

LICENSE AGREEMENT

AGREEMENT dated as of this day of October 12 2005, 2005, by and between Recorded Anthology of American Music, Inc. d/b/a New World Records, a non-profit corporation organized under the laws of the State of New York, with offices at [text removed] (hereinafter "RAAM" or "Licensor"), and University of California-San Diego, a California state education corporation, with offices at University of California – San Diego [text removed] (hereinafter "Licensee").

For good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

I. Content of Licensed Materials; Grant of License

1. The materials that are the subject of this Agreement shall consist of a Web-based repository of sound recordings, composition manuscript material and related scholarly documentation known as the Database of Recorded American Music (hereinafter "DRAM" or "Database") that has been compiled by RAAM to facilitate the pedagogical use of American music in libraries and academic institutions (hereinafter the "Licensed Materials").
2. RAAM hereby grants to Licensee a non-exclusive, royalty-free license to use the Licensed Materials for educational and non-profit purposes in the United States of America and world-wide, to the extent that RAAM has the right to grant Licensee a world-wide license to use the Licensed Materials or any part of the Licensed Materials, and the right to provide the Licensed Materials to Authorized Users in accordance with the terms of this Agreement.
3. Licensee and its Authorized Users acknowledge that the copyright and title to the Licensed Materials and any trademarks or service marks relating thereto remain with RAAM. Neither Licensee nor its Authorized Users shall have right, title or interest in the Licensed Materials except as expressly set forth in this Agreement.

II. Delivery/Access of Licensed Materials to Licensee

1. The Database will be stored at one or more locations in digital form accessible by telecommunications links between such locations and Licensee's or Authorized Users' workstations. RAAM shall make DRAM available online in digital form to Licensee and Authorized Users within thirty (30) days of when this Agreement is signed and received by RAAM and the Database is publicly available, provided, however, that IP addresses or passwords shall have been provided to RAAM pursuant to Section II. 2. herein.
2. Access to the Database shall be controlled by RAAM through the use of IP addresses and/or, at RAAM's sole discretion, passwords. Licensee shall be responsible for verifying the status of Authorized Users, providing lists of valid passwords or sets of IP addresses to RAAM if applicable, and updating such lists on a regular basis. The terms and conditions of this Agreement shall apply to any such updates. Licensee shall cooperate with RAAM in the implementation of additional security procedures as they are developed.
3. Licensee shall inform RAAM if it makes use of a proxy server to provide access to DRAM, or if it becomes aware of a proxy server that is providing such access.

III. Authorized Users; Authorized Use of Licensed Materials

1. Authorized Users. "Authorized Users" include Licensee and all full and part-time students and employees (including faculty, staff, affiliated researchers, and independent contractors) of Licensee, regardless of the physical location of such persons, and patrons not affiliated with Licensee who are physically present at Licensee's site.
2. Authorized Uses. Licensee and Authorized Users may make full use of the Licensed Materials for research, education and other non-commercial uses subject only to the restrictions set forth in Section V of this Agreement. By way of illustration and not as any limitation of the foregoing right to use the Licensed Materials, Licensee and Authorized Users may use the Licensed Materials as follows for research, education or other non-commercial purposes:
 - a) Display. Licensee and Authorized Users shall have the right to electronically display textual and visual Licensed Materials and to access and listen to all audio Licensed Materials.
 - b) Digitally Copy. Licensee and Authorized Users may download and digitally copy a reasonable portion of the textual and visual Licensed Materials.
 - c) Databases. Authorized Users shall be permitted to extract or use textual or visual information contained in the Database for educational, scientific, or research purposes, including extraction and manipulation of information for the purpose of illustration, explanation, example, comment, criticism, teaching, research, or analysis.
 - d) Electronic Links. Licensee may provide electronic links to the Licensed Materials from Licensee's web page(s), including electronic reserve links for use of the Licensed Materials in connection with specific courses of instruction offered by Licensee, and is encouraged to do so in ways that will increase the usefulness of the Licensed Materials to Authorized Users.
 - e) Scholarly Sharing. Authorized Users may transmit to third party colleagues in hard copy or electronically, minimal, insubstantial amounts of the textual or visual Licensed Material for personal use or scholarly, educational, or scientific research or professional use but in no case for re-sale. In addition, Authorized Users shall have the right to use, with appropriate credit, excerpts from the textual or visual Licensed Materials in the Authorized User's own scientific, scholarly and educational works.
 - f) Interlibrary Loan. Licensee may fulfill requests for textual and visual content from other institutions, a practice commonly called Interlibrary Loan. Licensee agrees to fulfill such requests in compliance with Section 108 of the United States Copyright Law (17 USC 108, "Limitations on exclusive rights: Reproduction by libraries and archives") and clause 3 of the Guidelines for the Proviso of Subsection 108(g)(2) prepared by the National Commission on New Technological Uses of Copyrighted Works.

