

SAMPLE CONTRACTS – INFORMATION SHEET

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Disclaimer

(a) Whilst these templates were drafted to safeguard the interests of songwriters and composers as fully as possible according to the current industry norms, such agreements directly affect the rights of members to exploit their works. In this respect we strongly recommend that you seek independent legal advice before entering into any agreement. As part of your BASCA membership, you have access to specific legal advice if you do not yet retain a lawyer.

(b) These contracts are provided as an educational resource only. The Explanatory Notes are intended as a guideline highlighting some issues particular to each contract. These documents do not constitute legal advice and BASCA cannot therefore accept any responsibility for action taken as a result of information provided herein. BASCA shall have no liability for any damage caused by errors or omissions in any information, contract, website section, instructions or scripts provided by us in connection with the contracts.

Explanatory Note:

A. Contracts: an overview

Exclusive licence: a license granted on an exclusive basis will mean that the Licensee will be have sole control over the works and that the writer cannot enter into another agreement for the same works.

Non-exclusive licence: if an agreement is made on a non-exclusive basis, the writer is free to sign other agreements or licence their works to other parties without compromising the first agreement.

In the case of publishing agreements for example this can occur in respect to songs other than those assigned in the contract (i.e: it is non-exclusive in respect of the writer as a composer but exclusive on the songs assigned).

Licensee: the person or organisation who wishes to place your music to film.

Licensor: the person or organisation who wishes to place your music to film.

B. Our types of sample contracts

Commissioning contract: this is a contract of services where a composer is asked to create music under specific instructions. Some commissioners may argue the doctrine of 'work made for hire' applies to the commission.

Joint songwriting agreement (collective works): this is where several individuals contributed to the work, but where the contributions to the work can be differentiated and the authors of the composition, lyric and music are identified as different individuals.

Joint songwriting agreement (joint works): this is where several individuals contributed to the work, but where the contributions to the work cannot be differentiated and the all contributors collectively own all the rights. Despite this collective ownership, shares of the income are distributed at the contributors' discretion (subject to their agreement).

Session agreement: this is an agreement whereby musicians consent to perform or be recorded performing in a sound recording. This does not give performers any rights in the composition or its exploitation unless otherwise agreed.

Single song assignment: this is an agreement for the assignment of a single song (as opposed to a catalogue) and can be made on an exclusive or non-exclusive basis.

Synchronisation licence: this license allows the composer to grant permission to another party to place their music in film. The synchronisation right authorises the coupling of songs with images which can include motion pictures, television productions, advertisements and DVD productions such as corporate films or promotional videos.

A synchronisation license may be accompanied by a commissioning contract outlining to commission details of the music to be synchronised. In this case the synchronisation licensee will be the same person or organisation as the commissioner and, as such, the fees in one of the contracts may be of £0.00. Do ensure the fees outlined adequately compensate you for the commission and the synchronisation.

C. Rights

Author's rights: as the author of a copyright work, a writer owns and controls the copyrights on the compositions. The composition is usually defined as the word and music embodied (but not the recording itself).

Scope of rights: it is important to be aware of the type of use required by each contract and ensuring that no types of usage are added to the contract as 'giveaways' without the necessary compensation to the writer.

For example in the case of granting a performance right for specific events, any recording of that performance has to be granted separately and gives rise to additional rights. Do ensure that such additional rights are cleared where necessary and that you receive the appropriate remuneration for such uses.

Moreover, scores used for the performance should be returned or destroyed (including electronic copies) after the performance.

Moral rights: in the UK these rights are (i) the right to be credited as author of the works, (2) the right to object false attribution of works and (iii) the right to object to defamatory treatment of the works (i.e. the writer can object substantial changes in the music or lyrics or object certain usages of the works). The concept is that an author can assert the above rights even after assigning the copyright.

The writer keeps their moral rights in relation to third parties but not in relation to the publisher (with the exception of the right to be credited). This means that the publisher is not obliged to credit the writer or prevent false attribution or defamatory treatment but the writer can still assert those rights against third parties.

