

## COLLEGES AND UNIVERSITIES LICENSE AGREEMENT (One Tier)

Agreement made and entered into this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_ (the “Effective Date”), by and between the AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, with its principal offices located at One Lincoln Plaza, New York, New York 10023, hereinafter referred to as “ASCAP”, and

[, a College or University with its principal offices located at](#)

hereinafter referred to as “Licensee”.

WITNESSETH:

WHEREAS, ASCAP’s writer and publisher members have authorized ASCAP to license, on a non-exclusive basis, non-dramatic public performances of their copyrighted musical compositions; and

WHEREAS, Licensee is an institution of higher education and desires to perform publicly and non-dramatically the copyrighted musical compositions in ASCAP’s repertory during the period hereof.

Now, therefore, the parties hereto mutually agree as follows:

### 1. Definitions

As used in this Agreement,

- (a) The term “Licensee” shall include the named institution and any of its constituent bodies, agencies or organizations, including, but not limited to, any organization such as a fraternity, sorority, social club or other organization affiliated with Licensee and located on or off Licensee’s campus, which is operated for the benefit of Licensee or its faculty, staff, students or alumni.
- (b) The term “premises” shall include Licensee’s campus(es) and any site located off Licensee’s campus which has been engaged by Licensee for use by Licensee and any of its constituent bodies, agencies or organizations, including, but not limited to, those locations where college groups such as bands or choruses perform as part of their non-profit, community outreach and educational activities, provided that such events are not promoted or sponsored by a third party.
- (c) The term “full-time student” 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 Paragraph is changed by the Integrated Post-Secondary Education Data System (IPEDS) or any superseding survey conducted annually by the Department of Education, such different method of conversion shall be deemed substituted in said Subsection (ii) as of the effective fall academic term.
- (d) The term “musical attractions” shall mean concerts, shows, recitals, dances and other similar performances.
- (e) The term “school year” shall mean the twelve-month period commencing September 1 of any calendar year during the term hereof.
- (f) The term “CPI adjustment” shall mean the difference in the Consumer Price Index, All Urban Consumers - (“CPI-U”), as determined by the United States Department of Labor, between the preceding July and July of the specified year.
- (g) “Internet Site or Service” shall mean a site or service accessible via the Internet or a similar transmission facility from which audio content is transmitted to “Users” and from which Users may download or otherwise select particular musical compositions or programs containing musical compositions and that has either the principal Universal Resource Locator (URL) of \_\_\_\_\_ or any other URL operated or maintained by Licensee, including the websites of Licensee owned and operated Radio Stations.
- (h) “Internet Transmissions” shall mean all transmissions of content to Users from or through Licensee’s Internet Site or Service, or from any other Internet site or service pursuant to an agreement between Licensee and the operator of the other Internet site or service, when accessed by means of any connection from Licensee’s Internet Site or Service.
- (i) “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.

(j) "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.

(k) "Intranet Transmissions" shall mean transmissions 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.

(l) "Radio Station" shall mean a radio station licensed for non-commercial educational broadcasting that is not qualified under the rules of the Corporation for Public Broadcasting for receipt of community service grants.

(m) "Users" means all those who access Internet Transmissions.

## **2. Term of License**

This Agreement shall be for an initial term of five (5) years, commencing July 1, 2007, which shall be considered the Effective Date of this Agreement, and shall automatically renew thereafter for additional terms of one (1) year each unless terminated by either party by giving notice of termination to the other party no later than thirty (30) days prior to the end of the initial or any renewal term. If such notice is given, the agreement shall terminate on the last day of the term in which notice is given.

## **3. Grant of License**

ASCAP hereby grants to Licensee for the term of this Agreement a non-exclusive license to perform publicly, or cause the public performance, on Licensee's premises, of non-dramatic musical compositions now or hereafter during the term hereof in the repertory of ASCAP, and of which ASCAP shall have the right to license such performing rights. Such performances shall include performances presented under the auspices of Licensee, including, but not limited to, performances by faculty, staff, students or alumni of Licensee while performing under the auspices of Licensee and shall include performances by means of Internet Transmissions, including webcasts of Licensee owned and operated Radio Stations, Intranet Transmissions and Licensee's Cable Television System.

## **4. Limitations on License**

(a) This license is not assignable or transferable by operation of law or otherwise, and is limited to the Licensee and to the premises.

