

**LICENSE AGREEMENT-SYMPHONY ORCHESTRAS WHICH HAVE  
ANNUAL TOTAL EXPENSES OF LESS THAN \$250,000**

**Agreement** made between AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS ("SOCIETY"), located at 2 Music Square W; Nashville, TN 37203

and

\_\_\_\_\_ ("LICENSEE"),

as follows:

1. (a) SOCIETY grants and LICENSEE accepts for a term commencing \_\_\_\_\_ and continuing thereafter for additional terms of one year each unless terminated by either party as hereinafter provided, a license to perform publicly in concerts given by

\_\_\_\_\_ at \_\_\_\_\_

and at other auditoriums in which orchestra shall give performances while on tour (the "premises"), non-dramatic renditions of the separate musical compositions including symphonic and other concert works heretofore copyrighted or composed by members of SOCIETY and now or hereafter during the term hereof in the repertory of SOCIETY, or hereafter during the term hereof copyrighted or composed by members of SOCIETY, or of which SOCIETY shall have the right to license such performing rights.

(b) This license is not assignable nor transferable by operation of law, devolution or otherwise, and is limited strictly to the LICENSEE and to the premises. The license fee herein provided to be paid is based upon the performance of such non-dramatic renditions for the entertainment solely of such persons as may be physically present on or in the premises described, and does not authorize the radio or television broadcasting, or transmission by wire or otherwise, of such performances or renditions to persons outside of such premises, and no license is hereby granted for any such radio or television broadcasting or transmission.

(c) Either party may, on notice given six months prior to the end of the initial or any renewal term, terminate this license effective on the following September 30.

2. (a) This license is limited to performances given in the United States, its territories and possessions, and in any other place not within the territorial jurisdiction of another performing right society to which SOCIETY has granted the right to license public performances of works in SOCIETY's repertory.

(b) This license is limited to symphony orchestras, which have annual total expenses of less than \$250,000.

(c) This license shall not extend to or be deemed to include: (i) operatic or dramatico-musical works (including plays with music, revues and ballets) as such, in whole or in part, or songs or other excerpts from operas or music plays accompanied either by pantomime, dance or visual representation of the work from which the music is taken; but fragments or instrumental selections from such works may be instrumentally rendered without dialogue, costume, accompanying dramatic action or scenic accessory, and unaccompanied by any stage action or visual representation of the work of which such music forms a part; or (ii) the right to perform any special orchestral arrangements or transcriptions of the musical compositions licensed hereunder unless such arrangements or transcriptions have been copyrighted by members of SOCIETY or by members of foreign societies which have granted to SOCIETY the right to license such performances.

3. SOCIETY reserves the right at any time to restrict the first American performance of any composition in its repertory and further reserves the right at any time to withdraw from its repertory and from operation of this license any musical work as to which any suit has been brought or threatened based on a claim that such composition infringes a composition not contained in SOCIETY's repertory, or on a claim that SOCIETY does not have the right to license the performing rights in such composition.

4. LICENSEE agrees to furnish to SOCIETY each month a program containing a list of all musical compositions performed by LICENSEE in each of the performances by the orchestra at the premises during the previous month, including all encores.

5. (a) The term "Adjusted Box Office" as used in this Agreement shall mean all gross box office receipts from concerts and concert fees for all concerts, excluding income from concerts benefiting the orchestra, such as pension fund concerts. Gross receipts shall in no event include income from program advertising, concessions, or recording or radio or television broadcasting activities. Gross receipts from "run-out" concerts and tours 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.

(b) The term "Season" as used in this Agreement shall mean the twelve-month period commencing October 1 of each year and ending on the next September 30.

6. License Fees, Reports and Payments

(a) In consideration of the license granted herein, LICENSEE agrees to pay SOCIETY the applicable license fee set forth in the Rate Schedule annexed hereto and made a part hereof, based on "LICENSEE's Operating Policy." The term "LICENSEE's Operating Policy," as used in this Agreement, means all of the factors which determine license fee applicable to the orchestra under the attached Rate Schedule.

(b) LICENSEE shall furnish reports to SOCIETY upon entering into this Agreement and on or before each succeeding October 1, on forms provided free of charge by SOCIETY.

(c) Each report to be furnished hereunder shall state the following: (i) the Adjusted Box Office for the preceding Season; and (ii) the license fee due for the then-current Season pursuant to the Rate Schedule.

(d) LICENSEE shall pay SOCIETY the license fees due hereunder as follows:

(a) Upon entering into this Agreement, the license fee due for the then-current Season, as shown by the report due at that time; and

(b) By each succeeding October 1, the license fee due for the then-current Season, as shown by the report due by that date.

(f) In the event LICENSEE shall be more than three months delinquent in payment of license fees due on or after October 1, 1994 hereunder, LICENSEE shall pay a finance charge on the license fees due of 1% per month, or the maximum rate permitted by law, whichever is less, from the date such license fees were due.

7. (a) SOCIETY shall have the right to require from LICENSEE such reasonable data or information in addition to that furnished by LICENSEE under subparagraph "6(b)" of this Agreement as may be deemed necessary in order to ascertain the Adjusted Box Office, as provided by this Agreement. SOCIETY shall have the further right, by its duly authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE only to such extent as may be necessary to verify such statement or statements as may be required by this Agreement. SOCIETY shall consider all data and information coming to its attention as the result of any such examination of books and records as completely and entirely confidential.

