Music Performance Agreement

# Concert Band/Wind Ensemble

52CBWE

LI-2017/SEPT-52CBWE

"Concert Band/Wind Ensemble/Symphonic Band" shall mean and be restricted to the _____
(Name of Organization)

_____

which is best described as a

PLEASE CHECK APPROPRIATE BOX

☐ Concert Band ☐ Symphonic Band

☐ Wind Ensemble ☐ Wind Symphony Orchestra

as of the date of this agreement: or

☐ Other Related Organization _____
(Provide Details)

1. **BMI GRANT**

BMI hereby grants to LICENSEE for the term of this agreement a non-exclusive license to perform or cause the performance of, in concerts presented before an audience physically present at the time of performance, all musical works of which BMI shall have the right to grant public performance licenses during the term. BMI warrants and represents that all composers and publishers who are affiliated with BMI have authorized BMI to license the non-exclusive right to public performance of their works and that all composers and publishers who hereafter become affiliated will give BMI a similar authorization. It is specifically understood that no rights other than those expressly provided for above in this paragraph are included in this license and, without in any way limiting the generality of this sentence, this license does not extend to or include:

(a) dramatic rights or the right to perform dramatico-musical works in whole or in substantial part; or

(b) the right to broadcast, telecast or otherwise transmit, by any means now or hereafter known, the performances licensed hereunder, provided that nothing herein contained shall be deemed to prevent the amplification of the performances licensed hereunder within the confines of the place where the performance is presented; or

(c) the right to record or otherwise mechanically reproduce the performances licensed hereunder by any means now or hereafter known; or

(d) the right to perform a concert/ classical work (as such terms are commonly understood) which has not previously been publicly performed in the United States, unless written permission to perform such work is first secured from the publisher, composer or copyright proprietor and written notice thereof is given to BMI.

2. **REVIEW OF STATEMENTS AND/OR ACCOUNTINGS**

BMI shall have the right, by its authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify the statements made hereunder. BMI shall consider all data and information coming to its attention as the result of any such examination, or contained in any such statement, as completely confidential.

3. **LATE PAYMENT FEE**

BMI may impose a late payment charge of one and one-half percent (1 ½%) per month from the date any payment is due hereunder on any payment that is received by BMI more than one month after the due date.

4. **BMI COMMITMENT TO CUSTOMER / INDEMNITY**

BMI agrees to indemnify, save harmless and defend LICENSEE, its officers and employees, its artists and the proprietors of places in which LICENSEE gives concerts, from and against any and all claims, demands or suits that may be made or brought against them or any of them with respect to the performance of any material licensed under this agreement. Such indemnity shall include performances of any works of which BMI's Music Works Registration Department has advised LICENSEE are then available for performance as part of BMI's repertoire. Such indemnity shall be limited to

works which are licensed by BMI at the time of LICENSEE's performance. BMI's Clearance Department will, upon written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE agrees to give BMI immediate notice of any claim, demand or suit, to deliver to BMI any papers pertaining thereto, and to cooperate with BMI in respect thereto and BMI shall have full charge of the defense of any such claim, demand or suit. LICENSEE, however, shall have the right to engage counsel of its own, at its own expense, who may participate in the defense of any such action or proceeding and with whom counsel for BMI shall cooperate.

5. **BREACH OR DEFAULT/WAIVER**

Upon any breach or default of any of the terms or conditions herein contained, BMI may give thirty (30) days' notice in writing to LICENSEE to cure such breach or default, and in the event that such breach or default shall not have been cured within such thirty (30) days, BMI may, at its sole option, and in addition to any and all other remedies which it may have, cancel this agreement by sending written notice to LICENSEE by registered or certified mail. No waiver by BMI of full performance of this agreement by LICENSEE in any one or more instances shall be deemed a waiver of the right to require full and complete performance of this agreement thereafter or of the right to cancel this agreement.

6. **CLASS AND CATEGORY**

In the event that BMI, at any time during the term hereof, shall, for the same class and category as that of LICENSEE, issue licenses granting rights similar to those in this agreement on a more favorable basis, BMI shall, for the balance of the term, offer LICENSEE a comparable agreement.

7. **ARBITRATION**

(a) All disputes of any kind, nature or description arising in connection with the terms and conditions of this agreement shall be submitted to the American Arbitration Association in the City, County and State of New York for arbitration under its then prevailing rules, the arbitrator (s) to be selected as follows: Each of the parties shall, by written notice to the other, have the right to appoint one arbitrator. If, within ten (10) days following the giving of such notice by one party, the other shall not, by written notice, appoint another arbitrator, the first arbitrator shall be the sole arbitrator. If two arbitrators are appointed, they shall appoint a third arbitrator. If ten (10) days elapse after the appointment of the second arbitrator and the two arbitrators are unable to agree upon the third arbitrator, then either party may, in writing, request the American Arbitration Association to appoint the third arbitrator. The award made in the arbitration shall be binding and conclusive on the parties and judgment may be, but need not be, entered into any court having jurisdiction. Such award shall include the fixing of the costs, expenses and attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

(b) If LICENSEE elects to waive the terms set forth in Paragraph 7(a) above, LICENSEE must cross out 7(a) and initial box to the right. ☐

8. **NOTICES**

Any notice required or permitted to be given under this agreement, other than the notices required pursuant to Paragraphs 5, 10 and 13 hereof, shall be deemed duly given when sent by ordinary first-class U.S. mail to the party for whom it is intended, at its address herein stated, or any other address which either party hereto may from time to time designate for such purpose, and when any such notice is so mailed, it shall be deemed to have been given upon the mailing thereof.