Type of use: contracts often contain a provision of use for "all media whether now known or to be devised". This ensures that a license will apply to any technology created even if it is not explicitly included in the contract. Writers may wish to negotiate a strict restriction of the scope of use to exclude some uses.

Rights period:

Copyright: the composition, lyrics and music are protected until 70 years after the death of the author.

Sound recording: the full period of copyright last 50 years after the death of the composer for the recording.

The rights can be granted for the life of copyright (as above) or for a shorter period called "Rights Period" which ranges from 10 to 50 years. 20-25 years is considered fair and standard.

Territory: the Territory refers to the region(s) in which (i) the Publisher will look to exploit the songs herein assigned, and (ii) the Publisher will collect income for the exploitation of the songs herein assigned. The writer may negotiate to limit the territories to which a licence applies (this will be most applicable to use in advertisements) but generally speaking rights are granted for worldwide use.

Reversion: in case of breach of contract, where the contracts are not fulfilled, or termination of contract, the rights assigned may revert back to the writer. This may require serving notice to the licensee or publisher. Any use of the rights will still require remuneration.

Rights of third parties: the writer is generally required to warrant (i.e.: ensure) that any rights of performers are not compromised by their agreements. The writer will usually be required to obtain the relevant consent forms.

Performers' consents: this means that all the performers of the recording to be licensed or synchronised have consented to be recorded.

Audit rights: writers can audit the publisher's accounts through a qualified auditor once a year provided they meet the formal requirements (e.g.: 30 days' notice). If an underpayment of 10% or more is found out by the auditor then the publisher will usually be required to pay the writer the sum underpaid plus interests.

D. Uses

Assignment: The label is able to transfer this agreement to a third party provided that they remain primarily responsible for the fulfilment of the obligations to the Writer in this agreement. Commissioning Film/TV production companies will usually want the copyright in the commissioned music to be assigned to it. Once the music is assigned, it becomes the Commissioner's property and the Composer cannot use it again.

Rental and lending rights: again, if this has not already been expressed in your commissioning contract, or if the licensee is not the commissioner your fee should take possible rentals / lendings into consideration.

Rental and Lending: if Rental and Lending rights have not been referred to in a commissioning contract, or if the licensee is not the commissioner, the composer should be aware of the possibility to include a fee for "equitable remuneration" to take possible rental/lending of the production into consideration.

Sound recording: It may not be possible for publishers to obtain a license for the use of the Sound Recordings directly from the Writer in the event that the Sound Recordings have been assigned and are controlled by a third party Record Label. There shall be no problem acquiring such license from Record Label as long as the Recordings are used solely for promotional purposes.

E. Revenue

Revenue: this is the basis used to calculate royalties.

Royalties: the royalty percentages within the following ranges are considered fair and balanced:

Sheet Music Royalties: this income is usually a share of the net receipts or a percentage of the suggested retail selling price of each copy of sheet music.

Mechanical Royalties: these are royalties paid by the record label for making copies of the song (both physical and digital). This royalty is a percentage of the dealer price of the record and can vary depending on formats.

Synchronisation Fees: this is the income generated from putting music on films, TV programs, and video games. This can take the form of an upfront fee which is shared between the record label and publisher, or can be distributed as royalties.

Broadcast/Performance Income: this is the income collected by a collecting society (PRS, ASCAP, GEMA, etc.) for the public performance of the music at establishments, through radio broadcasts and streaming. The publisher's share is added to the writer share and not included within it.

Advances: advances are an initial remuneration to the writer by the publisher taking the form of a payment. Advances can be non-returnable or recoupable from the writer's share of royalties.

Non-returnable advances: this means the writer does not have to repay the advance in case income generated by any type of exploitation is insufficient to recoup the amount given.

Fully recoupable: the first monies made from the exploitation will generally go towards recouping advances, studio time (if applicable) and other agreed (with the writer) costs incurred by the publisher.

Costs:

Commission fee: sub-publishers may wish to charge a commission fee for the administration of copyrights. A commission between 10% and 15% of the gross royalty income collected by that sub-publisher is generally considered fair. This commission may increase for covers and synchronisation starting at 20% and can be as much as 50%.

Direct costs: any Costs deducted from revenue occur before the royalty is paid and shall be directly related with the exploitation of the songs. These costs cannot be general costs of running the publishers business or overheads.

Writer's share: this refers to the monies collected by the collecting societies (PRS, ASCAP, BMI, GEMA, etc) which are to be paid directly to the Writers. In the event they are paid to the Publisher, as mentioned in "Revenue" above (Clause 2); they shall pass these monies on to the Writer without applying any type of charge or commission.

F. Termination

Schedules: these are located at the end of agreements and contain lists of relevant elements including a list of the compositions being assigned from writer to publisher for example or those compositions for synchronisation.

Termination: at the natural end of contract, all rights should revert back to the writer; for a publishing agreement this means the writer will resume responsibility for collecting income and securing new usages for the songs.

The termination clauses regulate the process for early termination of the contract. For example, if the publisher fails to pay royalties, the writer may terminate the contract. In this case, written notice of default on payments is required; if after 30 days the publisher has not resumed the payments the writer may terminate the agreement immediately after sending notice of termination. Account auditing and court action may be necessary to recover the money owed. If a publisher terminates the contract due to the writer's breach of contract or bankruptcy, the publisher is still required to pay royalties to the writer. In this event, the reversion of copyright will not occur automatically.

Joint and several liability: where agreements are made with a group, each individual member can be liable both as part of the group and individually, even after they have left the band. In the event of a breach, the injured party may choose to sue the group or a particular individual for that breach of contract.

Dispute resolution: arbitration and mediation are alternative methods of dispute resolutions that do not involve court proceedings. Any settlement reached in such a process will be legally binding.

Parties may prefer to opt for court action.

If a writer fails to take proper legal advice before signing music agreements, this may render the agreement unenforceable against them in a court of law. Labels and publishers should take all reasonable efforts to ensure the writer understands the agreement and wish to be bound by it; they should expressly encourage writers to take legal advice from an independent expert before signing any agreement.

COMMISSIONING CONTRACT

[SAMPLE CONTRACT DATED 2015]

Contract of service acknowledgement:

THIS AGREEMENT is made thisday of

BETWEEN

1. [COMPANY'S NAME] of [Writer's address] (**hereinafter "the Commissioner"**); and
2. [COMPOSER'S NAME] of [Composer's address] (**hereinafter "the Composer"**)

IT IS HEREBY AGREED:

1. DEFINITIONS

1. In this Agreement, the following expressions shall have the following meanings:

1.1. Commencement Date: this Agreement shall commence on the date when it has been signed by all the parties.

1.2. Composition: shall mean the whole or (when the Writer has co-written or co-arranged the same) the Writer's entire contribution to each of those musical works set out in Schedule [number] to this Agreement.

1.3. Rights Period: shall mean a period of (...) years from the date of Commencement of this Agreement or until this Agreement is mutually terminated by the consent of ALL parties in writing.

1.4. Territory: shall mean [all countries of the Universe].

1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

2. ENGAGEMENT

2.1. The Commissioner retains the Composer as an independent contractor to render, and the Composer agrees to render, to the best of his/her ability, services as a music composer to provide a musical arrangement/composition of [e.g.: approximately 40 minutes duration scored for Voice and Piano] (hereinafter "the Work").

2.2. The Composer will arrange pieces selected by the Commissioner and which are set out in Schedule 1 to this Agreement ("the Existing Works"), and the Composer will write new additional material, to result in a 40 minute cabaret-style performance.

2.3. The Services will be rendered subject to the approval of Company, and will include writing, composing, orchestrating, arranging, producing, mixing, performing, supervising, recording, revising, polishing, packaging and delivering to Company original musical composition ("the Compositions").

2.4. Services will be provided for use [e.g.: in the Company's productions and promotions]. Nothing in this Agreement shall oblige the company to use the results of the Artist's services pursuant to this Agreement.

2.5. The Composer hereby agrees that, subject to the rights of PRS for Music, MCPS, or other collecting societies, the Commissioner may give or promote the first performance of the Work, provided that this takes place on a date not later than [date], after which date the Composer is free to arrange the first performance elsewhere. However, with the written agreement of both parties, a new date for the first performance may be set.

2.6. Details of first performance(s) (if known):

Date(s) [e.g. 3 week run; 3-20 August 2016]

Performer(s) [Name of Performers]

Venue(s) [Name of venue]

3. DELIVERY

3.1. The Composer agrees to use all reasonable efforts to provide the first 15 minutes of the Work no later than [date], failing which the commission may be withdrawn by the Commissioner. However, with the written agreement of both parties, a new delivery date may be set.

3.2. The Composer agrees to use all reasonable efforts to provide the completed Work no later than [date], failing which the commission may be withdrawn by the Commissioner. However, with the written agreement of both parties, a new delivery date may be set.

3.3. The original manuscript shall remain the property of the Composer. The Commissioner shall receive two copies of the full score of the Work.

3.4. Provision of material in digital format will not constitute a licence to copy, except with permission from the Composer.

4. FEE

4.1. The Commissioner hereby agrees to pay the Composer a Fee of £ [amount] (“the Fee”) for the Services.

4.2. The Commissioner will pay the Composer’s Fee by [bank account specified by the Composer].

4.3. Fifty percent (50%) of the Fee is to be paid upon the signing of this contract (receipt of which is hereby acknowledged), for which the Composer will finish the first 15 minutes of the Work.

4.4. The remainder of the Fee is to be paid upon delivery of the first 15 minutes of the Work to the Commissioner.

5. RIGHTS

5.1. The Composer is free to offer the Work for publication.

5.2. The Composer hereby asserts his/her right to be identified with the Work as set out in Part II of The Copyright, Design and Patents Act, 1988 (as amended).

5.3. The Composer will be credited on all copies of the full score of the Work. The Commissioner covenants with the Composer to include (or cause the distributors and broadcasters to include) a full and appropriate credit in all versions of the Company's productions and promotions in which the Masters and/or Compositions are used in.

5.4. Subject to prior approval by the Composer, the Commissioner has the right to use and to authorise others to use the Composer’s name, likeness, voice and biographical data for any advertising, promotion or publicity purposes in connection with the Commissioner’s productions excluding the endorsement of any product or service other than the Commissioner’ programming services (or its affiliated entities).

5.5. Nothing in this Agreement shall be interpreted as granting the Company the right to copy, reproduce, distribute, commercialise or sell the Works as a stand-alone musical product,

soundtrack, or in a bundle with other musical works. These rights must be the subject of a separate specific agreement.

6. OBLIGATIONS

6.1. The Composer agrees to play piano at an open rehearsal of the first 15-minutes of the Work in the [e.g. Pound Theatre, London, on 3 April], at no extra cost.

6.2. The Composer agrees to pay his/her own travel and accommodation costs reasonably incurred associated with attending a performance and rehearsal in [e.g.: Edinburgh].

6.3. The Composer agrees to work in person with the Commissioner for up to [e.g.: ten (10)] hours at no extra cost. This time could be used developing the Work and/or rehearsal.

7. ARTIST WARRANTIES AND REPRESENTATIONS

7.1. The Composer warrants that to the best of his/her knowledge, the Composer is entitled to enter into this Agreement.

7.2. The Composer warrants and represents that the Works will be the Composer's original work; that no third party has any right, title or interest in and to such Works.

7.3. The Composer further warrants and represents that such Works, and the Commissioner's use thereof, will not infringe or violate the right of privacy of, or constitute a libel or slander against, or violate any common law rights or any other rights of any person or entity.

7.4. The Composer warrants and represents that he will obtain any and all necessary copyright permissions to incorporate arrangements of the Existing Works into the Work and will fully indemnify and hold the Composer harmless against any claims from any third party (including legal fees on an indemnity basis) arising from any breach or alleged breach of such warranty.

7.5. The Composer warrants and represents that the Composer will not violate any law, regulation or contractual obligation by entering into this Agreement, and the Composer is free to enter into this Agreement, is not subject to any obligation and has not made or will not make any grant or assignment that can, will or might prevent or interfere with the full performance of the Composer's obligations hereunder, or conflict with or impair the complete enjoyment of the rights and privileges granted to the Commissioner hereunder.

7.6. The Composer shall obtain all necessary clearances from all persons performing in the Master as in Schedule 3.

8. GENERAL

8.1. This Agreement and the Schedules attached hereto reflect the entire agreement between the parties in connection with the matters described herein, and cancels and supersedes all prior negotiations and understandings between the Commissioner and the Composer relating to the matters described.

8.2. Any further changes to this Agreement, including extensions, releases, discharges, modifications, waivers or rescissions, shall only be validated in written agreement signed by ALL parties and duly witnessed and dated in a like manner to below.

8.3. Neither party shall assign this Agreement or his/her obligations hereunder, in whole or in part, without the prior written consent of the other party. Any attempted assignment without the prior written consent of the other party shall be null and void.

8.4. The period of which this Agreement shall remain in force is for the Rights Period but it may be mutually terminated by the consent of ALL parties in writing. This Agreement is not superseded by a publishing, recording or any other agreements with third parties.

8.5. This is not an exclusive agreement for the Services to be performed under this Agreement and the Commissioner retains the right to engage others to perform the same type of services without any liability to the Composer.

8.6. All notices from either party to the other must be in writing to the respective addresses of the Writer and Publisher listed above. Notice may be given in person, by commercial courier or via mail (registered with postage prepaid) and is deemed received as of the date of any applicable receipt signed by the receiving party.

8.7. This Agreement (and any non-contractual disputes arising out of it) shall be governed by and construed in accordance with the laws of England and any legal proceedings that may arise out of it are subject to the exclusive jurisdiction of the English courts.

8.8. Arbitration and Mediation shall be also considered by both parties as alternative methods of dispute resolution should it be deemed appropriate according to the circumstances and agreed by both parties.

The above terms have been read and agreed by each of the parties set out below.

Signed by

.....
For or on behalf of
[Name of Composer]

Signed by

.....
For or on behalf of
[Name of Commissioner]

Signed by

.....
For or on behalf of
[Name of duly authorised officer of the Company]

Schedule 1

MUSIC DELIVERABLES

The Composer shall complete and deliver a version and such edits of each Composition and Master as Commissioner may require, including One (1) full version of each Composition in respect of the following musical compositions (use working titles if necessary):

General description (including length):

.....

SONGS (hereinafter referred to as “the Works”):

- 1.
- 2.
- 3.
- 4.

Delivery deadline:

.....
.....

Place of Recording (if applicable):

.....

Dates of Recording (if applicable):

.....

Place of Performance (if applicable):

.....

Date of Performance (if applicable):

.....

Schedule 2 (if applicable)

EXISTING WORKS to be arranged and incorporated into the Works commissioned herein as under Paragraph 1.2.

Title

.....

Composer

.....

Publisher (if applicable)

.....

Schedule 3

Through the present Schedule, the Composer warrants and represents that all the appropriate consents have been granted pursuant to Part II of the Copyright Designs and Patents Act 1988 (as amended or re-enacted) to make the fullest possible use of the above referred musical composition (“the Sound Recording”).

This Schedule does not constitute a contract between the Writer and the Musician.

[MUSICIAN’S NAME] of **[Musician’s address]** (hereinafter “the Musician”)

.....

Title of Work(s) Recorded (use working titles if necessary):

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.....

.....

Place of Recording:

.....

Dates of Recording:

.....

Musician’s Fee:

.....