

Copyright hints for Orchestra Librarians – How to stay legal 4/2/2013

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4/2/2013

These remarks are restricted to copyright as it involves orchestra/opera performance. Copyright is the right to make, distribute and sell copies of an owned piece of intellectual property (novel, photograph, recording, printed music, etc.). The ownership allows the author/artist or their agent the right to decide how their property may be used including copying excerpts or changing the work from its original state - a derivative. In the U.S., most works copyrighted from **1923** on are under copyright. Works published before 1923 were granted 75 years copyright protection by the U.S. Congress. As of 1998, anything copyrighted by 1922 was in Public Domain. Therefore, one can use materials copyrighted in 1922 and prior as they choose. They may sell, reproduce, alter, and otherwise use these works with no restrictions. In 1999, the Sonny Bono Copyright Extension Act added 20 years to the 75 year period governing works copyrighted in 1923 and after. Therefore, the next works entering Public Domain will be in **2019** for works copyrighted in 1923.

For music under copyright, the rights of composers are handled by licensing agencies (BMI, ASCAP, SESAC). Under the law, owners or operators of facilities or presenters of concerts and other events are responsible for performances on their premises. Every time the copyrighted work of a composer is performed, that composer (or the composer's estate) must be paid. The job of licensing agencies is to track performances of copyrighted works composed by their member composers. They receive royalties paid by performing institutions for performance of these copyrighted works, and redistribute the net income to the composers, arrangers, editors, etc. who are the legal owners of these works. Therefore, performing institutions regularly engage with licensing agencies. Most performing institutions have blanket licenses through which they pay these royalties to the licensing agencies. The annual amount paid is determined by the number of relevant pieces performed and the institution's yearly budget, which establishes a billing tier for calculating the final amount. Either quarterly, or annually, agencies will ask performing institutions and promoters for concert repertoire performed the preceding quarter, or year. These reports are either submitted to the agencies in hard copy or electronically. Annually, the agencies will send a bill that should be handled like any other invoice in the Library and then sent to the performing institution's Finance Department (handling of invoices is an internal protocol determined by the Administration of the performing institution).

Purchased sheet music under copyright (for example, most John Williams, Aaron Copland's *Four Dance Episodes from Rodeo*, etc.), even though owned by the performer, is subject to royalties for each performance, reported to the licensors as described in the paragraph above. Though you own this physical material, you are obligated to observe the copyright holder's rights. You may not distribute or sell copies, make recordings, or alter the piece without express permissions. You are allowed to make copies of originals in your possession in order to preserve your original purchase from damage and disintegration. But you must retain those originals in your collection as proof of ownership.

Most music still under copyright is distributed via rental, meaning that the publisher, composer, or their agent retains ownership of their hard copies. To hire such music, you contract the hard copies from the owner, or their agent, for performance via a rental agreement for a specified period of time and for a specified number of performances. At the conclusion of the final contracted use, these sets are then returned to the owner. In general, fees are determined from the duration of a work, not the forces needed to play it. For example, if you rent Alban Berg's *Kammerkonzert* for 13 winds, violin and piano, you will pay a fee for 40 minutes of music. If you rent Berg's *Der Wein* written for nearly 100 players, you pay only for 10 minutes. For works of lesser forces, those

fees may be lower. Since this music is under copyright, the publisher (Universal Edition) or their U.S. agent (European American Music) holds exclusive right as to making copies, recordings, cutting out material, etc. This goes for all publishers' materials being rented.

