Music Performance Agreement

# Circus Agreement

Account # _____

**35C**

**LI-2017/Sept-35C**

AGREEMENT, made at New York, N.Y. 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 at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10019, and _____

*(Legal Name of LICENSEE)*

Please check appropriate box and complete

☐ A corporation organized under the laws of the state of _____

☐ A partnership composed of _____

☐ An individual residing at _____

(hereinafter called "LICENSEE") with offices located at _____

City of _____ State of _____ Zip _____

Telephone No. ( ) _____

WITNESSETH:

WHEREAS, BMI is engaged in the business of licensing music for public performance, and

WHEREAS, LICENSEE proposes to publicly perform, present or cause the public performance of musical compositions at "facilities" (as herein defined) as parts of one or more circuses (as hereinafter defined);

IT IS HEREBY AGREED AS FOLLOWS:

1. As used in this agreement:

(a) "Facilities" shall include, but not be limited to, arenas, tents, stadiums, auditoriums, theaters, amphitheaters, stages and other similar places of performance, whether enclosed or not, located within the United States of America, its territories and possessions.

(b) "Circuses" shall mean shows and other similar spectator events (including events sponsored by charitable organizations or for charitable purposes) which include music, whether or not music is the principal type of entertainment.

2. The initial term of this agreement shall begin on *(month/year)* _____ and end on December 31 _____ and shall be extended for additional terms of one (1) year each unless cancelled by either party as of the end of the initial term of any additional term upon written notice forwarded by regular first-class U.S. mail not less than thirty (30) days prior to the end of any such term.

3. LICENSEE agrees that in the event any other corporation, partnership or individual directly or indirectly affiliated with or controlled by LICENSEE, or which controls LICENSEE, (hereinafter referred to as "New Affiliate") becomes engaged in, during the term of this agreement, performing, presenting or causing the performance of circuses of such a nature that said performances would require a license from BMI, then all performances of said circus shall be embraced by all the terms and conditions of this agreement. LICENSEE shall pay BMI the fees provided for in Paragraph 5 of this agreement for each performance of such circuses unless and until said New Affiliate shall enter into a licensing agreement directly with BMI with respect to the circuses which it presents. BMI agrees to enter into a licensing agreement directly with said New Affiliate under the same terms and conditions as, and at the same rates of payment as, set forth in the agreement upon LICENSEE's notifications in writing to BMI at any applicable time during the term of this agreement of the name and address of said New Affiliate and the owner or owners thereof.

4. BMI hereby grants to LICENSEE for the term of this agreement a non-exclusive license solely to perform, present or cause the performance of, as part of circuses in facilities, all the musical works as to which BMI shall have the right to grant public performance licenses during the term hereof. Said license shall not include the right to simultaneously broadcast, telecast, cablecast or otherwise transmit the performances to persons outside of the facility in which they originate. Said license shall also not include dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein.

5. (a) Subject to the provisions of Sub-paragraph 5 (b) hereof, LICENSEE agrees to pay BMI a fee for each performance of a circus computed on the basis set forth in Schedule A of the agreement.

(b) Payment shall be due BMI on the twentieth (20th) day of January, April, July and October of each year of this agreement for all circuses given during the previous calendar quarter of this agreement.

## SCHEDULE A

| FEE FOR EACH PERFORMANCE |
|---|
| $25.50 |

6. BMI shall have the right by its authorized representatives, at any time during customary business hours and upon thirty (30) days advance written notice, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify any and all statements rendered and accounting made hereunder.

7. In the event that BMI, at any time during the term hereof, shall issue licenses to enterprises of the same class and category as those licensed hereunder granting rights similar to those granted by this agreement at a more favorable rate of payment to the LICENSEE than is set forth herein, BMI shall notify LICENSEE and shall, for the balance of the term hereof, on the written request of LICENSEE, tender to LICENSEE the form of agreement containing such more favorable rate of payment.

8. In the event that LICENSEE engages in the presentation of a circus in conjunction with other persons or entities not licensed by BMI for performances of circuses, it is understood and agreed that LICENSEE shall be liable for payment of the entire amount of the fees required by this agreement. If, however, such other persons or entities are also licensed by BMI for performances of circuses, all such joint licensees shall

be deemed liable for a pro rata share of the total fees due for such circus, unless BMI is provided with satisfactory written evidence to the contrary signed by all such joint licensees. In the event BMI receives a fee for a circus from both LICENSEE and one or more of LICENSEE's co-presenter's, the total of which exceeds the amount due, BMI shall refund or credit the excess according to the co-presenter's liability for such fee as indicated herein.

9. BMI agrees to indemnify, save harmless and defend LICENSEE, its officers and employees, from and against any and all claims, demands or suits that may be brought against them or any of them with respect to the performance of any material licensed under this agreement. Such indemnity shall be limited to the works which are licensed by BMI at the time of LICENSEE's performances. BMI's Clearance Department will, upon 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 such claim, demand or suit, to deliver to BMI any papers pertaining thereto, and to cooperate with BMI with respect thereto, and BMI shall have full charge of the defense of any such claim, demand or suit.

10. All disputes of any kind, nature or description arising in connection with the terms and conditions of this agreement shall be submitted to arbitration at the American Arbitration Association in the City, County and State of New York under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators to be selected as follows: Each of the parties hereto 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 so 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 in any court having jurisdiction. Such award shall include the fixing of the costs, expenses and attorney's fees of arbitration, which shall be borne by the unsuccessful party.

11. Upon any breach or default of the terms and conditions herein, BMI may, at its sole option, cancel this agreement if such breach or default continuing thirty (30) days after LICENSEE's receipt of written notice thereof. The right to cancel granted to BMI pursuant to this paragraph shall be in addition to any and all other remedies, including the right to sue for copyright infringement, which BMI may have in law or in equity. 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 in accordance with the terms of this paragraph.

12. Any notice required or permitted to be given under this agreement shall be in writing and shall be deemed duly given when sent by regular first-class U.S. mail to the party for whom it is intended, at its address hereinabove stated, or any other address which either party hereto may from time to time designate for such purposes, and when any such notice is so mailed, it shall be deemed to have been given upon the mailing thereof. All notices directed to BMI must be addressed to the Vice President of Licensing.

13. LICENSEE agrees that it will perform, present or cause the performance of not less than (5) separate circuses in facilities during any consecutive twelve month period of the initial term of this agreement. In the event that less than five (5) separate attractions are presented by LICENSEE during any such consecutive twelve-month period, then BMI shall have the right to terminate this license pursuant to the provisions of Paragraph 11 hereof.

14. 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. The rights of LICENSEE hereunder shall not be assignable. This agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions herein are found by a court of competent jurisdiction to be void or unenforceable shall not affect the validity or enforceability of any other provisions

IN WITNESS WHEREOF, this agreement has been executed by the duly authorized representatives of BMI and LICENSEE all as of the date first above written.

**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** | |