

**CAMPUS MUSIC SERVICE
LICENSING AGREEMENT**

This agreement ("**Agreement**") is entered into as of _____ ("**Effective Date**") by and between Massachusetts Institute Technology ("**Licensee**"), a _____ corporation located at _____, and The Harry Fox Agency, Inc. ("**HFA**"), a New York corporation with an office at 711 Third Avenue, New York, NY 10017.

WHEREAS, Licensee owns and operates a service pursuant to which copyrighted musical compositions ("**Musical Works**") are digitally reproduced on a central computer server or servers, and are made available solely for analog-only playback through a closed-circuit system that is accessible only at various points located on the physical campus of Licensee ("**Service**"); and

WHEREAS, in order to operate the Service, Licensee seeks licenses to make Server Fixations (as below defined) of Musical Works that are owned and/or controlled by publisher-principals affiliated with HFA ("**Publisher- Principals**"); and

WHEREAS, HFA is prepared to issue such licenses to the extent it is authorized to do so by such Publisher- Principals;

NOW, THEREFORE, in consideration of the promises contained in this Agreement and for other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Licensing

1.1 Pursuant to the terms of this Agreement, and as more particularly described herein, upon receipt of appropriate license requests ("**License Requests**") from Licensee, HFA shall, to the extent authorized by particular Publisher-Principals, issue on behalf of such Publisher-Principals nonexclusive licenses ("**Licenses**") to reproduce Musical Works owned and/or controlled by such Publisher-Principals ("**Licensed Works**") for use on Licensee's Service in accordance with the terms of this Agreement. The license authority contemplated hereunder and granted pursuant to any License issued hereunder shall include and is limited to the digital reproduction of Licensed Works on a central computer server or servers owned and/or controlled by Licensee and located in the United States (including its territories and possessions and the Commonwealth of Puerto Rico (collectively, the "**United States**")) ("**Servers**") and digital reproduction of related Backup Copies (as below defined), solely for use in connection with the Service ("**Server Fixations**"). The license authority under any License issued hereunder is limited to and granted solely with respect to (x) the copyright interests of the individual Participating Publisher-Principal(s) (as below defined) on whose behalf the License is issued by HFA; and (y) the particular individual sound recording embodying the individual Licensed Work. A "**Backup Copy**" is a computer backup copy of a validly licensed Server Fixation of a Musical Work made on computer equipment owned and/or controlled by Licensee and located in the United States; provided, however, that any such Backup Copy is made, maintained and used only for bona fide backup purposes and not for any regular operation of the Service, i.e., exists only to enable the replacement or restoration of a Server Fixation that has been lost or rendered inaccessible due to a failure of computer hardware.