g) Fair Use. Licensee and Authorized Users may make all use of the Licensed Materials *as* is consistent with the Fair Use Provisions of the United States Copyright Law and international law. Nothing in this Agreement is intended to limit in any way whatsoever Licensee's or any Authorized User's rights under the Fair Use provisions of United States or international law to use the Licensed Materials.

h) Data Sharing. The Licensor and Licensee shall cooperate in gathering data on usage of the Database, and shall provide such data to each other upon request. The costs associated with these and all user studies will be absorbed by the Licensor with no cost to the Licensee. Notwithstanding the foregoing, the parties shall not provide data from which an individual user could be identified, unless such disclosure is reasonably necessary for pursuing a claim or investigation concerning alleged violation(s) of the Authorized Use or is in response to a subpoena, court order, or other legal proceeding.

IV. Access by and Authentication of Authorized Users

1. Authorized Users. Authorized Users shall be identified by the use of usernames and passwords and authenticated against Internet Protocol ("IP") address(es) provided by Licensee. Licensee shall not permit anyone other than Authorized Users to use the DRAM, or display or otherwise make available the Database to anyone other than Authorized Users.

2. Licensee shall use all reasonable efforts to protect DRAM from any use that is not permitted under this Agreement, and shall notify RAAM of any such use of which it learns or is notified. In the event of violation of the User Rules, Licensee agrees to consider the imposition of further restrictions on access to, and streaming from, the Database. RAAM and Licensee shall from time to time consult on the establishment of further measures to inform Authorized Users of the availability of DRAM and of the User Rules.

3. In the event of any unauthorized use of the Database by an Authorized User, (a) RAAM may suspend or terminate such Authorized User's access to DRAM, (b) upon notice to Licensee except in exigent circumstances, RAAM may suspend or terminate the access of the Internet Protocol ("IP") address(es) from which such unauthorized use occurred, and/or (c) Licensee shall suspend or terminate such Authorized User's access to the Database upon RAAM's request.

V. Restrictions on Use of Licensed Materials

1. Unauthorized Use. Licensee shall not knowingly permit anyone other than Authorized Users to use the Licensed Materials.

2. Copying or downloading of Audio Licensed Material. Licensee shall not copy or download audio Licensed Materials.

3. Modification of Licensed Materials. Licensee shall not modify or create a derivative work of the Licensed Materials without the prior written permission of RAAM.

4. Removal of Copyright Notice. Licensee may not remove, obscure or modify any copyright or other notices included in the Licensed Materials.

5. Commercial Purposes. Licensee may not use the Licensed Materials for bulk reproduction or distribution, or for peer-to-peer distribution of the Licensed Materials, or for commercial purposes including but not limited to the sale of the Licensed Materials.

