

COMMISSION AGREEMENT BETWEEN PROTOSTAR AND COMPOSER

This Commission Agreement is made as of this ___ day of _____, 202__, by and between ProtoStar Capital Investments, LLC (“Commissioner”) and Composer, subject to the Terms and Conditions set forth below. *Please read this entire Commission Agreement carefully.*

Name of Composer: _____

Title of Commissioned Work: _____

Description: _____

Instrumentation: _____

Approximate Length: _____ of performance time.

Deliverables (scores, etc.): _____ by _____, 202__

World Premiere Date: _____, 202__

Venue/Address (if known): _____

Composer’s Fee: \$_____, ½ payable upon execution of this Agreement and ½ payable after satisfactory completion and delivery of Commissioned Work.

Type of Commission: **Sole and Exclusive** **Lead** **Co-Commission**

Acknowledgement: “Commissioned [Exclusively] by the ProtoStar Group”

Other Terms: _____

PROTOSTAR CAPITAL INVESTMENTS, LLC

COMPOSER

By: _____
Gary P. Poon, President

Print Name:

Contact information:
ProtoStar Capital Investments, LLC
9984 Scripps Ranch Boulevard #232
San Diego, CA 92131
(202) 360-1160
gpoon@protostargroup.com

Contact Information:
Address:

Phone:
Email:

Composer: Please provide a signed W-9

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STANDARD TERMS AND CONDITIONS

A. INTELLECTUAL PROPERTY RIGHTS

1. All rights in the Commissioned Work not specifically granted to Commissioner herein are reserved by Composer, subject to the terms, conditions, and restrictions herein.
2. Composer shall be responsible for registering the Commissioned Work with the U.S. Copyright Office and other applicable agencies. Such registration shall include the Acknowledgement of Commissioner as set forth herein.
3. Unless otherwise specified herein, Commissioner is the sole and exclusive commissioner of the Commissioned Work.

B. WARRANTIES

1. Composer warrants that the Commissioned Work: (a) shall be an original composition by Composer; (b) will not infringe upon or violate the rights of, or owned by, any other party; (c) will not contain defamatory materials; and (d) shall be composed for the purposes of this Commission Agreement.
2. Composer further warrants that: (a) the information submitted in his/her/their application is true and correct; (b) Composer will perform the obligations herein to the fullest extent of his/her/their creative and artistic skills and technical abilities, and shall not delegate or subcontract any portion of the Commissioned Work to a third party; (c) nothing contained herein contravenes any pre-existing agreement that Composer may have with another party, nor shall Composer enter into any future agreement that would contravene any provisions herein; and (d) **no portion of the Commissioned Work will contain any content that was, is, or will be generated by Artificial Intelligence. Composer shall disclose to Commissioner whether and to what extent Artificial Intelligence was, is, or will be used to assist Composer in the creation of the Composition.**

C. WORLD PREMIERE, SUBSEQUENT PERFORMANCES, BROADCASTS, ONLINE STREAMINGS, RECORDINGS, ETC.

1. Unless otherwise specified herein and subject to Commissioner's approval, Composer shall arrange for the World Premiere of the Commissioned Work and shall select the performer(s) of the Commissioned Work at the World Premiere. Performance fees for the performer(s), which may include Composer, will be subject to a separate agreement.
2. Composer shall arrange for the video and audio recording of the World Premiere of the Commissioned Work and shall provide one copy to Commissioner for archival and internal use and for promotional purposes, with no rights of sale to others.
3. Composer shall notify Commissioner in the event the World Premiere or any subsequent performances of the Work are broadcast, streamed, or otherwise distributed on any platform or medium, either live or in recorded form.
4. Composer shall waive licensing fees (if applicable) for the score and parts of the Commissioned Work for the World Premiere and any subsequent performances of the Commissioned Work for one (1) year after the World Premiere.

D. SCORES/PROGRAM NOTES

1. Composer shall furnish one (1) copy of the completed Commissioned Work (full score and parts), proofread, and in graphically acceptable form to Commissioner by the due date set forth above. Commissioner may make copies of the Commissioned Work for archival and internal use and for promotional purposes, with no rights of sale to others. The original manuscript and master sheets shall remain the property of Composer.
2. The parties shall work together to draft program notes and other written materials for the Commissioned Work and performances, broadcast, online streaming, and recordings thereof. Composer shall provide biographical information and one or more high-resolution photos for publicity purposes.

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E. MARKETING AND PUBLICITY

1. Subject to the Confidentiality provision of Section P herein, the parties shall work together to issue press releases and other announcements regarding the commissioning of the Commissioned Work, the World Premiere, and any subsequent performances.
2. Composer may market and publicize the performances of the Commissioned Work at no cost to Commissioner.
3. All such marketing and publicity materials shall bear the credit line specified in Section F and any additional inscriptions to be provided by Commissioner.

F. ACKNOWLEDGEMENT OF COMMISSIONER

1. All materials relating to the Commissioned Work, including without limitation the original manuscript, master sheets, score, instrumental parts, programs, program notes, posters, press releases, announcements, marketing or publicity materials, and other media of any nature that are distributed at the World Premiere and any subsequent performances or concerts of the Commissioned Work and/or that accompanies any broadcast, live-streaming, or recording, shall, subject to Commissioner's prior written approval, contain the following inscription:

“Commissioned [Exclusively] by the ProtoStar Group”

2. Subject to Commissioner's prior written approval, Commissioner's registered mark and any description of Commissioner may be included as part of such written materials.