- 1.2 The authority of HFA to issue Licenses for any individual Musical Work on behalf of any one or more Publisher- Principals (as below defined) is subject to the approval of the relevant Publisher- Principal(s). Before commencing to issue licenses hereunder, HFA shall for a period of approximately four weeks (the "**Opt-In Period**") offer to its Publisher- Principals the opportunity to agree to make their Musical Works available for licensing under this Agreement by notifying HFA of their desire to opt in to the Agreement. Notwithstanding the decision to opt in by any individual Publisher- Principal, thereby rendering such Publisher- Principal a "**Participating Publisher- Principal**," if such Participating Publisher- Principal at any time requests that HFA not issue Licenses on its behalf (either with respect to a particular Musical Work or in general), HFA will honor that request; provided, however, that any Licenses validly issued by HFA prior to the receipt of such a request shall remain in effect until the Term (as below defined) of this Agreement expires.
- 1.3 Following execution of this Agreement and conclusion of the applicable Opt-In Period, Licensee may begin submitting License Requests in electronic form in accordance with the format specified in Exhibit A (as such format may be modified from time to time by HFA upon reasonable notice to Licensee) ("**Request Format**"), which License Requests shall be duly processed by HFA. Without limitation, Licensee shall include in each License Request to the extent required by the Request Format (a) the title of the Musical Work for which a License is being requested; (b) the writer(s) of the Musical Work; (c) the publisher(s) of the Musical Work; (d) the name of the record company that produced the sound recording embodying the Musical Work; (e) the name of the artist performing such sound recording; (f) the ISRC number for such sound recording; (g) the total playing time of such sound recording in its complete form, expressed in minutes and seconds; (h) the title of an album for which such sound recording has been previously licensed; and (i) such other information as may be required by HFA's Request Format.
- 1.4 HFA shall from time to time provide to Licensee an electronic file specifying the Licenses issued under this Agreement (each such report a "**Confirmation Report**"). To aid Licensee in the calculation of royalties, with respect to each License, such Confirmation Report shall include, *inter alia*, the total percentage ownership share of the Participating Publisher- Principal(s) on whose behalf the License has been issued.
- 1.5 For the avoidance of doubt, and without limitation, the Licenses granted hereunder do not extend to or cover: (a) any right to distribute Musical Works; (b) any right to digitally transmit Musical Works except to the extent required to engage in activities expressly authorized under this Agreement; (c) any right of public performance; (d) any copyrights or other rights in sound recordings; (e) any rights to synchronize musical works with visual images resulting in audiovisual works; (f) any print, display or karaoke rights; (g) any adaptation (derivative work) rights or right to alter the fundamental character of a Musical Work; (h) any merchandising rights; (i) any use of a musical work (whether or not embodied in a sound recording) for a marketing campaign, product tie-in, game or contest or otherwise to advertise, promote or cross-promote any product or service; or (j) any use of the title of a musical work, or the name or likeness of any writer, publisher or artist associated with a musical work, except for identification purposes as described in Section 4. For the purpose of advising Publisher- Principals who may wish to know, Licensee represents that it has obtained public performance licenses for the Service from ASCAP, BMI and SESAC.
- 1.6 The license authority contemplated by this Agreement and granted pursuant to any License issued hereunder is limited to Licensee and may not be sublicensed, assigned or otherwise transferred by Licensee.

2. Reporting and Payment of Royalties

- 2.1 Licensee shall account and pay royalties to HFA quarterly, within forty-five (45) days after the end of each calendar quarter, on the basis of each Server Fixation of a particular individual sound recording embodying a Licensed Work. Licensee shall provide its quarterly statements ("**Statements**") in electronic form in accordance with the format specified in Exhibit B (as such format may be modified from time to time by HFA upon reasonable notice to Licensee) ("**Reporting Format**"). With respect to each quarterly reporting period, for each License, Licensee shall include in its Statement (w) the HFA License number; (x) the number of Server Fixations made pursuant to that License; (y) the total royalty amount being paid for such Server Fixations; and (z) such other information as may be required by HFA's Reporting Format. Interest on late payments shall be payable to HFA at the rate of prime plus two percent (2%) calculated from the date the royalties were due to be paid under the applicable reporting period to the date of ultimate payment to HFA. Notwithstanding the foregoing, Licensee shall not be obligated to report or pay royalties for the making of Backup Copies or the use of Backup Copies to replace or restore Server Fixations that have already been reported and for which payment has already been made.
- 2.2 For each Server Fixation, the royalty shall be \$0.10 (ten cents); provided, however, that this amount shall be proportionately reduced to the extent that the Participating Publisher-Principal(s) on whose behalf the License is granted own(s) or control(s) less than 100% of the Work.

3. Term

The term of this Agreement shall commence as of the Effective Date and terminate on December 31, 2006 (the "**Term**"). If Licensee wishes to renew this Agreement for an additional two (2) year term, it shall notify HFA of such desire not later than a date six (6) months prior to the end of the Term. Such notification shall include proposed terms for any such renewal. Any renewal shall be subject to the approval of individual Publisher-Principals as described in Subsection 1.2, and HFA reserves the right to propose changes to administrative and other aspects of the Agreement as it deems appropriate.

4. Writer/Publisher Credit

Licensee shall, to the extent commercially reasonable, include in any graphics and/or imagery displayed in connection with the play of any Licensed Work written credit in legible form setting forth the names of the writer(s) and publisher(s) of such Licensed Work.

5. Security

- 5.1 In connection with the use of any Licensed Work, Licensee shall implement and maintain copy protection and digital rights management technology and systems, including software and/or hardware functional limitations (collectively, "**Security Systems**") with respect to all aspects of the Service, including without limitation its Servers and operating systems, that (a) are designed to prevent unauthorized reproduction and distribution of the Licensed Work; (b) are sufficient to track and enforce the use limitations contemplated by this Agreement; and (c) meet or exceed current industry standards as they exist from time to time for the digital reproduction and maintenance of sound recordings of Musical Works on computer servers and as computer backup copies for the purpose of operating a licensed music service.

- 5.2 In the event it becomes aware of a breach of Licensee's Security Systems ("**Security Breach**"), whether through its own monitoring efforts, upon being advised by another party (including HFA) or otherwise, Licensee shall use its best efforts to resolve the Security Breach and restore the full integrity of its Security Systems as quickly as possible. If a solution to the Security Breach is not immediately available (i.e., cannot be implemented within twenty-four (24) hours from the time Licensee becomes aware of the Security Breach), Licensee shall (a) promptly notify HFA of the Security Breach in writing (unless Licensee learned of the breach from HFA); and (b) cease all further reproduction of Licensed Works to the extent such activities are or could possibly be affected by the Security Breach, pending full resolution of the Security Breach. In such a case, Licensee (y) shall keep HFA reasonably apprised of the status of its efforts to resolve the Security Breach; and (z) shall not resume the activities that were suspended pursuant to this Subsection 5.2 until the full integrity of its Security Systems has been restored.
- 5.3 To the extent Licensee employs third-party technology in order to operate, Licensee shall use its best efforts to maintain and upgrade such technology by (a) diligently monitoring any third-party notifications of bug-fixes, security holes and functionality improvements; and (b) obtaining any available upgrades and bug-fixes, and installing, testing and distributing such upgrades and bug-fixes as necessary so as to maintain the integrity of its Security Systems.
- 5.4 Licensee shall use its best efforts to prevent any unauthorized reproduction, distribution or other use of Musical Works by operators and users of the Service and/or in any facility, on any device, or by any person under the supervision and/or control of Licensee.

6. Royalty and Security Compliance

- 6.1 Notwithstanding, without limiting and in addition to the general right of HFA and/or any Participating Publisher-Principal pursuant to industry custom and practice to examine the books and records of Licensee in connection with Licensee's use of Musical Works, HFA shall be entitled, upon thirty (30) days' notice to Licensee, to conduct an examination of the books, records, operations and Security Systems of Licensee ("**Royalty and Security Examination**") to determine whether Licensee is in compliance with its reporting, royalty and security obligations under this Agreement. Absent a good-faith basis to believe that Licensee is not in compliance with such obligations, HFA shall not seek to initiate a Royalty and Security Examination more than once every twelve (12) months or more than six (6) years following the termination of this Agreement.
- 6.2 During the course of a Royalty and Security Examination, upon request by HFA or an examiner acting on its behalf, Licensee shall, within three (3) business days (a) provide access to any information that may be called for by such request, including without limitation any (i) books, records, files, logs, reports, compilations, usage data and other documentation, whether in paper or electronic form, that were or could be used or required to generate or verify Licensee's Statements and/or that reflect or summarize Licensees' Statements; (ii) financial information, including books, records, ledgers, reports, and other documentation, reflecting cash receipts and general revenue accounts to the extent such information relates directly or indirectly to the activities licensed under this Agreement; and (iii) files, logs, reports, compilations, testing and monitoring data and other documentation related to and/or reflecting the operation and integrity of Licensee's Security Systems (such information, along with the information described in the items (a)(i) and (a)(ii) of this Subsection 6.2, collectively referred to as "**Documentation**"); and (b) through the assistance of personnel who are familiar with the technical and operational aspects of Licensee's computer, hardware, software, Security Systems (collectively, "**Operational Systems**") who are to be made available by Licensee, provide real-time and/or historical access to such Operational

Systems, as requested, sufficient to permit HFA or its examiner(s) to conduct meaningful tests and analysis to verify that (i) the Operational Systems are properly and accurately tracking and reporting the use of the Licensed Works, and royalties payable therefor, as contemplated by the terms of this Agreement; and (ii) the Operational Systems are in compliance with the security requirements set forth in Section 5 of this Agreement. Licensee shall provide the information, systems access and personnel required by this Subsection 6.2 free of charge and, unless otherwise agreed by HFA or its examiner(s), at Licensee's place of business.

