

**ARTISTIC SERVICES AGREEMENT**

This Agreement is made between the:

XXX CHORUS (hereinafter collectively referred to as COMMISSIONERS)

and XXXXX (hereinafter referred to as COMPOSER).

Effective date of this agreement is \_\_\_\_\_.

**1. Commission**

- a. COMMISSIONERS hereby commission COMPOSER to create an original composition sufficient in length to constitute a full evening's concert performance; roughly 2 hours, inclusive of applause timing and intermission (hereinafter referred to as the WORK).
- b. Delivery of the WORK shall consist of:
  - i. Piano/vocal scores, instrumental parts, conductor's scores, and all related materials; to be formatted as PDF files suitable for transmission via email
  - ii. MIDI files pertaining to the WORK, suitable for use in creating part-predominant rehearsal tracks by hosting organizations.
  - iii. Performance/accompaniment DVDs featuring video presentation and synchronized, sampled-instrument orchestration for the entirety of the WORK. The DVD shall be produced in two versions [each commissioning organization to receive two (2) copies of each version]:
    1. video and synchronized, full stereo orchestration
    2. video and synchronized monaural orchestration plus click track for conductor and live musicians
  - iv. Any production-related scripts, charts, diagrams, or documentation.

**2. Fees**

- a. COMPOSER shall be compensated in the amount of \$XX.XX for full delivery of the WORK.

**3. Approvals**

- a. All component parts and elements of the WORK shall require the approval of the COMMISSIONERS including, but not limited to, text, subject matter, instrumentation, use of ensembles or soloists, texture, text underlay, compositional style, construction of the WORK including number of movements, choral voicings and ranges, and title of the WORK as a whole and titles of the movements. COMPOSER shall submit proposals for all elements of the WORK, prior to their being incorporated in the final version of the WORK, to the COMMISSIONERS for consideration and all final decisions shall be the sole responsibility of the COMMISSIONERS. COMMISSIONERS and COMPOSER shall have mutual input as to the constituent components of the WORK, including, but not limited to, text, subject matter, instrumentation, use of ensembles or soloists, texture, text underlay, compositional style, construction of the WORK including number of movements, choral voicing and ranges, and title of the WORK as a whole and titles of the movements, prior to final delivery date.

- b. Final approval of these constituent components of the WORK shall be the responsibility of the COMMISSIONERS. COMPOSER shall have the right to make proposal changes to the COMMISSIONERS, subject to the approval of COMMISSIONER prior to the first rehearsal of the WORK. COMPOSER shall assign priority performance and recording rights to COMMISSIONERS. However, after initial performance and recordings by COMMISSIONERS, the WORK, in its entirety shall remain the property of COMPOSER.
- c. Should the entire work be deemed unacceptable by COMMISSIONERS, the contract shall be considered unfulfilled and COMPOSER shall return all fees paid to that point, and not receive any further payments. COMMISSIONERS will acknowledge receipt of the completed, approved WORK in writing.

#### 4. Schedule of Delivery

- a. The piano-vocal score of the WORK shall be delivered to COMMISSIONER on or before December 15, 2010. Should any portion of the piano-vocal score be unacceptable, COMPOSER will meet with COMMISSIONER and come to a mutual agreement regarding any revision of any applicable deadline.
- b. The performance DVDs, related instrumental parts, and conductor's scores shall be delivered to the individual commissioners on or before January 31, 2011. Should any portion of the aforementioned materials be unacceptable, COMPOSER will meet with COMMISSIONER and come to a mutual agreement regarding any revision of any applicable deadline.

#### 5. Schedule of Payment

- a. COMPOSER shall receive \$XX.XX US upon return and subsequent execution of this Agreement.
- b. COMPOSER shall receive \$XX.XX US upon delivery of the piano-vocal score and subsequent approval of same by COMMISSIONER as delineated in Section 4 of this Agreement.
- c. COMPOSER shall receive \$XX.XX US upon delivery of the remaining materials and subsequent approval of same by COMMISSIONER as delineated in section 4 of this Agreement.
- d. All payments shall be made payable to COMPOSER.

#### 6. Fee Reduction for Delayed Delivery

Time is of the essence with regard to performance by COMPOSER with reference to his obligations and compliance with deadlines set forth in Section 4 of this agreement. COMPOSER further understands and agrees that the timely performance of his obligations under this Agreement is an express condition bargained for in this contract. Having agreed upon the deadlines contained in Sections 4 and 5 of this agreement, and because the damages flowing from the failure to meet these deadlines is difficult to calculate, COMPOSER agrees that the COMMISSIONERS will deduct, from the final payment to COMPOSER, the amount of **\$50.00 per day after December 31, 2010.**

#### 7. Limit of Liability

- a. Should COMPOSER prove unable to fulfill this commission for any reason whatsoever, COMPOSER's liability to COMMISSIONERS will be limited to return whatever portion of

the commissioning fee has already been paid.

#### 8. Ownership

- a. COMPOSER will retain ownership and copyright of the WORK. COMPOSER will assign COMMISSIONERS all rights for performance, broadcast, recording, publication, or any other use, except as specifically licensed herein or in separate agreements with publishers or other for a period of time beginning with the activation of this Agreement and concluding December 31, 2011.
- b. The use of rights of ownership as listed above is conditioned upon the full and faithful performance of all material obligations under this Agreement by both COMPOSER and COMMISSIONERS, and shall not preclude COMPOSER from publishing as permitted by law.

#### 9. Rights and Terms

- a. The foregoing rights are limited to the right to produce the WORK on stage. However, COMMISSIONERS will have the exclusive right to give the world premiere(s) of the WORK, inclusive of repeat performances for a period of time to conclude December 31, 2011 in the constituent performance venues and regions of each individual entity of COMMISSIONERS. All other rights to record, film, tape, televise, broadcast or otherwise reproduce the WORK, or any component portion of the WORK, and all other rights are therein reserved to COMMISSIONERS, subject to any and all rights of COMPOSER as given in this Agreement.

#### 10. Broadcast Media and Archival Recording

- b. The rights granted herein are limited to the right to produce and present the WORK before a live audience pursuant to Section 6 above. However, COMMISSIONERS will have the exclusive right to record, at the expense of each individual commissioning organization, one (1) archival (i.e., non-commercial) audio and/or video recording of the WORK without any additional compensation due COMPOSER. COMMISSIONERS will furnish COMPOSER, at no cost, one (1) copy of any such recording.
- c. If live performances of the WORK are broadcast by television or radio in the area of individual COMMISSIONERS, appropriate ASCAP fees will be paid on behalf of COMPOSER and his publishing entity (Jackson Heights Heavy Opera Company [ASCAP]) for such broadcasts, by the individual COMMISSIONERS.

#### 11. Commercial Recording

- d. Insofar as COMPOSER is concerned, COMMISSIONERS may enter into a contract with a recording company during the term as defined in Sections 4 and 8 of this Agreement for the purpose of recording in any and all physical or digital media the WORK in its entirety or in part.
- e. COMPOSER agrees that such a contract as specified above may contain a clause granting to said recording company the right to use the name, likeness, and/or biographical resumé of COMPOSER on or in connection with said recording, its manufacture, distribution, or sale.
- f. For any and all such recordings, physical recorded media labels and liner notes, where appropriate, the text "arranged by COMPOSER" shall be prominently displayed.

## 12. Public Relations

- a. COMMISSIONERS shall have the right to use COMPOSER's name, likeness, and/or biographies in connection with the WORK. COMPOSER shall supply same to COMMISSIONERS.
- b. In printed concert programs and related materials, where appropriate, the text "arranged by COMPOSER" shall be prominently displayed.

## 13. Representations and Warranties

- a. COMPOSER hereby represents, warrants and agrees that he is and will be the sole arranger of the WORK. The WORK does not, and the use of the WORK as herein proposed, will not conflict or infringe upon any rights whatsoever of any person, firm, or corporation, and there has not been nor their now any claims or litigation existing or threatened in title, ownership, or copyright in either the lyric or the music, or the rights granted hereunder.
- b. COMPOSER agrees to indemnify and hold harmless COMMISSIONERS and all others claiming by, through or under COMMISSIONERS' personal representation, from and against all claims, liability, demands, suits, losses, costs, expenses (including reasonable attorney's fees), damages, judgments, or recoveries (including any amounts paid in settlement subject to COMPOSER's written approval, not to be unreasonably withheld), which may be made against or suffered or incurred by COMMISSIONERS and such others growing out of or by reason of any breach of non-performance of representations, agreements, undertakings, or warranties of COMPOSER contained in this Agreement, except as otherwise stated in this Agreement.
- c. COMMISSIONERS agree to indemnify and hold harmless COMPOSER and all other claiming by, through or under COMPOSER's personal representation, from and against all claims, liability, demands, suits, losses, costs, expenses (including reasonable attorney's fees), damages, judgments, or recoveries (including any amounts paid in settlement subject to COMMISSIONERS' written approval, not to be unreasonably withheld), which may be made against or suffered or incurred by COMPOSER and such others growing out of or by reason of any breach of non-performance of representations, agreements, undertakings, or warranties of COMMISSIONERS contained in this Agreement, except as otherwise stated in this Agreement.

## 14. Cancellation

- a. Neither COMMISSIONERS nor COMPOSER shall be deemed to be in default if performance of the obligations required by this Agreement becomes impossible because of any act of God, war, earthquake, fire, strike, civil commotion, act of Government, its agencies or officers, or any other legitimate cause beyond control of the parties. Upon the occurrence of any such event, or if COMPOSER fails to perform any or all of the conditions or covenants of this Agreement because of circumstances beyond the control of COMMISSIONERS and not induced or brought about by unreasonable acts, then COMMISSIONERS, in addition to any other rights or remedies they may have, may elect, by giving notice to COMPOSER, to extend the term of this Agreement for a period equivalent to all or any part of the period that any such conditions shall prevail, or that COMPOSER shall be in default. In the event of any such extension, specific dates, periods and time requirements referred to in this Agreement shall be postponed or extended

accordingly.

15. Permission to Arrange

- b. COMPOSER shall obtain all Permission to Arrange considerations with any and all publishers or owners of any and all components of the WORK.
- c. Any and all fees for said Permissions to Arrange will be paid by COMPOSER.

16. Miscellaneous

- a. This Agreement constitutes the entire understanding between the parties and many not be modified or otherwise changed except in writing signed by all parties hereto.
- b. Any controversy or claim arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration before one arbitrator in New York City, NY, in accordance with the rules then obtaining of the American Arbitration Association, and judgment upon the award rendered may be entered in any court or forum having jurisdiction thereof.
- c. This Agreement shall be governed by and interpreted under the laws of the State of New York. The parties to this Agreement hereby stipulate that the venue of any dispute arising under the terms of this Agreement shall be the City of New York, and the County of Queens.
- d. All notices due the parties shall be sent to them, Certified US Mail, Return Receipt Requested, at the address first set forth herein-above.
- e. COMMISSIONERS shall not assign this Agreement or its rights arising hereunder without the prior written consent of COMPOSER. COMPOSER shall not assign this Agreement or its rights arising hereunder without the prior written consent of COMMISSIONERS. None of the parties shall withhold their consent unreasonably in an attempt by any party to assign this Agreement.
- f. Paragraph headings are for convenience only and shall not be used to interpret or modify the terms of this Agreement.
- g. Any approvals or authorizations required hereunder must be made in writing.

17. Signatures

Signatures to this agreement may be executed in separate counterparts, and together shall constitute the entire signed agreement. Signatories expressly warrant and represent that they have full, legal authority to represent and bind those organizations on behalf of which they sign.

FOR THE COMMISSIONERS:

COMPOSER/ARRANGER:

Date:

Date:

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