

# CONTRACT FOR COMMISSION OF A MUSICAL WORK

## COMMISSIONING AGREEMENT

A COMMISSIONING AGREEMENT is made as of December 1, 2019 by and between: members of the Benjamin Taylor Commissioning Consortium (hereinafter referred to as "CONSORTIUM MEMBERS"), Benjamin Taylor Commissioning Consortium member and director David Lesniak (hereinafter referred to as "CONSORTIUM DIRECTOR") and Benjamin Taylor (hereinafter referred to as "COMPOSER")

The contract documents for this COMMISSIONING AGREEMENT shall consist of this contract and any riders or modifications, as provided for in paragraph 16. This agreement is made in Indiana and shall be construed in concordance with the laws of the State of Indiana, County and City of Bloomington.

## STATEMENT of COMMISSION

1. CONSORTIUM MEMBERS commission COMPOSER and COMPOSER agrees to write a new work for CONSORTIUM MEMBERS, of approximately 4-5 minutes duration. This work shall be written for standard concert band (grade 3-3.5) and electronic audio track.

2. The COMPOSER warrants that to the best of his/her knowledge:

- a) The WORK is an original composition and the COMPOSER is the owner thereof
- b) The COMPOSER is authorized to enter into this Agreement

3. COMPOSER shall be listed as Benjamin Dean Taylor. Appropriate copyright and performing rights license information shall also appear. The scores and other performance material delivered to CONSORTIUM MEMBERS, and on all published editions of the score shall include, the following inscription:

Commissioned by Plainfield East High School, David Lesniak, director. [followed by a list of consortium members]

4. COMPOSER agrees to deliver the completed work to CONSORTIUM MEMBERS, as follows:

- a) 1 complete score and set of parts (PDF) shall be delivered by email to CONSORTIUM MEMBERS no later than January 15, 2021.
- b) COMPOSER agrees to periodically advise CONSORTIUM DIRECTOR as to progress made toward its completion.

5. The CONSORTIUM MEMBERS agree to give at least 1 performance of the commissioned work during the period of 12 months following delivery of the score to the CONSORTIUM MEMBERS.

6. COMPOSER agrees to furnish an image and biography in electronic form.

## PAYMENT

7. As consideration of this agreement, CONSORTIUM MEMBERS agree to pay COMPOSER a total of no less than \$7,500. Each CONSORTIUM MEMBER will pay \$375 as a buy-in commission fee. The final date for joining the consortium will be May 1, 2020. By June 1, 2020 CONSORTIUM DIRECTOR will pay COMPOSER half of the total fee as a deposit. The remaining half of the total fee will be paid upon completion and delivery of the new work due January 30, 2021.

7a. In the event that the total monies collected from CONSORTIUM MEMBERS does not meet the stated total above by May 1, 2020, this contract will be null and void and up for possible renegotiation by consent of COMPOSER and CONSORTIUM DIRECTOR. In event that the contract is not renegotiated, all collected monies will be returned to CONSORTIUM MEMBERS.

8. It is agreed that COMPOSER is acting as an independent contractor and is exempt from Social Security, State and Federal unemployment insurance and State and Federal withholding requirements. COMPOSER shall indemnify, save and hold harmless CONSORTIUM MEMBERS against any such claims and expenses that may arise from any

unemployment issue, such as but not limited to tax withholding requirements relating to services rendered under this agreement.

### **NON-FULFILLMENT of TERMS**

9. This Agreement and the obligations of CONSORTIUM MEMBERS and/or COMPOSER are subject to conditions beyond the reasonable control such as illness, accidents, family tragedy, failure of instrument or equipment, fire, flood, riots, and/or unforeseen acts of nature. If COMPOSER or CONSORTIUM MEMBERS shall be forced to cancel the work as a result of any of the above events, CONSORTIUM MEMBERS shall be responsible only for any out-of-pocket expenses incurred by COMPOSER directly associated with this engagement. In the event a CONSORTIUM MEMBER elects to not fulfill this contract, that CONSORTIUM MEMBER forfeits any payments.

### **RIGHTS**

10. CONSORTIUM DIRECTOR shall have the following rights with respect to the commissioned work:

- a) The right of first refusal with respect to the making of the first commercial production of the work, on a record label acceptable to COMPOSER, for a period of 3 years following the completion of the work. After this period, the COMPOSER has the right to record the commissioned work elsewhere.
- b) The right to produce the work for non-commercial use, including online audio and video streaming, so long as a copy of the production is made available to the COMPOSER within 10 working days following the recording session or performance.
- c) The right to give the official world premiere during the first year. This distinction applies regardless of calendar date.
- d) CONSORTIUM DIRECTOR also shares all rights granted to CONSORTIUM MEMBERS.

11. CONSORTIUM MEMBERS shall have the following rights with respect to performance of the commissioned work:

- a) The exclusive right to perform the work including giving the premiere (regional premiere) of the work for a period of 1 year following delivery of the score. CONSORTIUM MEMBERS shall notify COMPOSER of all performances and email a PDF of the concert program to COMPOSER within 10 working days.
- b) The right to produce the work for non-commercial use, including online audio and video streaming, so long as a copy of the recording is made available to the COMPOSER within 10 working days following the recording session or performance.
- c) The right to produce the work for personal uses by CONSORTIUM MEMBERS, so long as a copy of the recording is made available to the COMPOSER within 10 working days following the recording session or performance.

12. COMPOSER grants CONSORTIUM MEMBERS the right, to be exercised in sole discretion, to use and license others to use COMPOSER's name, likeness, and biographical material in connection with the work and its production and presentation.

13. COMPOSER may authorize additional performances during the first year and agrees to notify CONSORTIUM DIRECTOR of any such performances.

14. All rights in the commissioned work not granted to CONSORTIUM MEMBERS are reserved to COMPOSER. CONSORTIUM MEMBERS acknowledge the COMPOSER retains ownership of the commissioned work. COMPOSER is not an employee of CONSORTIUM MEMBERS and CONSORTIUM MEMBERS agree that the resulting commission is not a "work for hire," as defined under current copyright law.

15. COMPOSER warrants that nothing contained herein contravenes any pre-existing agreement with publisher or any other party. COMPOSER agrees that any subsequent agreement with publisher shall be subject to the rights granted to CONSORTIUM MEMBERS hereunder.

### **MODIFICATIONS OR AMENDMENTS**

16. Modifications or amendments to this contract may be made. Any such modification must be in the form of a written rider to this contract, countersigned and dated by both COMPOSER and CONSORTIUM DIRECTOR.