High School Music License

1. DEFINITIONS

(a) **"Licensed Premises"** as used herein shall mean the High School known as _____.

(b) **"Premises"** shall include LICENSEE's school buildings and fields and any site located off LICENSEE's property that has been engaged for use by LICENSEE, including, but not limited to, those locations where High School 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.

(c) **"Enrolled Students"** as used herein shall be the total number of students enrolled at the High School at the start of the Fall 2018 academic term, and at the start of each subsequent academic year as this agreement shall be extended. Student counts shall be reported for the Fall 2018 upon execution of this agreement.

(d) **"Base Student Fee"** for the 2018-2019 Contract Year shall be the fee in appearing in the table at paragraph 12(a) based on the number of Enrolled Students at the High School; the fees in the table in paragraph12 shall be subject to a CPI Adjustment for each subsequent Contract Year, rounded to the nearest tenth of a cent, for calculating the Base Student Fee for each year covered by the agreement.

(e) **"Minimum Annual Fees"** shall mean that in no event shall the Total Base Student Fee for any Contract Year be less than the Minimum Annual Fee each year. The Minimum Annual Fee for Contract Year 2018-19 shall be $150.00; this Minimum Fee shall be subject to a CPI Adjustment for each subsequent Contract Year, rounded to the nearest cent.

(f) **"Compulsory Radio Station Rate"** shall mean the fee for non-commercial educational radio stations established under Section 118 of the U.S. Copyright Act. The Compulsory Radio Station Rate, as defined above, for Contract Years 2018-22 is outlined in Schedule A in Paragraph 2 herein.

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

(h) **"Total High School Radio Station Fee"** shall mean the total number of High School Radio Stations multiplied by the Compulsory Rate outlined in paragraph 12(b).

(i) **"CPI Adjustment"** shall mean the adjustment made to the fees in the table in paragraph 12(a) used to calculate the Base Student Fee, as well as the Minimum Annual Fee in each subsequent Contract Year, as determined 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 Fees in the table at Paragraph 12 payable for the 2019-2020 Contract Year, as compared to the Base Student Fee payable for the 2018-2019 Contract Year, will be adjusted based upon the percentage difference between the CPI-U in July 2019 and the CPI-U in July 2018

(j) **"Term"** shall mean the period commencing July 1, 2018 and ending June 30, 2019 (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".

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

(l) **"Orchestra"** shall mean a High School 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 school, which also has ultimate fiscal responsibility for the Orchestra, and is governed by the institution, a steering committee or other similar body, and not a separate board of directors independent from the school.

(m) **"Website"** 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 Website is primarily educational in nature and is operated for the primary purpose of promoting the High School and its resources to current and prospective students, faculty, staff, alumni, and the local school community. For the avoidance of doubt, if LICENSEE owns or operates any website(s) with commercial activities or programming, LICENSEE agrees that any such websites shall be separately licensed by BMI.

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

(o) **"Locally Originated Programming"** shall mean television programming produced or which is inserted locally by LICENSEE on LICENSEE's Closed Circuit 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.

(p) **"LICENSEE's Closed Circuit Television System"** shall mean a 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 premises, except that it shall not include free over-the-air broadcast television.

(q) **"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.

(r) **"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 Intranet Transmissions, Closed Circuit Television transmissions or High School Radio Station broadcasts 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, socials, high school theater groups, fairs/festivals, orchestras, Musical Attractions, fitness centers, athletic facilities, student bands, 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 Website Transmissions, including webcasts of High School Radio Broadcasting Stations, and LICENSEE's Closed Circuit Television System, with respect to Locally Originated Programming only. This license is available to High Schools with Enrollments of fewer than 6,000 students.

This grant of rights 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 Intranet Transmissions; (ii) Licensee's Website Transmissions; (iii) Licensee's High School Radio Station; or (iv) LICENSEE's Closed Circuit 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) This agreement does not cover performances of arrangements or adaptions of BMI Works that require the permission of the composer of the underlying work to qualify as a derivative work, unless such permission has been obtained;

(e) 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;

(f) performances by commercial radio stations; or

(g) LICENSEE's student participation in national or regional sporting tournaments and competitions, and national or regional music and arts competitions, as the music licensing obligations for those events are licensed by the state and regional associations which organize the events or by the Music Educators National Conference.

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): the Base Student Fee and the High School Radio Station Fee. The Base Student Fee and High School Radio Station Fee shall be reported and paid together.

The Table for Base Student Fees in 2018-19 is as follows:

Enter Student Count: _____	**Student Fee**
0-499	$150
500-999	$250
1,000-1,999	$550
2,000-2,999	$900
3,000-3,999	$1,250
4,000-5,999	$1,800
If student count 6,000 or greater, please contact BMI at (888) 689-5264	

(b) The Compulsory Rate for each High School Radio Station is as follows:

Check Appropriate Box	**Number of Enrolled Students**	**Calendar Years**				
		2017-18	**2018-19**	**2019-20**	**2020-21**	**2021-22**
Level 1 ☐	< 1,000	$352	$359	$366	$373	$380
Level 2 ☐	1,000 – 4,999	$407	$415	$423	$431	$440
Level 3 ☐	5,000 – 5,999	$557	$568	$579	$591	$603

NOTE: If your station is a low power station, please be advised that the lowest Level 1 fee, as set forth above for each of the five years, shall apply to any High Radio Station with an authorized effective radiated power (ERP), as that term is defined in 47 C.F.R. § 73.310(a), of 100 Watts or less, as specified on its current FCC license. This fee applies to such low power stations regardless of the size of the student population. Please also note that, for purposes of the Compulsory Fee as outlined herein, only full time students (graduate and under-graduate) are included in the student count. The Compulsory Fee payment you make to BMI for each contract year covers the compulsory license fee for the radio station for the entire calendar year under the applicable Compulsory License period. You will be billed the applicable calendar year amount when your BMI High School License invoice is sent in January.

(c) The Total Base Student Fees due BMI pursuant to this Agreement for the 2018-2019 Contract Year shall be paid by LICENSEE to BMI on or before February 1, 2019. 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 Enrolled 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 High School Radio Broadcasting Station(s), and such other information as BMI may reasonably require with regard to any High School 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.

(d) All license fees based upon the number of Enrolled Students shall be computed to the nearest tenth of a cent and all minimums to the nearest cent.

13. REPORTING OF MUSICAL WORKS

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

(a) All High School 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 High School 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 Website(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.

Exhibit A

Web Site Name	**URL (Example: school.edu)**

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 HIGH SCHOOL**
(Legal Name of LICENSEE)	*(Name of High School)*
PREMISES ADDRESS **A college, university or other post-secondary institution of higher education with its principal offices at:**	**MAILING ADDRESS** **(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** **(if applicable, please check one)** ☐ Federal ☐ State _____ *(State)* ☐ 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. ***PLEASE INCLUDE REPORT FORM AND PAYMENT*** **X**	**TO BE COMPLETED BY BMI** BROADCAST MUSIC, INC.
(Signature)	
(Print Name / Title)	
(Signatory Email Address)* *(if different from above)* ***In order to receive a copy of your executed Agreement, please provide the email address of the Signatory**	
PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO: **BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203**	**FOR BMI USE ONLY** **HSC** **LI-2018/MAR** **ACCOUNT NO.** **COID** **EFFECTIVE: March 2018**