Orchestral performances of music under copyright, either for sale, or rented from publishers, and licensed through the major agencies (BMI, ASCAP, SESAC) fall under a licensing category called Small Rights. Small Rights govern concert works. However, when dramatic or extra musical elements are added (for example, a staged opera—whether fully staged, or partly staged), or improvised, such as a dancer moving to a Shostakovich symphony, or even “static” additions, such as projections of paintings on a screen while performing a concert version of Stravinsky's ballet, *Agon*, a different licensing category is used. This category is called Grand Rights. To use materials under Grand Rights, the licensing agents are no longer involved (so BMI, ASCAP, and SESAC are out of the picture). The entire agreement is brokered either by the publisher, the publisher's agent, the composer, or the composer's agent. You will need to contract the physical music through a rental contract. But, above and beyond the rental contract, there will be a further contract that stipulates a percentage of gross receipts from ticket sales (usually about 8% of the gate), and any specific restrictions the institution must follow (printing the text, broadcasting, etc.). So, initially, you would receive a rental agreement and a bill for using the music. You would also receive a questionnaire asking for size of venue and average pricing of tickets in addition to the normal rental information asked for. Following the performances, the Finance Department will ask the Box Office for a tallying of ticket revenues and then pay the stipulated percentage amount to the Agent.

Even if your organization owns the materials for a copyrighted work, for example, Copland's *El Salon Mexico*, and you intend to run a film or dance to it, you still need to acquire Grand Rights permission from the Publisher or composer, possibly through their agent. Remember, copyrighted material is copyrighted material, whether you own it or rent it. Its use is still subject to the copyright holder's permission.

In 1994, the U.S. signed an international treaty, the General Agreement on Tariffs and Trade (GATT). As a result of this treaty, all works composed in the former Soviet Union, where the U.S. had not previously recognized copyright, were retroactively placed under copyright, using the same guidelines as above. Because Edwin F. Kalmus LC had legally reprinted so many of these works, an agreement was made allowing institutions who had bought these works before the treaty went into effect to maintain ownership of their parts, although they would now be paying licensing fees on them. Hence, the example of the dancer in the Shostakovich mentioned above becomes relevant. Even though you own the music, you would be haggling with G. Schirmer for Grand Rights (a big bunch of cash). This usage is no different than the *El Salon Mexico* example just mentioned.

As a Pops performance example of Grand Rights, imagine you have a show coming from Atlanta as a package, meaning that everything the orchestra needs to put on the show is received in a box from the guest. You look at the “rider” sent to Operations (a rider is a set of stipulations a performer's agent sends governing everything from the composition of the orchestra, to lights, food and beverages needed by the performer, etc. Once its contents have been agreed to by your management and them, a performing contract is then drawn up). It says that the producers have taken care of everything in Atlanta except for 2 items that need to be rented. If the Grand Rights for the show have been handled by your guests' management in Atlanta, you contact the rental agent and give them conductor, venue, dates, string and score needs, as required by them. They send a contract stipulating fees and performance limitations (broadcast, recording etc). You sign and return it. The music arrives 6 weeks in advance of the first rehearsal and is prepped in consultation with your principals. Once the rehearsals and performances are finished, you return the music to the publisher with 3 programs enclosed, as per their request. Sometime during this scenario, they will send a bill. This is sent to Finance for payment.

On the other hand, your guests' management might stipulate that Grand Rights are your problem. In this case, your first step is to meet with your Artistic and Operations Departments and make clear the scope of the cost that will be involved. If you are working with a group such as *Cirque de la symphonie*, their management will offer programs that include musical pieces that are still under copyright. As they perform "feats of valor" on stage to this music, Grand Rights are in play. Discussions with your Artistic and Operations Departments may expose budgetary limitations. Your input as to the pieces costing excessively will help the Artistic Department in their negotiations for alternative repertoire with the guest artists. *Cirque de la symphonie* seemingly understands this budget aspect, as they always have alternatives to propose. However, another guest artist might be less flexible and then the Grand Rights costs will be an issue. The Library's role here is to provide cost estimates, and, where alternatives are suggested, whether their inclusion raises costs, or lowers it. It is then Administration's job to finalize a program with the guests that satisfies budgetary parameters.

Generally, the Librarian is concerned with acquisition and return, when rented, of music. Their primary concern is determining whether a work is copyrighted pre-1923, or post-1923. The former you purchase, the best source being Educational Music Service, the latter you rent from publishers. Here you have little choice. You will need to know the hire agent for a particular work you want and sign their rental contract to receive the music. Once you have the rental music, say *Bolero* by Ravel, there are gray areas you will encounter. String players will want practice parts (not likely for *Bolero*, but there's always someone...) and you will need to make them copies. Technically, this is against the law (remember what copyright really is) but publishers know full well that this goes on and is a necessary evil. Technically, you should collect these copies after the concert. But most people lose them, or stash them at home and never return them. Publishers aren't too concerned as these practice parts aren't likely to show up in a solo performance at church... However, you might have the bassoonist come up and say she wants a copy of her part for a student she's teaching. Here you should draw the line, as this entails distributing copyrighted material outside of your ensemble to people whose use was never implied in the contract you signed. You should direct all such requests to repertoire excerpt books that have been published with copyright holders' permissions. These are the responsibility of students and their teachers to purchase from retailers. (A copy made by an orchestra member while the music is on loan to your orchestra is not the responsibility of the Orchestra Librarian. But, by the same token, the Orchestra Librarian needs to protect the Orchestra by never allowing such copies to be made in the Library or on Orchestra owned equipment.)

Like any law, copyright has quirky aspects. It is also not uniform internationally. In the European Union, copyright is maintained 70 years from the date of death of the composer. Mahler died in 1911, so you can purchase his 9th symphony of 1909 from Kalmus for use in the EU. But, you can't purchase the Kalmus edition of *Don Juan* for use in the EU, even though it was written in 1888, because Strauss died in 1949. If you are an American orchestra touring Germany, your legitimately purchased *Don Juan* set is now illegal. And... the fine print in the law even allows the police to confiscate it! Of course, that's rarely happens, BUT someone is liable for paying royalties. That's usually the presenter (operator of the venue), though Operations and Artistic should be sure they've set this in stone.

Back to Mahler. Even though he died in 1911, versions of his works are under copyright, as they have been edited, corrected, re-edited, and re-corrected by his publishers based on manuscript examination. Similarly, Rossini was poorly served by publishers and his operas were edited/corrected by Alberto Zedda in the 1960's. In choosing a corrected set of parts, it is necessary to contact Zedda and G. Ricordi's US agent: Boosey & Hawkes. Boosey & Hawkes handles copyright for G. Ricordi in the U.S. In the cases of Mahler and Rossini, as well as numerous other long deceased composers, editors and publishers become the copyright holders.

Mechanical Licensing

Mechanical licensing is the licensing of copyrighted musical compositions for use on CDs, records, tapes, and certain digital configurations. Within the music industry, a mechanical licensing agent licenses, collects, and distributes royalties on behalf of musical copyright owners. The licensing agent issues mechanical licenses that are valid for the physical or digital reproduction of compositions embodied in sound recordings that are manufactured and distributed to the public for private use in the U.S. (including its territories and possessions).

With respect to licenses located outside of the U.S., there is a distinction between the licenses that are available for the reproduction of physical products, such as CDs, versus digital reproductions, such as permanent digital downloads, interactive streams, limited downloads, and ringtones. U.S. agencies cannot issue mechanical licenses for physical products that are manufactured abroad. Those products require an import license in order to be distributed in the U.S.

APPENDIX: Examples of Contracts (Small and Grand Rights)

Example of Small Rights Contract

EUROPEAN AMERICAN MUSIC DISTRIBUTORS LLC

a Schott Music Company

Rental License Agreement

Fax No.: (212)810-4565

Agreement by and between **EUROPEAN AMERICAN MUSIC DISTRIBUTORS LLC**, Rental Library, 254 West 31st Street, 15th Floor, New York, NY 10001-2813, USA (hereinafter referred to as EAMDLLC) and:

Ship to:	☾	Bill to:	000000
		Customer Ref.:	

(hereinafter referred to as the Licensee) for the rental of performance materials (hereinafter referred to as the Materials) as follows:

Composer: Peter I. Tchaikovsky

Editor/Arranger:

Society: PD

Publisher: Baerenreiter Music Corp.

Title: Piano Concerto No. 2 in G Major op. 44

Set No.: NS1 (TCHP8)

Duration: 0:40

Date Requested: 03/06/2013

Date Materials Due Back: 05/06/2013

NOTE: Date requested cannot be guaranteed unless contract is received at least ten (10) business days prior to that date. For contracts returned less than ten (10) business days before date requested, rush fees may apply and/or delivery will be after date requested.

Total Scores	2	Vocal Material		Winds, Brass and Percussion	1
Strings	9(Vln.I) / 8(Vln.II) / 7(Viola) / 6(Vlc.) / 5(Db)				

Performance Details:

4/19/2013 (1)

4/20/2013 (1)

c. Thierry Fischer s. Louis Lortie

Materials may require import.

RENTAL FEES: \$2,170.00 + shipping + TAX (California Customers only)

By signing below, EAMDLLC and Licensee expressly agree to the Terms and Conditions set forth on the second page of this agreement. Please sign **both** pages of this agreement where indicated and return them by fax or post to EAMDLLC. Please retain a copy of this agreement for your records. COMPLETE MATERIALS REPLACEMENT FEE **\$5,775.00**

Accepted and agreed to by _____

TERMS AND CONDITIONS
Please Read Carefully

1. The Material will be rented for the fee(s) set forth on the reverse side of this agreement provided the performance takes place no later than the latest performance date listed on this agreement and that this agreement is signed and returned to EAMDC at least ten (10) business days in advance of the date required indicated. Any Rental License Agreement not returned in excess of eight weeks prior to the concert date is immediately subject to a rush service charge and expedited shipping costs when applicable, but EAMDC cannot guarantee immediate shipment upon contract receipt. Material requiring import will not be placed on order until this agreement is returned. The fees stated do not include shipping charges, which will be billed to the Licensee's account.
2. No Materials will be shipped or reserved until a signed copy of this agreement is returned to EAMDC and provided that Licensee's account (if applicable) is in good standing or payment has otherwise been received. Materials will be shipped to arrive eight (8) weeks prior to the first date of performance unless otherwise agreed upon. The rental period begins on that date and ends fourteen (14) days after the final performance. Materials must be returned to us on or before the end date to avoid additional charges. Please note EAMDC must receive this signed agreement no later than ten (10) business days prior to the date required to ensure timely delivery.
3. Please note that not all works of foreign publishers are in stock in the U.S. at any given time. If an order requires importation EAMDC will notify the Licensee who will be responsible for paying all importation charges.
4. A rental fee of \$150 or 50% of the first performance rental fee, whichever is greater, will be due for each month or portion of a month that the Materials have not been returned following the date fourteen (14) days after the final performance.
5. If radio broadcast rights are expressly granted on the reverse side hereof, EAMDC herein grants the Licensee the right to broadcast over radio the Work in the U.S. and Canada on a one-time only basis during the current concert season provided that each radio station broadcasting the Work holds a license from the performing rights society listed on the reverse side hereof. Because EAMDC is the agent for the work in the U.S. and Canada only, EAMDC cannot grant a license for radio broadcast outside of its territory. Any use of the Licensee's broadcast tape or any other relay of the Licensee's broadcast outside of the U.S. and Canada must be licensed by the copyright owner, specified on the reverse side of this agreement or its agent in the applicable territory. If radio broadcast rights are not expressly granted on the reverse side of this agreement, the Material cannot be used for radio broadcast.
6. The Materials are rented for live performances and, if granted, radio broadcasts in accordance with paragraph 4 above. The Material may not be used for any other purpose, including without limitation grand rights (staged or choreographed performances only), television broadcast, video and audio streaming, live and delayed broadcast over the Internet, satellite radio, subscription radio, transcription or synchronization without the prior written agreement of EAMDC. The Licensee may create an audio and/or audiovisual recording of their performance for archival purposes only. The Licensee will provide EAMDC with a copy of the archival recording upon request if permitted.
7. The Licensee agrees that no arrangements, transcriptions, or scores will be made of the work rented. Photocopies of Materials may be created for the purpose of practice and performance in the event the requested numbers of copies are not available. All such copies must be destroyed or returned to EAMDC following the performance. The Licensee agrees that the Material will not be sold, loaned or given in whole or in part to any other party for any purpose whatsoever.
8. In the event of cancellation of performance(s) after the Material has been shipped, the Licensee will incur a service charge equal to 50% of the rental fee up to \$500 but not less than \$100, plus shipping and any added rental periods incurred. Please note that notices of cancellation must be in writing and must be received not later than two (2) business days after the date of the scheduled performance to be accepted. Material must be received within ten (10) business days of the date cancellation notice has been sent. If notice is given or Material received after the applicable date, the full rental charges will remain due and payable.
9. A replacement charge will be collected for any Materials lost or defaced. The Licensee must notify EAMDC within five (5) days of the receipt of the Materials if any parts listed on the packing slip are not in the package received from EAMDC or received in poor condition. Otherwise, the Licensee will be held responsible for all parts listed on the packing slip. The Licensee agrees to pay upon receipt of an invoice from EAMDC, a replacement charge as specified on the front of this agreement if the complete set of Material is not received by EAMDC. If the Material is returned but parts are missing, the licensee shall pay a non-refundable fee of between \$10.00 and \$40.00 per part depending upon the duration of the work, plus a service charge of \$15.00 for up to three missing parts and \$25.00 for four or more. Missing scores will be billed at replacement cost plus a \$25.00 service charge for each score not returned. If Licensee subsequently returns a missing item, EAMDC will credit Licensee's account in an amount equal to 50% of the lost materials fee charged for that item.
10. All Materials must be returned to the EAMDC Rental Library, c/o Rental Distribution Services, 60 Depot Street, Verona NJ 07044, via a shipping method that includes proof of delivery. If a return label is provided the Licensee should use it for making the return shipment. No materials are to be delivered to our New York office unless expressly requested. Any such materials returned to our New York City offices are subject to the additional shipping costs incurred to forward them to Rental Distribution Services, plus a service charge of \$50.00 per

package. Any materials not returned via such a shipping method that are lost or damaged in transit will automatically be charged to you at the full replacement value of the set as listed on the reverse side hereof.

11. The Licensee represents that it has acquired the right to perform this work from the performing rights society specified on the reverse side hereof and will pay that society for the performance of this work. Failure to obtain such a license will void this agreement and may result in additional fees being charged to the Licensee's account unless otherwise agreed with EAMDC.

12. If prepayment is not required, full payment is due fourteen (14) days after the date of the last performance.

13. The Licensee agrees to give EAMDC two complimentary orchestra seats to each performance listed on the reverse side hereof, if so requested by us no less than 48 hours before concert time. If tickets are not available when requested, the Licensee shall pay an additional charge of \$150.00.

14. Please note a standard sets contain not more than two full scores. Subject to availability, up to three additional scores may be rented from EAMDC for the title at a supplementary charge dependent upon duration and provided that they are not available for retail purchase.

15. The Licensee agrees to provide EAMDC with three (3) copies of the concert program for the performance(s) set forth on the front of this agreement. Programs are to be included with the Material when returned.

16. No change in this agreement shall be valid without first procuring the written consent of EAMDC.

Signature _____ Print or Type Name _____ Title _____

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Example of Grand Rights Contract

BOOSEY & HAWKES

AGREEMENT FOR THEATRICAL PERFORMANCE

AGREEMENT made on February 19th, 2013 by and between **Hendon Music, Inc., o/b/o Casa Ricordi/Universal Music Publishing Ricordi S.R.L.**, 229 West 28th Street, 11th Floor, New York, NY 10001 ("B&H") and **BLAH OPERA**, 336 N. etc. ("Licensee")

B&H and Licensee agree as follows:

1. B&H hereby grants Licensee the non-exclusive right to perform: Puccini TURANDOT (STANDARD VERSION) ("Work") subject to all terms and conditions contained in this Agreement.
2. This Agreement shall be for a period of five (5) performances on [DATE], 2014.
3. In consideration of B&H granting Licensee the right to perform the Work, solely for live performances as presented by Licensee, and providing performance materials ("Materials") therefore, as set forth in this Agreement, Licensee agrees to pay B&H the following sums and providing performance materials ("Materials") as set forth in this Agreement, Licensee agrees to pay B&H the following sums:
 - a) In respect of the performing right: Eight Percent (8%) of the Gross Box Office receipts (adjusted only for actual, documented credit card processing fees, up to a maximum of 5%)
 - b) In respect of the rental of Materials: \$800 per performance
 - c) The fees referenced herein in Para 3 (a) and (b) are non-precedent setting
 - d) If available for commercial sale, vocal scores and/or other performance materials, shall be purchased through B&H's authorized printed music dealers
 - e) **An additional service fee of \$275.00 ("Rush Fee") shall be payable if Licensee requires *shipment* of Materials from Boosey & Hawkes within ten (10) business days of B&H's receipt of customer's signed license. Materials shall not be released unless Licensee has signed and returned the Agreement to B&H.**
4. **No Materials shall be shipped to Licensee until B&H receives a signed copy of this Agreement.**
5. **Notwithstanding the foregoing in Para. 4, in the event that Licensee performs the Work without first providing B&H a signed copy of this Agreement, all terms and conditions of this Agreement shall be deemed to have been accepted and agreed to by Licensee by virtue of Licensee's performance(s). Licensee shall then be responsible for rendering payment of all applicable fees as set forth in Para. 3.**

6. Licensee represents and warrants that: (please fill in at *)

- a) The capacity of the venue where the performance(s) of the Work is to occur is : *
- b) The likely potential gross box office income is: *
- c) Ticket prices to the performances of the Work will be: *

7. *All payments due under this Agreement shall be paid within thirty (30) days from the date of the final performance of the Work, regardless of whether B&H sends an invoice for such payment. In the event that there is a conflict between the terms of this Agreement and any invoice sent by B&H, the terms of this Agreement shall govern. Licensee agrees to pay any and all fees and costs associated with collecting the fee(s) due as per this Agreement if Licensee fails to make payment when required hereunder.* Where the performance fee is calculated on a percentage of gross box office receipts, payment of said performance fees shall be accompanied by an official statement setting forth the applicable gross box office receipts, including a clear representation of actual credit card processing fees, and the performance fee due.

Said statement is mandatory for B&H audit purposes.

8. **In all publicity, program books, and souvenir booklets, whether distributed in physical or digital copies, Licensee must give program credits to the Work and author(s) as set forth in Para. 1 and to B&H as follows: By arrangement with Hendon Music, Inc., a Boosey & Hawkes company, Sole Agent in the U.S., Canada and Mexico for Casa Ricordi/Universal Music Publishing Ricordi S.R.L., publisher and copyright owner.**

9. The Materials supplied herewith and the rights granted herein to Licensee are granted **solely for live performances as presented by Licensee** and only for use on the dates specified hereinabove and may not be used for radio, television or Internet transmission, recording, transcription, synchronization, or any other use whatsoever without express advance written permission and licensing from B&H. Separate fees are payable for such uses and will be quoted upon request. Notwithstanding the foregoing, recording of the performances may be permitted for archival use only, provided that such archival copy is not in any way publicly performed, displayed, or distributed.

10. This Agreement does not authorize or permit any use of the Work not expressly set forth herein and does not include the right to alter the fundamental character of the Work. Without limiting the foregoing, no arrangements, transcriptions (or alterations), amendments, modifications, interpolations of other works, deletions to the Work, or to the libretto of the Work may be made without B&H's express advance written permission.

11. Licensee shall not reprint the libretto or the story or synopsis of the Work without the express ~~written~~ permission of B&H.

12. No portion of the Materials may be copied or reproduced in any form or by any means whatsoever without B&H's express advance written permission.

13. The rights granted to Licensee in this Agreement are granted solely to Licensee and are not transferable; said rights do not enable any other person(s) or entities to give theatrical or other ~~performances~~ of the Work. Licensee shall not assign, mortgage, change, part with or otherwise ~~transfer~~ any of the rights granted or Materials supplied under this Agreement, and any assignment contrary to this Para. 13 shall be void from inception. B&H reserves all rights not expressly granted to Licensee hereunder.

14. The Materials are and at all times shall remain B&H's property. The Materials may not be sold, loaned or otherwise distributed, pledged or transferred to any other party by any means for any purpose whatsoever without the express prior written permission of B&H.

15. Cancellation Policy: If performances are canceled after Materials have been shipped, a cancellation fee will be charged. The cancellation fee is the greater of Three Hundred and Fifty Dollars (\$350.00) or fifty percent (50%) of the total rental fee due as referenced hereinabove in Para. 3(b). If the Materials from a canceled performance are received by B&H after the first previously scheduled performance date, a full rental fee will be due.

16. **All shipping charges, including insurance, are the responsibility of Licensee. Charges for shipment from our Library, which are non-refundable, are assessed in addition to rental fees due. Shipping charges do not include the Rush Fee, as set forth in Para. 3(e).**

17. Markings on Materials must be made in No. 2 lead pencil only. All markings other than corrections and bowing must be removed prior to return or a removal charge will be imposed.

18. Subject only to Para. 17, Materials must be returned in the same condition as received, appropriately packed, insured at value stated, and shipped prepaid, using a method requiring signature by B&H, immediately following the last performance.

19. If Materials are not received within ten (10) business days of the final performance date, Licensee will receive a late return letter informing Licensee of Materials that are overdue. Materials returned later than 2 weeks will incur a late fee of \$50 per week, up to a maximum of 6 weeks, i.e. \$300. If Materials remain unreturned after 6 weeks, full replacement costs for the materials will be charged. If Materials can be recovered after 6 weeks, the replacement costs will be credited in full, and replaced with the maximum late fee of \$300. Any replacement fees paid by Licensee do not grant Licensee either any ownership interest in the Materials or permission to use said Materials for future performances.

20. Licensee shall be liable for the replacement of all lost, defaced, damaged or destroyed parts of the Materials, regardless of cause, according to the packing slip prepared by B&H unless exception is taken by Licensee within five (5) business days of receipt of Materials. *If Licensee does not contact B&H within that time, Licensee shall have thereby indicated that the Materials have been received by Licensee in acceptable condition.* Materials returned incomplete shall be charged for missing parts as follows: \$35.00 per part, \$150.00 per vocal score, and \$200.00 per full score. The cost for a defaced score is \$100; Licensee will be assessed a full replacement charge for scores damaged beyond the possibility of future use. If missing Materials are subsequently returned within ten (10) business days of Licensee’s missing parts invoice, a 50% credit for such returned Materials shall be issued. Materials may be returned in more than one container, provided such containers are shipped to B&H at the same time.

21. Licensee agrees to provide B&H or their representative(s) two (2) orchestra seats for each performance of the Work, if requested by B&H.

22. Any and all claims or disputes between the parties hereto arising under, out of or in connection with this Agreement, its performance, interpretation, validity or making, shall be determined by arbitration in the City and State of New York, U.S.A. before a single arbitrator under the auspices of the American Arbitration Association (“AAA”) or another nationally-known alternative dispute resolution provider (the “ADR Provider”) under the ADR Provider’s then-applicable rules, including any rules for expedited proceedings. If the parties cannot agree upon an ADR Provider, the AAA shall be the ADR Provider. The non-prevailing party shall bear the costs of the arbitration proceeding, including reasonable attorney’s fees. Any award rendered by the arbitrator shall be final and conclusive and judgment thereon may, but need not, be entered in any court of competent jurisdiction.

23. B&H and Licensee each warrant that each has the right to execute this Agreement and that the individuals signing below are authorized to enter into this Agreement on behalf of its respective party. B&H and Licensee further agree that this Agreement contains the entire understanding between parties, and no alteration or modification of any kind shall be recognized or binding unless in writing signed by a duly authorized representative of each party. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, U.S.A., applicable to agreements made and to be fully performed within such State, without reference to such State’s conflict of laws provisions.

24. A late payment fee of 2% per month will be assessed for payments not received in accordance with the terms of Paragraph 7.

Accepted and Agreed to: BOOSEY & HAWKES, INC.

(Licensee)

By: _____

By: _____
Authorized Signatory
Associate Director of Grand Rights Licensing

Name: Title:
