicians etc. Many composers will provide other services in addition to writing the music. These might include orchestration, copying the score and parts, conducting, performing, hiring other musicians and recording the soundtrack (live or electronically). In this case, higher fees should apply to cover the extra costs, time and expertise.

Clause 3: Delivery

The Composer needs to agree with the Company exactly which audio files and other materials and (if relevant) session musician clearance forms, need to be delivered.

Composer should also agree whether the company or the Composer will prepare and create the cue sheet. The template agreement puts the responsibility for the cue sheet on the Company (see for example warranty clause 8 e) but normally the Composer would prepare a draft and the Company creates the final version. The Composer should correct any errors in the final cue sheet and if needed send the corrected final cue sheet back to the Company.

The Company may ask for stem audio files, which will enable the Company to remix and alter such files in any way they want: the Composer should be aware of this and comfortable that they may not then be consulted on changes/edits etc. If stems are to be delivered, clause 3b of the agreement would be changed to reflect what is agreed with the Company.

Composer must ensure the delivery schedule is realistic and everything can be delivered on time. Composer may be penalised if it is not. Individual session musicians can be engaged under the appropriate MU collective bargaining agreement.

Clause 4: Remuneration

The contract must specify the amounts due to Composer and payment terms. Composer should note that the amounts payable include all the costs of writing the compositions and of recording the masters (including any session musicians, sample and other clearances). Composer should ensure they are being paid enough to cover everything. Generally the amounts payable are negotiable with the Company and the Composer should always try to negotiate a fee that adequately covers the amount of work required to be done by the Composer.

Clause 5: Grant of Rights

Often production companies try to take an assignment for life of copyright, of the copyright in both masters and compositions. This clause provides for a non-exclusive life of copyright synchronisation licence in respect of the Works but for the Programme only, which is the basic

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requirement the Company will need.

If the Company wants to use the Works for any other purpose it should be obliged to get the Composer's permission in writing.

In this contract the Composer keeps all copyright in the masters and compositions – (namely, the copyright under The Copyright, Designs and Patents Act 1988 as amended) if the Company is to own all the copyright, then additional fees and royalty terms should be agreed with the Company.

Under clause 5b. the Company cannot make any changes to the Works (other than incidental changes) without permission from Composer (though see the comments above regarding stems).

Due to historic issues relating to copyright protection under international treaties and conventions (the protections under USA law and English law differ) even in contracts governed by English law, clauses appear that specifically refer to USA Copyright Statutes and composers are sometimes asked to create and deliver their Works as 'Works for Hire'.

A 'Work made for Hire' is defined under USA Copyright Statutes, essentially meaning an outright sale of all and any rights of the creator, in both the relevant song and the master. It is similar to creating copyrights as an employee for an employer. Big USA TV companies will insist on such clauses and a small English production company which makes programmes for such a USA TV company will therefore have to include it in their contract with the Composer. Obviously that is not beneficial to the Composer, who should if realistically possible, ask for such provisions to be removed.

Clause 6: Performance Rights

If the Company wishes to acquire publishing rights in any composition and if publishing rights in any composition are granted to the Company then it will want to receive and retain 100% of the so-called "publisher's share" of performance income. The same applies to the 'label share' in the masters if additional rights are granted to the Company.

The Composer must always be entitled (as in this clause) to collect 100% of the writers' and performers' shares of public performance income (collected by PRS/PPL and other performing rights organisations ('PROs')) from the Works when they are used in the Programme. Specifically, the PPL only collect 'neighbouring rights' income (which is what income from public performance of masters is called outside the UK) when the masters have been 'commercially released'.

It is usually sensible for the Composer to join the PRS or another PRO; the Company or its licensees must be obliged to pay all public performance monies that may be due for broadcast (etc) of the Programme.

If the Composer is a member of a PRO, the performance right in Composer's musical works is automatically assigned to the relevant PRO. The relevant PRO licenses broadcasts (etc) then distributes the income generated to composers, publishers and other copyright/performance rights owners according to the duration and medium of each performance or broadcast (etc).

In order to distribute the income, the relevant PRO relies on receiving accurate music cue sheets from broadcasters. The cue sheet prepared by the Composer should therefore include separate titles and timings for each cue. There should be an obligation on the Company to use the accurate cue sheet.

The BBC, Channel 4 and ITV all have blanket licence agreements with the PRS covering the

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public broadcast of music on TV and radio.

Clause 7: Credit

Composer should make sure that the credit Composer wants is made known to the Company and that Composer provides the Company with any photographs and biographies that Composer wants to be used in promotion for the Programme.

Clause 8: Warranties

The warranties in this clause are fairly standard and essentially promise that the Composer owns all the rights. Composer needs to check these carefully though to ensure they are all true.

The Composer should make sure the Works are original or, if they intend to include any samples, Composer must first check with the Company, then clear them and get company's approval before including anything in the final version.

All the Works must be fully cleared by the Composer for synchronisation with the Programme, so that the Company can license its rights to broadcast and exploit the Programme worldwide.

Clause 9: Termination

Under this clause the agreement terminates automatically if the Company enters into liquidation, receivership or administration and then third parties can only use the Works after they enter into a new agreement with the Composer. The Company may not in practice be able to agree such a clause, depending on the terms of any agreement it has with financiers, broadcasters etc. but something should be added to help protect against these circumstances.

Clause 10: Assignment

An assignment by Company can mean the Composer is not legally entitled to receive any more money for exploitation of the Works.

Under this clause Company cannot assign the agreement to any third party unless the assignee enters into a new contract with Composer to fulfil Company's obligations. The Company may not in practice be able to agree such a clause, depending on the terms of any agreement it has with financiers, broadcasters etc. but should add something to help protect Composer in these circumstances.

Clause 11: Confidentiality

Both parties need to keep the terms confidential, unless they become generally known through the fault of neither party, but Composer can make their involvement in the Programme known.

Clause 12: Remedy is Damages Only

Even if Company breaches any term of the agreement then Composer cannot stop exploitation or use of the Programme in any way – the Composer is only entitled to take legal action to recover monetary compensation. This is standard and will be required by the third party financing agreements that will be signed by the Company.

Clause 13: Miscellaneous

The agreement is governed by English Law and is the entire agreement between Composer and Company. Third parties have no rights and cannot rely on any terms arising from the agreement (so the Composer will not be subject to direct action by broadcasters and others).

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It is important that changes to the agreement can only be made in writing.

Additional issues that may be agreed by the Composer

1. Company may want to take publishing rights in the compositions, in which case clauses will be needed to cover all the relevant issues. If possible the rights in compositions should not be assigned to the Company on a buyout basis, with no royalties payable.
2. Company may want an assignment of copyright in the masters for separate use as well as within the Programme and for the full period of copyright. That may be acceptable if the fee is sufficient.
3. If a soundtrack album for the Programme (or any other exploitation of the masters separately to the Programme) is agreed in writing with Composer, then Composer should be paid a royalty, at a rate and on other terms for its exploitation, to also be agreed.
4. The following type of clauses will then be needed:
 - a) **Publishing Royalties**
 - i. Company agrees to properly register and administer all rights in the compositions and shall pay publishing royalties to Composer of no less than 50% of the total net income received.
 - ii. Public performance income – Company retains the publishers' share (6/12^{ths})
 - b) **Master Use Royalties**
 - i. Company agrees to pay a royalty on any use of the masters separately to the Programme, of no less than 50% of the total net income received (pro-rated as appropriate).
 - ii. Public performance income – Company retains the 'label share' (6/12^{ths})
 - c) **Accounting and Audit**
 - i. Company must account no less often than six (6) monthly.
 - ii. Usual accounting and audit provisions will need to be added.