



Anatomy of a Commission



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Discussion Guide and Sample Deal Memo for the Commissioning of a New Concert Work for Large Ensemble

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These materials have been prepared to facilitate dialogue and discussion regarding the commissioning of a new concert work. The terms and “notes to draft” (NTD) are not intended to serve as a substitute for professional legal advice. The specific contract terms and circumstances leading to a commission will differ in every instance. Readers are encouraged to seek out and consult with a legal advisor or other music publishing professional when working with these materials.

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AMERICAN COMPOSERS FORUM

DISCUSSION GUIDE AND SAMPLE DEAL MEMO FOR THE COMMISSIONING OF A NEW CONCERT WORK FOR LARGE ENSEMBLE¹

Composer:	[Composer's Name] [Composer's contact information] [Specify Composer's PRO (i.e., ASCAP, BMI etc.)]
Publisher / Composer's Representative:	c/o [Publisher's Name]² [Publisher's contact information] [Otherwise, N/A]
Commissioner:	[Commissioning Party]³
Co-Commissioner(s):	[Co-commissioning Parties]⁴
Artist(s) Attached (Optional):	The following artist(s) and/or creative contributors have also been attached ⁵ to the project: <ul style="list-style-type: none">• Ensemble• Conductor• Soloist(s)• Other creative contributors
Artistic Objectives for the Work (Optional):	[Provide a general description of the surrounding context and circumstances giving rise to the Work].⁶
Social Impact Goals (Optional):	[Articulate whether there are motivations and objectives for the commission that may be grounded in broader social impact goals as expressed by the Composer and/or Commissioner].

¹ NTD: The primary purpose of this “discussion guide” or “deal memo” is to provide a shared resource for a commissioner and composer to discuss and align around material terms regarding the commissioning of a new work. The general expectation is that the parties will use this document as a checklist to help guide discussion and surface goals, objectives, and expectations. In other words, the purpose of this document is to help level the playing field by making explicit those aspects of the commissioning process that might otherwise be implicit. If the parties choose to sign this document as part of the “development phase” for commissioning a new work, the terms would be “non-binding” and remain subject to preparation and execution of a long form commissioning agreement.

² NTD: If the composer is represented by a music publisher or another agent, identify the applicable party and primary contact(s). Otherwise, designate the composer as self-published.

³ NTD: If the Commission is part of a commissioning consortium, this space can be used to identify the “Lead Commissioner.”

⁴ NTD: Specify whether the Lead Commissioner or the Composer will be responsible for securing Co-Commissioners.

⁵ NTD: An “attachment” may be in the form of a tentative, non-binding commitment (for a specified period of time) to participate in the project or commission, subject to negotiating and finalizing terms and execution of a definitive binding agreement.

⁶ NTD: What are the creative and artistic goals for the commission? What are the other anticipated musical works on the program? Where will this Work be placed on the program and why?

Cultural Property Acknowledgement (Optional):	[If the Work is going to incorporate or reference material that may be considered traditional cultural property, the Composer can disclose this information and request a corresponding cultural property acknowledgement].
Underlying Rights; Third Party Rights (Optional):	[Specify any underlying rights that may need to be secured in connection with an existing literary work; poetry or textual material; life story rights; or other adaptation rights, if the Work is based on pre-existing material].⁷
Development Materials; Fee (Optional):	<p>Commissioner shall pay [\$TBD] to Composer to render services (the “Development Fee”) to prepare development materials, which may include a written description of the Work, initial concepts, or other materials necessary to assist the parties in identifying Co-Commissioners and/or other financiers (“Development Materials”).⁸</p> <p>Said Development Fee shall be payable to Composer:</p> <ul style="list-style-type: none"> • [\$TBD] by [Date]; • Remaining [\$TBD] upon delivery of the Development Materials. <p>The Composer shall retain ownership of the Development Materials. If the Composer and Commissioner are unable to secure the financing necessary for the commission within [X months of delivery of the Development Materials], the Composer is free to pitch the concept to other potential commissioning parties.</p>
Financing:	<p>The commission is being underwritten through the support of Commissioner’s [Insert Name of Fund], which was endowed by Donor for the purpose of supporting new works by living composers.⁹</p> <p>Lead Commissioner will contribute [\$TBD] to the commission. Co-Commissioner 1 will contribute [\$TBD] to the commission. Co-Commissioner 2 will contribute [\$TBD] to the commission.</p>

⁷ NTD: The parties should specify who will take responsibility for securing any underlying rights.

⁸ NTD: An often-overlooked mechanism to incubate new projects and commissions is to provide the Composer with development funding to support the creation of “development materials” that can be used to help pitch the project to other co-commissioning parties and/or donors. The relative risk to the Commissioner is low and the Composer is given the opportunity to dedicate real, meaningful time to envisioning the Work before fully committing to the commission. The provision of a Development Fee can also support a more equitable arrangement, such that the Composer is not rendering creative services for free. In anticipation of preparing a full Commissioning Agreement, the parties may wish to prepare a separate Deal Memo that would just address the creation, delivery, compensation, exclusivity, ownership, and confidentiality terms in connection with Development Materials.

⁹ NTD: Many commissions include financing or designated philanthropic support from one or more donors. Identify any donors, endowed funds, or other special circumstances in connection with the commission. If the commission is part of a commissioning consortium, the parties can use this space to identify the respective financial commitment of the Lead Commissioner and Co-Commissioners.

Instrumentation:	The Work shall be composed for orchestral forces estimated as: <ul style="list-style-type: none"> • [Instrumentation] • [Standard strings] • [TBD] other elements¹⁰
Duration:	The Work shall have an approximate duration of: <ul style="list-style-type: none"> • [TBD] minutes
Workshop Materials; Readings; Fee (Optional):	Commissioner shall pay [\$TBD] to Composer to render services (the “Workshop Fee”) to prepare workshop materials for readings of the Work scheduled for [Date] (the “Workshop Materials”). ¹¹ <p>Said Workshop Fee shall be payable to Composer:</p> <ul style="list-style-type: none"> • [\$TBD] by [Date]; • Remaining [\$TBD] upon delivery of the Workshop Materials. <p>The Composer shall retain ownership of the Workshop Materials.</p> <p>Commissioner agrees to supply Composer with an audio recording of the Workshop readings of the Work solely for Composer’s personal use.¹²</p>
Rehearsals (Optional):	Commissioner shall schedule rehearsals of the Work on the following dates: <ul style="list-style-type: none"> • [Date(s)] <p>Commissioner agrees to allocate approximately [TBD] minutes for rehearsal of Work.¹³</p>
Premiere / Performance Date(s); Venue:	The World Premiere is scheduled for [Date] , 202X in [City] at [Venue TBD] (the “World Premiere”). ¹⁴ <p>The [Regional] Premiere is scheduled for 202X-202X season in [City] at [Venue TBD] (the “Regional Premiere”).</p>
Fee; Payment Terms; Other	In consideration of Composer’s acceptance of the Commission, Commissioner shall pay [\$TBD] to render the services necessary to

¹⁰ NTD: Proposed instrumentation of the Work, including soloists, choral elements, or any other key artistic elements. Identify any electronics or other visual or special effects that may be contemplated as part of the Work. The parties may wish to specify a “not-to-exceed” instrumentation here.

¹¹ NTD: Specify whether the Composer will be given rehearsal time or the opportunity to undertake special workshops or readings of the Work in advance of the World Premiere. Providing such an opportunity could enhance the overall reception of the Work.

¹² NTD: To the extent that the Work receives readings, Composer may wish to retain copies of audio recordings of the Work to make further refinements.

¹³ NTD: The amount of rehearsal time devoted to preparation of a new work is frequently unknown or not a point of negotiation.

¹⁴ NTD: Specify the anticipated world premiere and regional performance date(s), as well as any workshops or readings to be held in anticipation of the premiere.

Reimbursements:	<p>create and prepare the Work (“Commission Fee”).¹⁵</p> <p>The Commission Fee shall be payable to the Composer [c/o Publisher]</p> <ul style="list-style-type: none"> • Amount due on signing the [Deal Memo / Commission Agreement] • Amount(s) due on Delivery of the manuscript <p>Travel expenses for Composer to attend Premiere and/or any other events during the process.</p>
Parts Preparation; Performance Materials:	<p>Commissioner agrees that it shall pay [\$TBD] towards the cost of materials preparation, including engraving, parts extraction, printing, and shipping of the performance materials.¹⁶</p> <p>Composer/Publisher also agrees to prepare [#TBD] physical scores and parts to be printed, bound, and delivered, which parts shall constitute the “Performance Materials.”¹⁷ The Performance Materials shall generally adhere to the Music Preparation guidelines published by the Major Orchestra Librarians’ Association.¹⁸</p> <p>Composer/Publisher shall retain ownership of the manuscript Performance Materials.</p> <p>Composer/Publisher agrees to provide Commissioner with [#TBD] full scores for its archives.</p>
Title of the Work; Commissioner’s Credit; Inscription:	<p>Composer agrees to supply the title of the Work no later than [Date], unless otherwise mutually extended.</p> <p>The following inscription shall appear on the title page of the score and parts.</p> <p style="text-align: center;"> <i>[Title of the Work]</i> <i>by [Composer]</i> <i>Commissioned by [Commissioner’s Name / with additional Co-Commissioning support from Co-Commissioners]</i> <i>[with generous support provided by X]</i> </p>

¹⁵ NTD: Fees may be negotiated based on the duration of the piece (i.e., per minute); size of instrumentation; delivery timelines, or any combination of these and others factors.

