



# Music License for Aircraft

## 1. DEFINITIONS

- (a) **“Music Programming”** shall mean the audio-only music content offered by LICENSEE which is delivered by satellite, pre-recorded tapes or other forms of recordation capable of audio performance for use only while Serviced Aircraft are in the air, while passengers are boarding and disembarking from Serviced Aircraft or while passengers are seated when Serviced Aircraft are on the ground.
- (b) **“Audio-Visual Programming”** shall mean the audio-visual content offered by LICENSEE which is delivered by satellite, pre-recorded tapes or other forms of recordation capable of audio-visual performance for use only while Serviced Aircraft are in the air, while passengers are boarding and disembarking from Serviced Aircraft or while passengers are seated when Serviced Aircraft are on the ground.
- (c) **“Serviced Aircraft”** shall mean LICENSEE’s aircraft utilizing LICENSEE’s Music Programming and/or Audio-Visual Programming.
- (d) **“Seating Capacity”** of a Serviced Aircraft shall mean the total number of passenger seats available for sale.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE for the Term of this Agreement a non-exclusive license to perform publicly in Serviced Aircraft as part of its Music Programming and/or Audio-Visual Programming all of the musical works for which BMI controls the right to grant public performance licenses during the Term (the “Works”). This license extends to Music Programming and/or Audio-Visual Programming utilized by LICENSEE while Serviced Aircraft are in the air and while passengers are boarding and disembarking from Serviced Aircraft or are seated when Serviced Aircraft are on the ground. This license shall only apply to domestic flights over and to and from the United States, its territories and possessions, and to international flights originating or terminating in the United States, its territories and possessions, to the extent that BMI may have the right to license such performances outside of the United States.
- (b) Notwithstanding anything to the contrary contained herein, this license shall not include or extend to: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the “grand rights” therein; (ii) performances associated with advertising or commercial announcements of any kind or nature, except only announcements relating to the air transportation and related services of LICENSEE and to the companies whose recordings are utilized in the music service; (iii) performances of the Works within any airport terminal buildings. This license shall extend only to the right of public performance (in the manner provided herein) of the Works and shall not be construed as authorizing LICENSEE to mechanically reproduce such Works by any method or means now or hereafter known.
- (c) BMI reserves the right to withdraw from the license granted hereunder any Work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such Work or that such Work infringes another composition.

## 3. INDEMNITY BY BMI

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 musical works licensed under this Agreement. Such indemnity shall be limited to musical works which are licensed by BMI at the time of LICENSEE’s performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI’s repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

## 4. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues for thirty (30) days after the date of BMI’s written notice to LICENSEE thereof. 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 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.

**5. FEES**

(a) LICENSEE agrees to pay BMI for each Serviced Aircraft for each month of the Term hereof the applicable license fee(s) computed as follows:

**MONTHLY LICENSE FEE SCHEDULE PER SERVICED AIRCRAFT**

<u>CATEGORY A</u>		<u>CATEGORY B</u>		<u>CATEGORY C</u>	
Music Programming		Audio-Visual Programming (paid in addition to Category A)		Music Programming Boarding or Disembarking <u>Only</u>	
<u>Seats</u>	<u>Fee</u>	<u>Seats</u>	<u>Fee</u>	<u>Seats</u>	<u>Fee</u>
100 or less	\$35.02	100 or less	\$5.42	100 or less	\$ 8.77
101-200	\$49.56	101-200	\$8.42	101-200	\$11.46
201-300	\$68.84	201-300	\$10.08	201-300	\$17.22
300+	\$94.40	300+	\$12.75	300+	\$25.96

- (i) For each Serviced Aircraft that utilizes Music Programming, LICENSEE shall pay a monthly license fee as set forth in Category A on the License Fee Schedule above.
- (ii) For each Serviced Aircraft that utilizes Audio-Visual Programming in addition to Music Programming, LICENSEE shall pay a monthly license fee as set forth in Category B, in addition to the fees set forth in Category A in the License Fee Schedule above.
- (iii) For each Serviced Aircraft that utilizes Music Programming during boarding or disembarking **only**, LICENSEE shall pay a monthly license fee as set forth in Category C on the License Fee Schedule above.

(b) Subject to Subparagraph 5 (a) and (d) and Paragraph 6, LICENSEE agrees to pay to BMI for each month of the Term an estimated license fee as an advance of the actual fee. Such monthly estimated license fee shall be based upon LICENSEE’s prior month’s number of Serviced Aircraft. The first license fee payment shall be made upon the signing of this Agreement. Each payment thereafter shall be made no later than twenty (20) days after the first day of the month for which the fee is due.

(c) BMI and LICENSEE acknowledge and agree that no fees will be due for any Serviced Aircraft during any period exceeding one (1) month during which such Serviced Aircraft are not in revenue service (e.g. while such Serviced Aircraft are being repaired or serviced).

(d) For each subsequent Contract Year of this Agreement, the license fees outlined in the License Fee Schedule in Paragraph 5(a) shall be adjusted in accordance with the increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding July and the next preceding July.

**6. REPORTING**

(a) At the same time as the license fee payments required by Paragraph 5 hereof are due, LICENSEE shall submit to BMI a monthly report, on report forms to be provided by BMI, certified either by an officer or by the auditor of LICENSEE, calculating the license fees due. The report form may also contain any other information regarding the subject matter of this Agreement which BMI reasonably requires.

(b) If, after processing the monthly report, the actual license fee due BMI is less than the estimated license fee already paid for such month, BMI will credit the difference to the account of LICENSEE.

(c) If, after processing the monthly report, the actual license fee due BMI is greater than the estimated license fee already paid for such month, LICENSEE will pay the difference between the actual and estimated license fee within thirty (30) days of receipt of BMI’s adjusted statement.

**7. MUSIC REPORTS**

At the same time that each report required by Paragraph 6 hereof is due, LICENSEE agrees to provide BMI with (a) a report (electronically, if possible) of all Works utilized in the Music Programming and Audio-Visual Programming during the month reported, setting forth the title and, to the extent known or reasonably available to LICENSEE, the writer(s) and publisher(s) of each such composition, and (b) a copy of the music program(s) utilized by LICENSEE for the month covered by such report.

## **8. REVIEW OF STATEMENTS AND/OR ACCOUNTINGS**

BMI shall have the right, upon reasonable notice to LICENSEE, by its authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify any and all statements and reports rendered and accountings made hereunder or under any prior agreement with BMI. BMI shall consider all data and information coming to its attention as the result of any such examination of books and records as confidential.

## **9. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

## **10. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one-half percent (1½%) per month from the date any payment is due hereunder on any payment that is received by BMI more than one month after the due date.

## **11. 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.

## **12. ARBITRATION**

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

## **13. 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 herein 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.

## **14. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days' advance written notice.

## **15. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

## **16. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

## **17. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, will not be binding until signed by both parties, and 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. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**18. TERM OF AGREEMENT**

The Term of this Agreement is for a period of three (3) years beginning on the first day of \_\_\_\_\_ and ending on the last day of \_\_\_\_\_, and shall be extended for additional periods of one (1) year each, unless canceled by either party as of the initial Contract Year or any additional Contract Year upon not less than sixty (60) days' notice prior to the end of any such Contract Year. A "Contract Year" shall mean each consecutive twelve-month period beginning with the first month of the Agreement.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b><u>TRADE NAME</u></b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address) (Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<i>(State of Incorporation, if different from Licensed Premises)</i>	
<input type="checkbox"/> Other _____	<i>(Street Address)</i>
Federal Tax ID No. _____	<i>(City) (State) (Zip)</i>
<b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i>	<i>(Telephone Number) (Fax Number)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<i>(Contact Name) (Title)</i>
<i>(State)</i>	<i>(Email Address – if different from above)</i>
<input type="checkbox"/> Local _____	
<i>(Municipality/City and State)</i>	

<p><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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.</p> <p><b><i>(SIGN HERE – PLEASE INCLUDE PAYMENT)</i></b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b></p> <p><b>TO BE COMPLETED BY BMI</b></p> <p><b>BROADCAST MUSIC INC.</b></p>
Signature	
Print Name / Title	
Signatory Email Address* <i>(if different from above)</i>	

<p><b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b></p> <p><b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b></p> <p><b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b></p>	<p><b>FOR BMI USE ONLY</b></p>	<p><b>ARC1</b></p>	<p><b>LI-2017/JULY</b></p>
	ACCOUNT NO.	COID	EFFECTIVE: January 2017



\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.



# Music License for Aircraft Audio- Visual Programming Only

## 1. DEFINITIONS

- (a) **“Audio-Visual Programming”** shall mean the audio-visual content offered by LICENSEE which is delivered by satellite, pre-recorded tapes or other forms of recordation capable of audio-visual performance for use only while Serviced Aircraft are in the air, while passengers are boarding and disembarking from Serviced Aircraft or while passengers are seated when Serviced Aircraft are on the ground.
- (b) **“Serviced Aircraft”** shall mean LICENSEE’s aircraft utilizing LICENSEE’s Audio-Visual Programming.
- (c) **“Seating Capacity”** of a Serviced Aircraft shall mean the total number of passenger seats available for sale.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE for the Term of this Agreement a non-exclusive license to perform publicly in Serviced Aircraft as part of its Audio-Visual Programming all of the musical works for which BMI controls the right to grant public performance licenses during the Term (the “Works”). This license extends to Audio-Visual Programming utilized by LICENSEE while Serviced Aircraft are in the air and while passengers are boarding and disembarking from Serviced Aircraft or are seated when Serviced Aircraft are on the ground. This license shall only apply to domestic flights over and to and from the United States, its territories and possessions, and to international flights originating or terminating in the United States, its territories and possessions, to the extent that BMI may have the right to license such performances outside of the United States.
- (b) Notwithstanding anything to the contrary contained herein, this license shall not include or extend to: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the “grand rights” therein; (ii) performances associated with advertising or commercial announcements of any kind or nature, except only announcements relating to the air transportation and related services of LICENSEE and to the companies whose recordings are utilized in the music service; (iii) performances of the Works within any airport terminal buildings. This license shall extend only to the right of public performance (in the manner provided herein) of the Works and shall not be construed as authorizing LICENSEE to mechanically reproduce such Works by any method or means now or hereafter known.
- (c) BMI reserves the right to withdraw from the license granted hereunder any Work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such Work or that such Work infringes another composition.

## 3. INDEMNITY BY BMI

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 musical works licensed under this Agreement. Such indemnity shall be limited to musical works which are licensed by BMI at the time of LICENSEE’s performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI’s repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

## 4. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues for thirty (30) days after the date of BMI’s written notice to LICENSEE thereof. 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 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.

**5. FEES**

(a) LICENSEE agrees to pay BMI for each Serviced Aircraft for each month of the Term hereof the applicable license fee(s) as set forth in the License Fee Schedule below:

**MONTHLY LICENSE FEE SCHEDULE PER SERVICED AIRCRAFT**

<b>Audio-Visual Programming ONLY</b>	
<b><u>Seats Per Aircraft</u></b>	<b><u>Fee Per Aircraft</u></b>
100 or less	\$12.26
101-200	\$16.06
201-300	\$24.08
300+	\$36.36

- (b) Subject to Subparagraph 5 (a) and (d) and Paragraph 6, LICENSEE agrees to pay to BMI for each month of the Term an estimated license fee as an advance of the actual fee. Such monthly estimated license fee shall be based upon LICENSEE's prior month's number of Serviced Aircraft. The first license fee payment shall be made upon the signing of this Agreement. Each payment thereafter shall be made no later than twenty (20) days after the first day of the month for which the fee is due.
- (c) BMI and LICENSEE acknowledge and agree that no fees will be due for any Serviced Aircraft during any period exceeding one (1) month during which such Serviced Aircraft are not in revenue service (e.g. while such Serviced Aircraft are being repaired or serviced).
- (d) For each subsequent Contract Year of this Agreement, the license fees outlined in the License Fee Schedule in Paragraph 5 (a) shall be adjusted in accordance with the increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding July and the next preceding July.

**6. REPORTING**

- (a) At the same time as the license fee payments required by Paragraph 5 hereof are due, LICENSEE shall submit to BMI a monthly report, on report forms to be provided by BMI, certified either by an officer or by the auditor of LICENSEE, calculating the license fees due. The report form may also contain any other information regarding the subject matter of this Agreement which BMI reasonably requires.
- (b) If, after processing the monthly report, the actual license fee due BMI is less than the estimated license fee already paid for such month, BMI will credit the difference to the account of LICENSEE.
- (c) If, after processing the monthly report, the actual license fee due BMI is greater than the estimated license fee already paid for such month, LICENSEE will pay the difference between the actual and estimated license fee within thirty (30) days of receipt of BMI's adjusted statement.

**7. MUSIC REPORTS**

At the same time that each report required by Paragraph 6 hereof is due, LICENSEE agrees to provide BMI with (a) a report (electronically, if possible) of all Works utilized in the Audio-Visual Programming during the month reported, setting forth the title and, to the extent known or reasonably available to LICENSEE, the writer(s) and publisher(s) of each such composition, and (b) a copy of the music program(s) utilized by LICENSEE for the month covered by such report.

**8. REVIEW OF STATEMENTS AND/OR ACCOUNTINGS**

BMI shall have the right, upon reasonable notice to LICENSEE, by its authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify any and all statements and reports rendered and accountings made hereunder or under any prior agreement with BMI. BMI shall consider all data and information coming to its attention as the result of any such examination of books and records as confidential.

**9. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

#### **10. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one-half percent (1½%) per month from the date any payment is due hereunder on any payment that is received by BMI more than one month after the due date.

#### **11. 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.

#### **12. ARBITRATION**

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

#### **13. 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 herein 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.

#### **14. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days' advance written notice.

#### **15. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

#### **16. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

#### **17. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, will not be binding until signed by both parties, and 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. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**18. TERM OF AGREEMENT**

The Term of this Agreement is for a period of three (3) years beginning on the first day of \_\_\_\_\_ and ending on the last day of \_\_\_\_\_, and shall be extended for additional periods of one (1) year each, unless canceled by either party as of the initial Contract Year or any additional Contract Year upon not less than sixty (60) days' notice prior to the end of any such Contract Year. A "Contract Year" shall mean each consecutive twelve-month period beginning with the first month of the Agreement.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b><u>TRADE NAME</u></b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address) (Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<i>(State of Incorporation, if different from Licensed Premises)</i> <i>(Enter names of partners)</i>	
<input type="checkbox"/> Other _____	<i>(Street Address)</i>
Federal Tax ID No. _____	<i>(City) (State) (Zip)</i>
<b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i>	<i>(Telephone Number) (Fax Number)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<i>(Contact Name) (Title)</i>
<i>(State)</i>	<i>(Email Address – if different from above)</i>
<input type="checkbox"/> Local _____	
<i>(Municipality/City and State)</i>	

<p><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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.</p> <p><b><i>(SIGN HERE – PLEASE INCLUDE PAYMENT)</i></b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b></p> <p><b>TO BE COMPLETED BY BMI</b></p> <p><b>BROADCAST MUSIC INC.</b></p>
Signature	
Print Name / Title	
Signatory Email Address* <i>(if different from above)</i>	

<p><b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b></p> <p><b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b></p> <p><b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b></p>	<p><b>FOR BMI USE ONLY</b></p> <p>ARC-AV1</p>	<p><b>LI-2017/JULY</b></p> <p><b>EFFECTIVE:</b> <b>January 2017</b></p>
ACCOUNT NO.	COID	

\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.







# Music License for Airports

## 1. DEFINITIONS

- (a) "Recorded Music" shall mean recorded music, via the playing of records, CD's, pre-recorded tapes, or other mechanical devices, or the reception of broadcast audio transmissions or receiving apparatus and amplifications thereof through loudspeakers located in the Licensed Premises, including audio-visual use.
- (b) "Live Music" shall mean music performed by musicians, singers or other entertainers actually present and performing at the Licensed Premises.
- (c) "Licensed Premises" shall include all areas of the airport facility accessed by members of the general public and airport employees.

## 2. BMI GRANT

BMI hereby grants to LICENSEE a non-exclusive license to perform, present or cause the live and/or recorded public performance on the Licensed Premises of all musical works of which BMI shall have the right to grant public performance licenses during the Term hereof. Said license shall be: restricted to performance of music in the manner described herein, granted in consideration of the payment of the license fees as set forth below and subject to all of the terms and conditions hereof. This license does not include:

- (a) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein;
- (b) the right to broadcast, telecast, cablecast or otherwise transmit including via the Internet or on-line service, the performances licensed hereunder to persons outside of the Licensed Premises; or
- (c) performances of music by means of a coin-operated phonorecord player (juke box).

BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

## 3. TERM OF AGREEMENT

The Term of this Agreement shall begin on the first day of \_\_\_\_\_ (month/year) and end on the last day of \_\_\_\_\_ (month/year) and shall continue thereafter unless canceled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "Contract Year(s)" upon thirty (30) days advance written notice to the other party. BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the Agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

## 4. FEES

LICENSEE agrees to pay BMI as follows:

- (a) For the first and subsequent Contract Years of this Agreement the appropriate fee from the License Fee Schedule based on annual passenger traffic throughout the airport for the twelve (12) month period immediately preceding the Contract Year.
- (b) For the second and subsequent Contact Years LICENSEE will be billed and pay an estimated annual fee equal to the prior contract year fee in addition to the CPI pursuant to this Paragraph.
- (c) Fees shall be payable immediately upon receipt of invoice.
- (d) FEE COMPUTATION: Please indicate Annual Passenger Category & Annual Music Fee in the space provided.

$$\frac{\text{Annual Passenger Category}}{\text{Category}} = \frac{\text{2017 Annual Music Fee}}{\text{Fee}}$$

LICENSE FEE SCHEDULE

Annual Passenger Category	Annual Passenger Traffic	2017 Annual Music Fee
1	Less than 1,000,000	\$ 861.90
2	1,000,000 to 10,000,000	\$1,205.80
3	10,000,001 to 25,000,000	\$1,549.50
4	25,000,001 to 45,000,000	\$1,894.90
5	more than 45,000,000	\$2,238.90

(e) Annual Music Fee for each Term year after 2010 shall be calculated by an adjustment of the 2017 Annual Music Fee based upon the percentage increase or decrease in the United States Consumer Price Index (Urban, All Items) between September 2016 and the September immediately preceding the anniversary date (or the initial Term as the case may be) of this Agreement, rounded to the nearest ten cents. BMI will advise LICENSEE in writing of the amount of each adjusted Annual Music Fee.

## 5. REPORTING AND FEE ADJUSTMENTS

LICENSEE shall in the first month of each Contract Year, furnish BMI (on forms provided by BMI) with a report setting forth:

- (i) Annual passenger traffic throughout the airport during the preceding Contract Year.
- (ii) Appropriate Annual Music Fee.

## 6. LATE PAYMENT FEE

BMI may impose a late payment charge of one and one-half percent (1 1/2%) per month from the date payment was due hereunder on any payment that is received by BMI more than thirty (30) days after the due date.

## 7. 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.

## 8. 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.

## 9. INDEMNITY BY BMI

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 particular musical works are available for performance as part of BMI's repertoire. 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.

## 10. BREACH OR DEFAULT / WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI may, at its sole option, cancel this Agreement with not less than sixty (60) days notice in writing to LICENSEE. 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.

**11. CANCELLATION BY LICENSEE**

In the event LICENSEE ceases to operate, 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.

**12. NOTICES**

All notices, if any, shall be in writing and be deemed given upon "mailing," when sent by ordinary first class mail to the party intended at its mailing address. Each party agrees to inform the other, in writing, of any change of address. Any such notice 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 person signing this Agreement on behalf of LICENSEE or such other person as LICENSEE may advise BMI in writing.

**13. 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) are to be selected as follows: Each of the parties 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.

**14. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, will not be binding until signed by both parties and 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.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>	
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>	
<b><u>TRADE NAME</u></b>	<i>(City)</i>	<i>(State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number)</i>	<i>(Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name)</i>	<i>(Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address)</i>	<i>(Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b>	
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	<i>(if different from Licensed Premises)</i>	
<input type="checkbox"/> Other	<i>(Street Address)</i>	
Federal Tax ID No. _____	<i>(City)</i>	<i>(State) (Zip)</i>
<b><u>GOVERNMENT ENTITIES</u></b>	<i>(Telephone Number)</i>	<i>(Fax Number)</i>
<i>(if applicable, please check one)</i>	<i>(Contact Name)</i>	<i>(Title)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State	<i>(Email Address – if different from above)</i>	
<input type="checkbox"/> Local		
<i>(Municipality/City and State)</i>		
<b>TO BE COMPLETED BY LICENSEE</b>	<b>FOR ADMINISTRATIVE USE ONLY</b>	
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.	<b>TO BE COMPLETED BY BMI</b>	
<b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b>	<b>BROADCAST MUSIC INC.</b>	
Signature		
Print Name / Title		
Signatory Email Address*		
<i>(if different from above)</i>	<b>FOR BMI USE ONLY</b>	<b>36AIR</b>
<b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b>		<b>LI-2016/NOV</b>
<b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b>		<b>EFFECTIVE: January 2017</b>
<b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b>	<b>ACCOUNT NO.</b>	<b>COID</b>

**BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203**

\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.





# Music License for Amusement / Theme Parks

## 1. DEFINITIONS

**"Live Music and Entertainment Costs"** (sometimes referred to as "Entertainment Costs") shall mean all direct and indirect expenditures paid by LICENSEE, or on LICENSEE's behalf, for all entertainment utilizing live music in connection with LICENSEE's activities at the premises or off the premises in connection with public relations. The term "Entertainment Costs" shall not include normal stage props and equipment unless the entity or person rendering or presenting entertainment services specifically requires specialized stage props and equipment. If any regularly or seasonally employed staff member of LICENSEE performs as part of an act containing live music entertainment in addition to performing other duties, that part of employees base wages (inclusive of overtime, if any) which equals the proportion of his or her time spent performing live music and entertainment services shall be included in Entertainment Costs. The term "Entertainment Costs" shall include the value of any accommodations or services (including without limitation, room and board) which are made available to any entity or person rendering or presenting entertainment activities as part of the consideration for such entertainment services. For purposes of this Agreement, the value of such accommodations or services shall be deemed to be one-half (1/2) of the prevailing rate charged to guests for similar accommodations or services at the facility where the person or entity is being accommodated and/or served.

## 2. BMI GRANT

BMI hereby grants to LICENSEE a non-exclusive license to cause and permit at the licensed premises the public performance of all musical works of which BMI shall have the right to grant public performance licenses during the Term hereof. Said license shall be restricted to performances of music in the manner described herein and is granted in consideration of the payment of the license fees as set forth herein and is subject to all of the terms and conditions hereof. This license does not include:

- (a) Dramatic Rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein;
- (b) the right to broadcast, telecast, cablecast or otherwise transmit the performances licensed hereunder to persons outside of the licensed premises;
- (c) This license does not authorize performances of music by means of a coin-operated phonorecord player (jukebox); or
- (d) The right to perform musical works licensed hereunder in live entertainment events with ticket prices exceeding \$10.00 above the regular park admission price.

BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such or that such work infringes another composition.

The license granted to LICENSEE pursuant to Paragraph 2 hereof shall extend to performances of music during the Term of this Agreement solely originating at LICENSEE's amusement or theme park. This license shall not extend to any performances originating outside of the licensed premises, except that if LICENSEE is a subscriber to a commercial subscription music service which is licensed by BMI, then only this license shall authorize performances on the licensed premises of music which is provided to LICENSEE by such subscription music service. In the event that LICENSEE performs the music licensed hereunder outside of the licensed premises for purposes of public relations for the licensed premises, this license shall extend to such other place for such purpose, whether or not such other place is licensed by BMI, as long as no direct or indirect monetary charge is imposed for such public relations performances. However, the extension of this license to such outside place shall not be interpreted to permit the exercise of any of the rights which are excluded by Paragraph 2(a) through 2(d) hereof. This license also shall not extend to any hotel or motel situated within the area of the licensed premises, whether or not such hotel is owned or operated by LICENSEE.

## 3. REVIEW OF STATEMENTS AND/OR ACCOUNTINGS

BMI shall have the right upon reasonable notice to LICENSEE, by its authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE as related to attendance, ticket prices of rides/attractions, number of days open and the payment of Live Music and Entertainment Costs as defined in this Agreement to such extent as may be necessary to verify the statements made or which should have been made hereunder or under prior agreement with BMI. BMI's right to examine the books and records of account of LICENSEE shall be limited to three (3) contract years prior to the date BMI forwards written notification of its intent to conduct such examination. BMI shall consider all data and information coming to its attention as the result of any such examination as confidential.

## 4. LATE PAYMENT AND SERVICE CHARGES

BMI may impose a late payment charge of 1% per month from the date any payment is due hereunder on any payment that is received by BMI more than one month after the due date.

## 5. INDEMNITY BY BMI

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 request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. 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.

## 6. TERMINATION OF AGREEMENT BY LICENSEE

If, during the Term hereof, LICENSEE shall permanently cease to operate the premises, whether by reason of sale or lease thereof, or otherwise, this Agreement and LICENSEE's obligation to BMI shall thereupon terminate; provided, however, that LICENSEE shall, within ten (10) days thereafter, give written notice of such termination to BMI, setting forth the effective date thereof and the name of the new owner or operator of the premises, as the case may be, and that LICENSEE shall pay to BMI all fees due hereunder until said effective date.

## 7. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues thirty (30) days after the date of BMI's written notice to LICENSEE thereof. 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.

## 8. OFFER OF COMPARABLE AGREEMENT

In the event that BMI, at any time during the Term hereof, 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.

## 9. ARBITRATION

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to the American Arbitration Association in the City, County and State of New York, for arbitration under its then prevailing rules, the arbitrator(s) to be selected as follows: Each of the parties 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 a 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 in 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.

## 10. FEES

- (a) In consideration of the license granted herein, LICENSEE agrees to pay to BMI for each calendar year of this Agreement, an estimated annual fee in advance on account of the actual fee. Such estimated fee shall then be subject to adjustment in accordance with Paragraph 11 hereof and the resulting actual fee shall be determined in the following manner. LICENSEE shall pay the annual fee on the License Fee Schedule which is:
  - (i) **Where the Amusement/Theme Park has a general admission charge paid for entry**, a sum equal to its General Admission Fee calculated from Schedule A and the Entertainment Costs Fee calculated from Schedule C for the applicable year; or
  - (ii) **Where the Amusement/Theme Park has NO general admission charge paid for entry**, a sum equal to its No General Admission Fee calculated from Schedule B and the Entertainment Costs Fee calculated from Schedule C for the applicable year.
- (b) In no event, however, shall the annual fee for any calendar year be less than the minimum fee for the applicable year indicated in Subparagraph 13(d).
- (c) The fee amount (or a monthly proration thereof if this Agreement begins other than in January) shall be payable in full no later than thirty (30) days after execution of this Agreement. The estimated annual fee for the second and subsequent calendar years, which shall be LICENSEE's actual fee for the previous calendar year, shall be due and payable as follows: one half (1/2) on or before July 1, and the balance on or before October 1. Said estimated fees may be subject to adjustment pursuant to Paragraph 11 of this Agreement.
- (d) For all years subsequent to 2017, the annual license fee rate shall be an adjustment of the 2017 rate based upon the percentage increase or decrease in the United States Consumer Price Index (National, All Items) between October 2016 and October of the year preceding each anniversary date of this Agreement, rounded to the nearest cent. BMI will advise LICENSEE in writing of the amount of each annual license rate.

## 11. REPORTING

For the second and subsequent calendar years, no later than sixty (60) days after the licensed premises are closed to the public for the season (or no later than March 1 of the following year if the licensed premises are open all year or during the Christmas - New Year's holiday period), LICENSEE shall submit a report (on a form made available by BMI), certified by an officer or by the auditor of LICENSEE, indicating the total attendance at the licensed premises during the previous year (for parks with general admission), or the ticket prices of rides/attractions, and the number of rides and attractions and the number of days open (for parks with no general admission), and LICENSEE's Entertainment Costs for the previous year.

- (a) If the actual fee is less than the estimated fee already paid to BMI for such calendar year, BMI agrees to credit the difference to the account of LICENSEE and, if such difference shall occur during the last year of the Term, BMI agrees to return same promptly.
- (b) If the actual fee is greater than the estimated fee already paid by LICENSEE to BMI for such calendar year, LICENSEE shall pay BMI the difference between the actual and estimated license fee within thirty (30) days of LICENSEE's receipt of the adjusted statement of license fees sent by BMI.
- (c) In the event that LICENSEE fails to timely submit to BMI an annual report required by this Paragraph 11, LICENSEE hereby appoints, authorizes and directs BMI, at BMI's option, to assess a reasonable estimated license fee for such year. BMI shall give written notice to LICENSEE of the license fee so calculated by BMI. LICENSEE shall have thirty (30) days after the mailing of such written notice by BMI to submit the required report. If BMI does not receive from LICENSEE the required report after such notice period has expired, BMI and LICENSEE agree that BMI's estimated fee shall then be established as the actual fee for the year unreported by LICENSEE. BMI and LICENSEE further agree that such established actual fee shall also become the basis for the estimated fee for the following year. LICENSEE agrees to waive its right to file its report for any calendar year in which BMI's estimated fee becomes the actual fee.

If Paragraph 6 of this Agreement shall become applicable, the fee due BMI by LICENSEE through the effective date of termination shall be determined by attendance or ride and ticket data and Entertainment Costs reported to BMI for the full or partial calendar year up to the date that LICENSEE shall cease to operate the premises, or the minimum fee for the applicable year indicated on the License Fee Schedule, whichever is greater.

## 12. NOTICES

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed duly given when sent by ordinary first-class U.S. mail (unless it is stated elsewhere in this Agreement that a notice is to be sent by certified mail) to the party for whom it is intended, at its indicated mailing address hereinabove stated, or any other address which either party hereto may from time to time designate for such purpose, and when such notice is so mailed, it shall be deemed given upon the mailing thereof. Any such notice sent to BMI shall be to the attention of the Licensing Department. Any such 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.

**13. FEE SCHEDULE**

LICENSEE warrants and represents that, during the full calendar year immediately preceding the beginning date of this Agreement:

- a. FOR AMUSEMENT PARKS WITH A GENERAL ADMISSION CHARGE** (if no general admission charge-use Paragraph 13(b)).
- its total attendance (rounded down to the last full thousand) was ..... (Total Attendance) **1**
- and divided by 1,000 equals ..... (Attendance Divided by 1,000) **2**
- and when multiplied by the Attendance Fee Rate from Schedule A below for the first (full or partial) calendar year of the Term, which is ..... (See Schedule A Rate) **3**
- results in an estimated annual General Admission Fee of ..... (Multiply Box 2 x Box 3) **4** \$

- b. FOR AMUSEMENT PARKS WITH NO GENERAL ADMISSION CHARGE**
- the total number of rides and attractions available at LICENSEE's facility is ..... **5**
- the highest stated ticket price for the highest priced ride/attraction is ..... **6**
- using Schedule B, the applicable fee (based on the figures in boxes 5 & 6) is..... (See Schedule B Rate) **7**
- the total number of days that the park is open is ..... **8**
- enter Seasonal Adjustment Factor (obtain from Schedule B) ..... (Seasonal Adjustment Factor) **9**
- results in an estimated annual No General Admission Fee of ..... (Multiply Box 7 x Box 9) **10** \$

- c. FOR ENTERTAINMENT COSTS FEE** (both General Admission and No General Admission Amusement Parks).
- its Live Music and Entertainment Costs were ..... (Yearly Entertainment Costs) **11**
- and the Entertainment Costs Fee Rate from Schedule C below for the first (full or partial) calendar year of the Term, which is ..... (See Schedule C Rate) **12**
- results in an estimated annual Entertainment Costs Fee of ..... (Multiply Box 11 x Box 12) **13** \$

- d.** (i) If LICENSEE did not operate during any part of the year preceding the Term hereof, LICENSEE shall make a good-faith estimate of its attendance (¶13a) or the number of days open (¶13b), and Entertainment Costs (¶13c) for the first full calendar year of the Term and indicate such estimates in Sub-paragraphs 13 (a) or (b) and (c) above and check this box.....
- (ii) THE TOTAL ESTIMATED ANNUAL FEE FOR THE FIRST CALENDAR YEAR OF THIS AGREEMENT IS** ..... (Add Box 4 or Box 10 to Box 13) **14** \$
- Not Less Than Minimum Fee*

(iii) If Agreement begins other than in January, prorate as follows:  
 No. of months in first calendar year of Term divided by 12, times  
 Fee in Paragraph 13 (d)(ii) = Fee Due of .....

