# Music License for Symphony Orchestra

**1. DEFINITIONS**

(a) **Orchestra** shall mean the entity identified on Page 4 herein which performs music concerts.

(b) **Small Budget Orchestra** shall mean any Orchestra that reported operating expenses of up to $1,000,000, as identified in line 18 of the Orchestra's Federal Income Tax 990 report (line 17 of the 990-EZ report) for the prior fiscal year.

(c) **Large Budget Orchestra** shall mean any Orchestra that reported operating expenses in excess of $1,000,000, as identified in line 18 of the Orchestra's Federal Income Tax 990 report (line 17 of the 990-EZ report) for the prior fiscal year.

(d) **Concert** shall mean and be restricted to a musical performance or similar event given by the Orchestra in the United States, its territories and possessions.

(e) **Classical Concert** shall mean any Concert which consists of classical musical works.

(f) **Pop Concert** shall mean any Concert which includes non-classical music including, but not limited to, pop music, jazz, folk music, country music, Broadway or off-Broadway musical theater music, film music, and television music.

(g) **Seating Capacity** shall mean the total number of seats permanently affixed in the venue where the Concert is presented plus any temporary seats added within the venue for a particular Concert. If the total number of seats available for the Concert shall be less than that of the permanent Seating Capacity of the venue, "Seating Capacity" shall mean the total number of seats available for the particular Concert. If a venue does not have permanent seating, "Seating Capacity" shall mean the total number of persons attending a particular Concert. If a venue has lawn seating, then "Seating Capacity" shall mean the total number of seats permanently affixed in the venue, in addition to total lawn Seating Capacity as determined by the local Fire Marshall.

(h) **Web Site** shall mean the Internet computer service comprising a series of interrelated web pages owned and/or operated by, or under the auspices of, Orchestra and currently accessible via the Internet at the Uniform Resource Locator (URL) web address listed on Page 4 from which audio and/or audio-visual content containing musical works is made available to individuals. Orchestra warrants and represents that such Web Site is generally educational in nature or otherwise operated for the primary purpose of promoting the Orchestra and its resources to current and prospective patrons, staff and the community.

(i) **Term** shall mean the period commencing September 1, 2007 and continuing through August 31, 2018.

(j) **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.

(k) **Actual License Fee** shall mean license fees paid at the conclusion of a Contract Year which are based upon LICENSEE's actual Gross Receipts for the Contract Year.

(l) **Estimated License Fee** shall mean license fees paid at the commencement of the Contract Year which are based upon LICENSEE's Actual License Fees for the prior Contract Year, and which LICENSEE pays with the expectation that the estimated amounts paid will be adjusted once Actual License Fees can be calculated at the end of the Contract Year.

(m) **Gross Receipts** shall mean all gross box office receipts and fees from Concerts performed by Orchestra, but not including special fund raising concerts given on behalf of the Orchestra, such as pension fund concerts. Gross Receipts shall in no event include income from program advertising, concessions, or recording or broadcasting activities, grants or contributions.

**2. BMI GRANT**

BMI hereby grants to Orchestra 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 further grants to Orchestra for the Term of this Agreement, a non-exclusive license to perform all musical works of which BMI shall have the right to grant public performance licenses during the Term by means of the Web Site; provided, however, that such right shall be limited to performances of concert clips to be no longer than two (2) minutes in duration and shall specifically exclude webcasting of entire concerts or performances of entire individual musical works from any Concert. 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 symphonic or other concert 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.

**3. INDEMNITY BY BMI**

BMI agrees to indemnify, save harmless and defend Orchestra, its officers and employees, its artists and the proprietors of places of which Orchestra performs 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 be limited to the works which are licensed by BMI at the time of Orchestra's performances. BMI's Clearance Department will, upon reasonable written request, advise Orchestra whether particular musical works are available for performance as part of BMI's repertoire. Orchestra shall provide the title and the writer/composer of each musical composition requested to be identified. Orchestra 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. Orchestra, 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.

## 4. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues thirty (30) days after the date of BMI's written notice to Orchestra thereof, consistent with the notice provisions outlined with Paragraph 14 herein. The right to cancel shall be in addition to any and all other remedies which BMI may have. No waiver by BMI of full performance of this Agreement by Orchestra in any one or more instances shall be 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.

