# College / University
## Two Tier

**1. DEFINITIONS**

(a) **"LICENSEE"** as used herein shall include the named institution and any of its constituent bodies, agencies, or organizations which maintain a substantial nexus to the named institution and/or over which the named institution has control or authority, including, but not limited to, fraternities, sororities, social clubs, and other organizations located on or off the LICENSEE's campus.

(b) **"Premises"** shall include LICENSEE's campus(es) and any site located off LICENSEE's campus(es) which has been engaged for use by LICENSEE, including, but not limited to, those locations where college groups such as bands or choruses perform as part of their nonprofit, community outreach and educational activities, provided that such events are not promoted or sponsored by a third party. However, in the event LICENSEE has a pecuniary interest in an establishment or property which is not directly related to LICENSEE's educational purposes or where the intended primary purpose of such establishment or property is not for the use of LICENSEE's students (e.g. a university related hospital or healthcare institution, other than a college/university infirmary used exclusively by students), at which establishment or property musical compositions are being performed publicly for purposes other than community outreach or education, it is specifically understood and agreed to by LICENSEE that this Agreement shall not apply to such other establishment or property.

(c) **"Full-time Students"** as used herein shall be the sum of (i) all full-time undergraduate and graduate students and (ii) one-third of all part-time undergraduate and graduate students. If during the Term of this Agreement, the method of converting part-time students to a full-time equivalency as indicated in subsection (ii) of this definition is changed from the Integrated Postsecondary Education Data System (IPEDS) or any superseding survey conducted annually by the U.S. Department of Education, such different method of conversion shall be deemed substituted in said subsection (ii) as of the effective Fall academic term. For the 2017-2018 Contract Year, the number of Full-time Students as for all covered branch campuses shall be reported for the Fall 2017 academic term upon execution of this Agreement.

(d) **"Base Student Fee"** for the 2017-2018 Contract Year shall be $.341 per student and shall be subject to a CPI Adjustment for each subsequent Contract Year, rounded to the nearest tenth of a cent.

(e) **"Total Base Student Fee"** shall mean the Base Student Fee in any Contract Year multiplied by the number of Full-Time Students in that Contract Year. In no event shall the Total Base Student Fee for any Contract Year be less than the Minimum Annual Total Base Student Fee. The Minimum Annual Total Base Student Fee for the 2017-2018 Contract Year shall be $231.01 and shall be subject to a CPI Adjustment for each subsequent Contract Year, rounded to the nearest cent.

(f) **"Compulsory Rate"** shall mean the fee for non-commercial educational radio stations established under Section 118 of the U.S. Copyright Act. The Compulsory Rate, as defined above, for the 2017-2018 Contract Year shall be $345.00 and shall be subject to a CPI Adjustment for each subsequent Contract Year.

(g) **"Campus Radio Station"** shall mean and be limited to a non-commercial educational radio station that is not affiliated with NPR.

(h) **"Total Campus Radio Station Fee"** shall mean the total number of Campus Radio Stations multiplied by the Compulsory Rate.

(i) **"Cable System"** shall mean each Cable Television System operated by LICENSEE on which Locally Originated Programming **only** is performed.

(j) **"Per Student Cable System Fee"** for the 2017-2018 Contract Year is $0.0677 and shall be subject to a CPI Adjustment for each subsequent Contract Year.

(k) **"Total Cable System Fee"** shall be calculated by multiplying the total number of Full-time Students by the Per Student Cable System Fee.

(l) **"CPI Adjustment"** shall mean the adjustment made to the Base Student Fee, the Minimum Annual Total Base Student Fee and the Per Student Cable System Fee (as applicable) in each subsequent Contract Year in accordance with the percentage change in the Consumer Price Index – All Urban Consumers (CPI-U) as determined by the United States Department of Labor, between the preceding July and the next preceding July. By way of illustration, the Base Student Fee payable for the 2018-2019 Contract Year, as compared to the Base Student Fee payable for the 2017-2018 Contract Year, will be adjusted based upon the percentage difference between the CPI-U in July 2018 and the CPI-U in July 2017.

(m) **"Term"** shall mean the period commencing July 1, _____ and ending June 30, 2018 (the "Initial Term") and shall be extended for additional periods of one (1) year each, unless canceled pursuant to Paragraph 6 herein, or at the end of the Initial Term or any subsequent Contract Year upon thirty (30) days advance written notice. Each twelve (12) month period commencing July 1 and ending the following June 30 shall be referred to as a "Contract Year".

(n) **"Musical Attractions"** shall mean concerts, stage shows, variety shows, symphonies, operas, recitals, chamber music and other similar performances presented or promoted exclusively by LICENSEE.

(o) **"Orchestra"** shall mean a college orchestra, which consists primarily of student performers who may be augmented by faculty, staff, or other musicians. The Orchestra is offered by the institution to further education in music, including training musicians for professional careers or to better their general musical skills. The Orchestra staff is employed by the college, which also has ultimate fiscal responsibility for the Orchestra, and is governed by the institution, a college-based steering committee or other similar body, and not a separate board of directors independent from the college.

(p) **"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, LICENSEE and currently accessible via the Internet at the Uniform Resource Locator (URL) listed on Exhibit A or any other URL owned and/or operated by LICENSEE from which audio and/or audio-visual content containing musical works is made available to individuals; provided, however, that LICENSEE shall endeavor to keep Exhibit A current by providing BMI with an updated Exhibit A annually upon submitting its annual report pursuant to Paragraph 13, so that BMI will know to exclude them from its routine Internet licensing sales efforts. LICENSEE warrants and represents that each such Web Site is generally educational in nature or otherwise operated for the primary purpose of promoting the school and its resources to current and prospective students, faculty, staff, alumni, and the school community. LICENSEE further warrants and represents that, in the event that LICENSEE has a pecuniary interest in a Web Site which is not related to LICENSEE's educational or promotional purposes or where the intended primary purpose of such Web Site is not for the use of LICENSEE's current or prospective students, faculty, staff, alumni, or the school community, it is specifically understood and agreed to by LICENSEE that this Agreement shall not apply to such Web Site(s).

(q) **"Internet Transmissions"** shall mean all transmissions of content over the Internet to individuals who access such transmissions from LICENSEE's Web Site(s) and receive such transmissions via a personal computer or other device capable of receiving such transmissions.

(r) **"Locally Originated Programming"** shall mean television programming produced or which is inserted locally by LICENSEE or through an interconnect (an association of two or more cable systems for the purpose of distributing advertising or programming simultaneously) or otherwise originating by or on "LICENSEE's Cable Television System" including, without limitation, (i) programming on locally-originated channels, including advertising and promotional materials thereon; (ii) programming on public, educational and governmental ("PEG") access channels; (iii) public service announcements; (iv) programming on leased access channels; and (v) advertising and promotional materials inserted locally or through an interconnect by or on behalf of LICENSEE into national, regional or local cable programming services.

(s) **"LICENSEE's Cable Television System"** shall mean a cable television system, system of closed circuit distribution, MMDS, internet, broadband, including any linear feed via the Internet, broadband or other online service or other means of distribution which is owned and operated by

LICENSEE and by which LICENSEE transmits Locally Originated Programming on LICENSEE's campus, except that it shall not include free over-the-air broadcast television.

(t) **"Intranet Transmissions"** shall mean transmissions of content that can only be accessed through an internal computer network accessible only to faculty, staff, students, and other members of the campus community who authenticate themselves through a secure access system and who access such transmissions via a personal computer or other device capable of receiving Internet Transmissions.

(u) **"Territory"** shall mean the United States, its Commonwealth, territories, and possessions.

## 2. GRANT OF RIGHTS

BMI hereby grants to LICENSEE for the Term of this Agreement a non-exclusive license to perform or cause the public performance by live or recorded means at LICENSEE's Premises or by means of Internet Transmissions or Intranet Transmissions in the Territory all of the musical works to which BMI shall have the right to grant public performance licenses, including, but not limited to, performances by or at sporting events, student unions, classrooms, fraternities/sororities, socials, college theater groups, fairs/festivals, college orchestras, Musical Attractions, fitness centers, athletic facilities, student bands, Campus Radio Broadcasting Stations, special events such as orientation and graduation, "music-on-hold" (as that term is commonly understood) through LICENSEE's telephone system(s) at the Premises to persons connected to the Premises by telephone, LICENSEE's Web Site(s), including webcasts of Campus Radio Broadcasting Stations and LICENSEE's Cable Television System, with respect to Locally Originated Programming only.

This license does not include:

(a) performances of music via any form of televised transmission, whether over-the-air broadcast, cable, satellite or otherwise, except performances via (i) LICENSEE's Web Site(s), subject to the limitations in Paragraph 1(p); (ii) LICENSEE's Intranet Transmissions; or (iii) LICENSEE's Cable Television System, with respect to Locally Originated Programming only;

(b) dramatic rights, the right to publicly perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to perform the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein;

(c) performances of music by means of a coin-operated phonorecord player (jukebox) or digital jukebox;

(d) Musical Attractions on the Premises promoted by outside promoters (which shall mean any person or entity other than LICENSEE);

(e) Musical Attractions occurring outside of the Premises, except as part of community outreach and educational activities; or

(f) performances by commercial radio stations.

This Agreement is not assignable, and no rights other than those mentioned are included in this Agreement.

## 3. EXAMINATION OF BOOKS AND RECORDS

BMI, upon giving reasonable notice to LICENSEE in writing, shall have the right to examine the books and records of account of LICENSEE which pertain solely to this Agreement and which may be necessary to verify any statements rendered and accountings made hereunder.

## 4. INDEMNITY

BMI agrees to indemnify, save harmless and defend LICENSEE, its officers and employees, 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 works which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon reasonable written request, advise LICENSEE whether specific musical works are available for performance, under this Agreement, if LICENSEE provides the title and the writer/composer of each musical work. LICENSEE 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.

## 5. BREACH OR DEFAULT/ WAIVER

Upon any breach or default of the terms and conditions of this Agreement that continues for thirty (30) days after LICENSEE's receipt of written notice thereof, BMI may, at its sole option, cancel this Agreement. 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 LICENSEE in any one or more instances shall be deemed 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. In the event of such cancellation, BMI agrees to refund to LICENSEE any unearned license fees paid in advance to BMI by LICENSEE.

## 6. CANCELLATION BY LICENSEE

In the event LICENSEE ceases to operate as an institution of higher education, or where LICENSEE ceases the public performance of music licensed by BMI, LICENSEE may cancel this Agreement upon giving sixty (60) days notice in writing to BMI. The right to cancel shall be in addition to any and all other remedies, which LICENSEE may have. In the event of such cancellation, BMI agrees to refund to LICENSEE any unearned license fees paid in advance to BMI by LICENSEE.

## 7. ARBITRATION

All disputes of any kind, nature or description not subject to the jurisdiction of the BMI Rate Court arising in connection with the terms and conditions of this Agreement shall be submitted to the American Arbitration Association in New York, New York for arbitration under its then prevailing rules, the arbitrator(s) to be selected as follows: Each of the parties hereto 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 into 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. NOTICES

All notices, if any, under this Agreement, will be in writing and deemed given upon mailing, when sent by ordinary first-class U.S. mail to the party intended, at its mailing address stated, or any other address which either party may designate. Any such notices sent to BMI shall be to the attention of the Vice President, Licensing Department at 10 Music Square East, Nashville, TN 37203. Any notice sent to LICENSEE shall be to the attention of the person signing this Agreement on behalf of LICENSEE or such other person as LICENSEE may advise BMI in writing.

## 9. OFFER OF COMPARABLE AGREEMENT

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

## 10. MISCELLANEOUS

This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and shall not be binding until signed by both parties. This Agreement 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. 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.

## 11. RESERVATION OF RIGHTS

The license granted in Paragraph 2 of this Agreement to publicly perform BMI music by means of Internet Transmissions or Intranet Transmissions is experimental in nature. Both parties hereby expressly reserve their right to re-evaluate the appropriateness of the fees and terms of the Agreement with respect to all such transmissions for periods following the Term.

## 12. FEES / REPORTING

(a) In consideration of the license granted herein, LICENSEE agrees to pay license fees for each Contract Year, which shall be comprised of the sum of (as applicable): a Total Base Student Fee, Total Campus Radio Station Fee, Total Cable System Fee, and In-House Promoters/Presenters Fee. The Total Base Student Fee, Total Campus Radio Station Fee, and Total Cable System Fee shall be reported and paid together. The In-House Promoters/Presenters Fee shall be reported and paid quarterly.

(b) The Total Base Student Fee due BMI pursuant to this Agreement for the 2017-2018 Contract Year shall be paid by LICENSEE to BMI on or before February 1, 2018. For each subsequent Contract Year on or before November 1, LICENSEE shall report to BMI, on forms to be supplied by BMI, the total number of Full-time Students as defined in Paragraph 1(c) for the Fall academic term of the Contract Year, which will establish the license fee for the subsequent Contract Years. In addition, LICENSEE shall report the call letters of its Campus Radio Broadcasting Station(s), whether it desires coverage for LICENSEE's Cable Television System, and such other information as BMI may reasonably require with regard to any Campus Radio Broadcasting Station(s). The license fee due BMI pursuant to the Agreement for the subsequent Contract Year shall be paid by LICENSEE to BMI on or before the 20th day of January in the subsequent Contract Year.

(c) All license fees based upon the number of Full-time Students shall be computed to the nearest tenth of a cent and all minimums to the nearest cent.

(d) LICENSEE shall pay BMI for each Contract Year the following Musical Event Promoter/Presenter Fee for performances presented or promoted exclusively by LICENSEE, the Entertainment Costs of which total $1,500 or more:

| Fee for In-House Promoters / Presenters | |
|---|---|
| **Seating Capacity** | **Fee Basis Percentage Applied to Gross Ticket Revenues Per Attraction** |
| 0 – 9,999 …… | 0.30% |
| 10,000 and more seats ……. | 0.15% |

## 13. REPORTING OF MUSICAL WORKS

For the purposes of royalty distribution to BMI's affiliated songwriters, composers and music publishers:

(a) All Campus Radio Broadcasting Station(s) licensed under the Compulsory Rate shall, upon written request from BMI made on not less than two (2) weeks notice specifying the prospective period to be covered by the request, agree to furnish BMI weekly lists of each station's performances of all musical works, indicating the compositions performed by title and composer or by such other convenient method as may be designated by BMI, and whether such Campus Radio Broadcasting Station's broadcast signal was also transmitted over the Internet; but such lists need not be furnished for more than two (2) weeks for each Contract Year of the Term of this Agreement.

(b) LICENSEE shall deliver to BMI for each calendar quarter, by the tenth (10th) day following the end of the calendar quarter, copies of any programs of the musical works presented by LICENSEE in its Musical Attractions or on LICENSEE's Web Site(s) during such quarter. Programs prepared for audiences or for the LICENSEE's own use are to be included, and shall include the presentation of encores to the extent possible. Nothing contained herein shall be deemed to require LICENSEE to deliver material not otherwise prepared.

(c) In connection with Paragraph 12(d) LICENSEE shall report to BMI on forms to be supplied by BMI all Musical Attractions as defined in Paragraph 1(n) which were presented or promoted exclusively by LICENSEE during the immediately preceding academic year. Attached to each report of Musical Attractions submitted by LICENSEE shall be lists of the musical works presented in LICENSEE's Musical Attractions indicating the compositions performed by title and composer or by such other convenient method as may be designated by BMI.

(d) To assist BMI with the distribution of royalties to its affiliated songwriters, composers and music publishers, at BMI's request, and on forms to be supplied by BMI, LICENSEE will provide BMI true, accurate and complete lists of all production music libraries and composers directly hired by LICENSEE's Cable Television System to compose original music for programming licensed hereunder. At BMI's written request, LICENSEE will also provide lists of the channel line-up for LICENSEE's Cable Television System licensed hereunder as of the last day of each year (i.e., December 31) within the Term.

### List of Additional Branch Campuses

(Enrollment figures should include all branch campuses that are covered under this Agreement)

| Institution Name | Branch Address | FICE Code Number |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

### Exhibit A

| Web Site Name | URL (Example: school.edu) |
|---|---|
| | |
| | |
| | |
| | |

**Attach List If More Space Required**

## AGREEMENT

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

| **LEGAL NAME** | **NAME OF INSTITUTION** |
|---|---|
| *(Legal Name of LICENSEE)* | *(Name of Institution)* |
| **PREMISES ADDRESS**<br>**A college, university or other post-secondary institution of higher education with its principal offices at:** | **MAILING ADDRESS**<br>**(If different from Premises Address)** |
| *(Street Address)* | *(Street Address)* |
| *(City)* *(State)* *(Zip)* | *(City)* *(State)* *(Zip)* |
| *(Telephone Number)* *(Fax Number)* | *(Telephone Number)* *(Fax Number)* |
| *(Contact Name)* *(Title)* | *(Contact Name)* *(Title)* |
| *(Email Address)* | *(Email Address)* |
| *(Web Address)* | **GOVERNMENT ENTITIES**<br>**(if applicable, please check one)**<br>☐ Federal ☐ State _____ *(State)*<br>☐ Local _____ *(Municipality and State)* |
| **FICE Code Number** | |

| **TO BE COMPLETED BY LICENSEE** | **FOR ADMINISTRATIVE USE ONLY** |
|---|---|
| **By signing this Agreement you represent that you have the authority to bind LICENSEE and that you have read, understood, and agree to all of the terms and conditions herein.**<br>***PLEASE INCLUDE REPORT FORM AND PAYMENT***<br>**X** | **TO BE COMPLETED BY BMI**<br>BROADCAST MUSIC, INC. |
| *(Signature)* | |
| *(Print Name / Title)* | |
| *(Signatory Email Address*)*<br>*(if different from above)*<br>***In order to receive a copy of your executed Agreement, please provide the email address of the Signatory** | |

| **FOR BMI USE ONLY** | | **COLL2** | **LI-2017/SEPT** |
|---|---|---|---|
| | | | **EFFECTIVE: January 2017** |
| **ACCOUNT NO.** | **COID** | | |

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