\$   
 (Prorated Fee Due)

Total Annual Minimum Fees (All Schedules)		
2015	2016	2017
\$320	\$321	\$326

- e.** LICENSEE warrants and represents that, to the extent necessary, LICENSEE shall obtain a separate BMI Musical Attractions license to cover LICENSEE's live music entertainment events with ticket prices exceeding \$10.00 above the regular park admission price.

**SCHEDULE A.**  
 Amusement Park with a General Admission

Year	2015	2016	2017	2018+
<b>Attendance Fee Rate</b>	\$6.06	\$6.07	\$6.17	CPI Adjustment

**SCHEDULE B.**  
 Amusement Park with No Admission

No. of Rides	Highest Ticket Price Per Ride					
	\$0 - \$1.35	\$1.36 - \$2.44	\$2.45 - \$3.46	\$3.47 - \$4.49	\$4.50 - \$5.52	\$5.53 - Over
<b>1-3</b>	\$106	\$138	\$211	\$287	\$361	\$436
<b>4-7</b>	\$138	\$211	\$287	\$361	\$436	\$505
<b>8-11</b>	\$211	\$287	\$361	\$436	\$505	\$580
<b>12-16</b>	\$287	\$361	\$436	\$505	\$580	\$653
<b>17-Over</b>	\$361	\$436	\$505	\$580	\$653	\$763

- Seasonal Adjustment Factor**
- 1) If park is open less than 90 days, adjustment factor is 1.
  - 2) If park is open 90 days or more, but less than 180 days, adjustment factor is 2.
  - 3) If park is open 180 days or more, but less than 270 days, adjustment factor is 3.
  - 4) If park is open 270 days or more, adjustment factor is 3.5.

**SCHEDULE C.**  
 Live Music and Entertainment Costs Fee\*

Year	2015	2016	2017
<b>Entertainment Costs Fee</b>	1.23%	1.23%	1.25%

\* Excludes live music with ticket price exceeding \$10 above the regular park admission price. See Paragraph 13(e) above.

**14. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, shall not be binding until signed by both parties, and 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. The rights of LICENSEE shall not be assignable. 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.

**15. TERM**

The Term of this Agreement shall begin on \_\_\_\_\_ and end on December 31, \_\_\_\_\_ and shall continue thereafter unless canceled by either party as of the end of the initial Term or any subsequent one (1) year Term, upon thirty (30) days advance written notice to the other party.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b><u>TRADE NAME</u></b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address) (Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<i>(State of Incorporation, if different from Licensed Premises)</i> <i>(Enter names of partners)</i>	
<input type="checkbox"/> Other _____	<i>(Street Address)</i>
Federal Tax ID No. _____	<i>(City) (State) (Zip)</i>
<b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i>	<i>(Telephone Number) (Fax Number)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<i>(Contact Name) (Title)</i>
<i>(State)</i>	<i>(Email Address – if different from above)</i>
<input type="checkbox"/> Local _____	
<i>(Municipality/City and State)</i>	

<p style="text-align:center;"><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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. <b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b></p>	<p style="text-align:center;"><b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b></p>						
Signature	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align:center;"><b>FOR BMI USE ONLY</b></td> <td style="text-align:center;"><b>44</b></td> <td style="text-align:center;"><b>LI-2016/DEC</b></td> </tr> <tr> <td style="text-align:center;"><b>ACCOUNT NO.</b></td> <td style="text-align:center;"><b>COID</b></td> <td style="text-align:center;"><b>EFFECTIVE: January 2017</b></td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>44</b>	<b>LI-2016/DEC</b>	<b>ACCOUNT NO.</b>	<b>COID</b>	<b>EFFECTIVE: January 2017</b>
<b>FOR BMI USE ONLY</b>		<b>44</b>	<b>LI-2016/DEC</b>				
<b>ACCOUNT NO.</b>		<b>COID</b>	<b>EFFECTIVE: January 2017</b>				
Print Name / Title							
Signatory Email Address* <i>(if different from above)</i>							
<p><b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b></p>							

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

® BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.





**INTERNET AND MOBILE GENERAL ENTERTAINMENT  
AUDIO-VISUAL SERVICES  
MUSIC PERFORMANCE AGREEMENT  
NOT PREVIOUSLY LICENSED BY BMI**

LI-01/17 - AV

This AGREEMENT (the “**Agreement**”) is by and between BROADCAST MUSIC, INC® (“**BMI**”), a New York corporation with its principal offices at 7 World Trade Center, 250 Greenwich Street, New York, New York 10007 and \_\_\_\_\_ (“**LICENSEE**” or “**you**”), a \_\_\_\_\_ (State)

- (check one)  corporation  
 limited liability company  
 partnership  
 individual d/b/a \_\_\_\_\_

with its principal offices at \_\_\_\_\_

(BMI and LICENSEE are referred to herein individually as a “**Party**” and collectively as the “**Parties**”), for the public performance of BMI Works through LICENSEE’s Service (all capitalized terms as defined below).

**WHEREAS:** (i) you own, operate, or control your Service for the primary purpose of generating Gross Revenue; (ii) the overall use of music in the audio-visual programming made available on the Service is generally of the same nature and intensity as what is commonly understood in the cable and broadcast television industry as a general entertainment audio-visual programming service, and (iii) you are interested in being licensed by BMI to publicly perform BMI Works through your Service pursuant to the terms of this Agreement (all capitalized terms as defined below).

**NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:**

**1. TERM:**

This Agreement begins on \_\_\_\_\_ (customarily, the launch date of your Service or the first date music was used as part of your Service) (the “**Start Date**”), and continues through the end of December of 20\_\_\_\_ (the “**Term**”), until it is terminated in accordance with the provisions hereof.

**2. DEFINITIONS:**

As used in this Agreement, the following terms have the following meanings:

A. “**Application(s)**” means the proprietary software application(s) owned, operated and/or controlled by LICENSEE and made available to consumers directly by LICENSEE or through third parties (e.g., mobile app stores) for the purpose of accessing the Service. LICENSEE shall list all such Applications on Exhibit A of this Agreement, and may amend Exhibit A during the Term to include additional Applications owned, operated and/or controlled by LICENSEE by written agreement signed by both Parties. LICENSEE must comply separately with all reporting requirements and pay separate license fees (including the Annual Minimum License Fee as defined below) under this Agreement, for each Application listed on Exhibit A. References to Applications shall include all Applications listed on Exhibit A.

B. “**BMI Works**” means the musical compositions for which BMI has the right to license the non-dramatic public performance on or through your Service at the time of your performance during the Term.

C. “**Execution Date**” means the date on which BMI countersigns this Agreement as indicated in BMI’s signature block to this Agreement.



D. **“Gross Revenue”** means all revenue generated by, or on behalf of LICENSEE, in connection with the operation of the Service for or from: (i) fees charged to consumers at retail, and other amounts paid to LICENSEE by third parties, for access to or use of all or any part(s) of the Service including LICENSEE’s Applications (e.g., subscription, transaction or pay-per-view fees (“**PPV**”); fees paid to make the Service available through Third Party Site Embedded Video Players, etc.); and (ii) advertising (e.g., banners, in-streams ads, hotlinks) on, or sponsorship of, all or any part(s) of the Service, including revenue from third parties for including their programming on your Service, commissions from third parties on transactions, and the fair market value of anything or service accepted in lieu of cash considerations (i.e., trade and barter e.g., exchange of sponsorship or advertising benefits for goods rather than cash payment). Gross Revenue includes revenue from the sale of Applications used to access all or any part(s) of the Service, but only to the extent that you, or someone acting on your behalf, package(s) or include(s) access to or use of the Service with the license for the Applications. Gross Revenue does not include revenue from the direct sale of physical goods; provided, however, if your Service only initiates, but does not enter into, a transaction for the sale of merchandise or tickets by a third party, then any commissions, referral fees and any revenue received by your Service from such third parties from initiating such transaction shall be included in Gross Revenue hereunder. You can deduct advertising agency commissions from your advertising revenue, but only up to 15% actually incurred to a third party advertising agency that you do not own or control. You may deduct any bad debts that you write off during a reporting period which are related to any billings that you previously reported, but you must include any recoveries of bad debts that were previously written off. In the event that LICENSEE or a third party chooses to bundle the Service with other products and services for one bundle fee (the “**Bundle**”) with access to the Service, the total retail revenue received for the bundle (“**Service Allocated Retail Value**”) shall be allocated among the Service and the other products and services in proportion to the stand-alone retail price of each product. For example, if LICENSEE sells the Service on a stand-alone basis for \$10.00/month and sells a software product on a stand-alone basis for \$5.00/month, and LICENSEE sells them together as a bundle for \$12.00/month, then \$8.00/month shall be attributed to the Service, and \$4.00/month shall be attributed to the LICENSEE software product. If the Parties are unable to arrive at a standalone retail price point for any of the individual elements of the Bundle, the Parties shall negotiate in good faith to determine the appropriate Service Allocated Retail Value for the Bundle, and failing to reach an agreement, may go to Arbitration to request a determination of the Service Allocated Retail Value for the Bundle.

E. **“Service”** means, for purposes of this Agreement, the programming service through which general entertainment audio-visual programming is made available for transmission in the Territory to consumers over the Internet, mobile and/or wireless networks and accessed and launched solely from LICENSEE’s Web Site, Third Party Site Embedded Video Player or Applications; provided, however, that (i) the overall use of music in the audio-visual programming made available on the Service is generally of the same nature and intensity as what is commonly understood in the cable and broadcast television industry as a general entertainment audio-visual programming service; (ii) your Service does not include audio-only programming, and (iii) no significant section or portion of your Service has a concentration of music usage that is materially higher than that of a general entertainment audio-visual programming service wherein items (ii) and (iii) shall be subject to separate licensing.

F. **“Territory”** shall mean the United States, its commonwealths, territories, and possessions.

G. **“Third Party Site Embedded Video Player”** means a LICENSEE-branded video player owned, operated, and/or controlled by LICENSEE, through which the Service is made available that is embedded in, and displayed on, a third party website pursuant to a contractual agreement between LICENSEE and such third party website (“**Third-Party Website Partner**”). LICENSEE shall list all such Third-Party Website Partners on Exhibit C of this Agreement, and may amend Exhibit C during the Term to include additional Third-Party Website Partners by written agreement signed by both Parties.

H. **“Web Page”** means a set of associated files transferred sequentially from a Web Site to, and rendered more or less simultaneously by, a browser. For purposes of calculating the License Fees due under this Agreement, proprietary media players and/or ‘pop-up’ windows with embedded media players that launch when accessing performances of music or upon loading the Web Page are considered part of the Web Page from which they were launched and not a separate Web Page.





I. **“Web Site”** means your Internet domain comprising a series of interrelated Web Pages currently registered with a domain name registration service and located at the URL (i.e., root domain of your Web Site): \_\_\_\_\_ . You may license additional Web Sites owned, operated and/or controlled by you by listing such additional sites on Exhibit A hereto, and may amend Exhibit A by written agreement signed by both Parties. You must comply separately with all reporting requirements and pay separate license fees under this Agreement, including Annual Minimum License Fees, for each Web Site listed on Exhibit A. References to Web Site shall include those additional sites listed on Exhibit A.

### **3. GRANT OF RIGHTS:**

A. BMI hereby grants to LICENSEE a non-exclusive license, subject to all the terms and conditions set forth in this Agreement, to make non-dramatic public performances of BMI Works that are embodied in audio-visual programming transmitted in the Territory to consumers over the Internet, mobile and/or wireless networks in and as part of the Service during the Term. It is expressly understood that while this grant of rights covers the transmission of the Service through Third Party Site Embedded Video Players on third party web sites, this license does not include or extend to: (i) any other uses of BMI Works on any such third party web site; or (ii) any programming services that are owned, operated, or controlled by a third party that may be made available on or through the Service, such excluded uses cited in clauses 3.A(i) and 3.A(ii) are subject to appropriate separate licensing. For the avoidance of doubt, it is further understood that the grant of rights herein relates to use of BMI Works solely in audio-visual programming and does not extend to any Service or offering that contains audio-only programming or to any Service where a significant section or portion contains audio-visual programming that you make available for transmission during the term that has a concentration of music usage that is materially higher than that of a general entertainment audio-visual programming service, which shall be separately licensed.

B. This Agreement does not include dramatic rights or the right to perform dramatico-musical works in whole or in substantial part. This Agreement also does not license public performances in any commercial establishments, including, but not limited to, where all or a portion of the music available through your Service is used as a commercial music service (as that term is customarily understood in the industry); such performances of BMI music shall be subject to appropriate separate licensing.

C. This license does not cover any transmission which is not part of the Service, and does not authorize you to grant to others (including, but not limited to, third party web sites, Online Services, cable television system operators) any license or right to perform publicly or cause to be performed by any means, method or process whatsoever, any of the musical compositions licensed hereunder. In the event that all or a portion of the Service is made available from a third party web site or included on a tier of services by a third party for additional revenue, either independently or with other web sites, LICENSEE will immediately notify BMI in writing. BMI and LICENSEE expressly agree that any such uses are not licensed under this Agreement and shall be subject to appropriate separate licensing.

D. This Agreement grants only public performing rights in musical works and does not grant any reproduction, distribution, or any other intellectual property right(s) in such musical works, or any digital performance, reproduction, distribution, or any other intellectual property right(s) in any sound recordings, to any person or entity, including those that may receive and/or download or otherwise store the transmission of the musical works licensed hereunder. Additionally, public performances originating from your Service outside of the Territory may be subject to appropriate separate licensing.

### **4. LICENSE FEE:**

A. In consideration of the license granted in this Agreement and subject to all the terms and conditions set forth in this Agreement, LICENSEE shall calculate and pay license fees to BMI by multiplying Gross Revenue generated in connection with the Service by 0.375% (**“License Fees”**). License Fees are due on or before the 30<sup>th</sup> day after the end of each calendar quarter when you file your Financial Report Forms (see Paragraph 6 below).



B. Acceptance by BMI of any License Fee payments or any Music Use Report shall not preclude BMI from subsequently questioning or auditing any aspect of such amounts or any such Music Use Report.

## **5. ANNUAL MINIMUM LICENSE FEE:**

A. An “**Annual Minimum License Fee**” is due upon signing the Agreement, and by January 30 of each calendar year (or any part of a calendar year) of the Term thereafter. Annual Minimum License Fees paid for a calendar year of the Term are credited against any License Fees you may owe for that year. In the event that BMI does not receive the Annual Minimum License Fee by January 30 of any calendar year of the Agreement, BMI may, in addition to any other remedies it may have available to it, cancel this Agreement retroactive to the end of the last calendar year for which an Annual Minimum License Fee was received.

B. You may prorate the Annual Minimum License Fee due for the initial calendar year of the Agreement based on the number of months of the initial calendar year that will be covered under the Agreement (e.g., if the start date of your license is July 10, 2017, the prorated Annual Minimum License Fee would be \$179.00 to cover the period from July through December 31st, 2017).

C. The Annual Minimum License Fee for 2017 is \$358 for each Web Site and Application listed on Exhibit A. For each year of the Agreement after 2017, the Annual Minimum License Fee will be increased to reflect the percentage change increase in the United States Consumer Price Index (All Urban Consumers, All Items) between October of the preceding year and October of the next preceding year, rounded to the nearest dollar amount.

## **6. FINANCIAL REPORT FORMS:**

A. LICENSEE shall submit a “**Financial Report Form**” in the form attached hereto as Exhibit B, certified as accurate and complete to the best of LICENSEE’s knowledge and belief. The Financial Report Form will identify all actual Gross Revenue generated in connection with the Service during the period covered in the Financial Report Form (i.e., previous calendar quarter), and will be accompanied by payment of any additional License Fees that may be due above the Annual Minimum License Fee already paid. You agree to make commercially reasonable efforts to use systems and/or software that BMI may develop to prepare and deliver your Financial Report Forms electronically to BMI.

B. Financial Report Forms and any License Fees based on such reports, are due on or before the 30<sup>th</sup> day after the end of each calendar quarter (e.g., first quarter Financial Report Form and corresponding License Fee will be due on or before April 30; the second quarter’s, on or before July 30; the third quarter’s, on or before October 30; and the fourth quarter’s, on or before January 30). BMI may assess Late Payment Charges in accordance with Paragraph 8 below if you fail to submit your Financial Report Form and/or pay License Fees on the due date set forth in this Agreement.

C. If BMI does not receive your Financial Report Form on the due date, BMI may bill you for estimated license fees on the basis of your previous Financial Report Form. Any payments received will be applied to your account pending receipt of your actual Financial Report Form and any additional fees that may be due above the amount already paid. Overpayments will be credited to your account, and refunded to you only after you have submitted all reports and payments due and this Agreement is terminated. BMI may assess Late Payment Charges against the difference between BMI’s estimated billing and the actual fees due based on your Financial Report Form, in accordance with Paragraph 8 below.

## **7. AUDIT:**

A. BMI has the right to require that you provide BMI with data or information sufficient to ascertain the License Fee due under this Agreement. BMI (and its duly authorized representatives) may, at BMI’s expense and during customary business hours, examine your books and records of account relating to any and all statements, accountings and reports required under this Agreement (including Music Use Reports) in order to verify their accuracy and/or determine the License Fee due for any unreported period, and to verify the compliance with the representations and warranties contained in Paragraph 11 below. BMI will only conduct



such an examination once (if at all) with respect to each year of the Term (or portion thereof), and will provide you with 30 days prior written notice before conducting such an examination. The audit rights specified in this Paragraph shall survive the termination or cancellation of this Agreement.

B. In addition to any other remedy that BMI may have, in the event that BMI's audit reveals that you have underpaid License Fees to BMI, you shall immediately pay the amount owed. If an audit conducted pursuant to the terms of this Agreement reveals an underpayment of less than ten percent (10%), then BMI may assess and impose a Late Payment Charge as defined below in Paragraph 8 if payment in full is not made within ten (10) days after the conclusion of the audit. If such underpayment amounts to ten percent (10%) or more, LICENSEE shall immediately pay BMI the amount LICENSEE owes BMI as determined by the audit plus a Late Payment Charge, as defined below, commencing from the actual date such monies were due.

**8. LATE CHARGES:** BMI may impose a "**Late Charge**" on the following bases:

A. Late Payment Charge. BMI may impose a "**Late Payment Charge**" of one and one-half percent (1½%) per month from the date payment was due for any payment (e.g., License Fees, Annual Minimum License Fee, or any portion thereof) that is received by BMI more than ten (10) days after the due date; and

B. Late Reporting Charge. If LICENSEE fails to submit a Financial Report Form when due, BMI may impose a "**Late Reporting Charge**" equal to the greater of:

i. A flat fee of \$50 per month starting from the first month in which the Financial Report Form was due; and

ii. One and one-half percent (1½%) per month starting from the first month in which the Financial Report Form was due, calculated against the total License Fee as reflected in the Financial Report Form when it is ultimately submitted to BMI.

**9. MUSIC USE REPORTS:** LICENSEE shall provide the following "**Music Use Reports**" electronically to BMI:

A. LICENSEE shall submit Music Use Reports containing data as set forth in Exhibit D attached hereto with respect to all programs made available through the Service during the Term of this Agreement. LICENSEE shall provide such Music Use Reports to BMI on a quarterly basis, thirty (30) days after the end of each calendar quarter. LICENSEE shall use commercially reasonable efforts to provide such cue sheets to BMI. At BMI's reasonable request, LICENSEE also shall request cue sheets or logs from licensors and outside producers with respect to programming produced by others and distributed as programs of the Service during the Term of this Agreement, and/or generate a list that includes the title and artist of individual musical works made available on the Service, as applicable, and shall furnish copies of any such cue sheets, logs, or lists to BMI.

B. LICENSEE shall submit the above-referenced cue sheets and program usage reports on or before the 30<sup>th</sup> day after the end of each calendar quarter. To the extent it is reasonably practicable for LICENSEE to do so, such cue sheets and program usage reports shall be delivered to BMI electronically using software provided to LICENSEE by BMI at no charge (or using a process and format approved by BMI). LICENSEE's obligations regarding the Music Use Reports for use of music during the Term specified in this Paragraph shall survive the termination or cancellation of this Agreement. Additionally, if you provide any more detailed usage information to any other person or company that licenses you to use music, you will provide BMI with a copy of that report.

**10. INDEMNIFICATION:** BMI shall indemnify, save and hold harmless and defend you and your officers and employees from and against any and all claims, demands and suits that are first made after the Execution Date and that are brought within the Territory alleging copyright infringement under U.S. Copyright Law that may be made or brought against you or them solely with respect to the public performance within the Territory during the Term of BMI Works as licensed hereunder. BMI's obligations under this Paragraph, however, are limited to those claims, demands or suits that are made or brought within the Territory under U.S. Copyright Law, and shall in no way extend to any (i) performances of BMI Works that occurred prior to the Start Date of this Agreement, and/or (ii) claims, demands or suits made or brought before the Execution Date of this Agreement or after the termination of this Agreement where such termination is the result of your failure to cure a breach within the Cure



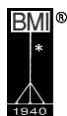
Period specified in Paragraph 12 below. BMI has no obligation to indemnify you for any claim, demand or suit that is made or brought against you while your account is not in good standing. For purposes hereof, if you fail to cure a breach within thirty (30) days of receiving of the breach Notice from BMI, then your account is not in good standing. This indemnity also shall not apply to transmissions of any musical work by you after written request from BMI that you refrain from performance of such work. You agree to give BMI prompt Notice of any such claim, demand, or suit, to deliver to BMI with such Notice any and all communications and documents pertaining thereto, and to cooperate with BMI with respect thereto, and BMI shall have full charge of the defense and/or settlement of any such claim, demand, or suit; provided, however, that you may retain counsel on your behalf and at your own expense and participate in the defense of such claim, demand or suit. You represent and warrant to BMI that you are not currently aware of any claims, demands or suits threatened against you in connection with the performance of BMI Works through your Service prior to the date of execution of this Agreement, nor are you aware of any facts or circumstances that would serve as a basis for such a claim, demand or suit.

#### **11. REPRESENTATIONS AND WARRANTIES; RESERVATION OF RIGHTS; CHANGES IN REPERTOIRE FROM PUBLISHER RIGHTS WITHDRAWAL**

A. You warrant and represent that: (i) you own, operate, and/or control the Service for the primary purpose of generating Gross Revenue; (ii) the overall use of music in the audio-visual programming made available on the Service is generally of the same nature and intensity as what is commonly understood in the cable and broadcast television industry as a general entertainment audio-visual programming service; and (iii) that your Service otherwise satisfies all of the qualifications set forth herein to be eligible for this form of license (including, but not limited to, the conditions set forth in Paragraph 3 above). BMI reserves the right, but has no obligation, to review your Service to determine whether this is the appropriate form of license. If, at any time, BMI determines that this Agreement is not, or is no longer, the appropriate form of license for your Service, BMI shall provide you with the appropriate form of license. In the event you do not agree with the terms of the alternate license that BMI provides, you reserve the right to obtain a license from BMI pursuant to Article XIV of the BMI Consent Decree by submitting a letter requesting a license pursuant thereto; BMI will not consider its receipt of this form of license as such an application. Additionally, BMI reserves the right to reject the submission of a license whose Start Date precedes the Execution Date.

B. The Parties acknowledge that the fee provisions hereof were agreed upon based on the volume of BMI Works licensable by BMI, and the utilization of BMI Works by LICENSEE's Service, as of the beginning of the Term hereof. In the event that there is a material change in the utilization of BMI Works by LICENSEE's Service during the Term due to the withdrawal of rights from, or other termination or non-renewal of, membership or affiliation agreements between rights owners and their then-current performing right licensing organization, where such withdrawal or other termination or non-renewal is not subject to licenses then in effect (as that term has been commonly understood in the performing rights licensing marketplace), then either Party may send a written claim to the other Party seeking an adjustment in the license fees payable during the Term (a "License Fee Adjustment") retroactive to the later of (i) the date of such material change, or (ii) three (3) months prior to the date on which the written claim was made to the other Party (such later date, the "Adjustment Effective Date"). The Parties agree to negotiate in good faith regarding whether a material change has occurred and regarding whether the claim for a License Fee Adjustment is warranted; and in the event the Parties are unable to agree on a mutually acceptable resolution of this issue, the issue may be submitted for determination by the BMI Rate Court. The Party seeking the adjustment shall have the right to terminate this Agreement as of the Adjustment Effective Date, in which event the Parties agree that: from the Adjustment Effective Date forward and for the remainder of the Term, the terms of this Agreement shall be deemed to be interim subject to finalization; and such final terms shall be determined either by mutual agreement between the Parties or by the BMI Rate Court. Both Parties reserve their rights as to what constitutes reasonable fees and terms for any time period subsequent to any such termination.

**12. BREACH OR DEFAULT:** BMI has the right to terminate this Agreement, effective as of the date of BMI's first Notice to you of a breach of any term under this Agreement, if you don't cure the breach within 30 days after receiving the first Notice from BMI (such thirty (30) day period, the "**Cure Period**"). Additionally, any attempt



by you to cure a breach after the Cure Period is voidable by BMI if, after the Cure Period and before your attempt to cure such breach, you become aware of any claims, demands, or suits, for which you may seek indemnity from BMI under Paragraph 10 above. BMI hereby expressly reserves the right to refund any payment it may receive from you and cancel this Agreement under such circumstances in lieu of indemnifying you for such claims, demands, or suits. This right to cancel is in addition to any other remedies BMI may have, and no waiver by BMI of full performance of this Agreement in any one or more instances shall be a waiver of the right to require full and complete performance of this Agreement for the remainder of the Term. For purposes of this Paragraph, a breach by LICENSEE shall include any scenario where LICENSEE does not submit any of the following items on their due date as specified in the Agreement: (i) Financial Reports, (ii) Music Use Reports, or (iii) any payment due under the Agreement (including the License Fee specified in Paragraph 4 or the Annual Minimum License Fee specified in Paragraph 5). Accordingly, any breach by LICENSEE with regards to any item specified in clause (i), (ii) or (iii) of this Paragraph shall be deemed a "breach" for all purposes of the Agreement. Notices of breach pursuant to this Paragraph may be sent by BMI via email to LICENSEE.

### **13. TERMINATING THE AGREEMENT:**

A. If you permanently discontinue the use of any video or audio-visual program containing music through your Service (as opposed to temporarily disabling the Service and/or the music made available through your Service), you can request to terminate this Agreement at any time during the Term by notifying BMI in writing at least sixty (60) days before the requested date of termination. You are required to submit all reports and payments to BMI before the Agreement will be terminated.

B. If BMI terminates its agreements with all other customers in your class and category, BMI can terminate this Agreement at any time during the Term by notifying you in writing at least thirty (30) days before the effective date of termination.

**14. ARBITRATION:** All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement (except for matters within the jurisdiction of the BMI rate court) shall be submitted to arbitration in the City, County, and State of New York under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators to be selected as follows: Each of the Parties 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 in any court having jurisdiction. Such award shall include the fixing of costs, expenses, and attorneys' fees of arbitration, which shall be borne by the unsuccessful Party.

**15. REMOVAL OF WORKS:** BMI reserves the right at its discretion to withdraw from the license granted by this Agreement any musical work as to which legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

**16. NOTICE:** All notices and other communications under this Agreement ("**Notice**") must be in writing and sent to the address(es) or fax number(s) designated by LICENSEE on the Customer Profile attached hereto (each address (including email) or fax number, hereinafter, a "**Notice Address**"), and to BMI's Notice Address(es) designated in this Paragraph. Either Party may change one or more of its Notice Addresses during the Term of the Agreement by providing Notice to the other, and both Parties have an obligation to keep their Notice Addresses current throughout the Term, since Notice that is sent to a Notice Address will be deemed received: (i) when sent electronically to all the e-mail addresses designated for such purpose by the Parties; (ii) when delivered in person; (iii) upon confirmed transmission by facsimile device; (iv) five (5) days after postmarked by ordinary first class, registered, or certified, postage prepaid U.S. mail; or (v) as of the date of confirmed delivery by private courier service. Notwithstanding the foregoing, Notices from you to BMI requesting termination under Paragraph 13, or advising BMI of a claim, demand, or suit under Paragraph 10, cannot be sent by e-mail.



**BMI Notice Address:** Senior Vice President, Licensing  
7 World Trade Center  
250 Greenwich Street  
New York, New York 10007-0030  
BMI Digital Licensing Department Fax number: (212) 220-4504

**with a separate copy to:**

Senior Vice President and General Counsel (sent to the address above)  
BMI Legal Department Fax number: (212) 220-4474  
BMI email address: [digitalaccount@bmi.com](mailto:digitalaccount@bmi.com)

**17. ASSIGNMENT:** This Agreement may not be assigned or otherwise transferred (whether by change of control, merger, operation of law or otherwise) without the prior written consent of BMI, not to be unreasonably withheld. For the avoidance of doubt, it is reasonable for BMI to withhold such consent if LICENSEE has failed to submit any payments or reports due.

**18. MISCELLANEOUS:**

A. Reports and/or payments that are due on a weekend day (or a nationally recognized holiday on which the U.S. Postal Service is not providing service) and received by BMI before the close of business on the next business day following the weekend day or holiday, will not be considered late under the Agreement.

B. BMI will, upon reasonable written request, advise you whether particular musical works are available for performance as part of BMI's repertoire. You will provide BMI with the title and the writer/composer of each musical composition requested to be identified.

C. BMI will make reasonable efforts to be exempted or excused from paying state or local taxes on the License Fees received pursuant to this Agreement. In the event that BMI is not excused from paying such taxes, however, and BMI is permitted by law to pass through such tax to you, you will pay BMI the full amount of such tax when you submit your License Fee payment(s) to BMI.

D. BMI shall treat the financial, web site traffic, and music usage information that you provide under this Agreement (or that BMI obtains through an audit) as "**Confidential Information.**" Your information is made available to BMI agents and employees who need to know such information in order to administer this Agreement. Information is also made available to BMI-represented songwriters, composers, music publishers, as well as foreign rights organizations, but only to show the royalties generated from your use of their works (i.e., song X was played Y times and earned \$Z in royalties). BMI will not otherwise disclose your financial, web site traffic, or music usage information unless required to do so by law or legal process. BMI may, however, use the information in your music use reports and the music use reports from other customers to compile aggregate market data, and may disclose such aggregate market data publicly so long as BMI does not specifically identify your information as coming from you. Notwithstanding the foregoing, nothing herein shall affect BMI's ability to produce or use such Confidential Information in connection with any claim, demand or suit in which BMI is involved pursuant to Paragraph 10 above.

E. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof. This Agreement is not binding on any Party to this Agreement until it has been signed by both Parties. This Agreement cannot be waived, 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, without regard to choice of law rules. 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.

F. The Parties agree that any applicable law that would require interpretation of any claimed ambiguities in this Agreement against BMI, the Party that drafted it, has no application and is expressly waived. If any claim is



made by a Party relating to any conflict, omission or ambiguity in the provisions of this Agreement, no presumption or burden of proof or persuasion will be implied because this Agreement was prepared by BMI.

G. All exhibits and attachments to this Agreement are hereby made a part hereof and incorporated by reference herein. The Parties agree that this Agreement will be considered signed when the signature of a Party is delivered by facsimile or email transmission to the other Party. Such facsimile or email signature shall be treated in all respects as having the same effect as an original signature. This Agreement may be executed in one or more counterparts and delivered by facsimile or e-mail, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

H. LICENSEE represents that: (i) the person executing this Agreement on its behalf is duly authorized to do so and that this Agreement is and shall be a binding obligation on the LICENSEE on behalf of whom it is executed, and (ii) that the execution and performance of this Agreement is not barred, prohibited or impaired by any existing law, rule, regulation, court or administrative order, decree, contract or agreement to which the LICENSEE is now a Party or by which it is bound.

**LICENSEE:**

**BROADCAST MUSIC, INC.**

\_\_\_\_\_  
An Authorized Signer

\_\_\_\_\_  
An Authorized Signer

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title of Signer

\_\_\_\_\_  
Title of Signer

**“EXECUTION DATE”** \_\_\_\_ / \_\_\_\_ / \_\_\_\_





# MUSIC PERFORMANCE AGREEMENT CORPORATE IMAGE LICENSE

http://www.bmi.com

*If you estimate your license fee will be less than \$2,000 per year under the terms of this license agreement, we recommend you use our online Digital Licensing Center available at [http://www.bmi.com/digital\\_licensing](http://www.bmi.com/digital_licensing)*

This Agreement (the "**Agreement**") is by and between Broadcast Music, Inc.® ("**BMI**"®), a New York corporation with its principal offices at 7 World Trade Center, 250 Greenwich Street, New York, New York 10007, and \_\_\_\_\_ ("**LICENSEE**" or "**YOU**" or "**YOUR**"), a \_\_\_\_\_ (state)

- (check one)     corporation  
                   limited liability company  
                   partnership  
                   individual d/b/a \_\_\_\_\_

with its principal offices at: \_\_\_\_\_ (BMI and LICENSEE are referred to herein individually as a "**Party**" and collectively as the "**Parties**"), for the public performance of BMI Works through LICENSEE's Web Site located at the URL: [http://\\_\\_\\_\\_\\_](http://_____) (the "**URL**") (all capitalized terms as defined below).

**WHEREAS:** (i) YOU own, operate, or control the Web Site for the primary purpose of promoting YOUR company's brand or image; (ii) YOUR Web Site is not a Music Service, and (iii) YOU are interested in being licensed by BMI to publicly perform BMI Works on the Web Site pursuant to the terms of this Agreement (all capitalized terms as defined below).

**NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:**

1. **TERM:** This Agreement begins on \_\_\_\_\_, 20\_\_\_\_ (customarily, the launch date of YOUR Web Site or the first date music was used as part of YOUR Web Site) (the "**Start Date**"), continues through the end of December of 2017, and automatically renews on a calendar year-to-year basis thereafter until it is terminated in accordance with the provisions hereof (the "**Term**").
2. **DEFINITIONS:** As used in this Agreement, the following terms have the following meanings:
  - A. "**Application**" means an identically named application that makes web service(s) calls to deliver programming over the Internet to a computer or other device capable of receiving Internet transmissions.
  - B. "**BMI Works**" means the musical compositions for which BMI has the right to license the non-dramatic public performance on or through YOUR Web Site at the time of YOUR performance during the Term.
  - C. "**Execution Date**" means the date on which BMI countersigns this Agreement as indicated in BMI's signature block to this Agreement, which such date shall be entered solely by BMI.
  - D. "**Music Page**" means a Web Page that presents one or more icons or hyperlinks that may be clicked on to access performances of music, provided, however, that if any portion of YOUR Web Site qualifies as a Music Service, that portion of YOUR Web Site is not eligible for license coverage under this Agreement and those pages would not be considered as Music Pages. For the avoidance of doubt, a Web Page is considered a Music Page if one or more icons or hyperlinks on the Web Page launches a media player or a "pop-up" window with an embedded media player through which one or more musical works are transmitted to the user, or otherwise opens another Web Page from which one or more musical works are automatically transmitted upon loading the Web Page without further action from the user.
  - E. "**Music Page Impression**" means (i) for Web Site, a transfer request for a single Music Page, and (ii) for an Application, a music impression.
  - F. "**Music Service**" means an Internet web site, Application, or service, or a designated portion or section thereof, the central focus of which is the transmission of audio and/or audio-visual material comprising predominantly feature uses of music (e.g., music-formatted radio, on-demand transmissions of music recordings or music videos, live concerts), as opposed to programming with background or incidental and/or occasional feature uses of music (e.g., news/talk radio, situational comedies, feature films).
  - G. "**Page Impression**" means (i) for Web Site, a transfer request for a single Web Page, and (ii) for an Application, an impression.
  - H. "**Territory**" means the United States, its commonwealths, territories, and possessions.



I. **“Web Page”** means a set of associated files transferred sequentially to, and rendered more or less simultaneously by, a browser or Application. For purposes of calculating the License Fees due under this Agreement, proprietary media players and/or “pop-up” windows with embedded media players that launch when accessing performances of music or upon loading the Web Page are considered part of the Web Page from which they were launched and not a separate Web Page.

J. **“Web Site”** means YOUR Internet domain comprising a series of interrelated Web Pages, currently registered with a domain name registration service and located at the URL identified above (*i.e.*, root domain of YOUR Web Site), the primary purpose of which is to promote YOUR company’s brand or image. For purposes of this Agreement, the term “Web Site” can include an Application. YOU may license additional independently named Web Sites and/or Applications owned, operated and/or controlled by YOU that are operated to promote YOUR company’s brand or image by listing such additional sites and each independently named Application to be licensed under this Agreement on Exhibit A hereto, and may amend Exhibit A by written agreement signed by both Parties. YOU must comply separately with all reporting requirements and pay separate license fees under this Agreement, including Annual Minimum License Fees, for each Web Site and independently named Application listed on Exhibit A. All references to Web Site in this Agreement shall include those additional sites and independently named Applications listed on Exhibit A.

### **3. GRANT OF RIGHTS:**

A. BMI hereby grants YOU a non-exclusive license to perform publicly BMI Works through YOUR Web Site within the Territory (subject to Paragraph 3.B below) during the Term, subject to all the terms and conditions set forth in this Agreement. This Agreement includes only public performances of musical works by transmission over the Internet to a computer or other device capable of receiving Internet transmissions, and only where such transmissions are accessed and launched from a Web Page on the Web Site; it does not cover any transmissions accessed or launched from a third party web site whether such transmissions are accessed or launched directly from the third party web site or via a link to YOUR proprietary media player and/or “pop-up” window. Public performances outside of the Territory may be subject to appropriate separate licensing.

B. This license does not cover transmissions that are made as part of a Music Service, or any transmission that is not part of and directly launched from YOUR Web Site, and does not authorize YOU to grant to others (including, but not limited to, third party web sites, online services, cable television system operators) any license or right to perform publicly or cause to be performed by any means, method or process whatsoever, any of the musical compositions licensed hereunder. In the event that all or a portion of the Web Site is made available from a third party web site or included on a tier of services by a third party for additional revenue, either independently or with other web sites, YOU will immediately notify BMI in writing. BMI and LICENSEE expressly agree that any and all such uses itemized in this paragraph are not licensed under this Agreement and shall be subject to appropriate separate licensing.

C. This Agreement does not include dramatic rights or the right to perform dramatico-musical works in whole or in substantial part. This Agreement also does not license public performances in any commercial establishments, including, but not limited to, where all or a portion of the music available on the Web Site is used as a commercial music service (as that term is customarily understood in the industry); such performances of BMI music shall be subject to appropriate separate licensing.

D. This Agreement grants only public performing rights in musical works and does not grant any reproduction, distribution, or any other intellectual property right(s) in such musical works, or any digital performance, reproduction, distribution, or any other intellectual property right(s) in any sound recordings, to any person or entity, including those that may receive and/or download or otherwise store the transmission of the musical works licensed hereunder.

### **4. LICENSE FEE:**

A. In consideration of the license granted in this Agreement and subject to all the terms and conditions set forth in this Agreement, LICENSEE shall calculate and pay license fees (**“License Fees”**) to BMI using either of the following License Fee Calculations at YOUR option:



i. Page Impressions License Fee Calculation:

$$\text{License Fee} = (\text{Page Impressions}) \times (\$0.40/1,000)$$

**or**

ii. Music Page Impressions License Fee Calculation:

$$\text{License Fee} = (\text{Music Page Impressions}) \times (\$0.60/1,000)$$

B. License Fees are due when YOU file YOUR Report Forms (see Paragraph 6 below).

**5. ANNUAL MINIMUM LICENSE FEE:**

A. An “**Annual Minimum License Fee**” (also referred to as the “**Minimum Fee**”) is due upon signing the Agreement, and by January 30 (for customers filing Annual Report Forms) or April 30 (for customers filing Quarterly Report Forms) of each calendar year (or any part of a calendar year) of the Term thereafter. Annual Minimum License Fees paid for a calendar year of the Term is credited against any License Fees YOU may owe for that year. In the event that BMI does not receive the Annual Minimum License Fee by January 30 of any calendar year of the Agreement, BMI may, in addition to any other remedies it may have available to it, cancel this Agreement retroactive to the end of the last calendar year for which an Annual Minimum License Fee was received.

B. YOU may prorate the Annual Minimum License Fee due for the initial calendar year of the Agreement based on the number of months of the initial calendar year that will be covered under the Agreement (e.g., if the start date of YOUR license is July 10, 2017, the prorated Annual Minimum License Fee would be \$179.00 to cover the period from July through December 31, 2017).

C. The Annual Minimum License Fee for 2017 is \$358 for each Web Site identified above and listed on Exhibit A. For each year of the Agreement after 2017, the Annual Minimum License Fee will be increased to reflect the percentage change increase in the United States Consumer Price Index (All Urban Consumers, All Items) between October of the preceding year and October of the next year, rounded to the nearest dollar amount.

**6. REPORT FORMS:**

A. Upon signing the Agreement, YOU will complete a preliminary Annual Report Form attached to this Agreement with a good faith estimate of what YOUR calendar year Page Impressions will be for the first calendar year (or portion thereof) of the Term. YOU will use this estimate for the initial calendar year, or the actual Page Impressions that YOU report in YOUR Report Form(s) for the immediately preceding calendar year for subsequent years, and the chart below to determine how often YOU need to report and pay license fees to BMI.

<i>Calendar Year Page Impressions</i>	<i>Report Form</i>	<i>Payment</i>
700,000 or less	ANNUAL	MINIMUM FEE
700,001 – 2,100,000	ANNUAL	greater of MINIMUM FEE and LICENSE FEE
2,100,001 or more	QUARTERLY	greater of MINIMUM FEE and LICENSE FEE

B. “Annual Report Forms,” and any additional license fees based on such reports, are due on or before January 30 following the calendar year to which they apply (e.g., Annual Report Form for 2017 will be due on or before January 30, 2018). BMI may assess Late Payment in accordance with Paragraph 8 below if YOU fail to report and/or pay License Fees on time.

C. “Quarterly Report Forms,” and any additional license fees based on such reports, are due on or before the 30<sup>th</sup> day after the end of each calendar quarter (e.g., first quarter Quarterly Report Form will be due on or before April 30; second quarter, on or before July 30; third quarter, on or before October 30; and fourth quarter, on or before January 30). BMI may assess Late Charges in accordance with Paragraph 8 below if YOU fail to report and/or pay License Fees on time.

D. If, at any point during any calendar year of the Agreement, YOUR actual calendar year Page Impressions exceeds 2,100,000, YOU will file a Quarterly Report Form on or before the 30<sup>th</sup> day after the end of the then current calendar quarter, and will continue to report and pay BMI quarterly as provided for above. BMI may assess Late Charges (see Paragraph 8



below) if YOU fail to report and/or pay on a quarterly basis as soon as YOUR actual calendar year Page Impressions exceeds 2,100,000.

E. Each Report Form will be in a form provided by BMI which will be substantially similar to the sample forms attached hereto as Exhibits B and C, will be certified by YOU or YOUR authorized representative, will identify actual Music Page Impressions and total Page Impressions generated in connection with the Web Site during the period covered in the Report Form (e.g., previous calendar year or previous calendar quarter), and will be accompanied by payment of any additional license fees that may be due above the Annual Minimum License Fee already paid. YOU agree to make commercially reasonable efforts to use systems and/or software that BMI may develop to prepare and deliver YOUR Report Forms electronically to BMI.

F. If BMI does not receive YOUR Report Form, BMI may bill YOU for estimated license fees on the basis of YOUR previous Report Form. Any payments received will be applied to YOUR account pending receipt of YOUR actual Report Form and any additional fees that may be due above the amount already paid. Overpayments will be credited to YOUR account, and refunded to YOU only after YOU have submitted all reports and payments due and this Agreement is terminated. BMI may assess Late Charges against the difference between BMI's estimated billing and the actual fees due based on YOUR Report Form, in accordance with Paragraph 8 below.

**7. AUDIT:**

A. BMI has the right to require that YOU provide BMI with data or information sufficient to ascertain the License Fee due under this Agreement. BMI (and its duly authorized representatives) may, at BMI's expense and during customary business hours, examine YOUR books and records of account relating to any and all statements, accountings and reports required under this Agreement (including Music Use Reports) in order to verify their accuracy and/or determine the License Fee due for any unreported period, and to verify the compliance with the representations and warranties contained in Paragraph 11 below. BMI will only conduct such an examination once (if at all) with respect to each year of the Term (or portion thereof), and will provide YOU with 30 days prior written notice before conducting such an examination. The audit rights specified in this paragraph shall survive the termination or cancellation of this Agreement.

B. In addition to any other remedy that BMI may have, in the event that BMI's audit reveals that YOU have underpaid License Fees to BMI, YOU shall immediately pay the amount owed. If an audit conducted pursuant to the terms of this Agreement reveals an underpayment of less than ten percent (10%), then BMI may assess and impose a Late Charge as defined below if payment in full is not made within ten (10) days after the conclusion of the audit. If such underpayment amounts to ten percent (10%) or more, LICENSEE shall immediately pay BMI the amount LICENSEE owes BMI as determined by the audit plus a Late Charge, as defined below, commencing from the actual date such monies were due.

**8. LATE CHARGES:** BMI may impose a Late Charge on the following bases:

A. Late Payment Charge. BMI may impose a Late Payment Charge of one and one-half percent (1½%) per month from the date payment was due for any payment (e.g., License Fees, Annual Minimum License Fee, or any portion thereof) that is received by BMI more than ten (10) days after the due date; and

B. Late Reporting Charge. If LICENSEE fails to submit a Report Form when due, BMI may impose a Late Reporting Charge equal to the greater of:

- i. A flat fee of \$50 per month starting from the first month in which the Report Form was due; and
- ii. One and one-half percent (1½%) per month starting from the first month in which the Report Form was due, calculated against the total License Fee as reflected in the Report Form when it is ultimately submitted to BMI.

**9. MUSIC USE REPORTS:** On or before the 30<sup>th</sup> day after the end of each calendar quarter of the Term, YOU shall provide quarterly usage reports electronically to BMI, on a per distribution channel and a per business model basis (e.g., free, subscription-based, pay-per-listen or pay-per-view) identifying all of the musical works that were made available from YOUR Web Site during the reporting period. YOUR reports must be sent to BMI electronically (using an industry standard report form (e.g., DDEX) or other standard form usage report provided by BMI).

A. For audio-only programming, YOUR report will, at a minimum, include: (i) the type of offering (e.g., advertiser-supported; subscription based); (ii) the title of each song; (iii) the featured artist that recorded the song and/or the songwriter(s) or composer(s) that wrote the song; and (iv) the number of times the song was performed. YOUR report will also include the amount, if any, that YOU may have charged the consumer to receive the transmission.

B. For audio-visual programming, YOU shall, as a matter of course, cause cue sheets or logs to be created with respect to all programs produced by YOU, if any, and made available on the Web Site Service during the Term of this Agreement. Additionally, at BMI's reasonable request, YOU shall also request cue sheets or logs from licensors and outside producers



with respect to programming produced by others and distributed as programs on YOUR Web Site during the Term of this Agreement. For purposes hereof, such cue sheets or logs shall identify the title and nature (e.g., television series program (and episode, original air date and/or season, if applicable), feature film (and release date), short, movie trailer/clip, promo, etc.), of each audio-visual work together with other identifying data (e.g., primary author, director, main actor(s)), and information identifying the title, artist, songwriter, composer, publisher, nature and type of use (e.g., theme, background), and the duration of each musical work contained in each audio-visual program. YOU shall provide any and all such cue sheets or logs not previously provided to BMI with YOUR quarterly usage report for the reporting period during which the program was made available on YOUR Web Site. YOUR quarterly usage report shall identify all audio-visual programs made available from YOUR Web Site during the immediately preceding calendar quarter, and shall specify the number of transmissions of each such audio-visual program on each distribution channel, and, where applicable, the fee charged for each transmission.

C. If YOUR report includes different types of uses (e.g., radio style programming and music videos), YOU will provide BMI with traffic and/or usage information. Additionally, if YOU provide any more detailed usage information any other person or company that licenses YOU to use music, YOU will provide BMI with a copy of that report. LICENSEE's obligations regarding the Music Use Reports specified in this paragraph shall survive the termination or cancellation of this Agreement.

**10. INDEMNIFICATION:** BMI shall indemnify, save and hold harmless and defend YOU and YOUR officers and employees from and against any and all claims, demands and suits alleging copyright infringement that may be made or brought against YOU or them after the Execution Date solely with respect to the public performance within the Territory during the Term of BMI Works as licensed hereunder ("**Claims**"). BMI's obligations under this paragraph, however, are limited to those Claims that are made or brought within the Territory under U.S. Copyright Law, and shall in no way extend to any (i) performances of BMI Works that occurred prior to the Execution Date of this Agreement, and/or (ii) Claims made or brought before the Execution Date of this Agreement or after the termination of this Agreement where such termination is the result of YOUR failure to cure a breach within the Cure Period specified in Paragraph 12 below. BMI has no obligation to indemnify YOU for any Claim that is made or brought against YOU while YOUR account is not in good standing. For purposes hereof, if YOU fail to cure a breach within thirty (30) days of receiving of the breach Notice from BMI, then YOUR account is not in good standing. This indemnity (as set forth in this paragraph) also shall not apply to transmissions of any BMI Works by YOU after written request from BMI that YOU refrain from performance of such work. YOU agree to: (i) give BMI prompt Notice of any such Claim, (ii) to deliver to BMI with such Notice any and all communications and documents pertaining thereto, and (iii) to fully cooperate with BMI with respect thereto; and subject to YOUR complete fulfillment of all the conditions set forth in the preceding clauses (i) through (iii), then BMI shall have full charge of the defense and/or settlement of any such Claim; provided, however, that YOU may retain counsel on YOUR behalf and at YOUR own expense and participate in the defense of such Claim. YOU represent and warrant to BMI that YOU are not currently aware of any claims, demands or suits threatened against YOU in connection with the performance of BMI Works on YOUR Web Site prior to the date of execution of this Agreement, nor are YOU aware of any facts or circumstances that would serve as a basis for such a claim, demand or suit.

**11. REPRESENTATIONS AND WARRANTIES; RESERVATION OF RIGHTS:** YOU warrant and represent that: (i) YOU own, operate, and/or control the Web Site for the primary purpose of promoting YOUR company's brand or image, (ii) YOUR Web Site is not a Music Service, and (iii) that YOUR Web Site otherwise satisfies all of the qualifications set forth herein to be eligible for this form of license (including, but not limited to, the condition and/or limitations set forth in Paragraph 3 above) ("**LICENSEE's Representations**"). BMI reserves the right, but has no obligation, to review YOUR Web Site to determine whether this is the appropriate form of license and/or whether YOU have satisfied all the LICENSEE's Representations set forth in the preceding clauses (i) through (iii). Notwithstanding anything to the contrary in this Agreement, if, at any time, BMI determines that this Agreement is not, or is no longer, the appropriate form of license for YOUR Web Site or that YOU have not fully satisfied all the clauses of LICENSEE's Representations, BMI may terminate this Agreement at any time during the Term and shall provide YOU Notice along with the appropriate form of license. In the event YOU do not agree with the terms of the alternate license that BMI provides, YOU may obtain a license from BMI pursuant to Article XIV of the BMI Consent Decree by submitting a letter requesting a license pursuant thereto; BMI will not consider its receipt of this form of license as such an application. Additionally, BMI reserves the right to reject the submission of a license whose Start Date precedes the Execution Date.

**12. BREACH OR DEFAULT:** BMI has the right to cancel this Agreement, effective as of the date of BMI's first Notice to YOU of a breach of any term under this Agreement, if YOU don't cure the breach within 30 days after receiving the first Notice from BMI (such thirty (30) day period, the "**Cure Period**"). Additionally, any attempt by YOU to cure a breach after the Cure Period is voidable by BMI if, after the Cure Period and before YOUR attempt to cure such breach, YOU become aware of any claims, demands, or suits, for which YOU may seek indemnity from BMI under Paragraph 10 above. BMI hereby expressly reserves the right to refund any payment it may receive from YOU and cancel this Agreement under such



circumstances in lieu of indemnifying YOU for such claims, demands, or suits. This right to cancel is in addition to any other remedies BMI may have, and no waiver by BMI of full performance of this Agreement in any one or more instances shall be a waiver of the right to require full and complete performance of this Agreement for the remainder of the Term. For purposes of this Paragraph 12 of the Agreement, a breach by LICENSEE shall include any scenario where LICENSEE does not submit any of the following items on their due date as specified in the Agreement: (i) Report Forms, (ii) Music Use Reports, or (iii) any payment due under the Agreement (including the License Fee specified in Paragraph 4 of the Agreement or the Annual Minimum License Fee specified in Paragraph 5 of the Agreement). Accordingly, any breach by LICENSEE with regards to any item specified in clause (i), (ii) or (iii) of this Paragraph 12 shall be deemed a "breach" for all purposes of the Agreement. Notices of breach pursuant to this paragraph may be sent by BMI via email to LICENSEE.

### **13. TERMINATING THE AGREEMENT:**

A. YOU can request to terminate the Agreement as of December 31, 2017, or as of December 31 of any year after 2017, by providing Notice to BMI in writing no later than November 1 of such year. Additionally, if YOU permanently discontinue the use of any audio, video or audio-visual program containing music through YOUR Service (as opposed to temporarily disabling the Service and/or the music made available through YOUR Service), YOU can request to terminate this Agreement at any time during the Term by notifying BMI in writing at least sixty (60) days before the requested date of termination. The terms of this Agreement all payment and reporting obligations upon LICENSEE, remain in effect for all of the Term prior to termination of this Agreement. YOU are required to submit all reports and payments to BMI before the Agreement will be terminated.

B. BMI may terminate this Agreement at the end of December of 2017, or at the end of December of any year after 2017, by notifying YOU in writing at least sixty (60) days before the effective date of termination. Additionally, if BMI terminates its agreements with all other customers in YOUR class and category, BMI can terminate this Agreement at any time during the Term by notifying YOU in writing at least sixty (60) days before the effective date of termination.

**14. ARBITRATION:** All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement (except for matters within the jurisdiction of the BMI rate court) shall be submitted to arbitration in the City, County, and State of New York under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators to be selected as follows: Each of the Parties 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 in any court having jurisdiction. Such award shall include the fixing of costs, expenses, and attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

**15. WITHDRAWAL OF WORKS:** BMI reserves the right at its discretion to withdraw from the license granted by this Agreement any musical work as to which legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

**16. NOTICE:** All notices and other communications under this Agreement ("**Notice**") must be in writing and sent to the address(es) or fax number(s) designated by LICENSEE on the signature page hereof (each address (including email) or fax number, hereinafter, a "**Notice Address**"), and to BMI's Notice Address(es) designated in this paragraph. Either party may change one or more of its Notice Addresses during the Term of the Agreement by providing Notice to the other, and both Parties have an obligation to keep their Notices Addresses current throughout the Term, since Notice that is sent to a Notice Address will be deemed received: (i) when sent electronically to all the e-mail addresses designated for such purpose by the Parties; (ii) when delivered in person; (iii) upon confirmed transmission by facsimile device; (iv) five (5) days after postmarked by ordinary first class, registered, or certified, postage prepaid U.S. mail; or (iv) as of the date of confirmed delivery by private courier service. Notwithstanding the foregoing, Notices from YOU to BMI requesting cancellation under Paragraph 13 of the Agreement, or advising BMI of a claim, demand, or suit under Paragraph 10 of the Agreement, cannot be sent by e-mail.

#### **BMI Notice Address:**

Senior Vice President, Licensing  
7 World Trade Center  
250 Greenwich Street  
New York, New York 10007-0030  
BMI Digital Licensing Department Fax number: (212) 220-4504



**with a separate copy to:**

Senior Vice President and General Counsel (sent to the address above)

BMI Legal Department Fax number: (212) 220-4474

BMI email address: digitalaccount@bmi.com

**17. ASSIGNMENT:** This Agreement may not be assigned or otherwise transferred (whether by change of control, merger, operation of law or otherwise) without the prior written consent of BMI, not to be unreasonably withheld. For the avoidance of doubt, it is reasonable for BMI to withhold such consent if LICENSEE has failed to submit any payments or reports due.

**18. MISCELLANEOUS:**

A. Reports and/or payments that are due on a weekend day (or a nationally recognized holiday on which the U.S. Postal Service is not providing service) and received by BMI before the close of business on the next business day following the weekend day or holiday, will not be considered late under the Agreement.

B. BMI will, upon reasonable written request, advise YOU whether particular musical works are available for performance as part of BMI's repertoire. YOU will provide BMI with the title and the writer/composer of each musical composition requested to be identified.

C. BMI will make reasonable efforts to be exempted or excused from paying state or local taxes on the License Fees received pursuant to this Agreement. In the event that BMI is not excused from paying such taxes, however, and BMI is permitted by law to pass through such tax to YOU, YOU will pay BMI the full amount of such tax when YOU submit YOUR License Fee payment(s) to BMI.

D. BMI treats the financial and music usage information that YOU provide under this Agreement (or that BMI obtains through an audit) as "**Confidential Information.**" YOUR information is made available to BMI agents and employees who need to know such information in order to administer this Agreement. Information is also made available to BMI-represented songwriters, composers, music publishers, as well as foreign rights organizations, but only to show the royalties generated from YOUR use of their works (*i.e.*, song X was played Y times and earned \$Z in royalties). BMI will not otherwise disclose YOUR financial or music usage information unless required to do so by law or legal process. BMI may, however, use the information in YOUR music use reports and the music use reports from other customers to compile aggregate market data, and may disclose such aggregate market data publicly so long as BMI does not specifically identify YOUR information as coming from YOU. Notwithstanding the foregoing, nothing herein shall affect BMI's ability to produce or use such Confidential Information in connection with any claim, demand or suit in which BMI is involved pursuant to Paragraph 10 above.

E. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof. This Agreement is not binding on any party to this Agreement until it has been signed by both Parties. This Agreement cannot be waived, 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, without regard to choice of law rules. 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.

F. The Parties agree that any applicable law that would require interpretation of any claimed ambiguities in this Agreement against BMI, the party that drafted it, has no application and is expressly waived. If any claim is made by a party relating to any conflict, omission or ambiguity in the provisions of this Agreement, no presumption or burden of proof or persuasion will be implied because this Agreement was prepared by BMI.

G. All exhibits and attachments to this Agreement are hereby made a part hereof and incorporated by reference herein. The Parties agree that this Agreement will be considered signed when the signature of a party is delivered by facsimile or email transmission to the other party. Such facsimile or email signature shall be treated in all respects as having the same effect as an original signature. This Agreement may be executed in one or more counterparts and delivered by facsimile or e-mail, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

H. LICENSEE represents that: (i) the person executing this Agreement on its behalf is duly authorized to do so and that this Agreement is and shall be a binding obligation on the LICENSEE on behalf of whom it is executed, and (ii) that the execution and performance of this Agreement is not barred, prohibited or impaired by any existing law, rule, regulation, court or administrative order, decree, contract or agreement to which the LICENSEE is now a party or by which it is bound.



**PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TOGETHER WITH  
ANNUAL MINIMUM FEE TO:  
BMI, ATTN: DIGITAL LICENSING, 10 MUSIC SQUARE E., NASHVILLE, TN 37203**

**EXECUTION DATE OF AGREEMENT:** \_\_\_\_\_  
(This date to be entered by BMI upon execution)

<b><u>LICENSEE</u></b>	<b><u>ADDRESS OF PRINCIPAL OFFICES</u></b>
(Name)	(Street Address)
(Site URL)	(City) (State) (Zip)
(Site Name)	(Telephone Number) (Fax Number)
<b><u>FINANCIAL CONTACT</u></b>	(Email Address) (Web Address)
(Name)	<b><u>BILLING ADDRESS</u></b> (if different from Corporate Address)
(Telephone Number) (Fax Number)	
(Email Address)	
<b><u>MUSIC USE REPORT CONTACT</u></b>	(Street Address)
(Name)	(City) (State) (Zip)
(Telephone Number) (Fax Number)	(Telephone Number) (Fax Number)
(Email Address)	(Email Address) (Web Address)

<p align="center"><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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.</p> <p align="center"><b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b></p>	<p align="center"><b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b></p>
Signature	
Print Name / Title	
Signatory Email Address* <i>(if different from above)</i>	
<b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b>	<b>LI-01/17-924</b>
	<b>CORPIMG-17</b>
	<b>ACCOUNT NO.</b>





# MUSIC PERFORMANCE AGREEMENT FOR GENERAL WEB SITES

If you estimate your license fee will be less than \$2,000 per year or your Gross Revenue less than \$114,286 per year under the terms of this license agreement, we recommend you use our online Digital Licensing Center available at [http://www.bmi.com/digital\\_licensing](http://www.bmi.com/digital_licensing)

<http://www.bmi.com>

This Agreement (the "Agreement") is by and between Broadcast Music, Inc.® ("BMI"®), a New York corporation with its principal offices at 7 World Trade Center, 250 Greenwich Street, New York, New York 10007, and \_\_\_\_\_ ("LICENSEE" or "YOU" or "YOUR"), a \_\_\_\_\_ (state)

(check one)    \_\_\_ corporation  
                  \_\_\_ limited liability company  
                  \_\_\_ partnership  
                  \_\_\_ individual d/b/a \_\_\_\_\_

with its principal offices at: \_\_\_\_\_

\_\_\_\_\_ (BMI and LICENSEE are referred to herein individually as a "Party" and collectively as the "Parties"), for the public performance of BMI Works through LICENSEE's Web Site located at the URL: [http://\\_\\_\\_\\_\\_](http://_____) (the "URL") (all capitalized terms as defined below).