- 6.3 During the course of and/or following completion of the Royalty and Security Examination, upon request by HFA or an examiner acting on its behalf, Licensee shall make available company personnel at an appropriate level of seniority and/or technical ability to discuss and/or resolve particular issues and findings arising out of such examination.
- 6.4 Licensee shall maintain any and all Documentation that reasonably might be expected to be relevant to HFA's conduct of a Royalty and Security Examination for a period of at least six (6) years following the expiration or termination of this Agreement, unless there is a Royalty and Security Examination in progress or not fully resolved as of the expiration of such period, in which case the Documentation shall be maintained until the Royalty and Security Examination is fully resolved to the satisfaction of HFA.
- 6.5 If a royalty examination reveals a nonpayment or underpayment of royalties due to HFA, the amounts determined to be owing shall be subject to interest payable at the rate of prime plus two percent (2%) calculated from the date the royalties were due to be paid under the applicable reporting period to the date of ultimate payment to HFA.

7. Representations and Warranties; Disclaimer; Indemnity

- 7.1 Licensee represents and warrants that: (a) it has the full right, power and authority to enter into and perform this Agreement in accordance with its terms and conditions; (b) it shall take all steps necessary to implement and shall comply with (i) its security obligations set forth in Section 5, and (ii) the requirements set forth in Section 9; and (c) the Service shall (i) neither infringe upon nor violate the intellectual property rights or other rights of any third party, and (ii) comply with all applicable laws, rules and regulations.
- 7.2 HFA represents and warrants that it has the full right, power and authority to enter into this Agreement and perform its obligations hereunder.
- 7.3 Licensee agrees to indemnify, defend and hold harmless HFA from and against any losses, injuries, damages, claims, expenses and costs (including without limitation reasonable attorneys' fees) incurred or suffered by HFA, arising from any third-party actions, claims, suits or legal proceedings of any kind, caused by, incident to or arising out of Licensee's failure to perform any of its obligations under this Agreement and/or breach of any of Licensee's representations, warranties or covenants hereunder.

8. Termination/Default

- 8.1 All license authority pursuant to Licenses issued hereunder shall terminate upon the expiration or termination of this Agreement (unless such Licenses are renewed pursuant to a renewal of this Agreement as contemplated under Section 3, in which case the terms of renewal shall apply as appropriate), and any further reproduction of any Licensed Work after the expiration of this Agreement shall be prohibited and actionable as an act of infringement under, and fully subject to the remedies provided by, the Copyright Act.

- 8.2 Notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, Licensee understands and agrees that in the event that (a) Licensee fails to account to HFA and pay royalties provided for in Section 2, HFA may provide written notice to Licensee that, unless the default is fully remedied within thirty (30) days from the date of the notice, this Agreement and any Licenses issued hereunder will be automatically terminated, and that such termination will render the further reproduction of any Licensed Work for which royalties have not been fully paid actionable as an act of infringement under Section 501 of the Copyright Act, and fully subject to the remedies provided by Sections 502 through 506 and 509 of the Copyright Act; (b) Licensee is in material breach or default of any of its obligations under this Agreement, HFA may provide written notice to Licensee that, unless the default is fully remedied within thirty (30) days from the date of the notice, this Agreement and any Licenses issued hereunder will be automatically terminated, and that such termination will render the further reproduction of any Licensed Work actionable as an act of infringement under Section 501 of the Copyright Act, and fully subject to the remedies provided by Sections 502 through 506 and 509 the Copyright Act. Licensee further understands and agrees that in the case of infringement, irreparable harm may be presumed, and HFA and/or any affected Publisher- Principal(s) shall be entitled as appropriate to injunctive relief, in addition to any other remedy that may be available at law or in equity and/or under this Agreement. For the avoidance of doubt, and without limitation, Licensee's breach of any of the obligations or restrictions imposed by Subsections 1.1, 1.5, 1.6 and 10.3 and Sections 2, 5, 6, 7, 9 of this Agreement shall be considered a material breach of, and default under, this Agreement.
- 8.3 To the extent permitted by applicable law, and without limitation, the occurrence of any of the following events shall also be considered a material breach of and default under this Agreement: (a) Licensee's dissolution and/or the liquidation of all of Licensee's assets; (b) the filing of a petition in bankruptcy or insolvency or for an arrangement or reorganization by, for or against Licensee; (c) the appointment of a receiver or trustee for all or a portion of Licensee's assets; (d) Licensee's assignment of assets for the benefit of creditors; (e) Licensee's insolvency; or (f) Licensee's inability to pay its debts as they become due. Upon the occurrence of any of the events described in items (a) through (f) of this Subsection 8.3, notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, this Agreement and all license authority pursuant to any Licenses granted hereunder shall terminate automatically without the requirement of any further action on the part of HFA or the Participating Publisher- Principals.
- 8.4 Notwithstanding, without limiting and in addition to any other remedy that may be available at law or in equity and/or under this Agreement, including without limitation the remedies set forth in Subsection 8.2, the breach of any of the provisions set forth in Section 5 shall entitle HFA and/or any relevant Publisher- Principal to specific performance of such provision and/or to terminate, effective immediately upon the giving of notice, the license authority pursuant to any License granted hereunder.
- 8.5 Notwithstanding the expiration or termination of this Agreement, Sections 2, 4, 5, 6, 7, 8, 9 and 10 shall to the extent applicable survive and continue to bind the parties and their legal representatives and successors.