9. **GOVERNING LAW/MISCELLANEOUS**

This agreement constitutes the entire understanding between the parties with respect to the subject matter hereof. This agreement cannot be waived or added to or modified orally and no waiver, addition or modification shall be valid unless in writing and signed by the parties. This agreement, its validity, construction and effect, shall be governed by the laws of the State of New York.

10. **DEFINITIONS**

**(a) Concerts:** shall mean and be restricted to concerts and similar events given by the Concert Band/Wind Ensemble/Symphonic Band in the United States, its territories and possessions.

**(b) Gross receipts:** shall mean all gross box office receipts from concerts and concert fees for all concerts, exclusive of federal, state, and/or local taxes. Gross receipts shall in no event include income from program advertising, concessions, or recording or broadcasting activities or grants or contributions. As to “run-out” concerts and tours, gross receipts shall be adjusted by deducting transportation and per diem costs incurred in connection therewith; but in no event shall such deductible costs for any such concert or tour exceed the gross receipts thereof.

**(c) Contract year**: shall mean any year of the term commencing September 1 or any partial year commencing on the commencement date of the term (if such date shall be other than September 1) and ending the following August 31.

11. **FEES**

(a) (i) In consideration of the non-exclusive license granted to LICENSEE hereunder, LICENSEE agrees to pay BMI for each contract year of the term a license fee equal to the applicable percentages of its gross receipts for the year immediately preceding such contract year as set forth below:

## LICENSE FEE SCHEDULE

**PERCENTAGE OF**
Concert Band/Wind Ensemble/Symphonic Band
GROSS RECEIPTS DURING THE PRECEDING YEAR

3/5 ths of 1% (.006)

**IN NO EVENT SHALL THE ANNUAL FEE FOR ANY CONTRACT YEAR BE LESS THAN ONE-HUNDRED-FIFTY ($150.00)**

(ii) If LICENSEE did not operate at all during the preceding year, the license fee for the first contract year shall be calculated upon an estimate of its gross receipts for such first contract year, and an adjustment to reflect LICENSEE's actual gross receipts will be made following submission of the statement required by subparagraph 11(d) for such year.

(b) LICENSEE represents that its gross receipts for purposes of calculating the license fee for the first contract year of the year of the term have been determined in accordance with Sub-paragraph ☐ 11(a) (i) or ☐ 11(a) (ii), and were $ _____ and that the license fee for the first contract year is accordingly $ _____ which amount shall be payable upon the execution of this agreement.
(Fill in not less than $150)

(c) **For each subsequent contract year of the term, the license fee shall be payable on or before January 15.**

(d) The license fee specified hereinabove shall be determined by a statement (on forms to be supplied by BMI), certified either by an officer or the auditor of LICENSEE, setting forth the total gross receipts for the immediately preceding contract year. **This statement shall be due on or before November 1 of each contract year.** A statement shall be submitted for every contract year of the term, regardless of the fact that LICENSEE may not have operated during the preceding year.

12. **REPORTING**

(a) LICENSEE agrees to furnish BMI within thirty (30) days following each concert during the term with a copy of the program utilized for each such concert, provided that LICENSEE shall at the same time furnish to BMI a list of the titles and composers/arrangers of all works performed in any such concert to the extent that such information is not contained in such program (including, without limitation, all encores).

(b) In the event that during the term hereof BMI collects a license fee from LICENSEE for a concert performance for which BMI shall also have collected a license fee from any one other than LICENSEE, it is agreed that BMI shall notify LICENSEE thereof, and LICENSEE shall be entitled to a credit against its next year's license fee of the resulting overpayment, such credit not to exceed that portion of LICENSEE's fee which represents the amount collected by BMI on account of such performance. If such overpayment shall occur during the final contract year of the term hereof, BMI shall refund the amount thereof promptly after the determination of such overpayment.

13. **TERM**

"Term" shall mean an initial period beginning September 1, 20 _____ and ending August 31, 20 _____ and continuing thereafter unless cancelled by either party at the end of said initial period, or at the end of any subsequent one (1) year period, upon thirty (30) days advance written notice by registered or certified mail.

**PLEASE RETURN THIS ENTIRE SIGNED AGREEMENT WITH YOUR CHECK TO:**
**10 MUSIC SQUARE EAST, NASHVILLE, TN 37203**

## AGREEMENT

THIS AGREEMENT made and entered into on *(Date will be entered by BMI upon execution)* _____ between BROADCAST MUSIC, INC., a corporation organized under the laws of the State of Delaware (hereinafter called BMI) with principal offices located at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030, and

**ENTER LEGAL NAME** _____
(Name of corporation, partnership, or individual owner)

**ENTER TRADE NAME** _____
(Doing business under the name of)

**OFFICE ADDRESS**

*(Street Address)*

*(City)* *(State)* *(Zip)*

*(Telephone Number)* *(Fax Number)*

*(Contact Name)* *(Title)*

**CHECK APPROPRIATE BOX AND COMPLETE**

☐ Individual Ownership

☐ LLC ☐ Corporation _____
(State of incorporation)

☐ LLP ☐ Partnership _____
(Enter names of partners)

☐ Other _____ Fed. Tax ID# _____

**MAILING ADDRESS**
**(if different from Office Address)**

*(Street Address)*

*(City)* *(State)* *(Zip)*

*(Telephone Number)* *(Fax Number)*

*(Contact Name)* *(Title)*

**TO BE COMPLETED BY LICENSEE**

**By signing this Agreement you agree that the foregoing is a true and accurate representation of your Music Policy.**

I have read and have understood all of the terms and conditions herein and my signature below is evidence of this.

_____
Signature

_____
Print Name / Title

**FOR ADMINISTRATIVE USE ONLY**
BROADCAST MUSIC, INC.

| FOR BMI USE ONLY | | |
|---|---|---|
| | | |
| **Account No.** | **COID** | |