**WHEREAS:** (i) YOU own, operate, or control the Web Site for the primary purpose of generating **Gross Revenue**; (ii) YOUR Web Site is not a **Music Service**, and (iii) YOU are interested in being licensed by BMI to publicly perform **BMI Works** on the Web Site pursuant to the terms of this Agreement (all capitalized terms as defined below).

## NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. **TERM:** This Agreement begins on \_\_\_\_\_, 20\_\_\_\_ (customarily, the launch date of YOUR Web Site or the first date music was used as part of YOUR Web Site) (the "Start Date"), continues through the end of December of 2017, and automatically renews on a calendar year-to-year basis thereafter until it is terminated in accordance with the provisions hereof (the "Term").

2. **DEFINITIONS:** As used in this Agreement, the following terms have the following meanings:

A. "**Application**" means an identically named application that makes web service(s) calls to deliver programming over the Internet to a computer or other device capable of receiving Internet transmissions.

B. "**BMI Works**" means the musical compositions for which BMI has the right to license the non-dramatic public performance on or through YOUR Web Site at the time of YOUR performance during the Term.

C. "**Execution Date**" means the date on which BMI countersigns this Agreement as indicated in BMI's signature block to this Agreement, which such date shall be entered solely by BMI.

D. "**Gross Revenue**" means all revenue generated in connection with the Web Site by YOU or anyone acting on YOUR behalf, for or from: (i) access to or use of all or any part(s) of the Web Site (e.g., subscription fees, online time, and other transactional charges); and (ii) advertising (e.g., banners, in-streams ads, hotlinks) on, or sponsorship of, all or any part(s) of the Web Site, including revenue from third parties for including their programming on YOUR Web Site, commissions from third parties on transactions, and the fair market value of anything or service in lieu of cash considerations (i.e., trade and barter, e.g., exchange of sponsorship or advertising benefits for goods rather than cash payment). Gross Revenue includes revenue from the sale of proprietary software used to access all or any part(s) of the Web Site, but only to the extent that YOU, or someone acting on YOUR behalf, package(s) or include(s) access to or use of the Web Site with the license for the software. Gross Revenue also includes any donations that YOU, or someone acting on YOUR behalf, receive(s) in connection with the Web Site. Gross Revenue does not include revenue from the direct sale of physical goods. YOU can deduct any bad debts that YOU write off during a reporting period which are related to any billings that YOU previously reported, but YOU must include any recoveries of bad debts that were previously written off.

E. "**Music Page**" means a Web Page that presents one or more icons or hyperlinks that may be clicked on to access performances of music, provided, however, that if any portion of YOUR Web Site qualifies as a Music Service, that portion of YOUR Web Site is not eligible for license coverage under this Agreement and those pages would not be considered as Music Pages. For the avoidance of doubt, a Web Page is considered a Music Page if one or more icons or hyperlinks on the Web Page launches a media player or a "pop-up" window with an embedded media player through which one or more musical works are transmitted to the user, or otherwise opens another Web Page from which one or more musical works are automatically transmitted upon loading the Web Page without further action from the user.



F. **“Music Page Impression”** means (i) for Web Site, a transfer request for a single Music Page, and (ii) for an Application, a music impression.

G. **“Music Revenue”** means all Gross Revenue generated in connection with the music on the Web Site, including, but not limited to: (a) in-stream advertising in programming containing music; and (b) banners or hotlinks on Music Pages. Additionally, if YOU, or someone acting on YOUR behalf, sell(s) advertising availabilities on a run-of-site basis or offer(s) a subscription service with both music and non-music content, YOU will include a portion of such revenue as Music Revenue by dividing Music Page Impressions by Page Impressions and then multiplying the run-of-site or subscription service revenue by the result.

H. **“Music Service”** means an Internet web site, Application, or service, or a designated portion or section thereof, the central focus of which is the transmission of audio and/or audio-visual material comprising predominantly feature uses of music (e.g., music-formatted radio, on-demand transmissions of music recordings or music videos, live concerts), as opposed to programming with background or incidental and/or occasional feature uses of music (e.g., news/talk radio, situational comedies, feature films).

I. **“Page Impression”** means (i) for Web Site, a transfer request for a single Web Page, and (ii) for an Application, an impression.

J. **“Territory”** means the United States, its commonwealths, territories, and possessions.

K. **“Web Page”** means a set of associated files transferred sequentially to, and rendered more or less simultaneously by, a browser or Application. For purposes of calculating the License Fees due under this Agreement, proprietary media players and/or “pop-up” windows with embedded media players that launch when accessing performances of music or upon loading the Web Page are considered part of the Web Page from which they were launched and not a separate Web Page.

L. **“Web Site”** means YOUR Internet domain comprising a series of interrelated Web Pages, currently registered with a domain name registration service and located at the URL identified above (*i.e.*, root domain of YOUR Web Site). For purposes of this Agreement, the term “Web Site” can include an Application. YOU may license additional independently named Web Sites and/or Applications owned, operated and/or controlled by YOU by listing such additional sites and each independently named Application to be licensed under this Agreement on Exhibit A hereto, and may amend Exhibit A by written agreement signed by both Parties. YOU must comply separately with all reporting requirements and pay separate license fees under this Agreement, including Annual Minimum License Fees, for each Web Site and independently named Application listed on Exhibit A. All references to Web Site in this Agreement shall include those additional sites and independently named Applications listed on Exhibit A.

### **3. GRANT OF RIGHTS:**

A. BMI hereby grants YOU a non-exclusive license to perform publicly BMI Works through YOUR Web Site within the Territory (subject to Paragraph 3.B below) during the Term, subject to all the terms and conditions set forth in this Agreement. This Agreement includes only public performances of musical works by transmission over the Internet to a computer or other device capable of receiving Internet transmissions, and only where such transmissions are accessed and launched from a Web Page on the Web Site; it does not cover any transmissions accessed or launched from a third party web site whether such transmissions are accessed or launched directly from the third party web site or via a link to YOUR proprietary media player and/or “pop-up” window. Public performances outside of the Territory may be subject to appropriate separate licensing.

B. This license does not cover transmissions that are made as part of a Music Service, or any transmission that is not part of and directly launched from YOUR Web Site, and does not authorize YOU to grant to others (including, but not limited to, third party web sites, online services, cable television system operators) any license or right to perform publicly or cause to be performed by any means, method or process whatsoever, any of the musical compositions licensed hereunder. In the event that all or a portion of the Web Site is made available from a third party web site or included on a tier of services by a third party for additional revenue, either independently or with other web sites, YOU will immediately notify BMI in writing. BMI and LICENSEE expressly agree that any and all such uses itemized in this paragraph are not licensed under this Agreement and shall be subject to appropriate separate licensing.

C. This Agreement does not include dramatic rights or the right to perform dramatico-musical works in whole or in substantial part. This Agreement also does not license public performances in any commercial establishments, including, but not limited to, where all or a portion of the music available on the Web Site is used as a commercial music service (as that term is customarily understood in the industry); such performances of BMI music shall be subject to appropriate separate licensing.



D. This Agreement grants only public performing rights in musical works and does not grant any reproduction, distribution, or any other intellectual property right(s) in such musical works, or any digital performance, reproduction, distribution, or any other intellectual property right(s) in any sound recordings, to any person or entity, including those that may receive and/or download or otherwise store the transmission of the musical works licensed hereunder.

**4. LICENSE FEE:**

A. In consideration of the license granted in this Agreement and subject to all the terms and conditions set forth in this Agreement, LICENSEE shall calculate and pay license fees (“**License Fees**”) to BMI using either of the following License Fee Calculations at YOUR option:

i. Gross Revenue License Fee Calculation:

$$\text{License Fee} = (\text{Gross Revenue}) \times (1.75\%)$$

**or**

ii. Music Revenue License Fee Calculation:

License Fee = the greater of:

- a) (Music Revenue) x (2.5%); and
- b) (Music Page Impressions/1,000) x (\$0.12)

B. License Fees are due when YOU file YOUR Financial Report Forms (see Paragraph 6 below).

**5. ANNUAL MINIMUM LICENSE FEE:**

A. An “**Annual Minimum License Fee**” (also referred to as the “**Minimum Fee**”) is due upon signing the Agreement, and by January 30 (for customers filing Annual Financial Report Forms) or April 30 (for customers filing Quarterly Financial Report Forms) of each calendar year (or any part of a calendar year) of the Term thereafter. Annual Minimum License Fees paid for a calendar year of the Term is credited against any License Fees YOU may owe for that year. In the event that BMI does not receive the Annual Minimum License Fee by January 30 of any calendar year of the Agreement, BMI may, in addition to any other remedies it may have available to it, cancel this Agreement retroactive to the end of the last calendar year for which an Annual Minimum License Fee was received.

B. YOU may prorate the Annual Minimum License Fee due for the initial calendar year of the Agreement based on the number of months of the initial calendar year that will be covered under the Agreement (e.g., if the start date of YOUR license is July 10, 2017, the prorated Annual Minimum License Fee would be \$179.00 to cover the period from July through December 31, 2017).

C. The Annual Minimum License Fee for 2017 is \$358 for each Web Site identified above and listed on Exhibit A. For each year of the Agreement after 2017, the Annual Minimum License Fee will be increased to reflect the percentage change increase in the United States Consumer Price Index (All Urban Consumers, All Items) between October of the preceding year and October of the next year, rounded to the nearest dollar amount.

**6. FINANCIAL REPORT FORMS:**

A. Upon signing the Agreement, YOU will complete the Estimated Gross Revenue section on the signature page of this Agreement with a good faith estimate of what YOUR Gross Revenue will be (rounded to the nearest dollar amount) for the first calendar year (or portion thereof) of the Term. YOU will use this estimate for the initial calendar year, and for subsequent years, as the actual Gross Revenue that YOU report in YOUR Financial Report Forms for the immediately preceding calendar year, and the chart below to determine how often YOU need to report and pay license fees to BMI.

<i>Calendar Year Gross Revenue</i>	<i>Financial Report Form</i>	<i>Payment</i>
\$15,000 or less	ANNUAL	MINIMUM FEE
\$15,001 – \$50,000	ANNUAL	greater of MINIMUM FEE and LICENSE FEE
\$50,001 or more	QUARTERLY	greater of MINIMUM FEE and LICENSE FEE



B. “**Annual Financial Report Forms**,” and any additional license fees based on such reports, are due on or before January 30 following the calendar year to which they apply (e.g., Annual Financial Report Form for 2017 will be due on or before January 30, 2018). BMI may assess Late Payment in accordance with Paragraph 8 below if YOU fail to report and/or pay License Fees on time.

C. “**Quarterly Financial Report Forms**,” and any additional license fees based on such reports, are due on or before the 30<sup>th</sup> day after the end of each calendar quarter (e.g., first quarter Quarterly Financial Report Form will be due on or before April 30; second quarter, on or before July 30; third quarter, on or before October 30; and fourth quarter, on or before January 30). BMI may assess Late Charges in accordance with Paragraph 8 below if YOU fail to report and/or pay License Fees on time.

D. If, at any point during any calendar year of the Agreement, YOUR actual calendar year Gross Revenue exceeds \$50,000, YOU will file a Quarterly Financial Report Form on or before the 30<sup>th</sup> day after the end of the then current calendar quarter, and will continue to report and pay BMI quarterly as provided for above. BMI may assess Late Charges (see Paragraph 8 below) if YOU fail to report and/or pay on a quarterly basis as soon as YOUR actual calendar year Gross Revenue exceeds \$50,000.

E. Each Financial Report Form will be in a form provided by BMI which will be substantially similar to the sample forms attached hereto as Exhibits B and C, will be certified by YOU or YOUR authorized representative, will identify actual Gross Revenue and/or Music Revenue (including Music Page Impressions and total Page Impressions for allocation purposes) generated in connection with the Web Site during the period covered in the Financial Report Form (e.g., previous calendar year or previous calendar quarter), and will be accompanied by payment of any additional license fees that may be due above the Annual Minimum License Fee already paid. YOU agree to make commercially reasonable efforts to use systems and/or software that BMI may develop to prepare and deliver YOUR Financial Report Forms electronically to BMI.

F. If BMI does not receive YOUR Financial Report Form, BMI may bill YOU for estimated license fees on the basis of YOUR previous Financial Report Form. Any payments received will be applied to YOUR account pending receipt of YOUR actual Financial Report Form and any additional fees that may be due above the amount already paid. Overpayments will be credited to YOUR account, and refunded to YOU only after YOU have submitted all reports and payments due and this Agreement is terminated. BMI may assess Late Charges against the difference between BMI’s estimated billing and the actual fees due based on YOUR Financial Report Form, in accordance with Paragraph 8 below.

## 7. **AUDIT:**

A. BMI has the right to require that YOU provide BMI with data or information sufficient to ascertain the License Fee due under this Agreement. BMI (and its duly authorized representatives) may, at BMI’s expense and during customary business hours, examine YOUR books and records of account relating to any and all statements, accountings and reports required under this Agreement (including Music Use Reports) in order to verify their accuracy and/or determine the License Fee due for any unreported period, and to verify the compliance with the representations and warranties contained in Paragraph 11 below. BMI will only conduct such an examination once (if at all) with respect to each year of the Term (or portion thereof), and will provide YOU with 30 days prior written notice before conducting such an examination. The audit rights specified in this paragraph shall survive the termination or cancellation of this Agreement.

B. In addition to any other remedy that BMI may have, in the event that BMI’s audit reveals that YOU have underpaid License Fees to BMI, YOU shall immediately pay the amount owed. If an audit conducted pursuant to the terms of this Agreement reveals an underpayment of less than ten percent (10%), then BMI may assess and impose a Late Charge as defined below in Paragraph 8 if payment in full is not made within ten (10) days after the conclusion of the audit. If such underpayment amounts to ten percent (10%) or more, LICENSEE shall immediately pay BMI the amount LICENSEE owes BMI as determined by the audit plus a Late Charge, as defined below, commencing from the actual date such monies were due.

8. **LATE CHARGES:** BMI may impose a Late Charge on the following bases:

A. **Late Payment Charge.** BMI may impose a Late Payment Charge of one and one-half percent (1½%) per month from the date payment was due for any payment (e.g., License Fees, Annual Minimum License Fee, or any portion thereof) that is received by BMI more than ten (10) days after the due date; and

B. **Late Reporting Charge.** If LICENSEE fails to submit a Financial Report Form when due, BMI may impose a Late Reporting Charge equal to the greater of:

i. A flat fee of \$50 per month starting from the first month in which the Financial Report Form was due; and



ii. One and one-half percent (1½%) per month starting from the first month in which the Financial Report Form was due, calculated against the total License Fee as reflected in the Financial Report Form when it is ultimately submitted to BMI.

**9. MUSIC USE REPORTS:** On or before the 30<sup>th</sup> day after the end of each calendar quarter of the Term, YOU shall provide quarterly usage reports electronically to BMI, on a per distribution channel and a per business model basis (e.g., free, subscription-based, pay-per-listen or pay-per-view) identifying all of the musical works that were made available from YOUR Web Site during the reporting period. YOUR reports must be sent to BMI electronically (using an industry standard report form (e.g., DDEX) or other standard form usage report provided by BMI).

A. For audio-only programming, YOUR report will, at a minimum, include: (i) the type of offering (e.g., advertiser-supported; subscription based); (ii) the title of each song; (iii) the featured artist that recorded the song and/or the songwriter(s) or composer(s) that wrote the song; and (iv) the number of times the song was performed. YOUR report will also include the amount, if any, that YOU may have charged the consumer to receive the transmission.

B. For audio-visual programming, YOU shall, as a matter of course, cause cue sheets or logs to be created with respect to all programs produced by YOU, if any, and made available on the Web Site Service during the Term of this Agreement. Additionally, at BMI's reasonable request, YOU shall also request cue sheets or logs from licensors and outside producers with respect to programming produced by others and distributed as programs on YOUR Web Site during the Term of this Agreement. For purposes hereof, such cue sheets or logs shall identify the title and nature (e.g., television series program (and episode, original air date and/or season, if applicable), feature film (and release date), short, movie trailer/clip, promo, etc.), of each audio-visual work together with other identifying data (e.g., primary author, director, main actor(s)), and information identifying the title, artist, songwriter, composer, publisher, nature and type of use (e.g., theme, background), and the duration of each musical work contained in each audio-visual program. YOU shall provide any and all such cue sheets or logs not previously provided to BMI with YOUR quarterly usage report for the reporting period during which the program was made available on YOUR Web Site. YOUR quarterly usage report shall identify all audio-visual programs made available from YOUR Web Site during the immediately preceding calendar quarter, and shall specify the number of transmissions of each such audio-visual program on each distribution channel, and, where applicable, the fee charged for each transmission.

C. If YOUR report includes different types of uses (e.g., radio style programming and music videos), YOU will provide BMI with traffic and/or usage information so that BMI can allocate the portion of YOUR revenue attributable to each type of use. Additionally, if YOU provide any more detailed usage information any other person or company that licenses YOU to use music, YOU will provide BMI with a copy of that report. LICENSEE's obligations regarding the Music Use Reports specified in this paragraph shall survive the termination or cancellation of this Agreement.

**10. INDEMNIFICATION:** BMI shall indemnify, save and hold harmless and defend YOU and YOUR officers and employees from and against any and all claims, demands and suits alleging copyright infringement that may be made or brought against YOU or them after the Execution Date solely with respect to the public performance within the Territory during the Term of BMI Works as licensed hereunder ("**Claims**"). BMI's obligations under this paragraph, however, are limited to those Claims that are made or brought within the Territory under U.S. Copyright Law, and shall in no way extend to any (i) performances of BMI Works that occurred prior to the Execution Date of this Agreement, and/or (ii) Claims made or brought before the Execution Date of this Agreement or after the termination of this Agreement where such termination is the result of YOUR failure to cure a breach within the Cure Period specified in Paragraph 12 below. BMI has no obligation to indemnify YOU for any Claim that is made or brought against YOU while YOUR account is not in good standing. For purposes hereof, if YOU fail to cure a breach within thirty (30) days of receiving of the breach Notice from BMI, then YOUR account is not in good standing. This indemnity (as set forth in this paragraph) also shall not apply to transmissions of any BMI Works by YOU after written request from BMI that YOU refrain from performance of such work. YOU agree to: (i) give BMI prompt Notice of any such Claim, (ii) to deliver to BMI with such Notice any and all communications and documents pertaining thereto, and (iii) to fully cooperate with BMI with respect thereto; and subject to YOUR complete fulfillment of all the conditions set forth in the preceding clauses (i) through (iii), then BMI shall have full charge of the defense and/or settlement of any such Claim; provided, however, that YOU may retain counsel on YOUR behalf and at YOUR own expense and participate in the defense of such Claim. YOU represent and warrant to BMI that YOU are not currently aware of any claims, demands or suits threatened against YOU in connection with the performance of BMI Works on YOUR Web Site prior to the date of execution of this Agreement, nor are YOU aware of any facts or circumstances that would serve as a basis for such a claim, demand or suit.

**11. REPRESENTATIONS AND WARRANTIES; RESERVATION OF RIGHTS:** YOU warrant and represent that: (i) YOU own, operate, and/or control the Web Site for the primary purpose of generating Gross Revenue, (ii) YOUR Web Site is not a Music Service, and (iii) that YOUR Web Site otherwise satisfies all of the qualifications set forth herein to be eligible for this form of license (including, but not limited to, the condition and/or limitations set forth in section 3 above) ("**LICENSEE's Representations**"). BMI reserves the right, but has no obligation, to review YOUR Web Site to determine whether this is the appropriate form of license and/or whether YOU have satisfied all the LICENSEE's Representations set



forth in the preceding clauses (i) through (iii). Notwithstanding anything to the contrary in this Agreement, if, at any time, BMI determines that this Agreement is not, or is no longer, the appropriate form of license for YOUR Web Site or that YOU have not fully satisfied all the clauses of LICENSEE's Representations, BMI may terminate this Agreement at any time during the Term and shall provide YOU Notice along with the appropriate form of license. In the event YOU do not agree with the terms of the alternate license that BMI provides, YOU may obtain a license from BMI pursuant to Article XIV of the BMI Consent Decree by submitting a letter requesting a license pursuant thereto; BMI will not consider its receipt of this form of license as such an application. Additionally, BMI reserves the right to reject the submission of a license whose Start Date precedes the Execution Date.

**12. BREACH OR DEFAULT:** BMI has the right to cancel this Agreement, effective as of the date of BMI's first Notice to YOU of a breach of any term under this Agreement, if YOU don't cure the breach within 30 days after receiving the first Notice from BMI (such thirty (30) day period, the "**Cure Period**"). Additionally, any attempt by YOU to cure a breach after the Cure Period is voidable by BMI if, after the Cure Period and before YOUR attempt to cure such breach, YOU become aware of any claims, demands, or suits, for which YOU may seek indemnity from BMI under Paragraph 10 above. BMI hereby expressly reserves the right to refund any payment it may receive from YOU and cancel this Agreement under such circumstances in lieu of indemnifying YOU for such claims, demands, or suits. This right to cancel is in addition to any other remedies BMI may have, and no waiver by BMI of full performance of this Agreement in any one or more instances shall be a waiver of the right to require full and complete performance of this Agreement for the remainder of the Term. For purposes of this Paragraph 12, a breach by LICENSEE shall include any scenario where LICENSEE does not submit any of the following items on their due date as specified in the Agreement: (i) Financial Reports, (ii) Music Use Reports, or (iii) any payment due under the Agreement (including the License Fee specified in Paragraph 4 of the Agreement or the Annual Minimum License Fee specified in Paragraph 5). Accordingly, any breach by LICENSEE with regards to any item specified in clause (i), (ii) or (iii) of this Paragraph 12 shall be deemed a "breach" for all purposes of the Agreement. Notices of breach pursuant to this paragraph may be sent by BMI via email to LICENSEE.

**13. TERMINATING THE AGREEMENT:**

A. YOU can request to terminate the Agreement as of December 31, 2017, or as of December 31 of any year after 2017, by providing Notice to BMI in writing no later than November 1 of such year. Additionally, if YOU permanently discontinue the use of any audio, video or audio-visual program containing music through YOUR Service (as opposed to temporarily disabling the Service and/or the music made available through YOUR Service), YOU can request to terminate this Agreement at any time during the Term by notifying BMI in writing at least sixty (60) days before the requested date of termination. The terms of this Agreement all payment and reporting obligations upon LICENSEE, remain in effect for all of the Term prior to termination of this Agreement. YOU are required to submit all reports and payments to BMI before the Agreement will be terminated.

B. BMI may terminate this Agreement at the end of December of 2017, or at the end of December of any year after 2017, by notifying YOU in writing at least thirty (30) days before the effective date of termination. Additionally, if BMI terminates its agreements with all other customers in YOUR class and category, BMI can terminate this Agreement at any time during the Term by notifying YOU in writing at least thirty (30) days before the effective date of termination.

**14. ARBITRATION:** All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement (except for matters within the jurisdiction of the BMI rate court) shall be submitted to arbitration in the City, County, and State of New York under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators to be selected as follows: Each of the Parties 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 in any court having jurisdiction. Such award shall include the fixing of costs, expenses, and attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

**15. WITHDRAWAL OF WORKS:** BMI reserves the right at its discretion to withdraw from the license granted by this Agreement any musical work as to which legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

**16. NOTICE:** All notices and other communications under this Agreement ("**Notice**") must be in writing and sent to the address(es) or fax number(s) designated by LICENSEE on the signature page hereof (each address (including email) or fax number, hereinafter, a "**Notice Address**"), and to BMI's Notice Address(es) designated in this paragraph. Either party may change one or more of its Notice Addresses during the Term of the Agreement by providing Notice to the other, and both Parties have an obligation to keep their Notices Addresses current throughout the Term, since Notice that is sent to



a Notice Address will be deemed received: (i) when sent electronically to all the e-mail addresses designated for such purpose by the Parties; (ii) when delivered in person; (iii) upon confirmed transmission by facsimile device; (iv) five (5) days after postmarked by ordinary first class, registered, or certified, postage prepaid U.S. mail; or (iv) as of the date of confirmed delivery by private courier service. Notwithstanding the foregoing, Notices from YOU to BMI requesting cancellation under Paragraph 13 of the Agreement, or advising BMI of a claim, demand, or suit under Paragraph 10 of the Agreement, cannot be sent by e-mail.

**BMI Notice Address:** Senior Vice President, Licensing  
7 World Trade Center  
250 Greenwich Street  
New York, New York 10007-0030  
BMI Digital Licensing Department Fax number: (212) 220-4504

**with a separate copy to:**

Senior Vice President and General Counsel (sent to the address above)

BMI Legal Department Fax number: (212) 220-4474

BMI email address: digitalaccount@bmi.com

**17. ASSIGNMENT:** This Agreement may not be assigned or otherwise transferred (whether by change of control, merger, operation of law or otherwise) without the prior written consent of BMI, not to be unreasonably withheld. For the avoidance of doubt, it is reasonable for BMI to withhold such consent if LICENSEE has failed to submit any payments or reports due.

**18. MISCELLANEOUS:**

A. Reports and/or payments that are due on a weekend day (or a nationally recognized holiday on which the U.S. Postal Service is not providing service) and received by BMI before the close of business on the next business day following the weekend day or holiday, will not be considered late under the Agreement.

B. BMI will, upon reasonable written request, advise YOU whether particular musical works are available for performance as part of BMI's repertoire. YOU will provide BMI with the title and the writer/composer of each musical composition requested to be identified.

C. BMI will make reasonable efforts to be exempted or excused from paying state or local taxes on the License Fees received pursuant to this Agreement. In the event that BMI is not excused from paying such taxes, however, and BMI is permitted by law to pass through such tax to YOU, YOU will pay BMI the full amount of such tax when YOU submit YOUR License Fee payment(s) to BMI.

D. BMI treats the financial and music usage information that YOU provide under this Agreement (or that BMI obtains through an audit) as "**Confidential Information.**" YOUR information is made available to BMI agents and employees who need to know such information in order to administer this Agreement. Information is also made available to BMI-represented songwriters, composers, music publishers, as well as foreign rights organizations, but only to show the royalties generated from YOUR use of their works (*i.e.*, song X was played Y times and earned \$Z in royalties). BMI will not otherwise disclose YOUR financial or music usage information unless required to do so by law or legal process. BMI may, however, use the information in YOUR music use reports and the music use reports from other customers to compile aggregate market data, and may disclose such aggregate market data publicly so long as BMI does not specifically identify YOUR information as coming from YOU. Notwithstanding the foregoing, nothing herein shall affect BMI's ability to produce or use such Confidential Information in connection with any claim, demand or suit in which BMI is involved pursuant to Paragraph 10 above.

E. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof. This Agreement is not binding on any party to this Agreement until it has been signed by both Parties. This Agreement cannot be waived, 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, without regard to choice of law rules. 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.

F. The parties to this Agreement agree that any applicable law that would require interpretation of any claimed ambiguities in this Agreement against BMI, the party that drafted it, has no application and is expressly waived. If any claim is made



by a party relating to any conflict, omission or ambiguity in the provisions of this Agreement, no presumption or burden of proof or persuasion will be implied because this Agreement was prepared by BMI.

G. All exhibits and attachments to this Agreement are hereby made a part hereof and incorporated by reference herein. The parties to this Agreement agree that this Agreement will be considered signed when the signature of a party is delivered by facsimile or email transmission to the other party. Such facsimile or email signature shall be treated in all respects as having the same effect as an original signature. This Agreement may be executed in one or more counterparts and delivered by facsimile or e-mail, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

H. LICENSEE represents that: (i) the person executing this Agreement on its behalf is duly authorized to do so and that this Agreement is and shall be a binding obligation on the LICENSEE on behalf of whom it is executed, and (ii) that the execution and performance of this Agreement is not barred, prohibited or impaired by any existing law, rule, regulation, court or administrative order, decree, contract or agreement to which the LICENSEE is now a party or by which it is bound.



**PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TOGETHER WITH  
ANNUAL MINIMUM FEE TO:  
BMI, ATTN: DIGITAL LICENSING, 10 MUSIC SQUARE E., NASHVILLE, TN 37203**

**EXECUTION DATE OF AGREEMENT:** \_\_\_\_\_  
(This date to be entered by BMI upon execution)

<b><u>LICENSEE</u></b>	<b><u>ADDRESS OF PRINCIPAL OFFICES</u></b>
(Name)	(Street Address)
(Site URL)	(City) (State) (Zip)
(Site Name)	(Telephone Number) (Fax Number)
<b><u>FINANCIAL CONTACT</u></b>	(Email Address) (Web Address)
(Name)	<b><u>BILLING ADDRESS</u></b> (if different from Corporate Address)
(Telephone Number) (Fax Number)	
(Email Address)	
<b><u>MUSIC USE REPORT CONTACT</u></b>	(Street Address)
(Name)	(City) (State) (Zip)
(Telephone Number) (Fax Number)	(Telephone Number) (Fax Number)
(Email Address)	(Email Address) (Web Address)
<b><u>ESTIMATED GROSS REVENUE</u></b>	
1. Subscriber Revenue \$ _____	
2. Advertising revenue \$ _____	
3. Provision of Space or Time \$ _____	
4. Donations \$ _____	
5. Trade or Barter \$ _____	
6. Proprietary Software \$ _____	
<b>TOTAL ESTIMATED GROSS REVENUE</b> \$ _____	

<p align="center"><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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. <b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b></p> <p align="center">Signature</p> <hr/> <p align="center">Print Name / Title</p> <hr/> <p align="center">Signatory Email Address* (if different from above)</p> <hr/> <p align="center"><b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b></p>	<p align="center"><b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b></p> <hr/> <p align="right">LI-01/17-923</p> <hr/> <p align="right">INTERNET-17</p> <hr/> <p align="center">ACCOUNT NO.</p>
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# INTERNET PROGRAMMING SERVICE EXTENDED MUSIC PERFORMANCE LICENSE AGREEMENT

LI-01/17 – 915 / IPS

<http://www.bmi.com>

This AGREEMENT (the “**Agreement**”), made on \_\_\_\_\_ (“**Effective Date**”), by and between BROADCAST MUSIC, INC.® (“**BMI**”), a New York corporation with its principal offices at 7 World Trade Center, 250 Greenwich Street, New York, New York 10007 and

(“**LICENSEE**”), a \_\_\_\_\_ (State)

- (Check one)  corporation
- partnership
- limited liability company
- individual d/b/a \_\_\_\_\_ (complete if applicable)

with its principal offices at \_\_\_\_\_

(BMI and LICENSEE are referred to herein individually as a “**Party**” and collectively as the “**Parties**”), for the public performance of BMI Works through LICENSEE’s Programming Service (all capitalized terms as defined below).

**WHEREAS:** (i) LICENSEE produces and/or packages certain audio and/or audiovisual programming which is made available on a non-subscription basis to end-users via streaming over the Internet through Affiliate Web Sites, third party web sites, Cellular Networks and/or Customer Interfaces; and (ii) LICENSEE desires a license to cover, pursuant to the terms of this Agreement, the public performance of BMI music contained in such programming as made available through such third party web sites and/or Cellular Networks and Customer Interfaces (all capitalized terms as defined below);

## NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

### 1. TERM:

The Term of this Agreement shall mean the period from \_\_\_\_\_ (Launch Date on which LICENSEE’s Programming Service was launched) (the “**Start Date**”) through December 31, 2017 and continuing on a year-to-year basis thereafter. Either party may terminate the Agreement upon 60 days’ prior written notice at the end of December of any year beginning with December 31, 2017. BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the Agreements of all other licensees of the same class and category as LICENSEE as of the end of any month during the initial term or any subsequent renewal term, upon 60 days’ prior written notice.