(b) This license does not authorize the broadcasting, telecasting or transmission by wire or otherwise, of renditions of musical compositions in ASCAP's repertory to persons outside of the premises, other than by means of (i) music-on-hold telephone systems operated by Licensee at the premises; (ii) Licensee's Internet Site or Service; (iii) Licensee's Intranet transmissions; and (iv) Licensee's Cable Television System.

(c) This license does not authorize performances at any musical attraction that is co-sponsored, co-promoted or co-presented by Licensee and any other entity engaged in the business, whether for-profit or not-for-profit, of promoting or presenting musical attractions.

(d) This license does not authorize any performance by means of a coin-operated phonorecord player (jukebox) otherwise covered by the compulsory license provisions of 17 U.S.C. Paragraph 116.

(e) This license is limited to non-dramatic performances, and does not authorize any dramatic performances. For purposes of this Agreement, a dramatic performance shall include, but not be limited to, the following:

- (i) performance of a "dramatico-musical work" (as hereinafter defined) in its entirety;
- (ii) performance of one or more musical compositions from a "dramatico-musical work" (as hereinafter defined) accompanied by dialogue, pantomime, dance, stage action, or visual representation of the work from which the music is taken;
- (iii) performance of one or more musical compositions as part of a story or plot, whether accompanied or unaccompanied by dialogue, pantomime, dance, stage action or visual representation;
- (iv) performance of a concert version of a "dramatico-musical work" (as hereinafter defined).

The term "dramatico-musical work" as used in this Agreement shall include, but not be limited to, a musical comedy, opera, play with music, revue or ballet.

(f) ASCAP 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 on a claim that such composition infringes a composition not contained in ASCAP's repertory, or on a claim that ASCAP does not have the right to license the performing rights in such composition.

(g) This license, to the extent it covers Licensee's Internet Site or Service, is limited to performances presented by means of Internet Transmissions, and by no other means; provided, however, that (i) nothing in this Agreement authorizes such performances when transmitted from Licensee's Internet Site or Service pursuant to an agreement between Licensee and any other Internet site or service operator, when accessed by means of a connection from that other Internet site or service, even if such performances fall within the definition of Internet Transmissions; and provided further, that (ii) if Licensee is an Internet access provider, nothing in this Agreement authorizes such performances when transmitted from or through any homepage(s) hosted on Licensee's Internet Site or Service for those for whom Licensee provides Internet access, provided however, that this license shall cover webpages maintained by Licensee's departments, schools, centers and other units, as well as by faculty and staff as part of their official duties and responsibilities to Licensee.

(h) Nothing in this Agreement grants to Licensee, or authorizes Licensee to grant to any User or to anyone else, any right to reproduce, copy or distribute by any means, method or process whatsoever, any of the musical compositions licensed by this Agreement, including but not limited to, transferring or downloading any such musical compositions to a computer hard drive or otherwise copying the composition onto any other storage medium.

(i) Nothing in this Agreement grants to Licensee, or authorizes Licensee to grant to anyone else, any right to reproduce, copy, distribute or perform publicly by any means, method or process whatsoever, any sound recording embodying any of the musical compositions licensed under this Agreement.

## 5. License Fees, Reports and Payments

(a) In consideration of the license granted herein, for the following periods, Licensee agrees to pay ASCAP a Base or Minimum License Fee and a Cable License Fee, if applicable, for performances of Locally Originated Programming by means of Licensee's Cable Television System.

(i) The Base License Fee and the Cable License Fee, if applicable, shall each be based on the number of fulltime students during the fall of each year of this Agreement:

<b>Period</b>	<b>Minimum and Base License Fee</b>	<b>Cable License Fee</b>
July 1, 2007- June 30, 2008	Greater of \$257 or 32 cents per full-time student	6.10 cents per full-time student
July 1, 2008- June 30, 2009	Greater of \$257 or 32 cents per full-time student	6.10 cents per full-time student

(ii) The Base, Minimum and Cable License Fee for the contract year commencing July 1, 2009 and each subsequent contract year of this Agreement shall be the Base, Minimum and Cable license fees for the preceding contract year, adjusted in accordance with the CPI Adjustments as defined above.

(iii) In the event that at any time during the initial term of the License the total annual fees payable by Licensee to another performance rights organization for the same performance rights as included herein ("Comparable Fees") exceed the total Base, Minimum and Cable License Fees payable by Licensee hereunder for such year, ASCAP may terminate this Agreement with thirty (30) days written notice.

(iv) Licensee shall report to ASCAP the number of full-time students during the fall of each year by November 1 of each year. Licensee shall also report at that time whether it provides Locally Originated Programming by means of a Cable Television System. License fees shall be payable by January 20 of each year of this Agreement.

(b) All license fees based upon the number of full-time students payable pursuant to Paragraphs 5(a) shall be computed to the nearest tenth of a cent.

(c) Licensee agrees to report to ASCAP, on forms supplied free of charge by ASCAP, simultaneously with payment of said license fees, Licensees' total full-time student enrollment.

(d) In the event Licensee shall fail to pay license fees due hereunder by April 30 of the year in which they are due, Licensee agrees to pay a finance charge on the license fees due of 1½ % per month, or the maximum rate permitted by the law of the state in which Licensee is located, whichever is less, from the date such license fees became due.

(e) Licensee agrees to furnish quarterly to ASCAP copies of all programs of musical works performed by Licensee in each of its musical attractions presented during the previous quarter, which are prepared for distribution to the audience or

for the use or information of Licensee or any department thereof, and program schedules for Licensee's Cable Television System. Copies of programs of Licensee's musical attractions shall include all encores to the extent possible. Licensee shall be under no obligation to furnish such programs when they have not been otherwise prepared.

## **6. Reservation of Rights**

The parties hereto expressly reserve all rights and privileges accorded by the Copyright Act of 1976, as amended, and other applicable laws.

## **7. Breach or Default**

Upon any breach or default of the terms and conditions of this Agreement, ASCAP may terminate this Agreement by giving Licensee thirty (30) days notice in writing to cure such breach or default, and in the event such breach or default has not been cured within said thirty (30) days, this Agreement shall terminate on the expiration of such thirty (30)-day period without further notice from ASCAP. The right to terminate shall be in addition to any and all other remedies which ASCAP may have. In this event of such termination, ASCAP shall refund to Licensee any unearned license fees paid in advance.

## **8. Interference in ASCAP's Operations**

In the event of:

- (a) Any major interference with the operation of ASCAP 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 which is applicable to the licensing of performing rights; or
- (b) Any substantial increase in the cost to ASCAP 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

ASCAP 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. The written notice provided by ASCAP shall explain the specific reason why it is terminating the license.

## **9. Indemnity Clause**

ASCAP agrees to indemnify, save and hold harmless and to defend Licensee from and against all claims, demands and suits that may be made or brought against it with respect to the non-dramatic performance under this Agreement of any compositions in ASCAP's repertory which are written or copyrighted by members of ASCAP. Licensee agrees to give ASCAP prompt notice of any such claim, demand or suit and agrees immediately to deliver to ASCAP all papers pertaining thereto. ASCAP shall have full charge of the defense of any such claim, demand or suit and Licensee shall cooperate fully with ASCAP in such defense. 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. ASCAP agrees at the request of Licensee to cooperate with and assist Licensee in the defense of any action or proceeding brought against it with respect to the performance of any musical compositions contained in the ASCAP repertory, but not copyrighted or written by members of ASCAP. This Paragraph 9 shall not apply to performances of any works that may be restricted under Paragraph 4(f) of this Agreement.

## **10. Availability of Other License Agreements**

In the event ASCAP offers any other type of license agreement to colleges or universities, Licensee may elect to enter into such other type of license agreement. Such election shall be prospective only, shall be effective at the beginning of the school year, and shall be accomplished by serving written notice on ASCAP of such election at least thirty (30) days prior to the commencement of said school year.

**11. Notices**

All notices shall be given in writing by United States certified mail sent to either party at the address stated above. Notices to ASCAP shall be made to the attention of: Director, Symphonic and Educational Licensing. Notices to Licensee shall be made to the attention of \_\_\_\_\_. Each party agrees to inform the other of any change of address.

**12. Modification of Agreement**

This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof. 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. Licensee recognizes that ASCAP must license all similarly situated users on a nondiscriminatory basis. Licensee agrees that any modifications to this Agreement by ASCAP, which are required by local, state or federal law for other colleges or universities, shall not constitute discrimination between similarly situated users. Examples of such modifications are statements of equal employment opportunity or nondiscrimination on the basis of race, creed, color, sex or national origin.

**13. Execution**

This Agreement may be signed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same agreement. Facsimile signatures shall be treated as original signatures for all purposes hereunder.

IN WITNESS WHEREOF, this Agreement has been executed in duplicate original by the duly authorized representatives of ASCAP and Licensee all as of the Effective Date.

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.)