VI. Monitoring Use: Maintaining Security and Protecting Privacy

1. Licensee shall use reasonable care to protect RAAM's rights in the Database and to prevent any unauthorized use or copying thereof.
2. Prior to the effective date of this Agreement, Licensee shall have demonstrated to RAAM's reasonable satisfaction that Licensee's Network is configured and procedures are in place to prohibit access to the Licensed Materials by any person other than as permitted hereunder. Licensee will make reasonable efforts to continue to effectively bar such access for so long as this Agreement remains in effect.
3. RAAM and Licensee agree to maintain the confidentiality of any data relating to the usage of the Licensed Materials by Licensee and its Authorized Users. Such data may be used solely for purposes directly related to the Licensed Materials and may only be provided to third parties in aggregate form. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party.

VII. Licensee Performance Obligations

Protection from Unauthorized Use. Licensee shall use reasonable efforts to inform Authorized Users of the restrictions on the use of the Licensed Materials. In the event that Licensee becomes aware of any unauthorized use of the Licensed Materials by an Authorized User, Licensee will take reasonable steps to terminate such Authorized User's access to the Licensed Materials and will reasonably cooperate with RAAM to prevent the recurrence of any unauthorized use. RAAM agrees that it will not take any steps to terminate an Authorized User's access to the Licensed Materials without first providing reasonable notice to Licensee and cooperating with Licensee to avoid any interruption of Licensee's access to the Licensed Materials.

VIII. Term

This Agreement shall commence upon execution hereof and continue in force until December 31, 2006

IX. Renewal

This Agreement shall automatically renew at the end of 2006, and each succeeding one (1) year term thereafter, unless either party gives written notice of its intention to terminate at least thirty (30) days before expiration of the then-current term. A subscription fee will apply for the first year, as set forth in Appendix A. The Licensee will be notified of that fee amount at least 60 days before the end of the current term.

IXa. Fees

Licensee shall be responsible for all acosts associated with accessing the Database, including but not limited to any telecommunications or other charges imposed by carriers, proprietary network operators and Internet service providers, or licenses for browser software, if any, as well as for all costs associated with printing from and/or listening to works from the Database.

X. Termination

1. In the event that either party materially breaches any obligations under this Agreement, such party shall so notify the breaching party in writing. The breaching party shall have sixty (60) days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the sixty (60) days, the non-breaching party shall have the right to terminate the Agreement without further notice.

2. Upon expiration or termination of this Agreement for cause, online access to the Licensed Materials by Licensee and Authorized Users shall be terminated. Authorized copies of Licensed Materials may be retained by Licensee or Authorized Users and used subject to the terms of this Agreement.

3. In the event of an early termination of this Agreement because the Licensed Materials are moved from Licensor's project server to another server, the parties agree that they will negotiate in good faith to enter into a license agreement to replace this Agreement so the Licensee will have uninterrupted access to the Licensed Materials.

Xa. Proprietary Rights

1. Licensee hereby recognizes and agrees that the Database and all Intellectual Property are proprietary to RAAM, subject to the rights of third parties therein. Licensee hereby warrants that it will not, during the term of this Agreement or any time thereafter, attack, dispute or contest, directly or indirectly, RAAM's right and title in and to the DRAM, nor assist or aid others to do so.

2. Neither party may use the other's name or trademark(s) in a way likely to cause confusion as to the origin of goods or services, or to endorse or show affiliation with the other, except as specifically approved. Notwithstanding the foregoing, (i) Licensor may use Licensee's name and/or the name of the Library in brochures or other materials to identify Licensee as a participant in the Database, and (ii) Licensee is encouraged to use Licensor's name to announce its participation to Authorized Users, provided that Licensee supplies Licensor with a copy of such announcements upon DRAM's request.

3. Licensee may provide electronic links to DRAM from Licensee's web page(s), and is encouraged to do so in ways that will increase the usefulness of the Database to Authorized Users. RAAM will provide assistance to Licensee in creating such links effectively through supplemental online instructions. Linking guidelines shall be provided in connection with the supplemental instructions and shall provide that, among other things, Licensee agrees to cooperate in testing the links and to make changes in the appearance of such links and/or in statements accompanying such links as reasonably requested by RAAM. RAAM may request notification of the URL(s) of Licensee's web page(s) containing such links. Other than the creation of such links, Licensee shall not modify, manipulate, or create a Derivative Work of the Database without the prior written permission of RAAM.

XI. Warranties: Indemnification

1. Each party hereby represents and warrants that it is duly organized and validly subsisting and has full authority to enter into this Agreement and to bind the party to the terms and conditions herein. Each party further represents and warrants that it has caused this Agreement to be executed by a duly authorized representative.
2. RAAM warrants that it has the right to license the rights granted under this Agreement to use Licensed Materials, that it has obtained any and all necessary permissions from third parties to license the Licensed Materials, and that use of the Licensed Materials by Licensee and Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright or other rights of any third party.
3. RAAM shall defend, indemnify and hold Licensee and Authorized Users harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any claim by any third party of an alleged infringement of copyright or any other right arising out of the use of the Licensed Materials by Licensee or any Authorized User in accordance with the terms of this Agreement. This indemnity shall survive the termination of this agreement. **NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.**
4. Licensee represents and warrants that (a) the list of IP addresses and/or passwords provided to RAAM in accordance with Section II. 2 above is accurate and valid, and (b) Licensee shall exert reasonable efforts to maintain sufficient security with respect to such IP addresses and/or passwords such that no one other than Authorized Users is or will be able to access the Database.
5. Licensee represents and warrants that it is providing no IP addresses to RAAM that would allow access to any campus other than those listed or indicated on page one of this Agreement, or for which access has otherwise been agreed in writing by RAAM. RAAM reserves the right to assess additional fees and require additional license terms or separate license agreements in the event that Licensee provides IP addresses pertaining to campuses other than those listed or indicated on page one of this Agreement. Licensee represents and warrants that it is not providing access to the Database to campuses other than those listed or indicated on page one of this Agreement, or for which access has otherwise been agreed to in writing by RAAM. RAAM reserves the right to assess additional fees and require additional license terms or separate license agreements in the event that campuses other than those listed or indicated on page one of this Agreement, are sought to be added in the future.
6. The Database has been developed and is maintained with reasonable professional care. Licensor shall use reasonable efforts to provide continuous availability of DRAM, subject to periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of Materials as they become available, and downtime related to equipment or services outside the control of Licensor, including public or private telecommunications services or internet nodes or facilities.

7. Other than the express warranties stated herein, the Database is presented on an "as is" basis, and Licensor disclaims any and all other warranties, conditions, or representations (express, implied, oral, or written) relating to the Database or any part thereof, including, without limitation, any and all implied warranties of fitness for a particular purpose. Licensor makes no warranties respecting any harm that may be caused by the transmission of a computer virus, worm, time bomb, logic bomb, or other such computer program.

8. Licensor shall not be liable for any loss, injury, claim, liability or damage of any kind resulting from the unavailability of the Database, interruption of the services provided hereunder, or arising out of or in connection with Licensee's use of Materials. If DRAM fails to operate in conformance with the terms of this Agreement, Licensee shall immediately notify Licensor, and Licensor's sole obligation shall be to repair the nonconformity. In no event shall Licensor's liability exceed the fees paid to Licensor by Licensee. Neither party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, even if advised of the possibility of a claim.

9. It is understood that use of the Database by Licensee and Authorized Users is intended to occur in the United States. RAAM expressly disclaims all representations and warranties set forth in this Section XI. to the extent invoked in connection with a claim based upon or arising out of usage in any country other than the United States. Access to DRAM by Authorized Users outside of the United States may be terminated by RAAM if warranted, in RAAM's sole opinion, by applicable laws or regulations.