### 2. DEFINITIONS:

As used in this Agreement, the following terms have the following meanings:

A. An “**Affiliate**” of LICENSEE means (1) the owner and/or operator of a Web Site which, pursuant to an agreement between LICENSEE and such owner and/or operator, makes LICENSEE’s Programming Service available on or in connection with its Web Site; and (2) whose principal offices are located, and the majority of whose employees work, within the Territory. LICENSEE shall list all Affiliates, and the URL(s) of the root domains of each such Affiliate, on Exhibit A attached hereto. LICENSEE may amend Exhibit A from time to time during the Term hereof by written agreement signed by both parties.

B. “**Aggregate Stream Hours**” means the total number of hours of LICENSEE’s Programming Service that LICENSEE has transmitted over the Internet and/or Cellular Networks during the relevant calendar quarter to all end users within the Territory who access such transmissions through an Affiliate Web Site, and/or Customer Interface (e.g., if three end users each listen to the Programming Service through an Affiliate Web Site for twenty minutes during the period, LICENSEE would report one (1) Aggregate Stream Hour).

C. “**BMI Works**” means the musical compositions for which BMI has the right to license the non-dramatic public performance on or through LICENSEE’s Programming Service at the time of performance during the Term.



D. **“Cellular Networks”** means, for purposes of this Agreement, the wireless networks over which mobile telephone and/or data services are provided to consumers, including, without limitation, Cellular Radiotelephone Services, Personal Communication Services (PCS) and Specialized Mobile Radio (SMR) services.

E. **“Customer Interface”** (“CI”) means a Web Site or Application (both wired and wireless, e.g. WAP, iOS/Android Mobile Application), Licensee’s proprietary software application(s) (including, but not limited to, LICENSEE’s branded API, embedded media player and/or widget) or other promotional or transactional interface owned and/or operated by Licensee or an Affiliate through which end users can listen to streams of audio or audio/visual content. LICENSEE shall list all such Customer Interfaces on Exhibit A attached hereto. LICENSEE shall identify on Exhibit A of the Agreement, all third parties with which, during the Term hereof, it has entered or does enter into a commercial relationship pursuant to which LICENSEE’s widgets will be made available for which LICENSEE desires to be licensed under the Agreement, and LICENSEE shall use commercially reasonable efforts to provide BMI with a list identifying all other third party web sites through which its widgets are accessing LICENSEE’s music programming ranked by the number of such accesses.

F. **“Programming Service”** means the audio or audio/visual content which LICENSEE produces and/or packages for transmission over the Internet and/or Cellular Networks via streaming to end-users who access the transmission solely through a Customer Interface and/or Affiliate Web Site that receive the transmission via personal computer or another device capable of receiving Internet and/or Cellular Network transmissions.

G. **“Territory”** means the United States, its commonwealths, territories, and possessions.

H. **“Through-to-the-User License”** means, in reference to the scope of the rights granted herein, a license which authorizes LICENSEE to make its Programming Service available to the end-user through Affiliate Web Sites and Customer Interface(s).

I. **“Web Page”** means a set of associated files transferred sequentially from a Web Site to, and rendered more or less simultaneously by, a browser.

J. **“Web Site”** means an Internet computer service comprising a series of interrelated Web Pages currently registered with a domain name registration service that contains the Programming Service and that an Affiliate of LICENSEE or LICENSEE produces and/or packages and then transmits or causes to be transmitted either directly or indirectly to persons who receive the service over the Internet by means of a personal computer or by means of another device capable of receiving Internet transmissions.

### 3. **GRANT OF RIGHTS:**

A. BMI hereby grants to LICENSEE, for the Term, a non-exclusive Through-to-the-User License, subject to all the terms and conditions set forth in this Agreement, to make non-dramatic public performances of BMI Works within the Territory (subject to Paragraph 3.B below) in and as part of LICENSEE’s Programming Service made available on Affiliate Web Site(s) and Customer Interface(s). For avoidance of doubt, the grant of the Through-to-the-User License specified herein only covers the public performance of BMI-licensed musical works in and as part of LICENSEE’s Programming Service made available on Affiliate Web Site(s) and Customer Interface(s), but that this license does not include or extend to any other uses of BMI-licensed musical works on any such third party web site, which shall be separately licensed. This Agreement shall only include public performances in the Territory of musical works by transmissions over the Internet received via personal computers or by means of another device capable of receiving the Internet through streaming technologies.

B. This Agreement does not include dramatic rights or the right to perform dramatico-musical works in whole or in substantial part. This Agreement also does not license public performances in any commercial establishments, including, but not limited to, where all or a portion of the music available through LICENSEE’s Programming Service is used as a commercial music service (as that term is customarily understood in the industry); such performances of BMI music shall be subject to appropriate separate licensing.

C. This license does not cover any transmission which is not part of LICENSEE’s Programming Service and, except as expressly provided for in this Agreement, does not authorize LICENSEE to grant to others (including, but not limited to, third party web sites, online services, cable television system operators and open video systems (acting as other than Internet service providers)) any license or right to perform publicly by any means, method or process whatsoever, any of the musical compositions licensed hereunder.

D. This Agreement grants only public performing rights in musical works and does not grant any reproduction, distribution, or any other intellectual property right(s) in such musical works, or any digital performance, reproduction, distribution, or any other intellectual property right(s) in sound recordings, to any person or entity, including those that may receive and/or download or otherwise store the transmission of musical works licensed hereunder. Additionally, public performances originating from LICENSEE's Programming Service outside of the Territory may be subject to appropriate separate licensing.

4. **LICENSE FEE:**

In consideration of the license granted in this Agreement and subject to all the terms and conditions set forth in this Agreement, LICENSEE shall calculate and pay to BMI for each calendar quarter of the Term hereof, on or before the thirtieth (30<sup>th</sup>) day after the end of each calendar quarter or portion thereof, a license fee equal to the total Aggregate Stream Hours during such quarter multiplied by \$0.006 (six tenths of one cent) ("**License Fee**").

5. **ANNUAL MINIMUM LICENSE FEE:**

A. An "**Annual Minimum License Fee**" is due from LICENSEE upon signing the Agreement, and by January 30 of each calendar year (or any part of a calendar year) of the Term thereafter. Annual Minimum License Fees paid for a calendar year of the Term are credited against any License Fees LICENSEE may owe for that year. In the event that BMI does not receive the Annual Minimum License Fee by January 30 of any calendar year of the Agreement, BMI may, in addition to any other remedies it may have available to it, cancel this Agreement retroactive to the end of the last calendar year for which an Annual Minimum License Fee was received.

B. LICENSEE may prorate the Annual Minimum License Fee due for the initial calendar year of the Agreement based on the number of months of the initial calendar year that will be covered under the Agreement (e.g., if the start date of LICENSEE's license is July 10, 2017, the prorated Annual Minimum License Fee would be \$680.00 to cover the period from July through December 31st, 2017).

C. The Annual Minimum License Fee due for calendar year 2017, and any prior calendar year, is \$1,360.00. For each year of the Term after 2017, the Annual Minimum License Fee shall be adjusted upward only to reflect any percentage change increase in the United States Consumer Price Index (National, All Items) between October of the preceding year and October of the next preceding year, rounded to the nearest dollar amount.

6. **REPORT FORMS:**

A. For each calendar quarter of this Agreement, LICENSEE shall submit to BMI a report, certified by an authorized representative of LICENSEE to be true and accurate, and in a form substantially the same as the Internet Programming Service Provider Quarterly Financial Report Form annexed to this Agreement as Exhibit B, stating the total Aggregate Stream Hours through a Customer Interface, Affiliate Web Site(s), and Mobile Applications. Such reports are due at the same time as the applicable quarterly License Fee. LICENSEE agrees to use commercially reasonable efforts to use software that BMI may provide to LICENSEE to prepare and deliver such reports electronically, or such other commercially reasonable alternative method upon which the parties agree. BMI shall have the right to estimate the fees due for a given quarter year on the basis of the highest quarterly fee during the previous twelve (12) months and bill LICENSEE therefor in the event that LICENSEE fails to report as required. Neither BMI's estimation of the fee for a reporting period nor anything else shall relieve LICENSEE of the obligation to report and make actual fee payments for the reporting period. If BMI's estimate was less than the actual License Fee due, LICENSEE shall pay BMI, at the time the report is rendered, the difference between the actual fee due and the estimated fee paid. If LICENSEE's report reflects that the actual fee for the quarter year was less than the estimated fee paid, BMI shall credit the overpayment to LICENSEE's account. If LICENSEE has submitted all contractually required prior reports and payments to BMI and this Agreement is terminated, BMI shall refund the overpayment to LICENSEE.

7. **AUDIT:**

A. BMI has the right to require that LICENSEE provide BMI with data or information sufficient to ascertain the license fee due hereunder.

B. BMI has the right to require that LICENSEE provide BMI with data or information sufficient to ascertain the License Fee due under this Agreement. BMI (and its duly authorized representatives) may, at BMI's expense and during customary business hours, examine LICENSEE's books and records of account relating to any and all statements, accountings and reports required under this Agreement (including Music Use Reports) in order to verify their accuracy and/or determine the License Fee due for any unreported period, and to verify the compliance with the representations and warranties contained



in Paragraph 11 below. BMI will only conduct such an examination once (if at all) with respect to each year of the Term (or portion thereof), and will provide LICENSEE with 30 days prior written notice before conducting such an examination. The audit rights specified in this paragraph shall survive the termination or cancellation of this Agreement.

C. In addition to any other remedy that BMI may have, in the event that BMI conducts an audit under Paragraph 7.B and such audit reveals that LICENSEE has underpaid License Fees to BMI, LICENSEE shall immediately pay the amount LICENSEE owes BMI and, in addition, if such underpayment amounts to ten percent (10%) or more of LICENSEE's annual License Fees for the audited period, LICENSEE shall pay BMI a late payment charge in the amount of one and one-half percent (1 1/2%) per month of all License Fees owed but not paid commencing on the actual date such monies were due.

D. The audit rights specified in this Paragraph 7 shall survive the termination or cancellation of this Agreement.

#### **8. LATE PAYMENT OR LATE REPORTING CHARGES:**

BMI may impose a late payment charge of one and one-half percent (1½%) per month from the date payment was due for any payment, Financial Report Form, or Music Use Report that is received by BMI more than ten (10) days after the due date. BMI may elect to assess such late payment charges for any payment that was due prior to the Effective Date commencing with the Launch Date.

#### **9. MUSIC USE REPORTS:**

A. LICENSEE shall provide BMI, in electronic form, quarterly Music Use Reports which shall contain detailed information concerning the transmission of all musical works contained in LICENSEE's Programming Service. Such information shall identify each musical work by title, composer/writer, author, artist, record label, any unique identifier (e.g. ISWC, ISAN), length, type of use (i.e., theme, background or feature performance) and manner of performance (i.e. instrumental or vocal) (or any other methodology agreed to by BMI and LICENSEE), specify the number of times each musical work was transmitted, and identify the Affiliate Web Site(s) through which the Program(s) containing such musical works was/were made available. In the event that a charge was made for an on-demand transmission where the user chose to access a particular work and paid a fee to LICENSEE for such service, LICENSEE shall include the gross price that the end user was charged to receive such transmission(s). With respect to transmissions of audiovisual works, such information shall also include the title of each audiovisual work, and the primary author, director, and principal actor(s) of the audiovisual work. With respect to on-demand transmissions where users are able to access transmissions of specific works upon request, such information shall also include the country where the end-user received such transmission. LICENSEE shall request reports from its licensors or outside producers with respect to all content provided by others and transmitted by LICENSEE as part of LICENSEE's Programming Service. LICENSEE shall notify BMI immediately in the event that LICENSEE is unable to obtain such reports, and BMI shall use commercially reasonable efforts to secure any missing reports from LICENSEE's licensors or outside producers, but nothing contained herein shall relieve LICENSEE of its obligation to deliver the reports to BMI in the event that BMI is unable to obtain such reports.

B. Notwithstanding anything to the contrary above, in the event that this license covers a service for which LICENSEE is also separately licensed for the digital transmission of sound recordings in connection with the Programming Service pursuant to the statutory license for non-interactive, non-subscription transmissions provided for under the U.S. Copyright Act, and LICENSEE is required to submit detailed monthly or quarterly music use reports to sound recording copyright owners pursuant to such license, LICENSEE may submit such reports to BMI for purposes of satisfying the music use reporting requirements contained herein, but only if such reports contain, at a minimum, the title and artist of each work used in connection with the Programming Service during the reporting period, and the number of times each such work was performed; provided, however, that in no event shall LICENSEE provide BMI with any less information than that which LICENSEE provides to any other copyright owners regarding such transmissions.

C. LICENSEE shall deliver to BMI Music Use Reports on or before the thirtieth (30) day following the end of such quarter. LICENSEE agrees to use commercially reasonable efforts to use software which BMI may provide to LICENSEE to prepare and deliver such reports electronically, or such other commercially reasonable alternative method upon which the parties agree.

#### **10. INDEMNIFICATION:**

BMI shall indemnify, save and hold harmless and defend LICENSEE and LICENSEE's officers and employees from and against any and all claims, demands and suits that are first made after the Effective Date and that are brought within the Territory alleging copyright infringement under U.S. Copyright Law that may be made or brought against LICENSEE or them solely with respect to the public performance within the Territory during the Term of BMI Works as licensed hereunder. BMI's obligations under this Paragraph, however, are limited to those claims, demands or suits that are made or brought



within the Territory under U.S. Copyright Law, and shall in no way extend to any (i) performances of BMI Works that occurred prior to the Start Date of this Agreement, and/or (ii) claims, demands or suits made or brought before the Effective Date of this Agreement or after the termination of this Agreement where such termination is the result of LICENSEE's failure to cure a breach within the Cure Period specified in Paragraph 12 below. BMI has no obligation to indemnify LICENSEE for any claim, demand or suit that is made or brought against LICENSEE while LICENSEE's account is not in good standing. For purposes hereof, if LICENSEE fails to cure a breach within thirty (30) days of receiving of the breach Notice from BMI, then LICENSEE's account is not in good standing. This indemnity also shall not apply to transmissions of any musical work by LICENSEE after written request from BMI that LICENSEE refrain from performance of such work. LICENSEE agrees to give BMI prompt Notice of any such claim, demand, or suit, to deliver to BMI with such Notice any and all communications and documents pertaining thereto, and to cooperate with BMI with respect thereto, and BMI shall have full charge of the defense and/or settlement of any such claim, demand, or suit; provided, however, that LICENSEE may retain counsel on its behalf and at its own expense and participate in the defense of such claim, demand or suit. LICENSEE represents and warrants to BMI that it is not currently aware of any claims, demands or suits threatened against it in connection with the performance of BMI Works through LICENSEE's Programming Service prior to the date of execution of this Agreement, nor are you aware of any facts or circumstances that would serve as a basis for such a claim, demand or suit.

#### **11. WARRANTY; RESERVATION OF RIGHTS:**

A. LICENSEE warrants and represents that, in the event that the Programming Service is delivered to end users over the Internet and/or Cellular Networks by transmissions other than point-to-point transmissions where one stream of programming from LICENSEE's servers is accessible to more than one end-user (e.g., multicasting), LICENSEE will have access to information sufficient to determine and report and pay License Fees to BMI on the Aggregate Stream Hours of the Programming Service.

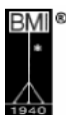
B. This Agreement is experimental in nature. Without limiting the foregoing, the grant of the Through-to-the-User license is experimental, non-precedential, and without prejudice. BMI reserves the right to dispute in any future Rate Court proceeding or negotiation between the Parties or any third-party the legal requirement of a Through-to-the-User scope of license grant and the license fees relating thereto, and neither Party shall cite or rely upon the fact that no separate or additional fee has been ascribed to the Through-to-the-User scope of license grant as precedent for the value thereof in any future Rate Court proceeding or negotiation.

#### **12. BREACH OR DEFAULT:**

BMI has the right to cancel this Agreement, effective as of the date of BMI's first Notice to LICENSEE of a breach of any term under this Agreement, if LICENSEE does not cure the breach within 30 days after receiving the first Notice from BMI (such thirty (30) day period, the "**Cure Period**"). Additionally, any attempt by LICENSEE to cure a breach after the Cure Period is voidable by BMI if, after the Cure Period and before LICENSEE's attempt to cure such breach, LICENSEE becomes aware of any claims, demands, or suits, for which it may seek indemnity from BMI under Paragraph 10 above. BMI hereby expressly reserves the right to refund any payment it may receive from LICENSEE and cancel this Agreement under such circumstances in lieu of indemnifying LICENSEE for such claims, demands, or suits. This right to cancel is in addition to any other remedies BMI may have, and no waiver by BMI of full performance of this Agreement in any one or more instances shall be a waiver of the right to require full and complete performance of this Agreement for the remainder of the Term. For purposes of this Paragraph 12, a breach by LICENSEE shall include any scenario where LICENSEE does not submit any of the following items on their due date as specified in the Agreement: (i) Financial Reports, (ii) Music Use Reports, or (iii) any payment due under the Agreement (including the License Fee specified in Paragraph 4 of the Agreement or the Annual Minimum License Fee specified in Paragraph 5 of the Agreement). Accordingly, any breach by LICENSEE with regards to any item specified in clause (i), (ii) or (iii) of this Paragraph 12 shall be deemed a "breach" for all purposes of the Agreement. Notices of breach pursuant to this paragraph may be sent by BMI via email to LICENSEE.

#### **13. DISCONTINUANCE OF MUSIC:**

In the event that LICENSEE ceases to publicly perform music in connection with LICENSEE's Programming Service, LICENSEE may cancel this Agreement by sending written notice to BMI prior to the effective date of cancellation as specified in such notice by LICENSEE, provided, however, that if LICENSEE continues to publicly perform music in connection with its Web Site, such Web Site must be separately licensed by BMI's Web Site Music Performance Agreement before this Agreement can be canceled. BMI will cancel this Agreement, retroactive to the effective date of cancellation, but only if, within ninety (90) days after the effective date, LICENSEE: (a) has submitted to BMI all reports and payments due under the Agreement through the effective date; and (b) has not resumed publicly performing music in connection with its Web Site. In the event that LICENSEE fails to provide such reports and payments or resumes publicly performing music in connection with its Web Site within the ninety (90) day period, LICENSEE's request to cancel this Agreement shall be



deemed withdrawn and this Agreement shall remain in full force and effect for the duration of the Term in accordance with Paragraph 1 above.

**14. ARBITRATION:**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement (except for matters within the jurisdiction of the BMI rate court) shall be submitted to arbitration in the City, County, and State of New York under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators to be selected as follows: Each of the parties 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 in any court having jurisdiction. Such award shall include the fixing of costs, expenses, and attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

**15. WITHDRAWAL OF WORKS:**

BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition. BMI shall, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified.

**16. NOTICE:**

All notices and other communications under this Agreement ("**Notice**") must be in writing and sent to the address(es) or fax number(s) designated by LICENSEE or BMI as designated in this paragraph (each address or fax number, hereinafter, a "**Notice Address**"), and to BMI's Notice Address(es). Either party may change one or more of its Notice Addresses during the Term of the Agreement by providing Notice to the other, and both parties have an obligation to keep their Notices Addresses current throughout the Term, since Notice that is sent to a Notice Address will be deemed received: (i) when sent electronically to the e-mail address designated for such purpose by the parties; (ii) when delivered in person; (iii) upon confirmed transmission by facsimile device; (iv) five (5) days after postmarked by ordinary first class, registered, or certified, postage prepaid U.S. mail; or (v) as of the date of confirmed delivery by private courier service. Notwithstanding the foregoing, Notices from you to BMI requesting cancellation under Paragraph 13 of the Agreement, or advising BMI of a claim, demand, or suit under Paragraph 10 of the Agreement, cannot be sent by e-mail.

**BMI Notice Address:**

Senior Vice President, Licensing  
7 World Trade Center  
250 Greenwich Street  
New York, New York 10007-0030  
BMI Digital Licensing Department Fax number: (212) 220-4504

**with a separate copy to:**

Senior Vice President and General Counsel (sent to the address above)  
  
BMI Legal Department Fax number: (212) 220-4474  
  
BMI email address: digitalaccount@bmi.com

**LICENSEE:**

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**Fax number:** \_\_\_\_\_

**e-mail:** \_\_\_\_\_

17. **ASSIGNMENT:**

This Agreement may not be assigned or otherwise transferred (whether by change of control, merger, operation of law or otherwise) without the prior written consent of BMI, not to be unreasonably withheld. For the avoidance of doubt, it is reasonable for BMI to withhold such consent if LICENSEE has failed to submit any payments or reports due.

18. **MISCELLANEOUS:**

A. Reports and/or payments that are due on a weekend day (or a nationally recognized holiday on which the U.S. Postal Service is not providing service) and received by BMI before the close of business on the next business day following the weekend day or holiday, will not be considered late under the Agreement.

B. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE will provide BMI with the title and the writer/composer of each musical composition requested to be identified.

C. BMI will make reasonable efforts to be exempted or excused from paying state or local taxes on the License Fees received pursuant to this Agreement. In the event that BMI is not excused from paying such taxes, however, and BMI is permitted by law to pass through such tax to LICENSEE, LICENSEE will pay BMI the full amount of such tax when LICENSEE submits LICENSEE's License Fee payment(s) to BMI.

D. BMI treats the financial and music usage information that LICENSEE provides under this Agreement (or that BMI obtains through an audit) as "**Confidential Information.**" LICENSEE's information is made available to BMI agents and employees who need to know such information in order to administer this Agreement. Information is also made available to BMI-represented songwriters, composers, music publishers, as well as foreign rights organizations, but only to show the royalties generated from LICENSEE's use of their works (i.e., song X was played Y times and earned \$Z in royalties). BMI will not otherwise disclose LICENSEE's financial or music usage information unless required to do so by law or legal process. BMI may, however, use the information in LICENSEE's music use reports and the music use reports from other customers to compile aggregate market data, and may disclose such aggregate market data publicly so long as BMI does not specifically identify LICENSEE's information as coming from LICENSEE. Notwithstanding the foregoing, nothing herein shall affect BMI's ability to produce or use such Confidential Information in connection with any claim, demand or suit in which BMI is involved pursuant to Paragraph 10 above.

E. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof. This Agreement is not binding on any party to this Agreement until it has been signed by both Parties. This Agreement cannot be waived, 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, without regard to choice of law rules. 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.

F. The Parties agree that any applicable law that would require interpretation of any claimed ambiguities in this Agreement against BMI, the party that drafted it, has no application and is expressly waived. If any claim is made by a party relating to any conflict, omission or ambiguity in the provisions of this Agreement, no presumption or burden of proof or persuasion will be implied because this Agreement was prepared by BMI.

G. All exhibits and attachments to this Agreement are hereby made a part hereof and incorporated by reference herein. The Parties agree that this Agreement will be considered signed when the signature of a party is delivered by facsimile or email transmission to the other party. Such facsimile or email signature shall be treated in all respects as having the same effect as an original signature. This Agreement may be executed in one or more counterparts and delivered by facsimile or e-mail, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.



H. LICENSEE represents that: (i) the person executing this Agreement on its behalf is duly authorized to do so and that this Agreement is and shall be a binding obligation on the LICENSEE on behalf of whom it is executed, and (ii) that the execution and performance of this Agreement is not barred, prohibited or impaired by any existing law, rule, regulation, court or administrative order, decree, contract or agreement to which the LICENSEE is now a party or by which it is bound.

**LICENSEE:**

**BROADCAST MUSIC, INC.**

\_\_\_\_\_  
An Authorized Signer

\_\_\_\_\_  
An Authorized Signer

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title of Signer

\_\_\_\_\_  
Title of Signer

**PLEASE COMPLETE ALL OF THE FOLLOWING:**

LICENSEE's main offices are located in the Territory

YES \_\_\_\_\_ NO \_\_\_\_\_

The majority of LICENSEE's employees are located in the Territory

YES \_\_\_\_\_ NO \_\_\_\_\_

LICENSEE's annual accounts are audited in the Territory

YES \_\_\_\_\_ NO \_\_\_\_\_

**Please return signed agreement together with minimum fee to:**

BMI  
10 Music Square East  
Nashville, TN 37203  
ATTN: Digital Licensing







# DIGITAL MUSIC SERVICE MUSIC PERFORMANCE LICENSE AGREEMENT

LI-01/17 - MSL17

This "Agreement" is by and between BROADCAST MUSIC, INC.® ("BMI"®), a New York corporation with its principal offices at 7 World Trade Center, 250 Greenwich Street, New York, New York 10007, and \_\_\_\_\_ ("LICENSEE" or "you"), a \_\_\_\_\_ (State)

- (check one)  corporation
- limited liability company
- partnership
- individual d/b/a \_\_\_\_\_

with its principal offices at \_\_\_\_\_

(referred to herein as "you" or the "LICENSEE") (each a "Party" and collectively, the "Parties").

**NOW, THEREFORE, intending to be legally bound, the Parties hereby agree as follows:**

## 1. TERM:

A. This Agreement begins on \_\_\_\_\_ (customarily, the launch date of your Service or the first date music was used as part of your Music Service) (the "Start Date"), continues through the end of December of 2017, and automatically renews on a calendar year-to-year basis thereafter (the "Term"), until it is terminated in accordance with the provisions hereof.

B. Either Party may terminate the Agreement effective at the end of any calendar year beginning with December 31, 2017, upon prior written Notice to the other Party no later than December 1<sup>st</sup> of such year.

C. In the event that during the Term LICENSEE ceases permanently to publicly perform music in connection with the Music Service (as opposed to temporarily disabling the Music Service and/or the music made available through the Music Service), LICENSEE may terminate this Agreement by sending written notice to BMI within thirty (30) days after the date LICENSEE ceases to publicly perform music in connection with such Music Service(s). The Agreement shall be deemed to be terminated and the License Application withdrawn, retroactive to the effective date of termination; provided, however that within sixty (60) days after the effective date of termination, LICENSEE shall submit to BMI all reports and payments due under the Agreement through the effective date of termination. In the event that LICENSEE fails to provide such reports and payments within such sixty (60) day period, the Agreement shall continue to govern the Term prior to LICENSEE's termination, and (1) with respect to any outstanding payments (including those that may be due as a result of an audit conducted pursuant to Paragraph 7 below) and/or reports required under this Agreement, LICENSEE shall be required to pay interest to BMI at a rate of 1.5% per month until such payments are made and reports submitted to BMI; (2) with respect to any outstanding financial



reports, BMI shall have the right to conduct an audit pursuant to Paragraph 7 except that such audit shall be at LICENSEE's sole cost and expense, and LICENSEE shall not have the right to postpone such audit; and (3) with respect to outstanding music use reports, BMI shall have the right on thirty (30) days' notice, at LICENSEE's sole cost and expense, to examine LICENSEE's usage logs and other data reasonably expected to assist BMI in identifying what music was played through the Music Service during any unreported period during the Term.

## **2. DEFINITIONS:**

As used in this Agreement, the following terms shall have the following respective meanings:

A. "Application(s)" shall mean LICENSEE's branded software application(s) owned, operated and controlled by LICENSEE and made available through distribution channels, including, but not limited to, mobile app stores or desktops for the sole purpose of making available the Music Service to end-user consumers. LICENSEE may license "Additional Applications" owned, operated and/or controlled by LICENSEE by listing such Additional Applications on Exhibit A hereto, and may amend Exhibit A by written agreement signed by both Parties. LICENSEE must comply separately with all reporting requirements and pay separate License Fees under this Agreement, for each Additional Application listed on Exhibit A. References to Applications shall include those Additional Applications listed on Exhibit A.

B. "BMI Works" shall mean the musical compositions for which BMI has the right to license the non-dramatic public performance on or through LICENSEE's Music Service at the time of performance of such musical compositions via the Music Service during the Term.

C. "Execution Date" shall mean the date on which BMI countersigns this Agreement as indicated in BMI's signature block to this Agreement.

D. "Gross Revenue" shall mean all revenue and payments collected at retail by, or on behalf of LICENSEE, for or from: (i) access to and/or use of the Music Service or portions thereof (including LICENSEE's Applications) by end users in the Territory, including revenue received in consideration of time spent on the service (e.g., subscription revenue or other fees); (ii) third-party advertising (including sponsor "hot links") on, or sponsorship of, all or any part of the Music Service in the Territory, including, but not limited to, in-stream and banner advertising generated in connection with LICENSEE's player (including revenue generated from banners ads on a Web Page from which the Music Service is made available from), revenue from third parties for including their programming on LICENSEE's web site, and revenues generated from sponsors; (iii) commissions, referral fees and any revenue generated from third parties on all transactions initiated through the Music Service in the Territory; (iv) music-product placement or promotion of music, artists and/or labels, in both cases, within the Music Service; and (v) sales of proprietary software used to access the Music Service in the Territory; *provided, however*, that revenue from the sale of proprietary software shall only be considered Gross Revenue for purposes of this Agreement to the extent that the software is required in order to access the Music Service and LICENSEE packages or includes access to the Music Service with the license for such software. Gross Revenue shall also include the fair market value of merchandise, services or anything of value (i.e., trade and barter), which LICENSEE may receive in lieu of cash consideration, which LICENSEE treats as revenue for accounting purposes. LICENSEE warrants and represents that it does not currently solicit for itself or receive donations and/or charitable contributions for itself in connection with the Music Service, and will include any such charitable revenue specifically contributed to advance the Music Service as Gross Revenue in the event that it receives any such revenue during the Term. You may deduct advertising agency



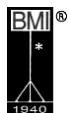
commissions from your advertising revenue, but only up to 15% of such advertising revenue actually incurred to a third party advertising agency that you do not own or control. LICENSEE may deduct from Gross Revenue any bad debts actually written off during a reporting period which are related to any billings reported, or any returns associated therewith, but shall increase Gross Revenue by any recoveries thereof. In the event that LICENSEE and a third party chooses to bundle the Music Service with other products and services for one bundle fee (the “Bundle”) with access to the Music Service, the total retail revenue received for the bundle (“Music Service Allocated Retail Value”) shall be allocated among the Music Service and the other products and services in proportion to the stand-alone retail price of each product. For example, if LICENSEE sells the Music Service on a stand-alone basis for \$10.00/month and sells a data plan or hardware device on a stand-alone basis for \$5.00/month, and LICENSEE sells them together as a bundle for \$12.00/month, then \$8.00/month shall be attributed to the Music Service, and \$4.00/month shall be attributed to the LICENSEE data plan or hardware device. If the Parties are unable to arrive at a stand-alone retail price point for any of the individual elements of the Bundle, the Parties shall negotiate in good faith to determine the appropriate Music Service Allocated Retail Value for the Bundle, and failing to reach an agreement, may petition the appropriate judicial forum as set forth in the BMI Consent Decree for a determination of the Music Service Allocated Retail Value for the Bundle.

E. “Music Service” shall mean the Music Service solely as described in Exhibit C attached hereto, that LICENSEE produces and/or packages and then makes available for transmissions delivered over the Internet, mobile and/or wireless networks or through LICENSEE’s (i) Web Site and/or LICENSEE’s player, that are accessed and launched solely from LICENSEE’s Web Site, and (ii) Applications (limited to the restrictions set forth in Exhibit C attached hereto), to users of such service in the Territory who access such programming through a device capable of receiving such transmissions.

F. “Music Service Play” shall mean each and all transmissions of each and all musical compositions (including any portion thereof) to each and all users of the non-subscription component of the Music Service (e.g., 10 different recordings transmitted to one user is 10 Music Service Plays; one recording transmitted to 10 users is 10 Music Service Plays); *provided however*, that LICENSEE shall not be required to track Music Service Plays made in connection with a user’s free trial period of up to 30 days so long as such plays are not monetized (ad-supported or otherwise) in any way during such free trial period. Commencing on the 31st day of such free trial period, each and all transmissions of all musical compositions referenced in this paragraph shall be deemed a Music Service Play.

G. “Subscriber” shall mean each individual user account to which a fee is assessed for access to and/or use of the Music Service for a specified period (e.g., a subscription fee) (a “Billing Event”), and those user accounts during an initial free trial period where a fee is not assessed to the extent such period extends beyond thirty (30) days without a Billing Event being triggered (a “Free Access Event”). For avoidance of doubt, a user account during a free trial period shall be considered a Subscriber commencing on the 31st day of such free trial period (the Free Access Event) even if the free trial period extends beyond 30 days and shall be subject to the License Fee set forth in Paragraph 4.A.ii below.

H. “Subscriber Month” shall mean each and every calendar month period that triggers a Billing Event or a Free Access Event for each and every Subscriber during each and every calendar quarter of the Term. For example, for a service that does not offer a free trial period, if one user signs up as a Subscriber on January 28, the total quarterly aggregate of Subscriber Months for that one user for that calendar quarter equals 3 (the Billing Events that would be triggered on January 28, February



28 and March 28 for this first calendar quarter). Using this scenario, if that single user ended their subscription on March 2, the total quarterly aggregate of Subscriber Months for that one user for that calendar quarter equals 2 (the Billing Events would be January 28 and February 28 for that last calendar quarter). As another example, for a service that does offer a 60 day free trial period, if one user signs up as a Subscriber for the free trial period on January 15, the total quarterly aggregate of Subscriber Months for that one user for that calendar quarter equals 2 (Subscriber Month 1 corresponds to the Free Access Event that would be triggered on February 14 which is the 31<sup>st</sup> day of the free trial period, and Subscriber Month 2 corresponds to the first Billing Event that would be triggered on March 14 for this first calendar quarter).

I. "Territory" shall mean the U.S. and its commonwealths, territories, and possessions, including the commonwealth of Puerto Rico.

J. "Web Page" means a set of associated files transferred sequentially from the Web Site to, and rendered more or less simultaneously by, a browser. For purposes of this Agreement, 'pop-up' windows, proprietary media players, and/or 'daughter' windows with embedded media players that launch when accessing performances of music or upon loading the Web Page are considered part of the Web Page from which they were launched and not a separate Web Page.

K. "Web Site" shall mean the Internet domain owned, operated and/or controlled by LICENSEE comprising a series of interrelated Web Pages currently registered with a domain name registration service and located exclusively at the URL (i.e., the root domain of LICENSEE's Web Site): \_\_\_\_\_ . LICENSEE may license "**Additional Web Sites**" owned, operated and/or controlled by LICENSEE by listing such Additional Web Sites on Exhibit A hereto, and may amend Exhibit A by written agreement signed by both Parties. LICENSEE must comply separately with all reporting requirements and pay separate License Fees under this Agreement, for each Additional Web Site listed on Exhibit A. References to Web Site shall include those Additional Web Sites listed on Exhibit A.

### **3. GRANT OF RIGHTS:**

A. BMI hereby grants to LICENSEE, for the Term, a non-exclusive through-to-the-user license to perform publicly BMI Works within the Territory, in and as part of LICENSEE's Music Service transmitted or caused to be transmitted by LICENSEE. This Agreement does not cover public performances outside of the Territory which may be subject to appropriate separate licensing.

B. This Agreement grants only public performing rights in musical works to LICENSEE, and does not grant any reproduction, distribution, or any other intellectual property right(s) in such musical works, or any digital performance, reproduction, distribution, or any other intellectual property right(s) in sound recordings, to any person or entity.

C. This Agreement does not include dramatic rights or the right to perform dramatico-musical works in whole or in substantial part, or license public performances in any commercial establishments, including, but not limited to, where all or a portion of the Music Services is used as a commercial music service (as that term is customarily understood in the industry); such performances of BMI music shall be subject to appropriate separate licensing.

D. Other than the license as provided in this Agreement, nothing herein shall be construed as the grant by BMI of any license in connection with any transmission which is not part of the Music Service (as described in Exhibit C) transmitted or caused to be transmitted by LICENSEE to users



of LICENSEE's Music Service, and nothing herein shall be construed to cover those instances where LICENSEE's Music Service is packaged or included on a tier of services by others or as otherwise authorizing LICENSEE to grant to others (including, but not limited to, third-party web sites, online services, broadband ISPs and mobile operators) any license or right to perform publicly by any means, method or process whatsoever, any of the musical compositions licensed hereunder. It is expressly understood and agreed that while this grant of rights in this Agreement covers the transmission of BMI Works via the Music Service and through LICENSEE's Applications (as further described in Exhibit C), this Agreement does not include or extend to any other uses of BMI Works on any third-party web site, service or platform that it is not directly made through LICENSEE's Music Service. Such excluded uses of BMI Works shall be subject to separate licensing between BMI and the relevant third-party service, platform or user.

E. The Grant of Rights set forth in this Agreement for a through-to-the-user license is experimental, non-precedential, and without prejudice. BMI reserves the right to dispute in any future Rate Court proceeding or negotiation between the Parties or any third-party the legal requirement of a through-to-the-user scope of license grant and the license fees relating thereto, and neither Party shall cite or rely upon the fact that no separate or additional fee has been ascribed to the through-to-the-user scope of license grant as precedent for the value thereof in any future Rate Court proceeding or negotiation.

#### **4. LICENSE FEES:**

A. In consideration of the license granted herein for LICENSEE's Music Service, LICENSEE shall calculate and pay to BMI "**License Fee(s)**" on a calendar quarterly basis which shall be equal to the greater of the following fees set forth in (i) and (ii), subject to the following terms and conditions in this paragraph 4:

- (i) 2.50% of all Gross Revenue generated during each applicable calendar quarter in connection with the Music Service, **and**
- (ii) with respect to the non-subscription free to-the-user component of the Music Service, a license fee equal to \$0.00006 multiplied by every Music Service Play during each applicable calendar quarter, **and/or**  
with respect to the subscription component of the Music Service, a license fee equal to the quarterly aggregate of \$0.25 (25 cents) multiplied by the total number of Subscriber Months for every Subscriber during each applicable calendar quarter.

B. License Fees are due on or before the 30<sup>th</sup> day after the end of each calendar quarter when LICENSEE files its Financial Reports (see Paragraph 6 below).

C. In the event that LICENSEE enters into direct licenses subsequent to the Start Date of this Agreement for its public performance of musical works via the Music Service during the Term for which it seeks an adjustment to its BMI License Fees hereunder, LICENSEE may elect to change from this form of license to an adjustable fee blanket license, effective as of the first day of any calendar quarter of the Term by providing BMI with Notice of such election no less than thirty days prior to the effective date. For the avoidance of doubt, a Notice of election received by BMI on or before December 1 will be effective as of January 1 of the following year, whereas a Notice of election received on December 2 will be effective as of April 1 of the following year. BMI shall



provide LICENSEE with the Adjustable Fee Blanket License crediting formula upon receipt of the Notice election. In the event of a dispute between the parties relating to the Adjustable Fee Blanket License crediting formula, either party may petition the appropriate judicial forum as set forth in the BMI Consent Decree for a determination of the appropriate crediting formula.

D. Acceptance by BMI of any License Fee payments or any Music Use Report shall not preclude BMI from subsequently questioning or auditing any aspect of such amounts or any such Music Use Report.

## **5. ANNUAL MINIMUM LICENSE FEE:**

A. Upon signing this Agreement, and by January 30 of each calendar year of the Term thereafter, LICENSEE shall pay to BMI an “**Annual Minimum License Fee**” for each calendar year of the Term, which Annual Minimum License Fee shall be credited and recoupable against any License Fees due hereunder, but which shall be nonrefundable. The Annual Minimum License Fee for calendar year 2017 is \$358.00 for each Web Site and Application listed on Exhibit A. LICENSEE may prorate the Annual Minimum License Fee due for the initial calendar year of the Agreement based on the number of months of the initial calendar year that will be covered under the Agreement (e.g., if the Start Date is July 10, 2017, the prorated Annual Minimum License Fee would be \$179.00 to cover the period from July through December 31st, 2017).

B. For each and any year of this Agreement after 2017, the Annual Minimum License Fee shall be increased to reflect any percentage change in the United States Consumer Price Index (All Urban Consumers, All Items) between October of the preceding year and October of the next preceding year, rounded to the nearest dollar amount.

## **6. FINANCIAL REPORT FORMS:**

A. LICENSEE shall submit to BMI financial reports setting forth Gross Revenue as applicable, generated in connection with the Music Service as follows:

(i) For each calendar quarter of this Agreement, a report, signed by an officer of LICENSEE confirming such report is complete and accurate, in a form and format and containing such information as set forth on the “**Financial Report**” attached as Exhibit B hereto, due at the same time as the applicable quarterly License Fee as set forth in Paragraph 4. Such Financial Report form shall include information sufficient to verify the accuracy of the License Fee, as defined in Paragraph 4 above. LICENSEE agrees to use commercially reasonable efforts to use (i) software which BMI may provide to LICENSEE to prepare and deliver such reports electronically, or (ii) such other commercially reasonable alternative method upon which the Parties agree.

(ii) In addition to any other remedy that BMI may have, BMI shall have the right to estimate the License Fee due for a given calendar quarter on the basis of the quarterly License Fee for the previous quarter and bill LICENSEE therefor in the event that LICENSEE fails to report as required. Neither BMI’s estimation of the fee for a reporting period nor anything else shall relieve LICENSEE of the obligation to report and make actual fee payments for the reporting period. If BMI’s estimate was less than the actual License Fees due, LICENSEE shall pay BMI, at the time the report is rendered, the difference between the actual fee due and the estimated fee paid, plus any Late Payment Charges on such difference. If LICENSEE’s report reflects that the actual fee for the calendar quarter was less than the estimated fee paid, BMI shall credit the overpayment to LICENSEE’s account.



## 7. AUDIT:

A. BMI shall have the right, at BMI's sole cost and expense, once with respect to each year of the Term, by its duly authorized representatives, to examine the books and records of account of LICENSEE necessary to verify all Financial Reports and the calculation of License Fees, including, but not limited to, the Music Service Allocated Retail Value, the calculation of Music Service Plays, Subscribers, Subscriber Months, Billing Events and Free Access Events, any and all statements, accounting and reports rendered and/or required by this Agreement (including Music Use Reports), and/or in order to ascertain the License Fee due BMI for any unreported period. Such examinations shall be during customary business hours and upon no less than thirty (30) days advance written notice. The audit rights specified herein shall survive the termination of this Agreement.

B. In addition to any other remedy that BMI may have, in the event that BMI's audit reveals that LICENSEE has underpaid license fees to BMI, LICENSEE shall immediately pay the amount owed. If an audit conducted pursuant to the terms of this Agreement reveals an underpayment of less than ten percent (10%), then BMI may assess and impose a Late Payment Charge as defined below if payment in full is not made within ten (10) days after the conclusion of the audit. If such underpayment amounts to ten percent (10%) or more, LICENSEE shall immediately pay BMI the amount LICENSEE owes BMI as determined by the audit plus a Late Payment Charge, as defined below, commencing from the actual date such monies were due.

## 8. LATE CHARGES: BMI may impose a "Late Charge" on the following bases:

A. Late Payment Charge. BMI may impose a "**Late Payment Charge**" of one and one-half percent (1½%) per month from the date payment was due for any payment (e.g., License Fees, Annual Minimum License Fee, or any portion thereof) that is received by BMI more than ten (10) days after the due date as set forth in this Agreement; and

B. Late Reporting Charge. If LICENSEE fails to submit a Financial Report when due as set forth in this Agreement, BMI may impose a "**Late Reporting Charge**" equal to the greater of:

- (i) A flat fee of \$50 per month starting from the first month in which the Financial Report was due; and
- (ii) One and one-half percent (1½%) per month starting from the first month in which the Financial Report was due, calculated against the total License Fee as reflected in the Financial Report when it is ultimately submitted to BMI.

## 9. MUSIC USE REPORTS:

A. LICENSEE shall provide to BMI, in electronic form, separate quarterly "**Music Use Reports**" for each of the types of programming offered through the Music Service, which reports shall include, on a per-track basis, the title of each musical work performed during the applicable reporting period, the featured artist who recorded each such work, and the number of times each such work was performed by the Music Service in the applicable calendar quarter. LICENSEE's obligations regarding the Music Use Reports specified in this paragraph shall survive the termination or cancellation of this Agreement.

B. LICENSEE shall deliver to BMI Music Use Reports on or before the thirtieth (30th) day following the end of each calendar quarter of the Term. LICENSEE shall deliver the reports to BMI in a mutually agreed method. Additionally, LICENSEE also agrees to make available to BMI such



reports in real time and online through a secured web site or other online device such that BMI can log in and access the data twenty four (24) hours a day, seven (7) days a week, solely in the event and to the extent that LICENSEE develops such a site or device and offers its other licensors the ability to access information through such a site or device.

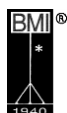
C. Notwithstanding anything in this paragraph to the contrary, if LICENSEE provides additional data to any other licensor of musical work performance rights with respect to the use of music in connection with the Music Service, including, but not limited to, more detailed information about the identity and/or use of music in connection with the Music Service or more frequent reports, LICENSEE shall also provide such information and/or more frequent information to BMI.

## **10. INDEMNIFICATION:**

BMI shall indemnify, save and hold harmless and defend LICENSEE from and against any and all claims, demands and suits, made or brought against LICENSEE after the Execution Date of this Agreement, alleging copyright infringement under U.S. Copyright Law that may be made or brought against LICENSEE solely with respect to the public performance within the Territory during the Term but after the Execution Date of any BMI Works licensed hereunder for LICENSEE's Music Service. BMI's obligations under this paragraph, however, are limited to those claims, demands or suits that are made or brought after the Execution Date within the Territory under U.S. Copyright Law for public performances during the Term relating to BMI Works solely through the Music Service and shall in no way extend to any claims, demands or suits made or brought before the Execution Date of this Agreement. Notwithstanding anything to the contrary in this Agreement, BMI has no obligation to indemnify LICENSEE for any claim, demand or suit that is made or brought against LICENSEE when LICENSEE's account is not in good standing. For purposes hereof, if LICENSEE fails to cure a breach within thirty (30) days of receiving Notice from BMI (the "**Cure Period**"), then LICENSEE's account is not in good standing as of the beginning of the Cure Period through the time that BMI accepts a cure of such breach. BMI's acceptance of a cure of such breach does not serve to revive BMI's indemnification obligation for the period during which the account was not in good standing as of the beginning of the Cure Period. This indemnity also shall not apply to transmissions of any musical work by LICENSEE commencing immediately after written request from BMI that LICENSEE refrain from performance of such work. LICENSEE agrees to give BMI prompt 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 and/or settlement of any such claim, demand, or suit; provided, however, that LICENSEE may retain counsel on LICENSEE's behalf and at LICENSEE's own expense and participate in the defense of such claim, demand or suit. LICENSEE represents and warrants to BMI that it is not currently aware of any claims, demands or suits threatened against LICENSEE in connection with the performance of BMI Works on the Music Service prior to the Execution Date of this Agreement, nor is LICENSEE aware of any facts or circumstances that would serve as a basis for such a claim, demand or suit.

## **11. REPRESENTATIONS AND WARRANTIES:**

LICENSEE warrants and represents that: (i) it owns, operates, and/or controls the Music Service for the primary purpose of generating Gross Revenue, and (ii) that the Music Service otherwise satisfies all of the qualifications set forth herein to be eligible for this form of license (including, but not limited to, the conditions set forth in Paragraph 3 above).





## **12. BREACH OR DEFAULT:**

BMI has the right to terminate this Agreement, effective as of the date of BMI's first Notice to you of a breach of any term under this Agreement, if you don't cure the breach within 30 days after receiving the first Notice from BMI. This right to terminate is in addition to any other remedies BMI may have, and no waiver by BMI of full performance of this Agreement in any one or more instances shall be a waiver of the right to require full and complete performance of this Agreement for the remainder of the Term. Notices of breach pursuant to this paragraph may be sent by BMI via email to LICENSEE.

## **13. TERMINATING THE AGREEMENT:**

If BMI terminates its agreements with all other customers in your class and category, BMI can terminate this Agreement at any time during the Term by notifying you in writing at least thirty (30) days before the effective date of termination.

## **14. ARBITRATION:**

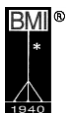
All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement (except for matters within the jurisdiction of the BMI rate court) shall be submitted to "**Arbitration**" in the City, County, and State of New York under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators to be selected as follows: Each of the Parties 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 in any court having jurisdiction. Such award shall include the fixing of costs, expenses, and attorneys' fees of arbitration, which shall be borne by the unsuccessful Party.

## **15. REMOVAL OF WORKS:**

BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

## **16. NOTICE:**

All notices and other communications under this Agreement ("**Notice**") must be in writing and sent to the address(es) or fax number(s) designated by LICENSEE or BMI as designated in this paragraph (each address or fax number, hereinafter, a "**Notice Address**"), and to BMI's Notice Address(es). Either Party may change one or more of its Notice Addresses during the Term of the Agreement by providing Notice to the other, and both Parties have an obligation to keep their Notices Addresses current throughout the Term, since Notice that is sent to a Notice Address will be deemed received: (i) when sent electronically to the e-mail address designated for such purpose by the Parties; (ii) when delivered in person; (iii) upon confirmed transmission by facsimile device; (iv) five (5) days after postmarked by ordinary first class, registered, or certified, postage prepaid U.S. mail;



or (v) as of the date of confirmed delivery by private courier service. Notwithstanding the foregoing, Notices from LICENSEE to BMI requesting cancellation under Paragraphs 1.B or 1.C of the Agreement, or advising BMI of a claim, demand, or suit under Paragraph 10 of the Agreement, cannot be sent by e-mail.

**BMI:** 7 World Trade Center, 250 Greenwich Street  
New York, NY 10007-0030  
Attn: Senior Vice President, Licensing

BMI Digital Licensing Department Fax number: (212) 220 – 4501  
e-mail: [digitalaccount@bmi.com](mailto:digitalaccount@bmi.com)

**with a separate copy to:**

Senior Vice President and General Counsel  
sent to the address above

BMI Legal Department Fax number: (212) 220 - 4474

**LICENSEE:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Fax number: \_\_\_\_\_

e-mail: \_\_\_\_\_

**17. ASSIGNMENT:**

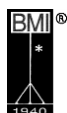
This Agreement may not be assigned or otherwise transferred (whether by change of control, merger, operation of law or otherwise) without the prior written consent of BMI, not to be unreasonably withheld. For the avoidance of doubt, it is reasonable for BMI to withhold such consent if LICENSEE has failed to submit any payments or reports due under this Agreement.

**18. MISCELLANEOUS:**

A. Reports and/or payments that are due on a weekend day (or a nationally recognized holiday on which the U.S. Postal Service is not providing service) and received by BMI before the close of business on the next business day following the weekend day or holiday, will not be considered late under the Agreement.

B. BMI shall, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title, publisher(s) and the writer/composer(s) of each musical composition requested to be identified.

C. In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax, other than income tax, which



is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay BMI the full amount of such tax together with LICENSEE's fee payment(s) as invoiced by BMI, within normal payment terms; provided, however that BMI is permitted by law to pass through such tax to LICENSEE; and provided further that BMI will make reasonable efforts to seek to be exempt from the tax.

D. BMI treats the financial, web site traffic, and music usage information that LICENSEE provides under this Agreement (or that BMI obtains through an audit) as "**Confidential Information**". LICENSEE's Confidential Information shall be used and disclosed by BMI to its agents and employees who need to know such information in order to administer this Agreement, provided that any third-parties agree to be bound by the confidentiality provisions set forth herein. BMI shall also make available and disclose Confidential Information to BMI-represented songwriters, composers, music publishers, as well as foreign copyright organizations, to show the royalties generated from LICENSEE's use of their works (e.g., song X was played Y times and earned \$Z in royalties). BMI will not otherwise disclose LICENSEE's financial, web site traffic, or music usage information unless required to do so by law or legal process. Notwithstanding anything to the contrary herein, BMI may, however, use the information in LICENSEE's financial and music use reports and the financial and music use reports from other customers to compile aggregate financial and market data, and may disclose such aggregate market data publicly so long as BMI does not specifically identify LICENSEE's information as coming from LICENSEE. Notwithstanding the foregoing, nothing herein shall affect BMI's ability to produce or use such Confidential Information in connection with any claim, demand or suit in which BMI is involved pursuant to Paragraph 10 above.

E. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof. This Agreement is not binding on any Party to this Agreement until it has been signed by both Parties. This Agreement cannot be waived, added to or modified orally and no waiver, addition or modification shall be valid unless in writing and signed by the Parties, except for the unilateral amendment allowed by BMI in accordance with Paragraph 4.C above. This Agreement, its validity, construction, and effect, shall be governed by the laws of the State of New York, without regard to choice of law rules. A finding by a court of competent jurisdiction that any provisions herein are void or unenforceable shall not affect the validity or enforceability of any other provisions.

F. The Parties to this Agreement agree that any applicable law that would require interpretation of any claimed ambiguities in this Agreement against BMI, the party that drafted it, has no application and is expressly waived. If any claim is made by a Party relating to any conflict, omission or ambiguity in the provisions of this Agreement, no presumption or burden of proof or persuasion will be implied because this Agreement was prepared by BMI.

G. All exhibits and attachments to this Agreement are hereby made a part hereof and incorporated by reference herein. The Parties to this Agreement agree that this Agreement will be considered signed when the signature of a Party is delivered by facsimile or email transmission to the other Party. Such facsimile or email signature shall be treated in all respects as having the same effect as an original signature. This Agreement may be executed in one or more counterparts and delivered by facsimile or e-mail, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. Notwithstanding the foregoing, this Agreement will only be effective when signed by both Parties as of the Execution Date below.



H. LICENSEE represents that: (i) the person executing this Agreement on its behalf is duly authorized to do so and that this Agreement is and shall be a binding obligation on the LICENSEE on behalf of whom it is executed, and (ii) that the execution and performance of this Agreement is not barred, prohibited or impaired by any existing law, rule, regulation, court or administrative order, decree, contract or agreement to which the LICENSEE is now a party or by which it is bound.

**IN WITNESS WHEREOF**, each of the Parties hereto has duly authorized, executed and delivered this Agreement as of the Execution Date written below.

**BROADCAST MUSIC, INC.**

**LICENSEE**

By: \_\_\_\_\_  
(An Authorized Signer)

By: \_\_\_\_\_  
(An Authorized Signer)

\_\_\_\_\_  
(Print Name of Signer)

\_\_\_\_\_  
(Print Name of Signer)

\_\_\_\_\_  
(Title of Signer)

\_\_\_\_\_  
(Title of Signer)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(**Execution Date**)





http://www.bmi.com

# NON-COMMERCIAL MUSIC PERFORMANCE AGREEMENT

If you estimate your license fee will be less than \$2,000 per year under the terms of this license agreement, we recommend you use our online Digital Licensing Center available at [http://www.bmi.com/digital\\_licensing](http://www.bmi.com/digital_licensing)

This Agreement (the "Agreement") is by and between Broadcast Music, Inc.® ("BMI"®), a New York corporation with its principal offices at 7 World Trade Center, 250 Greenwich Street, New York, New York 10007, and \_\_\_\_\_ ("LICENSEE" or "YOU" or "YOUR"), a bona-fide non-profit tax-exempt (e.g., 501(c)(3))

(check one)    \_\_\_ corporation  
                  \_\_\_ limited liability company  
                  \_\_\_ partnership  
                  \_\_\_ individual d/b/a \_\_\_\_\_ established under the laws of the state of \_\_\_\_\_

with its principal offices at: \_\_\_\_\_ (BMI and LICENSEE are referred to herein individually as a "Party" and collectively as the "Parties"), for the public performance of BMI Works through LICENSEE's Web Site located at the URL: [http://\\_\\_\\_\\_\\_](http://_____) (the "URL") (all capitalized terms as defined below).

**WHEREAS:** (i) YOU own, operate, or control the Web Site in order to further YOUR organization's non-profit tax-exempt religious, charitable, or educational purposes; (ii) YOUR Web Site is not a **Music Service**, and (iii) YOU are interested in being licensed by BMI to publicly perform **BMI Works** on the Web Site pursuant to the terms of this Agreement (all capitalized terms as defined below).

## NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. **TERM:** This Agreement begins on \_\_\_\_\_, 20\_\_\_\_ (customarily, the launch date of YOUR Web Site or the first date music was used as part of YOUR Web Site) (the "Start Date"), continues through the end of December of 2017, and automatically renews on a calendar year-to-year basis thereafter until it is terminated in accordance with the provisions hereof (the "Term").

2. **DEFINITIONS:** As used in this Agreement, the following terms have the following meanings:

A. "**Application**" means an identically named application that makes web service(s) calls to deliver programming over the Internet to a computer or other device capable of receiving Internet transmissions.

B. "**BMI Works**" means the musical compositions for which BMI has the right to license the non-dramatic public performance on or through YOUR Web Site at the time of YOUR performance during the Term.

C. "**Execution Date**" means the date on which BMI countersigns this Agreement as indicated in BMI's signature block to this Agreement, which such date shall be entered solely by BMI.

D. "**Music Page**" means a Web Page that presents one or more icons or hyperlinks that may be clicked on to access performances of music, provided, however, that if any portion of YOUR Web Site qualifies as a Music Service, that portion of YOUR Web Site is not eligible for license coverage under this Agreement and those pages would not be considered as Music Pages. For the avoidance of doubt, a Web Page is considered a Music Page if one or more icons or hyperlinks on the Web Page launches a media player or a "pop-up" window with an embedded media player through which one or more musical works are transmitted to the user, or otherwise opens another Web Page from which one or more musical works are automatically transmitted upon loading the Web Page without further action from the user.

E. "**Music Page Impression**" means (i) for Web Site, a transfer request for a single Music Page, and (ii) for an Application, a music impression.

F. "**Music Service**" means an Internet web site, Application, or service, or a designated portion or section thereof, the central focus of which is the transmission of audio and/or audio-visual material comprising predominantly feature uses of music (e.g., music-formatted radio, on-demand transmissions of music recordings or music videos, live concerts), as opposed to programming with background or incidental and/or occasional feature uses of music (e.g., news/talk radio, situational comedies, feature films).

G. "**Page Impression**" means (i) for Web Site, a transfer request for a single Web Page, and (ii) for an Application, an impression.

H. **“Territory”** means the United States, its commonwealths, territories, and possessions.

I. **“Web Page”** means a set of associated files transferred sequentially to, and rendered more or less simultaneously by, a browser or Application. For purposes of calculating the License Fees due under this Agreement, proprietary media players and/or “pop-up” windows with embedded media players that launch when accessing performances of music or upon loading the Web Page are considered part of the Web Page from which they were launched and not a separate Web Page.

J. **“Web Site”** means YOUR non-commercial Internet domain comprising a series of interrelated Web Pages, currently registered with a domain name registration service and located at the URL identified above (*i.e.*, root domain of YOUR Web Site) that YOU operate in furtherance of YOUR organization’s religious, charitable, or educational purposes. For purposes of this Agreement, the term “Web Site” can include an Application. YOU may license additional independently named Web Sites and/or Applications owned, operated and/or controlled by YOU that are operated in furtherance of YOUR organization’s religious, charitable, or educational purposes by listing such additional sites and each independently named Application to be licensed under this Agreement on Exhibit A hereto, and may amend Exhibit A by written agreement signed by both Parties. YOU must comply separately with all reporting requirements and pay separate license fees under this Agreement, including Annual Minimum License Fees, for each Web Site and independently named Application listed on Exhibit A. All references to Web Site in this Agreement shall include those additional sites and independently named Applications listed on Exhibit A.

### **3. GRANT OF RIGHTS:**

A. BMI hereby grants YOU a non-exclusive license to perform publicly BMI Works through YOUR Web Site within the Territory (subject to Paragraph 3.B below) during the Term, subject to all the terms and conditions set forth in this Agreement. This Agreement includes only public performances of musical works by transmission over the Internet to a computer or other device capable of receiving Internet transmissions, and only where such transmissions are accessed and launched from a Web Page on the Web Site; it does not cover any transmissions accessed or launched from a third party web site whether such transmissions are accessed or launched directly from the third party web site or via a link to YOUR proprietary media player and/or “pop-up” window. Public performances outside of the Territory may be subject to appropriate separate licensing.

B. This license does not cover transmissions that are made as part of a Music Service, or any transmission that is not part of and directly launched from YOUR Web Site, and does not authorize YOU to grant to others (including, but not limited to, third party web sites, online services, cable television system operators) any license or right to perform publicly or cause to be performed by any means, method or process whatsoever, any of the musical compositions licensed hereunder. In the event that all or a portion of the Web Site is made available from a third party web site or included on a tier of services by a third party for additional revenue, either independently or with other web sites, YOU will immediately notify BMI in writing. BMI and LICENSEE expressly agree that any and all such uses itemized in this paragraph are not licensed under this Agreement and shall be subject to appropriate separate licensing.

C. This Agreement does not include dramatic rights or the right to perform dramatico-musical works in whole or in substantial part. This Agreement also does not license public performances in any commercial establishments, including, but not limited to, where all or a portion of the music available on the Web Site is used as a commercial music service (as that term is customarily understood in the industry); such performances of BMI music shall be subject to appropriate separate licensing.

D. This Agreement grants only public performing rights in musical works and does not grant any reproduction, distribution, or any other intellectual property right(s) in such musical works, or any digital performance, reproduction, distribution, or any other intellectual property right(s) in any sound recordings, to any person or entity, including those that may receive and/or download or otherwise store the transmission of the musical works licensed hereunder.

### **4. LICENSE FEE:**

A. In consideration of the license granted in this Agreement and subject to all the terms and conditions set forth in this Agreement, LICENSEE shall calculate and pay license fees (**“License Fees”**) to BMI using either of the following License Fee Calculations at YOUR option:



i. Page Impressions License Fee Calculation:

$$\text{License Fee} = (\text{Page Impressions}) \times (\$0.08/1,000)$$

**or**

ii. Music Page Impressions License Fee Calculation:

$$\text{License Fee} = (\text{Music Page Impressions}) \times (\$0.12/1,000)$$

B. License Fees are due when YOU file YOUR Report Forms (see Paragraph 6 below).

**5. ANNUAL MINIMUM LICENSE FEE:**

A. An “Annual Minimum License Fee” (also referred to as the “Minimum Fee”) is due upon signing the Agreement, and by January 30 (for customers filing Annual Report Forms) or April 30 (for customers filing Quarterly Report Forms) of each calendar year (or any part of a calendar year) of the Term thereafter. Annual Minimum License Fees paid for a calendar year of the Term is credited against any License Fees YOU may owe for that year. In the event that BMI does not receive the Annual Minimum License Fee by January 30 of any calendar year of the Agreement, BMI may, in addition to any other remedies it may have available to it, cancel this Agreement retroactive to the end of the last calendar year for which an Annual Minimum License Fee was received.

B. YOU may prorate the Annual Minimum License Fee due for the initial calendar year of the Agreement based on the number of months of the initial calendar year that will be covered under the Agreement (e.g., if the start date of YOUR license is July 10, 2017, the prorated Annual Minimum License Fee would be \$179.00 to cover the period from July through December 31, 2017).

C. The Annual Minimum License Fee for 2017 is \$358 for each Web Site identified above and listed on Exhibit A. For each year of the Agreement after 2017, the Annual Minimum License Fee will be increased to reflect the percentage change increase in the United States Consumer Price Index (All Urban Consumers, All Items) between October of the preceding year and October of the next year, rounded to the nearest dollar amount.

**6. REPORT FORMS:**

A. Upon signing the Agreement, YOU will complete a preliminary Annual Report Form attached to this Agreement with a good faith estimate of what YOUR calendar year Page Impressions will be for the first calendar year (or portion thereof) of the Term. YOU will use this estimate for the initial calendar year, or the actual Page Impressions that YOU report in YOUR Report Form(s) for the immediately preceding calendar year for subsequent years, and the chart below to determine how often YOU need to report and pay license fees to BMI.

<i>Calendar Year Page Impressions</i>	<i>Report Form</i>	<i>Payment</i>
3,500,000 or less	ANNUAL	MINIMUM FEE
3,500,001 – 10,900,000	ANNUAL	greater of MINIMUM FEE and LICENSE FEE
10,900,001 or more	QUARTERLY	greater of MINIMUM FEE and LICENSE FEE

B. “Annual Report Forms,” and any additional license fees based on such reports, are due on or before January 30 following the calendar year to which they apply (e.g., Annual Report Form for 2017 will be due on or before January 30, 2018). BMI may assess Late Payment in accordance with Paragraph 8 below if YOU fail to report and/or pay License Fees on time.

C. “Quarterly Report Forms,” and any additional license fees based on such reports, are due on or before the 30<sup>th</sup> day after the end of each calendar quarter (e.g., first quarter Quarterly Report Form will be due on or before April 30; second quarter, on or before July 30; third quarter, on or before October 30; and fourth quarter, on or before January 30). BMI may assess Late Charges in accordance with Paragraph 8 below if YOU fail to report and/or pay License Fees on time.

D. If, at any point during any calendar year of the Agreement, YOUR actual calendar year Page Impressions exceeds 10,900,000, YOU will file a Quarterly Report Form on or before the 30<sup>th</sup> day after the end of the then current calendar quarter, and will continue to report and pay BMI quarterly as provided for above. BMI may assess Late Charges (see



Paragraph 8 below) if YOU fail to report and/or pay on a quarterly basis as soon as YOUR actual calendar year Page Impressions exceeds 10,900,000.

E. Each Report Form will be in a form provided by BMI which will be substantially similar to the sample forms attached hereto as Exhibits B and C, will be certified by YOU or YOUR authorized representative, will identify actual Music Page Impressions and total Page Impressions generated in connection with the Web Site during the period covered in the Report Form (e.g., previous calendar year or previous calendar quarter), and will be accompanied by payment of any additional license fees that may be due above the Annual Minimum License Fee already paid. YOU agree to make commercially reasonable efforts to use systems and/or software that BMI may develop to prepare and deliver YOUR Report Forms electronically to BMI.

F. If BMI does not receive YOUR Report Form, BMI may bill YOU for estimated license fees on the basis of YOUR previous Report Form. Any payments received will be applied to YOUR account pending receipt of YOUR actual Report Form and any additional fees that may be due above the amount already paid. Overpayments will be credited to YOUR account, and refunded to YOU only after YOU have submitted all reports and payments due and this Agreement is terminated. BMI may assess Late Charges against the difference between BMI's estimated billing and the actual fees due based on YOUR Report Form, in accordance with Paragraph 8 below.

## **7. AUDIT:**

A. BMI has the right to require that YOU provide BMI with data or information sufficient to ascertain the License Fee due under this Agreement. BMI (and its duly authorized representatives) may, at BMI's expense and during customary business hours, examine YOUR books and records of account relating to any and all statements, accountings and reports required under this Agreement (including Music Use Reports) in order to verify their accuracy and/or determine the License Fee due for any unreported period, and to verify the compliance with the representations and warranties contained in Paragraph 11 below. BMI will only conduct such an examination once (if at all) with respect to each year of the Term (or portion thereof), and will provide YOU with 30 days prior written notice before conducting such an examination. The audit rights specified in this paragraph shall survive the termination or cancellation of this Agreement.

B. In addition to any other remedy that BMI may have, in the event that BMI's audit reveals that YOU have underpaid License Fees to BMI, YOU shall immediately pay the amount owed. If an audit conducted pursuant to the terms of this Agreement reveals an underpayment of less than ten percent (10%), then BMI may assess and impose a Late Charge as defined below if payment in full is not made within ten (10) days after the conclusion of the audit. If such underpayment amounts to ten percent (10%) or more, LICENSEE shall immediately pay BMI the amount LICENSEE owes BMI as determined by the audit plus a Late Charge, as defined below, commencing from the actual date such monies were due.

## **8. LATE CHARGES:** BMI may impose a Late Charge on the following bases:

A. Late Payment Charge. BMI may impose a Late Payment Charge of one and one-half percent (1½%) per month from the date payment was due for any payment (e.g., License Fees, Annual Minimum License Fee, or any portion thereof) that is received by BMI more than ten (10) days after the due date; and

B. Late Reporting Charge. If LICENSEE fails to submit a Report Form when due, BMI may impose a Late Reporting Charge equal to the greater of:

- i. A flat fee of \$50 per month starting from the first month in which the Report Form was due; and
- ii. One and one-half percent (1½%) per month starting from the first month in which the Report Form was due, calculated against the total License Fee as reflected in the Report Form when it is ultimately submitted to BMI.

**9. MUSIC USE REPORTS:** On or before the 30<sup>th</sup> day after the end of each calendar quarter of the Term, YOU shall provide quarterly usage reports electronically to BMI, on a per distribution channel and a per business model basis (e.g., free, subscription-based, pay-per-listen or pay-per-view) identifying all of the musical works that were made available from YOUR Web Site during the reporting period. YOUR reports must be sent to BMI electronically (using an industry standard report form (e.g., DDEX) or other standard form usage report provided by BMI).

A. For audio-only programming, YOUR report will, at a minimum, include: (i) the type of offering (e.g., advertiser-supported; subscription based); (ii) the title of each song; (iii) the featured artist that recorded the song and/or the songwriter(s) or composer(s) that wrote the song; and (iv) the number of times the song was performed. YOUR report will also include the amount, if any, that YOU may have charged the consumer to receive the transmission.

B. For audio-visual programming, YOU shall, as a matter of course, cause cue sheets or logs to be created with respect to all programs produced by YOU, if any, and made available on the Web Site Service during the Term of this Agreement. Additionally, at BMI's reasonable request, YOU shall also request cue sheets or logs from licensors and outside producers





with respect to programming produced by others and distributed as programs on YOUR Web Site during the Term of this Agreement. For purposes hereof, such cue sheets or logs shall identify the title and nature (e.g., television series program (and episode, original air date and/or season, if applicable), feature film (and release date), short, movie trailer/clip, promo, etc.), of each audio-visual work together with other identifying data (e.g., primary author, director, main actor(s)), and information identifying the title, artist, songwriter, composer, publisher, nature and type of use (e.g., theme, background), and the duration of each musical work contained in each audio-visual program. YOU shall provide any and all such cue sheets or logs not previously provided to BMI with YOUR quarterly usage report for the reporting period during which the program was made available on YOUR Web Site. YOUR quarterly usage report shall identify all audio-visual programs made available from YOUR Web Site during the immediately preceding calendar quarter, and shall specify the number of transmissions of each such audio-visual program on each distribution channel, and, where applicable, the fee charged for each transmission.

C. If YOUR report includes different types of uses (e.g., radio style programming and music videos), YOU will provide BMI with traffic and/or usage information. Additionally, if YOU provide any more detailed usage information any other person or company that licenses YOU to use music, YOU will provide BMI with a copy of that report. LICENSEE's obligations regarding the Music Use Reports specified in this paragraph shall survive the termination or cancellation of this Agreement.

**10. INDEMNIFICATION:** BMI shall indemnify, save and hold harmless and defend YOU and YOUR officers and employees from and against any and all claims, demands and suits alleging copyright infringement that may be made or brought against YOU or them after the Execution Date solely with respect to the public performance within the Territory during the Term of BMI Works as licensed hereunder ("**Claims**"). BMI's obligations under this paragraph, however, are limited to those Claims that are made or brought within the Territory under U.S. Copyright Law, and shall in no way extend to any (i) performances of BMI Works that occurred prior to the Execution Date of this Agreement, and/or (ii) Claims made or brought before the Execution Date of this Agreement or after the termination of this Agreement where such termination is the result of YOUR failure to cure a breach within the Cure Period specified in Paragraph 12 below. BMI has no obligation to indemnify YOU for any Claim that is made or brought against YOU while YOUR account is not in good standing. For purposes hereof, if YOU fail to cure a breach within thirty (30) days of receiving of the breach Notice from BMI, then YOUR account is not in good standing. This indemnity (as set forth in this paragraph) also shall not apply to transmissions of any BMI Works by YOU after written request from BMI that YOU refrain from performance of such work. YOU agree to: (i) give BMI prompt Notice of any such Claim, (ii) to deliver to BMI with such Notice any and all communications and documents pertaining thereto, and (iii) to fully cooperate with BMI with respect thereto; and subject to YOUR complete fulfillment of all the conditions set forth in the preceding clauses (i) through (iii), then BMI shall have full charge of the defense and/or settlement of any such Claim; provided, however, that YOU may retain counsel on YOUR behalf and at YOUR own expense and participate in the defense of such Claim. YOU represent and warrant to BMI that YOU are not currently aware of any claims, demands or suits threatened against YOU in connection with the performance of BMI Works on YOUR Web Site prior to the date of execution of this Agreement, nor are YOU aware of any facts or circumstances that would serve as a basis for such a claim, demand or suit.

**11. REPRESENTATIONS AND WARRANTIES; RESERVATION OF RIGHTS:** YOU warrant and represent that: (i) YOU own, operate, and/or control the Web Site in order to further YOUR organization's non-profit tax-exempt religious, charitable, or educational purposes, (ii) YOUR Web Site is not a Music Service, and (iii) that YOUR Web Site otherwise satisfies all of the qualifications set forth herein to be eligible for this form of license (including, but not limited to, the condition and/or limitations set forth in Paragraph 3 above) ("**LICENSEE's Representations**"). BMI reserves the right, but has no obligation, to review YOUR Web Site to determine whether this is the appropriate form of license and/or whether YOU have satisfied all the LICENSEE's Representations set forth in the preceding clauses (i) through (iii). Notwithstanding anything to the contrary in this Agreement, if, at any time, BMI determines that this Agreement is not, or is no longer, the appropriate form of license for YOUR Web Site or that YOU have not fully satisfied all the clauses of LICENSEE's Representations, BMI may terminate this Agreement at any time during the Term and shall provide YOU Notice along with the appropriate form of license. In the event YOU do not agree with the terms of the alternate license that BMI provides, YOU may obtain a license from BMI pursuant to Article XIV of the BMI Consent Decree by submitting a letter requesting a license pursuant thereto; BMI will not consider its receipt of this form of license as such an application. Additionally, BMI reserves the right to reject the submission of a license whose Start Date precedes the Execution Date.

**12. BREACH OR DEFAULT:** BMI has the right to cancel this Agreement, effective as of the date of BMI's first Notice to YOU of a breach of any term under this Agreement, if YOU don't cure the breach within 30 days after receiving the first Notice from BMI (such thirty (30) day period, the "**Cure Period**"). Additionally, any attempt by YOU to cure a breach after the Cure Period is voidable by BMI if, after the Cure Period and before YOUR attempt to cure such breach, YOU become aware of any claims, demands, or suits, for which YOU may seek indemnity from BMI under Paragraph 10 above. BMI hereby expressly reserves the right to refund any payment it may receive from YOU and cancel this Agreement under such circumstances in lieu of indemnifying YOU for such claims, demands, or suits. This right to cancel is in addition to any



other remedies BMI may have, and no waiver by BMI of full performance of this Agreement in any one or more instances shall be a waiver of the right to require full and complete performance of this Agreement for the remainder of the Term. For purposes of this Paragraph 12 of the Agreement, a breach by LICENSEE shall include any scenario where LICENSEE does not submit any of the following items on their due date as specified in the Agreement: (i) Report Forms, (ii) Music Use Reports, or (iii) any payment due under the Agreement (including the License Fee specified in Paragraph 4 of the Agreement or the Annual Minimum License Fee specified in Paragraph 5 of the Agreement). Accordingly, any breach by LICENSEE with regards to any item specified in clause (i), (ii) or (iii) of this Paragraph 12 shall be deemed a "breach" for all purposes of the Agreement. Notices of breach pursuant to this paragraph may be sent by BMI via email to LICENSEE.

### **13. TERMINATING THE AGREEMENT:**

A. YOU can request to terminate the Agreement as of December 31, 2017, or as of December 31 of any year after 2017, by providing Notice to BMI in writing no later than November 1 of such year. Additionally, if YOU permanently discontinue the use of any audio, video or audio-visual program containing music through YOUR Service (as opposed to temporarily disabling the Service and/or the music made available through YOUR Service), YOU can request to terminate this Agreement at any time during the Term by notifying BMI in writing at least sixty (60) days before the requested date of termination. The terms of this Agreement all payment and reporting obligations upon LICENSEE, remain in effect for all of the Term prior to termination of this Agreement. YOU are required to submit all reports and payments to BMI before the Agreement will be terminated.

B. BMI may terminate this Agreement at the end of December of 2017, or at the end of December of any year after 2017, by notifying YOU in writing at least sixty (60) days before the effective date of termination. Additionally, if BMI terminates its agreements with all other customers in YOUR class and category, BMI can terminate this Agreement at any time during the Term by notifying YOU in writing at least sixty (60) days before the effective date of termination.

**14. ARBITRATION:** All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement (except for matters within the jurisdiction of the BMI rate court) shall be submitted to arbitration in the City, County, and State of New York under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators to be selected as follows: Each of the Parties 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 in any court having jurisdiction. Such award shall include the fixing of costs, expenses, and attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

**15. WITHDRAWAL OF WORKS:** BMI reserves the right at its discretion to withdraw from the license granted by this Agreement any musical work as to which legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

**16. NOTICE:** All notices and other communications under this Agreement ("**Notice**") must be in writing and sent to the address(es) or fax number(s) designated by LICENSEE on the signature page hereof (each address (including email) or fax number, hereinafter, a "**Notice Address**"), and to BMI's Notice Address(es) designated in this paragraph. Either party may change one or more of its Notice Addresses during the Term of the Agreement by providing Notice to the other, and both Parties have an obligation to keep their Notices Addresses current throughout the Term, since Notice that is sent to a Notice Address will be deemed received: (i) when sent electronically to all the e-mail addresses designated for such purpose by the Parties; (ii) when delivered in person; (iii) upon confirmed transmission by facsimile device; (iv) five (5) days after postmarked by ordinary first class, registered, or certified, postage prepaid U.S. mail; or (iv) as of the date of confirmed delivery by private courier service. Notwithstanding the foregoing, Notices from YOU to BMI requesting cancellation under Paragraph 13 of the Agreement, or advising BMI of a claim, demand, or suit under Paragraph 10 of the Agreement, cannot be sent by e-mail.

**BMI Notice Address:**

Senior Vice President, Licensing  
7 World Trade Center  
250 Greenwich Street  
New York, New York 10007-0030  
BMI Digital Licensing Department Fax number: (212) 220-4504



**with a separate copy to:**

Senior Vice President and General Counsel (sent to the address above)

BMI Legal Department Fax number: (212) 220-4474

BMI email address: digitalaccount@bmi.com

**17. ASSIGNMENT:** This Agreement may not be assigned or otherwise transferred (whether by change of control, merger, operation of law or otherwise) without the prior written consent of BMI, not to be unreasonably withheld. For the avoidance of doubt, it is reasonable for BMI to withhold such consent if LICENSEE has failed to submit any payments or reports due.

**18. MISCELLANEOUS:**

A. Reports and/or payments that are due on a weekend day (or a nationally recognized holiday on which the U.S. Postal Service is not providing service) and received by BMI before the close of business on the next business day following the weekend day or holiday, will not be considered late under the Agreement.

B. BMI will, upon reasonable written request, advise YOU whether particular musical works are available for performance as part of BMI's repertoire. YOU will provide BMI with the title and the writer/composer of each musical composition requested to be identified.

C. BMI will make reasonable efforts to be exempted or excused from paying state or local taxes on the License Fees received pursuant to this Agreement. In the event that BMI is not excused from paying such taxes, however, and BMI is permitted by law to pass through such tax to YOU, YOU will pay BMI the full amount of such tax when YOU submit YOUR License Fee payment(s) to BMI.

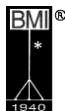
D. BMI treats the financial and music usage information that YOU provide under this Agreement (or that BMI obtains through an audit) as "**Confidential Information.**" YOUR information is made available to BMI agents and employees who need to know such information in order to administer this Agreement. Information is also made available to BMI-represented songwriters, composers, music publishers, as well as foreign rights organizations, but only to show the royalties generated from YOUR use of their works (*i.e.*, song X was played Y times and earned \$Z in royalties). BMI will not otherwise disclose YOUR financial or music usage information unless required to do so by law or legal process. BMI may, however, use the information in YOUR music use reports and the music use reports from other customers to compile aggregate market data, and may disclose such aggregate market data publicly so long as BMI does not specifically identify YOUR information as coming from YOU. Notwithstanding the foregoing, nothing herein shall affect BMI's ability to produce or use such Confidential Information in connection with any claim, demand or suit in which BMI is involved pursuant to Paragraph 10 above.

E. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof. This Agreement is not binding on any party to this Agreement until it has been signed by both Parties. This Agreement cannot be waived, 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, without regard to choice of law rules. 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.

F. The Parties agree that any applicable law that would require interpretation of any claimed ambiguities in this Agreement against BMI, the party that drafted it, has no application and is expressly waived. If any claim is made by a party relating to any conflict, omission or ambiguity in the provisions of this Agreement, no presumption or burden of proof or persuasion will be implied because this Agreement was prepared by BMI.

G. All exhibits and attachments to this Agreement are hereby made a part hereof and incorporated by reference herein. The Parties agree that this Agreement will be considered signed when the signature of a party is delivered by facsimile or email transmission to the other party. Such facsimile or email signature shall be treated in all respects as having the same effect as an original signature. This Agreement may be executed in one or more counterparts and delivered by facsimile or e-mail, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

H. LICENSEE represents that: (i) the person executing this Agreement on its behalf is duly authorized to do so and that this Agreement is and shall be a binding obligation on the LICENSEE on behalf of whom it is executed, and (ii) that the execution and performance of this Agreement is not barred, prohibited or impaired by any existing law, rule, regulation, court or administrative order, decree, contract or agreement to which the LICENSEE is now a party or by which it is bound.



**PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TOGETHER WITH  
ANNUAL MINIMUM FEE TO:  
BMI, ATTN: DIGITAL LICENSING, 10 MUSIC SQUARE E., NASHVILLE, TN 37203**

**EXECUTION DATE OF AGREEMENT:** \_\_\_\_\_  
(This date to be entered by BMI upon execution)

<b><u>LICENSEE</u></b>	<b><u>ADDRESS OF PRINCIPAL OFFICES</u></b>
(Name)	(Street Address)
(Site URL)	(City) (State) (Zip)
(Site Name)	(Telephone Number) (Fax Number)
<b><u>FINANCIAL CONTACT</u></b>	(Email Address) (Web Address)
(Name)	<b><u>BILLING ADDRESS</u></b> (if different from Corporate Address)
(Telephone Number) (Fax Number)	
(Email Address)	
<b><u>MUSIC USE REPORT CONTACT</u></b>	(Street Address)
(Name)	(City) (State) (Zip)
(Telephone Number) (Fax Number)	(Telephone Number) (Fax Number)
(Email Address)	(Email Address) (Web Address)

<p align="center"><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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. <b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b></p>	<p align="center"><b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b></p>
Signature	
Print Name / Title	
Signatory Email Address* (if different from above)	
<b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b>	<b>LI-01/17-925</b>
	<b>ACCOUNT NO.</b>
	<b>NFP-17</b>





# MUSIC PERFORMANCE AGREEMENT PROMO CLIP SERVICE - EXTENDED DURATION

LI - 01/17 - PROMO Ext

http://www.bmi.com

This Agreement (the "**Agreement**") is by and between Broadcast Music, Inc.® ("**BMI**"®), a New York corporation with its principal offices at 7 World Trade Center, 250 Greenwich Street, New York, New York 10007, and \_\_\_\_\_ ("**LICENSEE**" or "**YOU**" or "**YOUR**", and including, for purposes of this Agreement, subsidiaries and affiliates under common control by or of LICENSEE), a \_\_\_\_\_ (state)

- (check one)     corporation  
 limited liability company  
 partnership  
 individual d/b/a \_\_\_\_\_

with its principal offices at: \_\_\_\_\_ (BMI and LICENSEE are referred to herein individually as a "**Party**" and collectively as the "**Parties**"), for the public performance of BMI Works through LICENSEE's Promo Clip Service (all capitalized terms as defined below).

WHEREAS LICENSEE currently provides consumers with access to digital audio samples of sound recordings embodying musical compositions as part of LICENSEE's Promo Clip Service, for the purpose of promoting the retail sale of digital music product containing such sound recordings; and

WHEREAS BMI and LICENSEE wish to enter into a license agreement on a non-prejudicial basis to cover the public performance over the Internet or Cellular Networks of BMI Works contained in such digital audio samples of sound recordings which are made available to consumers through Customer Interfaces (all capitalized terms as defined below).

## NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

### 1. **TERM:**

A. The "**Term**" of this Agreement means the period from \_\_\_\_\_ (launch date) through 31st December 2017 ("**Initial Term**") and continuing on a year-to-year basis thereafter (each calendar year, a "**Renewal Term**"). Either party may terminate the Agreement upon 60 days' prior written notice at the end of December of any year beginning with December 31, 2017.

B. BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the Agreements of all other licensees of the same class and category as LICENSEE as of the end of any month during the initial term or any subsequent renewal term, upon 60 days' prior written notice; provided, however, that in the event that BMI terminates this agreement in accordance with this sub-paragraph 1(B), and BMI and LICENSEE have not yet reached agreement on the terms of a license to cover subsequent periods, LICENSEE understands that it may apply to BMI for a license pursuant to the BMI Consent Decree and shall be licensed prospectively as of the date of BMI's receipt of such application; and that BMI shall offer LICENSEE its then-current license for services in the same class and category as LICENSEE.

### 2. **DEFINITIONS:** As used in this Agreement, the following terms have the following meanings:

A. "**Aggregate Stream Hours**" means the total number of hours of LICENSEE's Promo Clip Service that LICENSEE has transmitted over the Internet and/or Cellular Networks during the relevant calendar quarter to all consumers within the Territory who access such transmissions through a Customer Interface licensed hereunder (e.g., if 120 consumers each listen to one thirty second sample through any of the Customer Interfaces during the reporting period, LICENSEE would report one Aggregate Stream Hour).

B. "**BMI Works**" means the musical compositions for which BMI has the right to license the non-dramatic public performance on or through LICENSEE's Promo Clip Service at the time of performance during the Term.

C. "**Cellular Networks**" means, for purposes of this Agreement, the wireless networks over which mobile telephone and/or data services are provided to consumers, including, without limitation, Cellular Radiotelephone Services, Personal Communication Services (PCS) and Specialized Mobile Radio (SMR) services.

D. "**Customer Interface**" means a Web Site (both wired and wireless, e.g. WAP), Interactive Voice Response (IVR) or other promotional or transactional interface owned and/or operated by LICENSEE or its Clients (as defined below in this

paragraph) through which consumers can listen to previews of digital audio samples of sound recordings and then select and/or purchase digital music product containing such sound recordings, including, but not limited to, so-called 'web kiosks.' For the avoidance of doubt, a "**web kiosk**" is considered to be a Customer Interface for purposes of this Agreement whether such kiosk is the vehicle through which associated purchases of sound recordings are made, or is simply used at the point of retail sale to promote the sale of sound recordings from the premises at which the kiosk is located. A "**Client**" of LICENSEE means a third party operating a Web Site (both wired and wireless, e.g. WAP), Interactive Voice Response (IVR) or other promotional or transactional interface owned and/or operated by such third party through which consumers can listen to previews of digital audio samples of sound recordings and then select and/or purchase digital music product containing such sound recordings, including, but not limited to, so-called 'web kiosks' where Promo Clips are served to end users by technical means controlled exclusively by LICENSEE and pursuant to an agreement between LICENSEE and such third party (including but not limited to a transmission network, content distribution network, servers and/or digital transmission systems). LICENSEE shall list all Customer Interfaces and Clients on Exhibit A attached hereto. LICENSEE may amend Exhibit A from time to time during the Term hereof by written agreement signed by both parties.

E. "**Music Service**" means an Internet web site, application, or service, or a designated portion or section thereof, the central focus of which is the transmission of audio and/or audio-visual material comprising predominantly feature uses of music (e.g., music-formatted radio, on-demand transmissions of music recordings or music videos, live concerts), as opposed to programming with background or incidental and/or occasional feature uses of music (e.g., news/talk radio, situational comedies, feature films).

F. LICENSEE's "**Promo Clip Service**" means the digital audio samples, clips or previews of sound recordings (such samples, clips or previews delivered as part of the Promo Clip Service are referred to as "**Promo Clips**") which LICENSEE produces and/or packages for transmission over the Internet or Cellular Networks free of charge to consumers through Customer Interfaces for the purpose of promoting the retail sale of digital music product.

G. "**Territory**" means the United States, its commonwealths, territories, and possessions.

H. "**Web Page**" means a set of associated files transferred sequentially to, and rendered more or less simultaneously by, a browser.

I. "**Web Site**" means an Internet computer service comprising a series of interrelated Web Pages currently registered with a domain name registration service that provides access to the Promo Clip Service and that LICENSEE produces and/or packages and then transmits or causes to be transmitted either directly or indirectly to persons who receive the service over the Internet (wired and/or wireless) by means of a personal computer or by means of another device capable of receiving Internet transmissions.

### **3. GRANT OF RIGHTS:**

A. BMI hereby grants to LICENSEE, for the Term, a non-exclusive license to perform publicly within the Territory (subject to Paragraph 3.B below), in and as part of LICENSEE's Promo Clip Service made available to consumers through Customer Interfaces, all BMI Works, subject to all the terms and conditions set forth in this Agreement. This Agreement shall only include public performances in the Territory of musical works by transmissions over the Internet, and public performances in the Territory of musical works by transmissions over Cellular Networks, where such transmissions are made to consumers using streaming technologies (as that term is currently used in the industry). Public performances over the Internet outside of the Territory, or over Cellular Networks outside of the Territory, may be subject to appropriate separate licensing. For the avoidance of doubt, the grant of rights specified herein only covers the public performance of BMI Works in and as part of LICENSEE's Promo Clip Service made available through Customer Interfaces, but that the license granted in this Agreement does not include or extend to any other uses of BMI Works on any such third party web site, which shall be separately licensed. This Agreement does not include dramatic rights or the right to perform dramatico-musical works in whole or in substantial part. This Agreement also does not license public performances in any commercial establishments (other than as part of the delivery of LICENSEE'S Promo Clip Service through web kiosks located on premises at the point of sale, such as kiosks located in music retail stores); such performances of BMI music shall be subject to appropriate separate licensing.

B. Notwithstanding the foregoing, the territorial scope of the grant of rights with respect to any Customer Interfaces owned and or operated by LICENSEE whose main offices, or the majority of its employees, are located outside of the Territory, or with respect to any musical works that are affiliated with BMI through a non-U.S. performing rights licensing organization, or any transmissions over Cellular Networks, shall be limited to public performances in the Territory. Public performances on such Customer Interfaces, or of such musical works, or over such Cellular Networks outside of the Territory may be subject to appropriate separate licensing.

C. This license shall not include (i) any transmissions of BMI music made in connection with the digital distribution of music such that end users are able to download digital sound recordings upon demand for their permanent collections or



for a period of time and are charged a fee for such downloading (“**Downloaded Music Transmissions**”); or (ii) any transmissions of digital audio samples containing more than one musical work, or containing any advertising or other content. Notwithstanding the foregoing, nothing contained herein shall preclude either party from arguing whether and to what extent a public performance license is required for Downloaded Music Transmissions.

D. Nothing herein shall be construed as the grant by BMI of any license in connection with any transmission which is not part of LICENSEE’s or a LICENSEE Client’s Promo Clip Service and, except as expressly provided for in this Agreement, nothing herein shall be construed as authorizing LICENSEE to grant to others (including, but not limited to, third party web sites, online services, cable television system operators and open video systems (acting as other than Internet service providers)) any license or right to perform publicly by any means, method or process whatsoever, any of the BMI Works licensed hereunder.

E. This Agreement grants only public performing rights in musical works and does not grant any reproduction, distribution, or any other intellectual property right(s) in such musical works, or any digital performance, reproduction, distribution, or any other intellectual property right(s) in any sound recordings, to any person or entity, including those that may receive and/or download or otherwise store the transmission of the musical works licensed hereunder.

#### **4. LICENSE FEE:**

In consideration of the license granted herein for the Promo Clip Service, LICENSEE shall pay license fees to BMI for each calendar quarter of the Term, on or before the thirtieth (30) day after the end of each calendar quarter, a license fee equal to the total Aggregate Stream Hours during such quarter multiplied by \$0.006.

#### **5. ANNUAL MINIMUM LICENSE FEE:**

A. On or before January 31 of each calendar year of the Term of the Agreement beginning with calendar year 2017, LICENSEE shall pay to BMI an “**Annual Minimum License Fee**” for the Promo Clip Service. The Annual Minimum License Fee for the Promo Clip Service for calendar year 2017 is \$358.00.

B. For each year of the Term after 2017, the Annual Minimum License Fees shall be increased to reflect any percentage increase in the United States Consumer Price Index (All Urban Consumers, All Items) between October of the preceding year and October of the next preceding year, rounded to the nearest dollar amount.

C. The Annual License Minimum Fee payments are credited against any of the license fees that LICENSEE shall owe to BMI in the same calendar year to which such minimum fees apply. Overpayments shall be credited to LICENSEE’s account.

#### **6. REPORT FORMS:**

A. Within thirty (30) days after the end of each calendar quarter of each calendar year during the Term of this Agreement, LICENSEE shall submit to BMI a report (a “**Report Form**”), certified by an authorized representative of LICENSEE and in a form substantially the same as the Promo Clip Service Quarterly Report Form annexed to this Agreement as Exhibit B, stating the total Aggregate Stream Hours transmitted in connection with the Promo Clip Service. Such reports are due at the same time as the applicable quarterly license fee. LICENSEE agrees to use commercially reasonable efforts to use software that BMI may provide to LICENSEE to prepare and deliver such reports electronically, or such other commercially reasonable alternative method upon which the parties agree. BMI shall have the right to estimate the fees due for a given quarter year on the basis of the highest quarterly fee during the previous twelve (12) months and bill LICENSEE therefore in the event that LICENSEE fails to report as required. Neither BMI’s estimation of the fee for a reporting period nor anything else shall relieve LICENSEE of the obligation to report and make actual fee payments for the reporting period. If BMI’s estimate was less than the actual license fee due, LICENSEE shall pay BMI, at the time the report is rendered, the difference between the actual fee due and the estimated fee paid. If LICENSEE’s report reflects that the actual fee for the quarter year was less than the estimated fee paid, BMI shall credit the overpayment to LICENSEE’s account. If LICENSEE has submitted all contractually required prior reports and payments to BMI and this Agreement is terminated, BMI shall refund the overpayment to LICENSEE.