## 5. CANCELLATION OF ENTIRE CATEGORY

BMI shall have the right to cancel this Agreement at the conclusion of the 2017-2018 Contract Year, or any subsequent Contract Year thereafter, along with the simultaneous cancellation of the agreements of all other orchestras of the same class and category as Orchestra, provided that BMI shall provide notice to Orchestra of any such cancellation by March 1st of the Contract Year of the termination.

## 6. TERMINATION OF AGREEMENT BY ORCHESTRA

If Orchestra shall permanently cease to operate, this Agreement and Orchestra's obligation to BMI shall thereupon terminate, provided that Orchestra shall, within thirty (30) days thereafter, give written notice of such termination to BMI, setting forth the effective date thereof, and that Orchestra shall pay to BMI all fees due hereunder until said effective date. The fee due BMI by Orchestra through the effective date of termination shall be a proration of the fee for the Contract Year of termination, but in no event less than the Minimum Annual License Fee.

## 7. ARBITRATION

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 arbitration 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 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 attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

## 8. LICENSE FEES

(a) For the period September 1, 2007 through August 31, 2010, Orchestra shall pay license fees due pursuant to Orchestra's 2007 BMI Symphony Orchestra Interim License Agreement and such license fees shall be considered final license fees due for this period.

(b) Upon execution of this Agreement, for the period commencing September 1, 2010, Orchestra shall pay license fees for Pop Concerts and Classical Concerts as follows:

| | For Venues Up To 3,500 Seats | | | For Venues Over 3,500 Seats | | |
|---|---|---|---|---|---|---|
| | Classical Concerts | | Pop Concerts | Classical or Pop Concerts | | |
| **SEASON** | **PERCENTAGE OF GROSS RECEIPTS DURING PRECEDING YEAR UP TO AND INCLUDING $1M** | **PERCENTAGE OF GROSS RECEIPTS DURING PRECEDING YEAR OVER $1M** | **RATE** | **RATE for 3,501 to 5,000 Seats** | **RATE for 5,001 to 9,999 Seats** | **RATE for 10,000 and over Seats** |
| 2010-11 | 0.60% | 0.275% | 0.60% | 0.40% | 0.30% | 0.15% |
| 2011-12 | 0.60% | 0.300% | 0.60% | 0.40% | 0.30% | 0.15% |
| 2012-13 | 0.60% | 0.300% | 0.60% | 0.40% | 0.30% | 0.15% |
| 2013-14 | 0.60% | 0.325% | 0.60% | 0.40% | 0.30% | 0.15% |
| 2014-15 | 0.60% | 0.325% | 0.60% | 0.40% | 0.30% | 0.15% |
| 2015-16 | 0.60% | 0.350% | 0.60% | 0.40% | 0.30% | 0.15% |
| 2016-17 | 0.60% | 0.350% | 0.60% | 0.40% | 0.30% | 0.15% |
| 2017-18 | 0.60% | 0.350% | 0.60% | 0.40% | 0.30% | 0.15% |

(c) For each subsequent Contract Year of the Term, the license fee shall be payable on or before October 1st following the commencement of such year.

(d) For each Contract Year, there shall be a Minimum Annual License Fee per Orchestra. The Minimum Annual License Fee for the 2017-2018 Contract Year is $233. The Minimum Annual License Fee shall be modified for each Contract Year commencing with the 2011-2012 Contract Year consistent with any percentage increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding April and the next preceding April, and shall be rounded to the nearest dollar.

## 9. ANNUAL FINANCIAL REPORTING

(a) For each Contract Year, Orchestra shall pay an Estimated License Fee based upon the prior Contract Year's Gross Receipts, and shall pay any adjustments necessary for that Contract Year once the actual Gross Receipts for the Contract Year become available as follows:

(i) Within thirty (30) days of execution of this Agreement, Orchestra shall report to BMI **electronically** its Gross Receipts for the 2011-2012 Contract Year, or in the event that Orchestra executes this Agreement in any Contract Year after the 2011-2012 Contract Year, Orchestra shall report to BMI its Gross Receipts for the Contract Year immediately preceding the first Contract Year of the Term. Simultaneous with Orchestra's submission of its Gross Receipts reporting, Orchestra shall pay Estimated License Fees due, or, in the case of Orchestras executing this Agreement during 2012, any differential in the Estimated License Fees paid for the 2011-2012 Contract Year and the Actual License Fees due, shall be paid to BMI, or in the event of an over-payment by Orchestra, a credit will be applied to Orchestra's account.