9. Proprietary and Confidential Information

- 9.1 HFA shall have no obligation to perform its obligations hereunder unless and until Licensee enters into the Data Access and Use Agreement, attached hereto and incorporated herein as Exhibit C (the "**Data Access and Use Agreement**"), governing the nondisclosure and use of HFA Confidential Information (as defined in the Data Access and Use Agreement) by Licensee.

- 9.2 To the extent Licensee seeks to have a third-party individual or entity obtain access to HFA Confidential Information for purposes of obtaining and administering Licenses and otherwise fulfilling its obligations under this Agreement (each, a "**Third-Party Administrator**"), Licensee must obtain HFA's prior consent of each such Third-Party Administrator (such consent not to be unreasonably withheld). Upon HFA's consent to Licensee's use of such Third-Party Administrator, HFA will require that such Third-Party Administrator enter into a data access and use agreement with HFA substantially in the form of the Data Access and Use Agreement, prior to allowing such Third-Party Administrator access to any HFA Confidential Information.

10. Miscellaneous

- 10.1 Notices. All notices hereunder shall be in writing and shall be deemed effective (a) if provided by hand delivery, upon delivery; (b) if provided by overnight courier, one (1) business day following the date sent; and (c) if provided by registered or certified mail, return receipt requested, five (5) business days following the date mailed. Notices shall be sent to the following addresses:

If to HFA:

To the address set forth above. Attn: General Counsel. Fax: 212-922-3299.

If to Licensee:

To the address set forth above. Attn: _____
Fax: _____.

- 10.2 Publicity. Neither party shall issue any press release or other publicity document concerning this Agreement without the prior written consent of the other party.

- 10.3 Assignment. This Agreement may not be assigned.

- 10.4 Entire Agreement; Amendment. This Agreement represents the entire understanding of the parties with respect to the subject matter hereof, supersedes all prior and contemporaneous agreements and understandings of the parties with respect to the subject matter hereof, and may not be altered or amended except in a written instrument executed by both parties.

- 10.5 Governing Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, federal law and/or the laws of the State of New York (without giving effect to conflicts of law principles thereof), as may be applicable. With respect to any action or proceeding arising out of this Agreement, the parties (a) agree that the sole and exclusive venue for such action or proceeding shall be in a court of appropriate jurisdiction located in New York County, New York; (2) agree to the appropriateness of, and waive any objection concerning, the propriety and/or convenience of, proceeding in such venue; and (3) consent to the personal jurisdiction of such court.
- 10.6 Severability; Waiver. If a court should determine that any part of this Agreement is invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect. Performance of any obligation required of a party hereunder may be waived only by a written waiver signed by a duly authorized officer of the other party, which waiver shall be effective only with respect to the specific obligation described therein.
- 10.7 Headings. The titles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.
- 10.8 Assistance of Counsel. Each party hereto acknowledges that it has been represented by its own independent counsel, who has reviewed this Agreement and discussed the terms herein with his or her respective client prior to execution.
- 10.9 Counterparts. This Agreement may be executed in multiple counterparts and delivery of an executed counterpart may be made by facsimile, each such counterpart to be considered and accepted as an original, and all such counterparts together to constitute a single Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date:

[LICENSEE]

By: _____
 Print name:
 Title:

THE HARRY FOX AGENCY, INC.

By: _____
 Print name:
 Title: