
COMMISSIONING AGREEMENT

Entered in to by

(herein after referred to as the BROADCASTER)

And

(herein after referred to as the PRODUCER)

As well as

(herein after referred to as the COMPOSER)

Broadcaster: means which has commissioned the creation of both the musical work as well as the Production for which it will be used.

Producer: means which has been commissioned by the Broadcaster to create the Production.

Composer: means who has commissioned by the Broadcaster to create the musical work for the Production as per specification

Musical Work: means the work consisting of music and shall include any words or literary work associated therewith created by the composer for use in the Production as per specification

Mechanical Right: means the reproduction right in the musical work created as per the specification by the composer for the production

Performing Right: means the right to perform and to make the musical work available to, the public, as given to the broadcaster through the Production.

Production: means the television programme for which the musical work has been commissioned.

Commissioning Fee: means the once-off amount paid or payable to the Composer for composing the musical work, excluding royalties for the performance and reproduction of such work.

ENGAGEMENT TO COMPOSE / ARRANGE MUSICAL COMPOSITION FOR THE TELEVISION PRODUCTION (herein after “the **PRODUCTION**”)

WHEREAS:

The **BROADCASTER** has commissioned the **PRODUCER** to produce the **PRODUCTION**:

This agreement is entered into by the **BROADCASTER**, the **PRODUCER** and the **COMPOSER** subject to the terms and conditions, which follow:

- A. The **BROADCASTER** hereby commissions the **COMPOSER** to compose, arrange, perform/procure the performance, produce and record the musical work for the **PRODUCTION**.
- B. It is an express condition of this agreement that the **COMPOSER** will retain the copyright in the musical work and the literary work composed for the **PRODUCTION**, as contemplated in s 6 of the Copyright Act 98 of 1978 as amended. Notwithstanding the aforementioned, it is understood that the copyright in the **PRODUCTION**, as contemplated by sections 8 and 9 of the Copyright Act 98 of 1978, shall vest in the **PRODUCER** and/or the **BROADCASTER** in accordance with any separate agreement entered into by the latter, and where such agreement does not exist, in the **BROADCASTER**.
- C. In terms of this agreement, the **BROADCASTER** shall, notwithstanding clause B above and subject to clauses D and E below, be entitled to make and preserve an unlimited number of recordings, for the purposes of broadcast, of the musical work for use in the **PRODUCTION**, provided it has entered into a blanket license agreement with the Composers, Authors and Publishers Association (**CAPASSO**) for the applicable period.
- D. The **COMPOSER** shall, in light of the provisions of the copyright Act, Act 98 of the 1978, be entitled to compensation for the use of the Musical Work by the **BROADCASTER**.
- E. The **COMPOSER** shall, be entitled to collect directly from the Composers Authors and Publishers Association (**CAPASSO**) all Mechanical Rights royalties arising from the reproduction of the Musical Work by the **BROADCASTER**.
- F. The **COMPOSER** shall, further, be entitled to collect directly from the South African Music Rights Association (herein after “**SAMRO**”) that portion of composer’s royalties due to the **COMPOSER** for the public performance or performances of the Musical Work by the **BROADCASTER** from time to time.
- G. It is the **COMPOSER**’s responsibility to be or become a member of both **CAPASSO** and **SAMRO** in order to receive the royalties stipulated in clauses E and F above.

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- H. In consideration for the composition of the musical work in terms of this agreement, the PRODUCER shall upon the completion and delivery of the musical work, pay the COMPOSER out of the contract amount of the PRODUCTION, the COMMISSIONING FEE in the amount of R..... excluding value added tax.
- I. In order to secure payment of the COMMISSIONING FEE, the COMPOSER shall furnish to the PRODUCER with all the necessary meta-data reflecting the Musical Work and bank account details for payments due by the PRODUCER.
- J. The COMPOSER warrants the following in respect of the Musical Work composed for the PRODUCTION:
1. The work is original;
 2. the work does not infringe the copyright or any right of any third party;
 3. the work does not defame any third party;
 4. the work does not contain any sample of any other work composed or performed by any third party;
 5. a third party who performs in or contributes to the musical composition in any capacity shall be remunerated by the COMPOSER for such performance or contribution out of the fee and such third party, to the extent that this may be required, shall cede and assign all the relevant aspects of copyright and such rights as may be required to give effect to this agreement to the COMPOSER prior to the delivery date of the musical composition. It shall be the COMPOSER's responsibility to see to such cessions and assignments;
 6. the COMPOSER is entitled and legally competent to enter this agreement.
- K. The COMPOSER indemnifies and holds harmless the BROADCASTER against any and all claims, damages, liabilities, actions, causes of actions, cost and expenses including legal fees (on an attorney and own client scale), judgments or penalties of any nature whatsoever arising from a breach by the COMPOSER of any of the warranties, undertakings or terms and conditions set out in this agreement.
- L. The PRODUCER similarly indemnifies and holds harmless the BROADCASTER against any and all claims, damages, liabilities, actions, causes of action, cost and expenses including legal fees (on an attorney and own client scale), judgments or penalties of any nature whatsoever arising from a breach by the PRODUCER of any of the warranties, undertakings or terms and conditions set out in this agreement.
- M. The musical composition shall include:
- i.
 - ii.
 - iii.

- N. The musical composition as defined in clause M (i to iii) above will be delivered to the PRODUCER by no later than

- O. The COMPOSER will receive a credit in the end credit sequence of each of the episodes of the PRODUCTION:

SIGNED AT _____ THIS THE ____ DAY OF _____ 2015

on behalf of the BROADCASTER
duly authorised

WITNESS

SIGNED AT _____ THIS THE ____ DAY OF _____ 2015

On behalf the PRODUCER
duly authorised

WITNESS

SIGNED AT _____ THIS THE ____ DAY OF _____ 2015

On behalf of the COMPOSER
duly authorised

WITNESS