(ii) For each subsequent Contract Year of the Term, commencing with the 2012-2013 Contract Year, Orchestra shall report to BMI **electronically** its actual Gross Receipts for the immediately preceding Contract Year on or before September 10th. Simultaneously

therewith Orchestra shall pay Estimated License Fees for the upcoming Contract Year based upon the Gross Receipts of the prior Contract Year and shall pay any adjustment due for the prior Contract Year. In the event that Orchestra's Estimated License Fee payment for the prior Contract Year exceeded the Actual License Fee due, a credit will be applied to Orchestra's account.

(iii) In the event that any Small Budget Orchestra provides a report, consistent with the reporting obligations outlined in Paragraph 10 herein, indicating that a particular Concert does not include any BMI licensed musical works, such Small Budget Orchestra may eliminate that single Concert and its Gross Receipts from this Agreement, and no license fees shall be due for such Concert upon verification by BMI.

(iv) Should Orchestra fail to report and submit payments to BMI within thirty (30) days after the specified date, then BMI will apply estimated billings to the account based on either Orchestra's prior year's Gross Receipts or reports from Orchestra's Federal Income Tax 990 report, whichever is higher. BMI shall give written notice to Orchestra of the Estimated Fee calculated. Orchestra shall have thirty (30) days after such written notice by BMI to submit the report. If BMI does not receive the report from Orchestra within those thirty (30) days, BMI and Orchestra agree that BMI's Estimated License Fee shall then be established as the Actual License Fee for the period unreported by Orchestra. BMI and Orchestra further agree that such established Actual License Fee (subject to adjustment by audit) shall also become the Estimated License Fee for the following Contract Year. Orchestra agrees to waive its right to file its report for any period in which BMI's Estimated License Fee becomes the Actual License Fee. Any differences between the Estimated and the Actual License Fee shall be payable by Orchestra when the report is submitted. If BMI's Estimated License Fee is greater than the Actual License Fee, then Orchestra's account shall be credited with the difference, provided however that Orchestra's Annual License Fee shall not fall below the Minimum Annual Fee.

(v) In the event that during the Term hereof, BMI collects a license fee from Orchestra any part of which is based on income derived from a Concert for which BMI shall also have collected a license fee from anyone other than Orchestra, it is agreed that BMI shall notify Orchestra thereof, and Orchestra shall be entitled to a credit against its next Contract Year's license fee in the amount of the overpayment. However, in no event shall such credit exceed that portion of Orchestra's fee which represents the amount collected by BMI on account of such Concert. 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.

## 10. REPORTING OF CONCERTS

Orchestra shall deliver to BMI, via **electronic transmission** in accordance with a format required by BMI, lists of the musical works, including encores to the extent possible, presented by Orchestra in its Concerts during such period. Reports for Large Budget Orchestras shall be due quarterly on the tenth (10th) day of December, March, June and September of each year of this Agreement for all Concerts presented by Large Budget Orchestra during the prior quarter. Reports for Small Budget Orchestras shall be due semi-annually on the tenth (10th) day of March and September of each year of this Agreement for all Concerts presented by Small Budget Orchestra during the prior six (6) month period. Orchestra shall submit reports to BMI, setting forth all performances of ***all*** Concerts occurring during the applicable period, including all Concerts for which a Small Budget Orchestra may claim no license fees are due to BMI pursuant to Paragraph 9(iii). Such report shall include the name of each Concert, the dates of each Concert, the number of performances each day and the Gross Receipts [as defined in Paragraph 1(m)] for a regularly scheduled performance of each Concert. A report shall be furnished to BMI by Orchestra for each period during the Term of the Agreement, regardless of whether or not any Concerts occurred during that period or advise BMI that the Orchestra's season is complete.

## 11. REVIEW OF STATEMENTS AND/OR ACCOUNTINGS

(a) BMI shall have the right, once with respect to each year of the Term, by its authorized representatives, at any time during customary business hours, and upon reasonable notice, in writing to Orchestra of not less than thirty (30) business days, to examine those portions of Orchestra's books and records of account to such extent as may be necessary to verify any and all statements and/or accountings made hereunder or under prior agreement with BMI. BMI shall consider all data and information coming to its attention as the result of any such examination of Orchestra's books and records as confidential.

(b) BMI may conduct an audit pursuant to this Paragraph for a period not to exceed three (3) calendar years preceding the year in which the audit is made.

## 12. LATE PAYMENT CHARGE

BMI may impose a late payment charge of one percent (1%) per month from the date any payment is due hereunder on any payment that is received by BMI more than thirty (30) days after the due date.

## 13. OFFER OF COMPARABLE AGREEMENT

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

## 14. NOTICES

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed given when sent by certified first-class U.S. mail return receipt requested to the party intended, at its mailing address herein stated, or any other address which either party hereto may designate. Any such notice sent to BMI shall be to the attention of the Licensing Department. Any such notice sent to Orchestra shall be to the attention of the person signing this Agreement on behalf of Orchestra or such other person as Orchestra may advise BMI in writing.

## 15. MISCELLANEOUS

This Agreement constitutes the entire understanding between the parties, shall not be binding until signed by both parties, and 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 Orchestra 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**16. TERM OF AGREEMENT**

The initial Term of this annual Agreement shall begin on the first day of (*month/year*) _____ and end on the last day of August 2018 and shall continue thereafter for one (1) year Terms unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "Contract Year") consistent with the cancellation notice requirements outlined in Paragraphs 4, 5 and 6 herein.

**AGREEMENT**

THIS AGREEMENT made and entered into on *(Date will be entered by BMI upon execution)* _____ between BROADCAST MUSIC, INC., a corporation with principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030, herein referred to as BMI, and ***the entity described below and herein referred to as ORCHESTRA.***

| **LEGAL NAME** | **ORCHESTRA ADDRESS** |
|---|---|
| *(Name of Corporation, Partnership, or Individual Owner)* | *(Street Address)* |
| **TRADE NAME** | *(City)* *(State)* *(Zip)* |
| *(Doing business under the name of)* | *(Telephone Number)* *(Fax Number)* |
| **PLEASE CHECK APPROPRIATE BOX** | *(Contact Name)* *(Title)* |
| ☐ Individual Ownership | *(Email Address)* *(Web Address)* |
| ☐ LLC ☐ Corporation _____ *(State of Incorporation, if different from Orchestra Address)* | **MAILING ADDRESS** **(if different from Orchestra Address)** |
| ☐ LLP ☐ Partnership _____ *(Enter names of partners)* | |
| ☐ Other _____ | *(Street Address)* |
| Federal Tax ID No. _____ | *(City)* *(State)* *(Zip)* |
| **GOVERNMENT ENTITIES** **(if applicable, please check one)** | *(Telephone Number)* *(Fax Number)* |
| ☐ Federal ☐ State _____ *(State)* | *(Contact Name)* *(Title)* |
| ☐ Local _____ *(Municipality/City and State)* | *(Email Address- if different from above)* |

| **TO BE COMPLETED BY ORCHESTRA** | **FOR ADMINISTRATIVE USE ONLY** **TO BE COMPLETED BY BMI** BROADCAST MUSIC INC. |
|---|---|
| By signing this Agreement you represent that you have the authority to bind Orchestra and that you have read, understood and agree to all of the terms and conditions herein. ***(SIGN HERE – PLEASE INCLUDE PAYMENT)*** | |
| Signature | |
| Print Name / Title | |
| Signatory Email Address* *(if different from above)* | **FOR BMI USE ONLY** **SYM1** **LI-2017/MAY** |
| ***In order to receive a copy of your executed Agreement, please provide the email address of the Signatory** | **EFFECTIVE: September 2017** |
| | **ACCOUNT NO.** **COID** |

**PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:**
**BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203**