

Sample Commissioning Agreement: Theatrical Work

**MUSIC COMMISSION AND LICENSE AGREEMENT
BALLET**

This is an AGREEMENT (hereafter referred to as AGREEMENT) between Jane Composer (hereafter referred to as COMPOSER) and Ballet Company (hereafter referred to as COMMISSIONER) for a music commission and license. COMPOSER and COMMISSIONER hereby agree as follows:

1) COMMISSION AND SCOPE OF AGREEMENT. Subject to the terms and conditions of this AGREEMENT, COMMISSIONER commissions COMPOSER to write an orchestral score (hereafter referred to as SCORE) to New Ballet Score (hereafter referred to as BALLET), a ballet approximately ninety (90) minutes in total duration consisting of three (3) acts of approximately 30 minutes duration each, to be set to the existing scenario and choreography by Joseph Choreographer.

Instrumentation will be pic,22,E.hn,2,b.cl.,2-4321-T-2 perc-hp-kbd-strings, 60 players maximum.

2) DELIVERY AND DEADLINES. COMPOSER will deliver to COMMISSIONER a piano score before December 31, 2001. COMPOSER will deliver the final section of the orchestration to the copyist (see section 3 below) on or before March 31, 2002.

3) PARTS COPYING. COMMISSIONER will engage COMPOSER'S regular copyist, Peter Copyist, on such terms and conditions as COMMISSIONER and Mr. Copyist may agree. COMMISSIONER will also arrange for the printing and binding of all materials at its expense through COMPOSER'S regular printer, Stevens Printing, on such terms as COMMISSIONER and Stevens Printing may agree.

4) DATE OF PREMIERE. Premiere of BALLET by COMMISSIONER shall be April 24, 2002, plus two additional performances on or before May 15, 2002 in the BALLET'S regular venue.

5) COMMISSIONER'S RIGHT TO LICENSE. The term of COMMISSIONER'S licensing rights for the SCORE will be for as long as COMMISSIONER has the right to license the choreography and physical properties. COMMISSIONER will have the right to license the music and rent the performance materials only to companies to which it is renting the production.

This Agreement is subject to binding arbitration

____ / ____ Initials

6) COMPENSATION. In consideration of the services provided and the licenses granted in this AGREEMENT, COMMISSIONER agrees to pay COMPOSER a total fee of \$XXXXXX (XX thousand dollars), payable in three equal installments:

- On execution of this agreement,
- On delivery of the piano score,
- On delivery of the full orchestra score.

All payments shall be made payable to Jane Composer and mailed to COMPOSER’s address as stated at the foot of this AGREEMENT.

7) ROYALTIES. After the 2002 performances described in Section 4 of this AGREEMENT, COMMISSIONER will pay COMPOSER a per performances royalty of \$1,000 Dollars (\$1,000) per performance in houses of up to 3400 seating capacity through the 2003- 2004 season. The rate will be increased proportionately for larger venues. The royalty rate will increase by 10% after each two seasons over the rate applicable to those two seasons, as outlined below:

<u>Season</u>	<u>Per Performance Royalty</u>
Through May 15, 2002	No per performance royalty
May 16, 2002 – June 30, 2004	\$1,000
July 1, 2004 – June 30, 2006	\$1,100
July 1, 2006 – June 30, 2008	\$1,210
July 1, 2008 – June 30, 2010	\$1,331
July 1, 2010 – June 30, 2012	\$1,461
10% increase for each subsequent two year period.	

The above rates will also apply to all not-for-profit companies to which COMMISSIONER rents its production.

If COMMISSIONER receives an offer to rent its production for presentation by a for-profit company, or for performance in commercial venues such as Madison Square Garden, New York, New York in which most performances are presented by a for-profit company, COMMISSIONER will notify COMPOSER of such offer promptly following its receipt by COMMISSIONER. COMMISSIONER and COMPOSER thereafter will negotiate in good faith for a royalty based on then-current industry standard royalty rates for performances in that venue. Should COMMISSIONER and COMPOSER be unable to agree on a royalty within fourteen (14) days of COMMISSIONER’s notifying COMPOSER of the offer, the parties will submit the relevant facts to an impartial arbitrator with experience in the theatrical industry whose decision shall be binding upon both parties.

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For COMMISSIONER only, COMPOSER will waive royalties for “student matinee performances” on a “most favored nations” basis with the other royalty participants. “Student matinee performances” shall be defined as performances occurring between 10:00 a.m. and 3:00 p.m. on a weekday for an audience consisting of school-age children (as well as teachers and chaperones) and not on sale to the general public. Royalty payments for student matinee performances will not be waived for any other company.

COMMISSIONER will pay COMPOSER a recoupable but non-refundable advance against royalties of XX Thousand Dollars (\$XX,000) not later than May 31, 2002.

8) RENTAL FEES. COMMISSIONER shall not be required to pay rental fees for its own performances until the 2006-2007 season, at which time COMMISSIONER will pay rental fees at the rate of \$300 per performance. This rate will be increased by 10% every two seasons thereafter, as outlined below:

COMMISSIONER Rental Fees

<u>Season</u>	<u>Per Performance Rental</u>
Through June 30, 2006	No per performance rental
July 1, 2006 – June 30, 2008	\$300
July 1, 2008 – June 30, 2010	\$330
July 1, 2010 – June 30, 2012	\$363

10% increase for each subsequent two year period.

Companies to which COMMISSIONER rents its production will pay rental fees at the rate of \$500 per performance beginning immediately (i.e., upon execution of this AGREEMENT). This rate will also be increased by 10% every two years thereafter, as outlined below:

Companies other than COMMISSIONER

<u>Season</u>	<u>Per Performance Rental</u>
Through June 30, 2004	\$500
July 1, 2006 – June 30, 2008	\$550
July 1, 2008 – June 30, 2010	\$605
July 1, 2010 – June 30, 2012	\$665
July 1, 2012 – June 30, 2014	\$732

10% increase for each subsequent two year period.

The above rates will apply to all companies to which COMMISSIONER rents its production.

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If COMMISSIONER receives an offer to rent its production for presentation by a for-profit company, or for performance in commercial venues such as Madison Square Garden, New York, New York in which most performances are presented by a for-profit company, COMMISSIONER will notify COMPOSER of such offer promptly following its receipt by COMMISSIONER. COMMISSIONER and COMPOSER thereafter will negotiate in good faith for rental fees based on then-current industry standard royalty rates for performances in that venue. Should COMMISSIONER and COMPOSER be unable to agree on a rental fee within fourteen (14) days of COMMISSIONER's notifying COMPOSER of the offer, the parties will submit the relevant facts to an impartial arbitrator with experience in the theatrical industry whose decision shall be binding upon both parties.

9) PARTS READING. COMPOSER will make himself available for parts reading and rehearsal in COMPANY'S home venue as outlined in Attachment B of this AGREEMENT. COMMISSIONER shall provide travel expenses as outlined in Section 11) of this AGREEMENT. During orchestra reading rehearsals, COMMISSIONER shall arrange for music librarian staff to make such changes and corrections as are necessary.

10) TRAVEL AND PER DIEM. For services provided under the scope of this AGREEMENT, COMMISSIONER will provide coach-class round-trip airfares (on XYZ Airlines) for COMPOSER travel: COMMISSIONER will also supply housing, ground transportation, and a per diem of \$100 per day while COMPOSER is in Home Town in connection with her services under this AGREEMENT. COMPOSER will comply with the applicable COMMISSIONER policies on travel set out on Attachment B.

11) COMP TICKETS. COMPOSER will receive up to six (6) pairs of complimentary tickets per performance for the premiere. COMPOSER will receive up to three (3) pairs of complimentary tickets per performance for performances occurring on or before May 15, 2002. All such tickets will be in prime orchestra locations and, if possible, contiguous.

For each of these performances (i.e., April & May 2002), COMPOSER shall have the right to purchase up to five (5) additional pairs of prime orchestra tickets at regular price, provided that availability for any given performance will not be guaranteed later than 48 hours prior to curtain time of that performance.

12) EXCLUSIVITY. COMPOSER will not license the SCORE for other choreography for performance prior to the end of the 2003-2004 season (e.g., May 31, 2004). All other rights are reserved for COMPOSER'S unlimited use.

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13) CONDUCTOR. For performances during the 2002 COMMISSIONER season, Mr. Robert Conductor, COMMISSIONER music director, will conduct. If Mr. Conductor is not able or available to conduct those or any future COMMISSIONER performances, COMMISSIONER will engage a conductor mutually acceptable to COMPOSER and COMMISSIONER, with such acceptance not unreasonably withheld by either party.

14) ARCHIVAL FILMING. COMMISSIONER shall have the right, without further notification and at its own expense, to film or videotape a performance of the BALLET for archival purposes. Such film or tape shall be used for the sole purpose of reconstructing and rehearsing the BALLET and shall not be displayed publicly. Any film or videotape shall be made in compliance with all applicable union agreements and will be used by COMMISSIONER for archival and rehearsal purposes only. A copy of each such tape shall be given to COMPOSER for his personal use only.

15) BROADCAST FILMING & RECORDING. It is understood that COMMISSIONER may not record, film or videotape performances of the BALLET for sale or distribution on any audio format, television, motion picture, CD-ROM, or any other electronic media or any other media without prior written AGREEMENT by COMPOSER and COMMISSIONER.

COMMISSIONER reserves the right to create a performance-quality recording of the SCORE to be used for BALLET performance only (e.g., touring performances, production rentals, etc.); it being expressly understood that such a recording will not be used for sale or distribution. COMMISSIONER will engage the Home Town Symphony Orchestra (“HTSO”) for recording. Should HTSO be unavailable (or if reasonable terms cannot be agreed), COMMISSIONER will engage another orchestra acceptable to COMPOSER, such acceptance not to be unreasonably withheld. COMPOSER shall have the right to attend the recording sessions. COMMISSIONER will provide coach class air fare to the recording venue and accommodation in a hotel regularly used by COMMISSIONER for out-of-town artists, or, if the recording venue is not in the Home Town area, in the same hotel as the COMMISSIONER management. For any future performances of BALLET by COMMISSIONER or any other company to recorded music, all royalty and rental fees to COMPOSER as outlined in this AGREEMENT will apply.

16) PUBLIC RELATIONS, ADVERTISING & PUBLICITY. COMPOSER agrees that portions of the BALLET may be filmed or photographed for television news and publicity materials. All such filming or photographing shall be done in compliance with all applicable union agreements. At no time will more than 3 (three) minutes of videotape be used for publicity purposes.

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Further, COMPOSER agrees to allow COMMISSIONER full license to use photographs of himself (provided by COMPOSER) in its efforts to publicize the production of BALLET. COMPOSER hereby allows COMMISSIONER to use such photographs in brochures, souvenir books, fund raising materials, ticket sales campaigns, and other publicity vehicles as are standard in the industry. In all such printed pieces, COMMISSIONER shall credit COMPOSER as outlined in this AGREEMENT.

17) WRITTEN CREDITS.

a) COMPOSER CREDIT. COMMISSIONER shall credit COMPOSER in all press releases, program books, posters, publicity, and promotional materials, whether written, audio, or audio-visual as follows:

“Music Jane Composer”

it being understood that in the case of audio or audio-visual promotional or advertising materials, words of similar import may be used. Neither COMMISSIONER, COMPOSER, the choreographer nor any other person will be given a so-called “proprietary credit,” e.g., “[Person]’s “New Ballet Score,” without the prior approval of COMMISSIONER and COMPOSER.

This credit will appear in all house and souvenir program books in the same size and type style as the choreographer, it being understood that such size and type style will be more prominent than all other creative or performing participants. If bio and/or photograph of choreographer are included in program book, COMMISSIONER will also include bio and/or photograph of COMPOSER. COMPOSER will provide COMMISSIONER with black and white photograph and 200-word bio. COMMISSIONER reserves the right to edit bios for space considerations, provided that COMPOSER approves the edited bio, approval not to be unreasonably withheld.

b) PUBLISHER CREDIT. COMMISSIONER shall credit COMPOSER’S publishing company on the program page in all house and souvenir program books as follows:

Presented by arrangement with Publisher Music, publisher

c) CREDIT FOR OTHER PRODUCTIONS. COMMISSIONER will require any company to which it rents its production to give the credits stated in paragraphs b) and c) above. COMMISSIONER will not be liable to COMPOSER for any renting company’s failure to give such credit provided that it uses its best efforts to cause that renting company to cure such failure prospectively.

d) COMMISSIONER CREDIT. If COMPOSER licenses the of SCORE (or any portion of SCORE) to any other company, for any purpose, COMMISSIONER shall be credited as follows in all press releases, program books and other written material:

“NEW BALLET SCORE * was commissioned by Ballet Company, Marcia Director, artistic director, in 1999 for the United States premiere of New Ballet Score, with choreography and scenario by Joe Choreographer. The first U.S. performance of New Ballet Score occurred on April 24, 2002 in the Music Hall in Home Town, Massachusetts.

* [or any other title that COMPOSER may assign to SCORE]

COMPOSER will not be liable to COMMISSIONER for any licensee’s failure to give such credit provided that he uses his best efforts to cause that licensee to cure such failure prospectively

18)ASSIGNMENT. Each party agrees that it shall not assign this letter AGREEMENT or any of the rights granted in this AGREEMENT without the prior written consent of the other. This AGREEMENT shall inure to the benefit of and shall be binding on the heirs, legal representatives, successors and assigns of each party.

19) GOVERNING LAW. This letter AGREEMENT shall be governed by the laws of the State of New York.

If the above provisions meet your understanding of our AGREEMENT, please sign one copy of this document and return to this office in the enclosed envelope. The other copy is for your records.

Agreed and Accepted by

Ballet Company
Michael Manager Executive Director

Jane Composer

Date: _____

ADDRESS: _____

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ATTACHMENT A
COMMISSIONER INDEPENDENT CONTRACTOR-GENERAL PROVISIONS

1) INDEPENDENT CONTRACTOR. COMPOSER is an independent contractor in his relationship with COMMISSIONER. This AGREEMENT shall not be construed as creating an employer-employee or principal-agent relationship, nor any type or kind of partnership or joint venture between the parties.

2) PAYROLL TAXES. Any and all sums subject to deductions, if any, required to be withheld and/or paid under any applicable state, federal, or municipal laws, including but not limited to FICA and applicable income taxes, shall be COMPOSER'S sole responsibility. COMPOSER agrees to indemnify and hold harmless COMMISSIONER with regard to the aforementioned withholding obligations.

3) ENTIRE AGREEMENT. This AGREEMENT sets forth the entire AGREEMENT between the parties, and supersedes all other oral and written provisions, and may be modified only in writing signed by all parties. All headings and paragraph captions are for reference only, and shall not be considered in construing this AGREEMENT.

4) SEVERABILITY. Whenever possible, each provision of this AGREEMENT will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this AGREEMENT is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this AGREEMENT.

5) FORCE MAJEURE. COMPOSER agrees to hold COMMISSIONER harmless from all damages, including consequential damages, which COMPOSER may suffer as the result of an act of nature or catastrophe which prevents COMMISSIONER from fulfilling the services under this AGREEMENT. COMMISSIONER is entitled to cancel and terminate this AGREEMENT, or suspend its performance, in case of war, rebellion, terrorism, strike, fire, flood, or any "Act of God" or other circumstance beyond its control, in making the carrying out of this AGREEMENT impossible.

6) INDEMNIFICATION. COMPOSER shall hereby indemnify COMMISSIONER and hold COMMISSIONER (and its employees, agents, directors and representatives) harmless from any and all claims, liabilities or damages, including cost of litigation and attorney's fees, incurred by or arising from the performance of duties under this AGREEMENT, except for those claims, liabilities or damages arising from the gross negligence of COMMISSIONER and its employees, agents, directors and representatives.

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7) ARBITRATION. In the case of any controversy or claim arising out of or relating to this AGREEMENT, or breach of this AGREEMENT, a good faith negotiation shall first occur between the parties to resolve the disagreement. If a resolution is not reached, the disagreement shall be settled by arbitration, in New York, New York, in accordance with the rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator(s) may be entered into any court having jurisdiction. In any such action, the prevailing party shall be entitled to recover reasonable attorney's fees.

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ATTACHMENT B
TRAVEL AND SCHEDULE OF SERVICES

Please note these COMMISSIONER travel policies; they are integral to this Agreement. COMMISSIONER books air travel as follows:

- 30 (thirty) days in advance of first leg of travel
- Coach class
- On XYZ Airlines when available. XYZ is a season sponsor of COMMISSIONER; New York is the primary AA hub.
- Over a Saturday night (for best rates).
- Once a ticket is booked, if COMPOSER requires a schedule change, COMPOSER will be responsible for all change fees and additional fares.
- All travel booked through COMMISSIONER company manager Jack Alltrades

Please complete the following (we will endeavor to meet your requests, but obviously cannot guarantee):

- Airplane seating preference (circle): aisle window front rear
- Meals (circle): vegetarian kosher other: _____

DATE(s)TIME

SERVICE TYPE

LOCATION