(b) The period for which SOCIETY may audit pursuant to this Agreement shall be limited to three Seasons preceding the Season in which the audit is made provided, however, that if an audit is postponed at the request of LICENSEE, SOCIETY shall have the right to audit for the period commencing with the third Season preceding the Season in which notification of intention to audit was first given by SOCIETY to LICENSEE. This three Season limitation shall not apply if LICENSEE fails or refuses after written notice from SOCIETY to produce the books and records necessary to verify any report or statement of accounting rendered pursuant to this Agreement. Nothing herein shall restrict SOCIETY's right to audit under previous license agreements, for a limit of three Seasons for all such license agreements.

(c) In the event any such audit shows LICENSEE to have underpaid the license fees due SOCIETY by 5% or less, LICENSEE shall pay a finance charge on the additional license fees due at the rate of 1% per month, or at the maximum rate permitted by law, whichever is less, from the date SOCIETY demands payment of such amount.

(d) In the event any such audit shows LICENSEE to have underpaid the license fees due SOCIETY by more than 5%, LICENSEE shall pay a finance charge on the additional license fees due at the rate of 1% per month, or at the maximum rate permitted by law, whichever is less, from the date(s) the license fees were due.

8. (a) Upon any breach or default by either party of any term or condition contained herein, the other party may terminate this license by giving the party in default thirty days' notice to cure such breach or default; and in the event that such breach or default has not been cured within said thirty days, this license shall terminate on the expiration of such thirty-day period without further notice. In the event of such termination, SOCIETY shall refund to LICENSEE any unearned license fees paid in advance.

(b) SOCIETY shall have the right to terminate this Agreement on thirty days' notice in the event that LICENSEE's annual total expenses as determined by the American Symphony Orchestra League for any year during the term hereof shall exceed \$250,000. In the event of such termination, and provided that LICENSEE was not otherwise in default under its terminated license, LICENSEE shall have the right to enter into the then-current applicable form of ASCAP license agreement.

9. In the event of:

(a) Any major interference with the operations of SOCIETY in the state, territory, dependency, possession or political subdivision in which LICENSEE is located, by reason of any law of such state, territory, dependency, possession or political subdivision; or

(b) Any substantial increase in the cost to SOCIETY of operating in such state, territory, dependency, possession or political subdivision, by reason of any law of such state, territory, dependency, possession or political subdivision, which is applicable to the licensing of performing rights, SOCIETY shall have the right to terminate this Agreement forthwith by written notice and, in the event of such termination, shall refund to LICENSEE any unearned license fees paid in advance.

10. (a) SOCIETY agrees to indemnify, save and hold LICENSEE, its artists and the proprietors of the premises, harmless, and defend

LICENSEE, its artists and the proprietors of said premises from an against any claim, demand or suit that may be made or brought against them or any of them with respect to performances given by LICENSEE during the term hereof in accordance with this license, of "cleared composition(s)" (as hereinafter defined), or of any musical compositions heretofore copyrighted or composed by members of SOCIETY and now or hereafter during the term hereof in SOCIETY'S repertory or hereafter during the term hereof copyrighted or composed by present members of SOCIETY or by future members of SOCIETY so long as such present or future members remain members of SOCIETY In the event of the service upon LICENSEE of any notice, process, paper or pleading under which a claim, demand or action is made or begun against LICENSEE on account or any such matter as is hereinabove referred to, LICENSEE shall promptly give SOCIETY written notice thereof and simultaneously therewith deliver to SOCIETY any such notice, process, paper or pleading, or a copy thereof, and SOCIETY at its own expense shall have sole charge of the defense of any such action or proceeding. 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 SOCIETY shall cooperate. LICENSEE shall cooperate with SOCIETY in every way in the defense of any such action or proceeding, and in any appeals that may be taken from any judgments or orders entered therein, and shall execute all pleadings, bonds, or other instruments, but at the sole expense of SOCIETY, that may be required in order properly to defend and resist any such action or proceeding, and prosecute any appeals taken therein.

(b) In the event of the service upon LICENSEE of any notice, process, paper or pleading under which a claim, demand, or action is made, or begun against LICENSEE on account of the rendition by LICENSEE of any musical' composition (other than a "cleared composition(s)") contained in SOCIETY's repertory but not heretofore or hereafter during the term hereof copyrighted or composed by members of SOCIETY, SOCIETY agrees at the request of LICENSEE to cooperate with and assist LICENSEE in the defense of any such action or proceeding, and in any appeals that LICENSEE may elect to take from any judgments or orders entered therein.

(c) This Paragraph "10" shall not apply to performances of any works that may be restricted under Paragraph "3" if such performances occur after the date of notice of restriction or withdrawal given in accordance with Paragraph "11."

(d) The term "cleared composition(s)" as used in this Agreement shall mean any musical composition which SOCIETY shall have notified LICENSEE is a composition with respect to which SOCIETY is willing to indemnify LICENSEE, provided that SOCIETY may limit such indemnity to a specific program of LICENSEE for which a clearance shall have been given by SOCIETY.

11. All notices required or permitted hereunder shall be given in writing by certified United States mail sent to either party at the address given above. Each party agrees to inform the other of any change of address.

IN WITNESS WHEREOF, this Agreement has been duly executed by SOCIETY and LICENSEE

this     day of     , 20     .

AMERICAN SOCIETY OF COMPOSERS,  
AUTHORS AND PUBLISHERS

By \_\_\_\_\_

LICENSEE \_\_\_\_\_

By \_\_\_\_\_

TITLE \_\_\_\_\_

(Fill in capacity in which signed: (a) If corporation, state corporate office held;  
(b) If partnership, write word "partner" under signature of signing partner; (c) If  
individual owner, write "individual owner" under signature.)