XII. Limitations on Warranties

Notwithstanding anything else in this Agreement:

Neither party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, arising out of the use of or the inability to use the Licensed Materials.

XIII. Assignment and Transfer

Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party. Any purported assignment or transfer for which such consent has not been obtained shall be null and void.

XIV. Governing Law

This Agreement shall be governed by and construed in all respects in accordance with the laws of the State of New York, applicable to contacts made and to be performed therein excluding any such laws that might direct the application of the laws of another jurisdiction. By its execution of this Agreement, each party hereby consents that it shall be subject to the exclusive jurisdiction of the Federal and State courts located in the San Diego County, California, for the resolution of any disputes arising from this Agreement, regardless of the place of execution or performance of this Agreement.

XV. Force Majeure

Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its reasonable control, including, but not limited to, Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

XVI. Entire Agreement

This Agreement and the Project Agreement constitute the entire agreement of the parties and supersede all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

XVII. Amendment

No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of RAAM and Licensee.

XVIII. Severability

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable, or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

XIX. Waiver of Contractual Right

Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

XX. Notices

All notices, consents, payments, demands, requests and other communications required, desired or permitted to be given pursuant to this Agreement shall be in writing and may be hand delivered or, if sent by registered or certified mail, return receipt requested, shall be deemed received within three (3) business days after mailing.

If to RAAM: [text removed]
 [text removed]
 [text removed]
 [text removed]

If to Licensee: [text removed]
 [text removed]
 [text removed]
 [text removed]

Either party may from time to time change its notice address by written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement by their respective, duly authorized representatives as of the date first above written.

RECORDED ANTHOLOGY OF AMERICAN MUSIC

By: _____
Print Name: Arthur Moorhead
Title: Director, DRAM Subscription Services

By: _____
Print Name: Tony Harvell
Title: Head of Acquisitions, UCSD Libraries

SCHEDULE A

COLLECTIONS AND PAYMENT TERMS

Licensee: University of California at San Diego

Full Time Equivalent (FTE) Enrollment (undergraduate plus graduate): 24,752

DRAM Classification: Very Large

The parties hereby agree that Licensee shall participate in the DRAM Classification category selected below. Information concerning the content of the Database of Recorded American Music is available upon request to Recorded Anthology of American Music, Inc. or at
[text removed]

DRAM Classification Categories¹

| | |
|-------------------|----------------|
| Very Large | [text removed] |
| Large | [text removed] |
| Medium | [text removed] |
| Small | [text removed] |
| Very Small | [text removed] |
| Independent/Music | [text removed] |

TOTAL: [text removed]

Payment Terms

Licensees signing this Agreement on or before October 31, 2005 will receive access to the Database without fee until December 31, 2005, and invoiced on January 2, 2006 for the continuation of service through the end of the calendar year calculated against the "charter" rate.

Licensees signing after October 31, 2005 will be invoiced for service from the date campus-wide access to the Database is established at the regular subscription rate on a prorated basis for 2005, and will be invoiced on January 2, 2006 at the regular subscription rate for the 2006 calendar year.

Licensee shall be invoiced for the total applicable Annual Subscription Fee indicated above on or about the beginning of every calendar year during the initial and renewal terms of this Agreement. All invoices shall be due and payable thirty (30) days after the date of issue.

All payments shall be made by check payable to New World Records.

¹ **Very Large:** All institutions classified by Carnegie as Research I.

Large: All institutions classified by Carnegie as Research II or Doctoral I.

Medium: All Doctoral II and Masters I institutions with FIE enrollments above 2,500.

Small: All Masters II and Bachelors I colleges with FTE enrollments of 1,000 or more; Doctoral II and Masters I institutions with enrollments below 2,500.

Very Small: All Bachelors II institutions; Doctoral II and Masters I institutions with enrollments below 1,000.

Independent/Music: Independent Music & Art Schools, for which the \$495 base subscription fee may be reconsidered or renegotiated based upon a variety of factors.