¹⁶ NTD: If the Composer delivers the scores and parts to the Commissioner, the parties should specify how and when they will be returned and who will bear the costs of shipping. The Commission Fee may be negotiated as an all-in “Package Fee,” meaning that the Commission Fee includes funds for parts preparation and copying costs. In this instance, the Composer remains responsible for the costs associated with preparing the performance materials. Alternatively, a Composer may wish to negotiate a fee whereby the parts are delivered to the Commissioner as PDFs and the Commissioner takes responsibility for printing and distributing the parts.

¹⁷ NTD: If any other deliverables are required in connection with an interdisciplinary work, they should be specified here and designate responsibility for delivering such materials.

¹⁸ NTD: MOLA publishes its own guidelines for music preparation located [here](#).

Delivery:	<p>Timelines for delivery shall be as follows:</p> <ul style="list-style-type: none"> • Development Materials (if applicable) by [Date] • Workshop Materials (if applicable) by [Date] • Rehearsal / Reading Materials (if applicable) by [Date] • Final Manuscript of the score by [Date] [with proof of delivery by means of a private URL].¹⁹ • Performance Materials by [Date], which date shall be no less than [X] days before Commissioner’s first rehearsal.²⁰
Grant of Rights; Exclusivity:	<p>Composer shall grant Commissioner the following rights:</p> <ul style="list-style-type: none"> • The exclusive right to present the World Premiere public performance(s) of the Work for a period of [TBD]²¹ the (“Exclusivity Period”)²²; • The right to present additional live performances of the Work without payment of rental fees for a period of [TBD] following the World Premiere; <p>Composer shall grant Co-Commissioner(s) the following rights:</p> <ul style="list-style-type: none"> • The exclusive right to present the Regional Premiere public performance(s) of the Work during the [TBD] season.
Audio Recording Rights:	<p>Composer shall grant the following [exclusive / non-exclusive] rights with respect to make, capture, record, and authorize public performances of the Work in audio-only formats [with / without additional compensation] therefor:</p> <ul style="list-style-type: none"> • <u>Audio Archival Capture</u>. Commissioner shall have the right to capture and record the rehearsals and performances in the form of archival sound recordings, which sound recordings may be stored and encoded by Commissioner for future use. • <u>Terrestrial Radio Broadcast</u>. The right to authorize a live or delayed terrestrial radio broadcast on a local radio station or as part of a nationally syndicated broadcast program for a period of [TBD]. • <u>Non-Commercial Audio Streaming</u>. The right to make the recording available on Commissioner’s website or a third-party website for “on-demand audio streaming,” on the condition that Commissioner or such third party maintains digital public performance licenses; such audio streaming is not behind a paywall; and audio streams are not available for download.
Audio Commercial	Commissioner shall have the option to manufacture, reproduce, and

¹⁹ NTD: If the manuscript of the score is completed in advance of parts preparation, the Commissioner may request evidence of such delivery for purposes of trigger payment or otherwise.

²⁰ NTD: For copyright purposes, delivery of the final score and parts to the Commissioner can trigger “publication,” and Composers should take note of this date for purposes of evaluating copyright registration considerations.

²¹ NTD: The parties should specify the duration of the “Exclusivity Period” (if any).

²² NTD: This “Exclusivity Period” could also include the exclusive right to present subsequent performances of the Work on tour.

Recording Rights:	distribute the first full-length commercial audio recording of the Work (the “Commercial Recording Option”) for a period of [TBD] following the date of the World Premiere. ²³ In the event that Commissioner exercises such Commercial Recording Option, the parties shall negotiate the terms thereof in good faith.
Audiovisual Recording Rights:	<p>Composer shall grant the following [exclusive / non-exclusive] rights to make, capture, record, and authorize public performances of the Work in audiovisual formats [with / without additional payment] therefore:</p> <ul style="list-style-type: none"> • <u>Audiovisual Archival Capture</u>. Commissioner shall have the right to capture and record the rehearsals and performances in the form of archival audiovisual recordings, which audiovisual recordings may be stored and encoded by Commissioner for future use. • <u>Live Audiovisual Streaming</u>. Commissioner shall have the right to make available a live audiovisual stream of the World Premiere on Commissioner’s website [on the condition that such stream is not behind a paywall]. • <u>Audiovisual Promotional Use</u>. Commissioner shall have the right to use up to [X] minutes of in-context performance footage from the World Premiere as part of non-downloadable on-demand audiovisual streaming on Commissioner’s website and social media channels for a period of [TBD].
Composer’s Promotional Use:	<p>Subject to applicable union limitations, Commissioner agrees to deliver copies of the archival audio and audiovisual recordings of the Work and Composer shall have the right to:</p> <ul style="list-style-type: none"> • <u>Audio Promotional Use</u>. Use up to [X] minutes of the audio recording on Composer’s website solely for promotional purposes and in non-downloadable format. • <u>Audiovisual Promotional Use</u>. Use up to [X] minutes of the audiovisual recording on Composer’s website and social media channels solely for promotional purposes and in non-downloadable format. • <u>Audio Perusal</u>. Make a full-length audio only archival recording of the Work available by means of a private secure URL solely for perusal purposes by third parties interested in renting the Work on the condition that such recording is not able to be downloaded or publicly performed.
Copyright; Composer’s	Composer shall reserve all other rights in the Work not expressly

²³ NTD: Under US Copyright law, the composer of a musical work holds the exclusive right and authority to determine when the first recording of the work may be distributed to the public as part of a manufactured physical product or digitally, including by means of a digital phonorecord delivery (i.e., an individually identifiable reproduction of a sound recording such as a permanent download, a limited download, or an interactive stream). Once the first authorized sound recording has been made, any party may secure a mechanical license to manufacture and reproduce recordings of the work, subject to payment of applicable mechanical licensing fees.

Reserved Rights:	granted, including ownership of the copyright in the resulting Work.
Tickets:	Commissioner shall provide Composer with [#] of tickets in [TBD] locations to the World Premiere performances.
Composer's Credit:	<p>Commissioner agrees to accord credit to Composer and the Work in all printed and digital materials advertising and promoting the program. <i>Such credit shall be in a style and size equal to other composers featured on the program.</i>²⁴</p> <p>Commissioner shall include the following on the program page in the concert program: [Title of Work] © [Year of Delivery of the Performance Materials to Commissioner]²⁵ [Composer's Name]. All rights reserved.</p>
Publicity Rights; Ancillary Services:	<p>Composer shall grant Commissioner the non-exclusive, worldwide, royalty-free right to use Composer's name, likeness, and approved biography in connection with the Work and World Premiere performances.</p> <p>Composer shall supply customary program notes about the Work by [Date], which program notes may be modified with Composer's approval.</p> <p>Composer agrees to provide such cooperation and assistance as Commissioner may reasonably request in connection with the preparation, promotion, and performance of the Work, subject to reimbursement of Composer's approved out-of-pocket expenses.²⁶</p>
Non-Fulfillment; Withdrawal	Composer may withdraw from the Commission prior to [Date] without penalty. Thereafter, Composer's sole liability in connection with withdrawal or non-fulfillment shall be return of any fees paid [other than Development Fees; Workshop Fees]. ²⁷
Force Majeure; Amended Timelines	Extensions of deadlines by mutual written agreement in the event of force majeure conditions or as mutually agreed otherwise.

²⁴ NTD: Frequently, the Composer's name is omitted from the title of the program and/or the marketing of the program. The more prominent or well-known composer (often deceased) is featured. The parties should agree ahead of time that this is a material term of the agreement.

²⁵ NTD: For purposes of copyright, delivery of the final Performance Materials constitutes "publication" under copyright law. Therefore, Composer should carefully track the date of delivery and seek to register the copyright in the Work with the US Copyright Office within three (3) months of publication in order to ensure maximum benefits under copyright law.

²⁶ NTD: The parties should identify whether the Composer will participate in press interviews, video interviews, digital media, pre-concert lectures, and/or any other community activities; when those activities will take place; and whether Composer will receive any separate compensation for such services rendered.

²⁷ NTD: The parties may also wish to specify what would happen in the event of the Composer's untimely death, incapacitation, or unexpected incapacity. This can include a discussion of whether the Commissioner would have rights to engage other composers to help finish the Work or whether the Composer's Estate would retain such rights, subject to a time limitation.

Miscellaneous	[Incorporate any other miscellaneous standard terms or boilerplate language. For example, the parties could specify that the Deal Memo is binding or non-binding, unless and until a more formal Commissioning Agreement is drafted and signed by the parties].

Seen and agreed:

Composer

Date

Commissioner

Date

(Version **[X]** **[Last Modified Date]**)

(Amended: **[Date]**)

(Last Amended: **[Date]**)²⁸

²⁸ NTD: The primary objective is to encourage further written amendments, until the terms are sufficiently aligned to incorporate into a long form binding agreement. Each amendment would be separately delineated.