G. RIGHT TO MODIFY OR REVOKE

Commissioner reserves the right to discontinue, modify, withdraw, revoke, or withhold any payments to be made under this Agreement or to require a total or partial return of the Composer's Fee if Commissioner determines, in its sole discretion, that Composer has: (1) made any false, misleading, inaccurate, or incomplete representations to the Commissioner; (2) submitted any information or documents that are false, misleading, inaccurate, or incomplete; or (3) breached of any of the terms, conditions, and undertakings set forth herein.

H. FORCE MAJEURE

The parties agree that if for any cause beyond control of Composer, such as, but not limited to, illness or accident, Composer is unable to fulfill the terms of this agreement, Composer's sole liability to Commissioner shall be the refund, upon Commissioner's demand, of any fees and/or expenses Commissioner has paid to or on behalf of Composer.

I. GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the laws of the State of California without regard to the conflict of laws rules thereof and shall take effect as if executed and performed in the State of California. The parties hereby submit to the jurisdiction of the state and federal courts of the State of California for the purpose of resolving any dispute arising out of or resulting from this Agreement. The parties agree that the proper venue for resolving any such dispute is in the City of San Diego. In the event that any provision herein shall be held invalid by a court with jurisdiction over the parties, such provision shall be deleted from this Agreement, which shall then be construed to give effect to the remaining provisions thereof.

J. ENTIRE AGREEMENT

This Agreement sets forth the entire understanding and agreement of the parties hereto with respect to the subject matter thereof and may not be altered, amended, or assigned without an express written instrument to such effect signed by both parties hereto.

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K. ASSIGNABILITY

This Agreement constitutes a personal contract, and neither this Agreement nor any rights or obligations herein are assignable by Composer at any time to any other person or entity. This Agreement inures to the benefit of Commissioner and its successors, assigns, and associated, affiliated, and subsidiary companies.

L. ANTI-MONEY LAUNDERING, ANTI-TAX FRAUD, AND ANTI-TERRORIST FINANCING

Composer agrees to be bound by the Anti-Money Laundering, Anti-Tax Fraud, and Anti-Terrorist Financing provisions of Commissioner's Standard Terms and Conditions for all grants, which are posted on Commissioner's website (<https://protostargroup.com/how-to-apply-for-a-grant/>) and incorporated herein by reference.

M. AUTONOMY; INDEPENDENT CONTRACTOR STATUS

1. This Agreement does not create an employer-employee relationship, a partnership, joint venture, or other agency relationship between the parties. The parties acknowledge that Composer is not an employee of Commissioner but is an independent contractor whom Commissioner has commissioned to compose the Commissioned Work pursuant to this Agreement. Composer is fulfilling the obligations under this Agreement solely at his/her/their own direction and under his/her/their own supervision. Composer shall be responsible for his/her/their own federal, state, and local income, sales, and property taxes, social security, unemployment insurance, and worker's compensation insurance coverage. Upon execution of this Agreement, Composer shall furnish Commissioner with a signed Form W-9.
2. The parties further agree, and Composer warrants, that because this Agreement gives Composer complete artistic control over the creation of the Commissioned Work and any performances thereof, Composer: (a) is free from the control and direction of Commissioner; (b) is performing work that is outside the usual course of Commissioner's business; and (c) is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work being performed under this Agreement.

N. INDEMNIFICATION

Composer shall hold harmless, indemnify, and defend Commissioner, its affiliates, subsidiaries, successors, and assigns, and any officers, agents, employees, directors, trustees, representatives and shareholders thereof, from and against any and all liabilities, losses, costs, claims, demands, expenses, damages, actions, causes of action, penalties, judgments, and suits of any kind or nature whatsoever, including the reasonable fees and expenses of Commissioner's counsel, selected in its sole discretion, in connection with: (i) any claims of copyright infringement (or any form of intellectual property infringement) relating to the Commissioned Work, and (ii) any breach by Composer of any warranty, covenant, representation, or agreement made or to be performed by Composer hereunder. Composer shall reimburse Commissioner, on demand, for any payment made by Commissioner, at any time after the date hereof (including after the termination date), with respect to any liability or claim to which the foregoing indemnity applies.

O. INDEPENDENT COUNSEL

Each of the parties to this Agreement hereby acknowledges and agrees that he, she, it, or they have had ample opportunities to seek independent legal advice or to otherwise consult with an attorney prior to the execution of this Agreement and that any decision not to seek independent legal advice or otherwise consult with an attorney was made knowingly, intentionally, and intelligently, with full understanding and appreciation of the consequences of such decision.

P. CONFIDENTIALITY

The parties shall not disclose the Composer's Fee to any third party, except upon written consent of both parties. This clause shall survive the termination or expiration of this Commission Agreement.

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IN WITNESS WHEREOF, the parties have reviewed this Commission Agreement, agree to be bound by its terms and conditions, and have obtained the requisite authority to execute this Agreement.

PROTOSTAR CAPITAL INVESTMENTS, LLC

COMPOSER

By: _____
Gary P. Poon, President

Print Name:

Sample Form