#### **7. AUDIT:**

A. BMI shall have the right to require that LICENSEE provide BMI with data or information sufficient to ascertain the license fee due hereunder.

B. BMI has the right to require that YOU provide BMI with data or information sufficient to ascertain the License Fee due under this Agreement. BMI (and its duly authorized representatives) may, at BMI’s expense and during customary business hours, examine YOUR books and records of account relating to any and all statements, accountings and reports required under this Agreement (including Music Use Reports) in order to verify their accuracy and/or determine the License Fee due for any unreported period, and to verify the compliance with the representations and warranties contained in



Paragraph 11 below. BMI will only conduct such an examination once (if at all) with respect to each year of the Term (or portion thereof), and will provide YOU with 30 days prior written notice before conducting such an examination. The audit rights specified in this paragraph shall survive the termination or cancellation of this Agreement.

C. In addition to any other remedy that BMI may have, in the event that BMI conducts an audit under Paragraph 7(B) and such audit reveals that LICENSEE has underpaid license fees to BMI, LICENSEE shall immediately pay the amount LICENSEE owes BMI and, in addition, if such underpayment amounts to ten percent (10%) or more of LICENSEE's annual fees for the audited period, LICENSEE shall pay BMI a late payment charge in the amount of one and one-half percent (1 1/2%) per month of all monies owed commencing on the actual date such monies were due.

#### **8. LATE CHARGES:**

BMI may impose a late payment charge of one and one half percent (1 1/2%) per month from the date payment was due on any payment that is received by BMI more than ten (10) days after the due date.

#### **9. MUSIC USE REPORTS:**

A. LICENSEE shall provide BMI, in electronic form, "**Music Use Reports**" which shall contain detailed information concerning the transmission of all musical works in connection with LICENSEE's Promo Clip Service. Such information shall identify each musical work by title, composer/writer, author, artist, record label, any unique identifier (e.g. ISWC, ISAN), length, and manner of performance (i.e. instrumental or vocal) (or any other methodology agreed to by BMI and LICENSEE), shall specify the number of times each musical work was transmitted, and shall include, to the extent that such information is available to LICENSEE, the country where the end-user received each such transmission.

B. LICENSEE shall submit to BMI quarterly Music Use Reports with the information identified in Paragraph 9(A) above (or such other information as the parties may agree) for the transmissions during the previous calendar quarter, on or before the thirtieth (30) day following the end of each calendar quarter of the Term. LICENSEE agrees to use commercially reasonable efforts to use software which BMI may provide to LICENSEE to prepare and deliver such reports electronically, or such other commercially reasonable alternative method upon which the parties agree.

**10. INDEMNIFICATION:** BMI shall indemnify, save and hold harmless and defend YOU and YOUR officers and employees from and against any and all claims, demands and suits alleging copyright infringement that may be made or brought against YOU or them after the Execution Date solely with respect to the public performance over the Internet within the Territory, or over Cellular Networks within the Territory, during the Term of BMI Works as licensed hereunder ("**Claims**"). BMI's obligations under this paragraph, however, are limited to those Claims that are made or brought within the Territory under U.S. Copyright Law, and shall in no way extend to any (i) performances of BMI Works that occurred prior to the Execution Date of this Agreement, and/or (ii) Claims made or brought before the Execution Date of this Agreement or after the termination of this Agreement where such termination is the result of YOUR failure to cure a breach within the Cure Period specified in Paragraph 12 below. BMI has no obligation to indemnify YOU for any Claim that is made or brought against YOU while YOUR account is not in good standing. For purposes hereof, if YOU fail to cure a breach within thirty (30) days of receiving of the breach Notice from BMI, then YOUR account is not in good standing. This indemnity (as set forth in this paragraph) also shall not apply to transmissions of any BMI Works by YOU after written request from BMI that YOU refrain from performance of such work. YOU agree to: (i) give BMI prompt Notice of any such Claim, (ii) to deliver to BMI with such Notice any and all communications and documents pertaining thereto, and (iii) to fully cooperate with BMI with respect thereto; and subject to YOUR complete fulfillment of all the conditions set forth in the preceding clauses (i) through (iii), then BMI shall have full charge of the defense and/or settlement of any such Claim; provided, however, that YOU may retain counsel on YOUR behalf and at YOUR own expense and participate in the defense of such Claim. YOU represent and warrant to BMI that YOU are not currently aware of any claims, demands or suits threatened against YOU in connection with the performance of BMI Works on YOUR Promo Clip Service prior to the date of execution of this Agreement, nor are YOU aware of any facts or circumstances that would serve as a basis for such a claim, demand or suit.

**11. REPRESENTATIONS AND WARRANTIES; RESERVATION OF RIGHTS:** YOU warrant and represent that: (i) YOU own, operate, and/or control the Promo Clip Service for the purpose of promoting the retail sale of digital music product containing such sound recordings, (ii) YOUR Promo Clip Service is not a Music Service, (iii) that YOUR Promo Clip Service otherwise satisfies all of the qualifications set forth herein to be eligible for this form of license (including, but not limited to, the condition and/or limitations set forth in Paragraph 3 above) and (iv) LICENSEE shall use its best efforts to include, in each of its digital audio samples (i.e. within the file header), accurate identification information including song title and artist ("**LICENSEE's Representations**"). BMI reserves the right, but has no obligation, to review YOUR Promo Clip Service to determine whether this is the appropriate form of license and/or whether YOU have satisfied all the LICENSEE's Representations set forth in the preceding clauses (i) through (iii). Notwithstanding anything to the contrary in this Agreement, if, at any time, BMI determines that this Agreement is not, or is no longer, the appropriate form of license for YOUR Promo Clip Service or that YOU have not fully satisfied all the clauses of LICENSEE's Representations, BMI may





terminate this Agreement at any time during the Term and shall provide YOU Notice along with the appropriate form of license. In the event YOU do not agree with the terms of the alternate license that BMI provides, YOU may obtain a license from BMI pursuant to Article XIV of the BMI Consent Decree by submitting a letter requesting a license pursuant thereto; BMI will not consider its receipt of this form of license as such an application. Additionally, BMI reserves the right to reject the submission of a license whose Start Date precedes the Execution Date.

**12. BREACH OR DEFAULT:** BMI has the right to cancel this Agreement, effective as of the date of BMI's first Notice to YOU of a breach of any term under this Agreement, if YOU don't cure the breach within 30 days after receiving the first Notice from BMI (such thirty (30) day period, the "**Cure Period**"). Additionally, any attempt by YOU to cure a breach after the Cure Period is voidable by BMI if, after the Cure Period and before YOUR attempt to cure such breach, YOU become aware of any claims, demands, or suits, for which YOU may seek indemnity from BMI under Paragraph 10 above. BMI hereby expressly reserves the right to refund any payment it may receive from YOU and cancel this Agreement under such circumstances in lieu of indemnifying YOU for such claims, demands, or suits. This right to cancel is in addition to any other remedies BMI may have, and no waiver by BMI of full performance of this Agreement in any one or more instances shall be a waiver of the right to require full and complete performance of this Agreement for the remainder of the Term. For purposes of this Paragraph 12 of the Agreement, a breach by LICENSEE shall include any scenario where LICENSEE does not submit any of the following items on their due date as specified in the Agreement: (i) Report Forms, (ii) Music Use Reports, or (iii) any payment due under the Agreement (including the License Fee specified in Paragraph 4 of the Agreement or the Annual Minimum License Fee specified in Paragraph 5 of the Agreement). Accordingly, any breach by LICENSEE with regards to any item specified in clause (i), (ii) or (iii) of this Paragraph 12 shall be deemed a "breach" for all purposes of the Agreement. Notices of breach pursuant to this paragraph may be sent by BMI via email to LICENSEE.

**13. DISCONTINUANCE OF MUSIC:** In the event that LICENSEE ceases to publicly perform music in connection with its Promo Clip Service, LICENSEE may cancel this Agreement by sending written notice to BMI prior to the effective date of cancellation as specified in such notice by LICENSEE. BMI will cancel this Agreement, retroactive to the effective date of cancellation, but only if, within ninety (90) days after the effective date, LICENSEE: (a) has submitted to BMI all reports and payments due under the Agreement through the effective date; and (b) has not resumed publicly performing music in connection with its Promo Clip Service. In the event that LICENSEE fails to provide such reports and payments or resumes publicly performing music in connection with its Promo Clip Service within the ninety (90) day period, LICENSEE's request to cancel this Agreement shall be deemed withdrawn and this Agreement shall remain in full force and effect for the duration of the Term in accordance with Paragraph 1 above.

**14. ARBITRATION:** All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement (except for matters within the jurisdiction of the BMI rate court) shall be submitted to arbitration in the City, County, and State of New York under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators to be selected as follows: Each of the Parties 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 in any court having jurisdiction. Such award shall include the fixing of costs, expenses, and attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

**15. WITHDRAWAL OF WORKS:** BMI reserves the right at its discretion to withdraw from the license granted by this Agreement any musical work as to which legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

**16. NOTICE:** All notices and other communications under this Agreement ("**Notice**") must be in writing and sent to the address(es) or fax number(s) designated by LICENSEE or BMI as designated in this paragraph (each address or fax number, hereinafter, a "**Notice Address**"), and to BMI's Notice Address(es). Either party may change one or more of its Notice Addresses during the Term of the Agreement by providing Notice to the other, and both Parties have an obligation to keep their Notices Addresses current throughout the Term, since Notice that is sent to a Notice Address will be deemed received: (i) when sent electronically to all the e-mail addresses designated for such purpose by the Parties; (ii) when delivered in person; (iii) upon confirmed transmission by facsimile device; (iv) five (5) days after postmarked by ordinary first class, registered, or certified, postage prepaid U.S. mail; or (v) as of the date of confirmed delivery by private courier service. Notwithstanding the foregoing, Notices from YOU to BMI requesting cancellation under Paragraph 13 of the Agreement, or advising BMI of a claim, demand, or suit under Paragraph 10 of the Agreement, cannot be sent by e-mail.

**BMI Notice Address:** Senior Vice President, Licensing  
7 World Trade Center  
250 Greenwich Street



New York, New York 10007-0030  
BMI Digital Licensing Department Fax number: (212) 220-4504

**with a separate copy to:**

Senior Vice President and General Counsel (sent to the address above)

BMI Legal Department Fax number: (212) 220-4474

BMI email address: digitalaccount@bmi.com

**LICENSEE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Fax number: \_\_\_\_\_

e-mail: \_\_\_\_\_

**17. ASSIGNMENT:** This Agreement may not be assigned or otherwise transferred (whether by change of control, merger, operation of law or otherwise) without the prior written consent of BMI, not to be unreasonably withheld. For the avoidance of doubt, it is reasonable for BMI to withhold such consent if LICENSEE has failed to submit any payments or reports due.

**18. MISCELLANEOUS:**

A. Reports and/or payments that are due on a weekend day (or a nationally recognized holiday on which the U.S. Postal Service is not providing service) and received by BMI before the close of business on the next business day following the weekend day or holiday, will not be considered late under the Agreement.

B. BMI will, upon reasonable written request, advise YOU whether particular musical works are available for performance as part of BMI's repertoire. YOU will provide BMI with the title and the writer/composer of each musical composition requested to be identified.

C. BMI will make reasonable efforts to be exempted or excused from paying state or local taxes on the License Fees received pursuant to this Agreement. In the event that BMI is not excused from paying such taxes, however, and BMI is permitted by law to pass through such tax to YOU, YOU will pay BMI the full amount of such tax when YOU submit YOUR License Fee payment(s) to BMI.

D. BMI treats the financial and music usage information that YOU provide under this Agreement (or that BMI obtains through an audit) as "**Confidential Information.**" YOUR information is made available to BMI agents and employees who need to know such information in order to administer this Agreement. Information is also made available to BMI-represented songwriters, composers, music publishers, as well as foreign rights organizations, but only to show the royalties generated from YOUR use of their works (*i.e.*, song X was played Y times and earned \$Z in royalties). BMI will not otherwise disclose YOUR financial or music usage information unless required to do so by law or legal process. BMI may, however, use the information in YOUR music use reports and the music use reports from other customers to compile aggregate market data, and may disclose such aggregate market data publicly so long as BMI does not specifically identify YOUR information as coming from YOU. Notwithstanding the foregoing, nothing herein shall affect BMI's ability to produce or use such Confidential Information in connection with any claim, demand or suit in which BMI is involved pursuant to Paragraph 10 above.

E. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof. This Agreement is not binding on any party to this Agreement until it has been signed by both Parties. This Agreement cannot be waived, 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, without regard to choice of law rules. 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.



F. The Parties agree that any applicable law that would require interpretation of any claimed ambiguities in this Agreement against BMI, the party that drafted it, has no application and is expressly waived. If any claim is made by a party relating to any conflict, omission or ambiguity in the provisions of this Agreement, no presumption or burden of proof or persuasion will be implied because this Agreement was prepared by BMI.

G. All exhibits and attachments to this Agreement are hereby made a part hereof and incorporated by reference herein. The Parties agree that this Agreement will be considered signed when the signature of a party is delivered by facsimile or email transmission to the other party. Such facsimile or email signature shall be treated in all respects as having the same effect as an original signature. This Agreement may be executed in one or more counterparts and delivered by facsimile or e-mail, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

H. LICENSEE represents that: (i) the person executing this Agreement on its behalf is duly authorized to do so and that this Agreement is and shall be a binding obligation on the LICENSEE on behalf of whom it is executed, and (ii) that the execution and performance of this Agreement is not barred, prohibited or impaired by any existing law, rule, regulation, court or administrative order, decree, contract or agreement to which the LICENSEE is now a party or by which it is bound.

**LICENSEE:**

**BROADCAST MUSIC, INC.**

\_\_\_\_\_  
An Authorized Signer

\_\_\_\_\_  
An Authorized Signer

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title of Signer

\_\_\_\_\_  
Title of Signer

\_\_\_\_\_  
"EXECUTION DATE"





http://www.bmi.com

**PROMO CLIP SERVICE – EXTENDED DURATION  
MUSIC PERFORMANCE LICENSE AGREEMENT**

RF-01/17-Promo Ext. Profile

**CUSTOMER PROFILE**

*Please complete and return with your signed agreements  
so we can service your account properly*

**Site URL:** \_\_\_\_\_

**Site Name:** \_\_\_\_\_

**Corporate Name:** \_\_\_\_\_

**Corporate Contact:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Corporate Address:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

**E-Mail:** \_\_\_\_\_

**Financial Contact:** \_\_\_\_\_ **Title:** \_\_\_\_\_  
*If different from above*

**Billing Address:** \_\_\_\_\_  
*If different from above*

**Telephone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

**E-Mail:** \_\_\_\_\_

**Music Use Reports Contact:** \_\_\_\_\_ **Title:** \_\_\_\_\_  
*If different from above*

**Telephone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

**E-Mail:** \_\_\_\_\_

**Questions? Please visit our web site at: <http://www.bmi.com>**



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<http://www.bmi.com>

**PROMO CLIP SERVICE – EXTENDED DURATION  
MUSIC PERFORMANCE LICENSE AGREEMENT**

RF-02/15-PROMO Ext. Exhibit A

**EXHIBIT A**

Customer Interface(s) and Clients



BMI® and Broadcast Music, Inc®. are registered trademarks of Broadcast Music, Inc.



**PROMO CLIP SERVICE – EXTENDED DURATION  
MUSIC PERFORMANCE LICENSE AGREEMENT**

RF-02/15-Promo Ext. Exhibit B

**EXHIBIT B**

**QUARTERLY REPORT FORM  
Per Stream Hour Rate Calculation  
QUARTERLY FINANCIAL REPORT FORM**

Report For Calendar Quarter: Jan. 1 – Mar. 31  Apr. 1 – June. 30  July. 1 – Sept. 30  Oct. 1 – Dec. 31  \_\_\_\_\_ YEAR

Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone #: \_\_\_\_\_  
Name of Web Site: \_\_\_\_\_  
URL: \_\_\_\_\_

MONTH	AGGREGATE STREAM MINUTES	AGGREGATE STREAM HOURS

**GRAND TOTAL AGGREGATE STREAM HOURS (SUM)** \_\_\_\_\_

**LICENSE FEE CALCULATION**

\_\_\_\_\_ X \$0.006 = \$ \_\_\_\_\_  
GRAND TOTAL AGGREGATE STREAM HOUR LICENSE FEE

I hereby certify on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ that the above is true and correct.

BY: \_\_\_\_\_  
(SIGNATURE)  
\_\_\_\_\_  
(PRINT NAME OF SIGNER)  
\_\_\_\_\_  
(TITLE OF SIGNER)

Please return report to:  
**Attn: Digital Licensing  
BMI  
10 Music Square East  
Nashville, TN 37203-4399**





# Music License for Bowling Center

## 1. BMI Grant

BMI hereby grants to LICENSEE a non-exclusive license to cause and permit the public performance of all musical works of which BMI shall have the right to grant public performance licenses during the Term hereof, by live and or recorded means except as described below at the bowling center owned or operated by LICENSEE located at address listed under licensed premises (the "Premises"). The Premises shall also include any other bowling centers now or hereinafter owned or operated by LICENSEE which publicly performs music, up to a maximum of 749 lanes. Any other such bowling centers are set forth on the List of Additional Premises attached hereto. Said license shall be restricted to performances of music in the manner described in this Agreement, and is granted in consideration of the payment of the license fees as set forth herein and is subject to all of the terms and conditions hereof. This license does not include:

- (a) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein; or
- (b) the right to broadcast, telecast or otherwise transmit the performances licensed hereunder to persons outside of the licensed premises.
- (c) this license does not authorize performances of music by means of a coin-operated phonorecord player (jukebox) as formerly defined in the Copyright Law.
- (d) this license does not authorize performances of music in or as part of a concert, musical attraction or other activity or event for which a separate admission fee or similar charge is made to attend.
- (e) BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

## 2. Indemnity by BMI

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 musical works licensed under this Agreement. Such indemnity shall be limited to works which are licensed by BMI at the time of LICENSEE's performances. 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.

## 3. Late Payment Charge

BMI may impose a late payment charge of 1.5% per month from the date any payment is due hereunder on any payment that is received by BMI more than thirty (30) days after the due date.

## 4. Breach or Default / Waiver

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues thirty (30) days after the LICENSEE's receipt of written notice thereof. 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.

## 5. Notices

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed duly given when sent by ordinary first-class U.S. mail to the party for whom it is intended, at its indicated mailing address stated, or any other address which either party hereto may from time to time designate for such purpose, and when such notice is so mailed, it shall be deemed given upon the mailing thereof. Any such notice sent to BMI shall be to the attention of the Licensing Department. Any such 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.

**6. Arbitration**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement, except with respect to matters within the jurisdiction of the BMI rate court, shall be submitted to the American Arbitration Association in the City and State of New York, for arbitration under its then prevailing rules, the arbitrator(s) to be selected as follows: Each of the parties 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 a 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 in 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.

**7. Fee / Calculations**

- (a) In consideration of the license granted herein, LICENSEE agrees to pay BMI an annual license fee based on the total number of LICENSEE's lanes at the Premises set forth in Paragraph 8, calculated at the rate of \$28.70 per lane, pro-rated if the initial Term is less than a full calendar year. Notwithstanding LICENSEE's total number of lanes, the minimum annual license fee for each bowling center for the first contract year shall be \$356.00, pro-rated if the initial Term is less than a full calendar year.
- (b) For all years subsequent to 2003, the annual license fee rate shall be an adjustment of the 2003 rate based upon the percentage increase or decrease in the United States Consumer Price Index (National, All Items) between July 2003 and July of the year preceding each anniversary date of this Agreement, rounded to the nearest ten cents. BMI will advise LICENSEE in writing of the amount of each annual license rate.
- (c) The minimum annual license fee for each bowling center for contract years after 2003 shall be an adjustment of the 2003 minimum annual license fee of \$265.00 based upon the percentage increase or decrease in the United States Consumer Price Index (National, All Items) between July 2003 and July of the year preceding the anniversary date of this Agreement, rounded to the nearest dollar.

**8. Annual Fee**

LICENSEE warrants and represents that, as of the date of this Agreement, the total number of lanes at all of LICENSEE'S premises is \_\_\_\_\_. As such, based upon the rate set forth above, LICENSEE agrees to pay BMI the amount of \_\_\_\_\_ for the first contract year, or as pro-rated in Paragraph 7 (a) if the initial Term is less than a full calendar year. Payment is to be made upon submission of this Agreement to BMI in executed form.

$$(a) \frac{\$ \text{ Annual Fee}}{\text{Annual Fee}} \div 12 = \$ \text{ _____ } \times \frac{\text{Months in Initial Term}}{\text{Months in Initial Term}} = \frac{\text{Pro-rated Fee Initial Term}}{\text{Pro-rated Fee Initial Term}}$$

**9. Reporting / Fee Adjustments**

- (a) After the first contract year, LICENSEE agrees to submit to BMI, within ten (10) days after the beginning of each contract year, a report certified by an officer of LICENSEE containing (a) a list of bowling centers which publicly performed music at any time during the immediately preceding twelve months, owned or operated by LICENSEE and (b) the total number of lanes in all those bowling centers. Upon submission of each annual report, BMI will advise LICENSEE in writing of the then current annual fee and any adjustment for the prior contract year based on any additional locations added. LICENSEE agrees to pay the annual fee for the then current contract year plus any adjustment for the prior contract year within thirty (30) days of BMI's delivery to LICENSEE of the statement containing the annual fees and adjustments if any.
- (b) If LICENSEE fails to timely submit to BMI the annual report required by Paragraph 9 (a), LICENSEE hereby appoints and authorizes BMI, at BMI's option, to assess a reasonable estimated license fee for such contract year. BMI shall give written notice to LICENSEE of the fee calculated. LICENSEE shall have thirty (30) days after such written notice by BMI to submit the report. Nothing herein shall relieve LICENSEE of its obligation to report its actual number of total lanes for each year.
- (c) In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any tax (whether sales, use, gross receipts, business or otherwise) which is based upon the amount received by BMI from LICENSEE, then LICENSEE agrees to pay to BMI the full amount of such tax together with LICENSEE's fee payment(s) as billed by BMI.



**10. Discontinuance of Music**

In the event that LICENSEE permanently discontinues the use of all music at a licensed premise(s) or LICENSEE ceases to operate a licensed premise(s) during the Term and so notifies BMI in writing, within thirty (30) days after receipt of such notice a pro rata adjustment to fees will be made. In no event, however, will that fee be less than the per bowling center annual minimum fee as set forth in Paragraph 7 (a).

**11. Miscellaneous**

This Agreement constitutes the entire understanding between the parties, shall not be binding until signed by both parties, and 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. The rights of LICENSEE shall not be assignable. 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.

**List of Additional Premises**

	<b>DBA / Premise</b>	<b>Address</b>	<b>Phone #</b>	<b># Lanes</b>
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				

*-Attach Additional Sheets if Necessary-*

--

**Total Lanes**

**12. Term of Agreement**

The initial Term of the Agreement shall begin on the first day of (month/year) \_\_\_\_\_ and end on the last day of December (year) \_\_\_\_\_ and continue for additional periods of one (1) year each, unless canceled by either party at the end of the initial Term or any subsequent one year period, upon thirty (30) days advance written notice. Each one (1) year period is a "contract year." BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the Agreements of all other licensees of the same class and category as LICENSEE as of the end of any month during the Term, upon sixty (60) days advance written notice.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<small>(Name of Corporation, Partnership, or Individual Owner)</small>	<small>(Street Address)</small>
<b><u>TRADE NAME</u></b>	<small>(City) (State) (Zip)</small>
<small>(Doing business under the name of)</small>	<small>(Telephone Number) (Fax Number)</small>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<small>(Contact Name) (Title)</small>
<input type="checkbox"/> Individual Ownership <input type="checkbox"/> LLC <input type="checkbox"/> Corporation <input type="checkbox"/> LLP <input type="checkbox"/> Partnership <input type="checkbox"/> Other _____	<small>(Email Address) (Web Address)</small>
<small>(State of Incorporation, if different from Licensed Premises)</small>	<b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small>
<small>(Enter names of partners)</small>	
Federal Tax ID No. _____	<small>(Street Address)</small>
<b><u>GOVERNMENT ENTITIES</u></b> <small>(if applicable, please check one)</small>	<small>(City) (State) (Zip)</small>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____ <small>(State)</small>	<small>(Telephone Number) (Fax Number)</small>
<input type="checkbox"/> Local _____ <small>(Municipality/City and State)</small>	<small>(Contact Name) (Title)</small>
	<small>(Email Address – if different from above)</small>

<p style="text-align:center;"><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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.  <b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b></p>	<p style="text-align:center;"><b>FOR ADMINISTRATIVE USE ONLY</b>  <b>TO BE COMPLETED BY BMI</b>  <b>BROADCAST MUSIC INC.</b></p>						
Signature	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:60%; text-align:center;"><b>FOR BMI USE ONLY</b></td> <td style="width:10%; text-align:center;"><b>36B</b></td> <td style="width:30%; text-align:center;"><b>LI-2016/AUG</b></td> </tr> <tr> <td style="text-align:center;"><small>ACCOUNT NO.</small></td> <td style="text-align:center;"><small>COID</small></td> <td style="text-align:center;"><b>EFFECTIVE: January 2017</b></td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>36B</b>	<b>LI-2016/AUG</b>	<small>ACCOUNT NO.</small>	<small>COID</small>	<b>EFFECTIVE: January 2017</b>
<b>FOR BMI USE ONLY</b>		<b>36B</b>	<b>LI-2016/AUG</b>				
<small>ACCOUNT NO.</small>		<small>COID</small>	<b>EFFECTIVE: January 2017</b>				
Print Name / Title							
Signatory Email Address* <small>(if different from above)</small>							

**\*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**

\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.





# Music License for Business Multiple Use

## 1. DEFINITIONS

- (a) Location: each premises operated and owned or leased by you or your subsidiaries which is used primarily as an executive or general office or as an industrial facility as listed or to be listed on Schedule A.
- (b) Executive or general office: a location where LICENSEE conducts its managerial or administrative functions.
- (c) Industrial facility: a premises used for manufacturing plant or warehouse and related purposes.
- (d) Off-site location: a premises other than the location address under the location's sole control and attended solely by the location's employees, their families and social acquaintances, and intra-corporate invitees.
- (e) Employees: all full-time and part-time persons employed at a location.
- (f) Subsidiary: an entity wholly-owned by LICENSEE.

## 2. BMI GRANT

BMI grants you a non-exclusive license to perform or allow to be performed at the licensed locations and off-site locations all musical works of which BMI shall have the right to grant public performance licenses during the Term of this Agreement. This grant of rights includes but is not limited to music performed: (1) over telephones in the form of music-on-hold; (2) as live music or recorded background music; (3) in fitness and aerobics facilities; (4) in audiovisual presentations in business meetings; (5) over teleconferencing at the licensed locations; (6) in television and radio programming received by LICENSEE on the locations; and (7) performances of music by interactive software, whether (a) delivered by media such as CD-ROM, CD-I, diskette or cartridge, or (b) rendered by multimedia hardware, such as computer-driven handheld devices.

This license does not include: (a) the right to present the music in any way which may be a use of the "grand rights;" (b) the right to broadcast, telecast, cablecast or otherwise transmit the performances outside of the licensed locations, except to the extent that music on telephone hold lines originating at a licensed location is audible at remote premises on telephone lines as part of "music-on-hold;" (c) performances of music by a jukebox; (d) any performance of music by interactive software, delivered by on line service, such as interactive cable, interactive TV, computer network, telephone or satellite. In all cases the term "premises" shall specifically exclude (1) any retail establishment owned or leased by LICENSEE; (2) any location which is used by LICENSEE for a trade show, convention or exposition; and (3) any hospital or similar facility.

LICENSEE may be responsible for securing other rights including, but not limited to, synchronization and mechanical rights.

BMI may withdraw from the license your right to perform any musical work as to which a legal action has been brought or a claim made that BMI does not have the right to license the work or that the work infringes another work.

## 3. INDEMNITY BY BMI

BMI agrees to indemnify you, your officers and employees against any and all claims that may be made against you with respect to the performance of any music licensed under this Agreement at the time of your performances. You agree to give BMI immediate notice of any claim, to deliver to BMI any related papers and to cooperate with BMI in the matter, of which BMI will be in full charge. BMI will, upon reasonable written request, advise you whether specific musical works are available for performance, if you provide the title and the writer/composer of each musical work.

## 4. BREACH OR DEFAULT/WAIVER

If there is any breach or default by you of this Agreement, BMI will have the right to cancel it, but the cancellation will become effective only if the breach or default continues thirty (30) days after the date of BMI's written notice to you. The right to cancel is in addition to any other remedies which BMI may have. BMI may enforce any of its rights under this Agreement at any time even if it has not done so earlier.

## 5. ARBITRATION

All disputes of any kind arising in connection with the terms of this Agreement shall be submitted to the American Arbitration Association in New York, New York under its rules then in effect. The arbitrators will be selected as follows: each of us will, by written notice to the other, have the right to appoint one arbitrator. If, within ten (10) days after such notice by one of us, the other one does not, by written notice, appoint another arbitrator, the first arbitrator will be the only arbitrator. However, if we each appoint an arbitrator, the two arbitrators will appoint a third arbitrator. If ten (10) days pass after the second arbitrator's appointment and the two arbitrators cannot agree upon the third arbitrator, then either of us may, in writing, request the American Arbitration Association to appoint the third arbitrator. The arbitration award shall be entirely binding on both of us and judgment may be entered in any appropriate court. The award shall include an amount for the costs, expenses and attorneys' fees of arbitration, which shall be paid by the losing party.

### Schedule A

Name and address of each location for which a fee is paid, and highest number of employees at that location.

Locations DBA	Address	City	State	Zip	Highest # of employees for the report year	Subsidiary name (If Applicable)

**Total Employees:**

**IF MORE SPACE REQUIRED, ATTACH SHEET(S)**

**Enter Total here and on Page 3 of this Agreement in space provided.**

**6. NOTICES**

Any notices to be given are to be in writing and will be deemed given on the day they are sent by ordinary first-class U.S. mail to the other of us, at its mailing address stated, or any different address which either of us later designates in writing. Any notices you send to BMI will be addressed to the attention of the Licensing Department. Any notices BMI sends to you will be addressed to the attention of the person signing this Agreement for you unless you advise BMI to address notices to someone else.

**7. FEES**

(a) You agree to pay BMI for each employee for the first year of this Agreement fees as follows:

**LICENSE FEE SCHEDULE**

**NOTE: The tiers are successive, not cumulative. For example, 800 employees would be covered by 250 in the first tier, 250 in the second tier and 300 in the third tier.**

NUMBER OF EMPLOYEES	FEE PER EMPLOYEE
First 250	84 cents
251 - 500	66 cents
501 - 10,000	50 cents
10,001 - 20,000	43 cents
20,001 - 75,000	35 cents
75,001 and Over	23 cents

(b) Subject to Subparagraphs 7 (a), (c), (d) and Paragraph 8, you agree to pay to BMI for each contract year an estimated fee as an advance of the actual fee. Based upon your projection, you estimate that your highest number of employees at all of the locations listed on Schedule A during the first contract year will be \_\_\_\_\_ and your estimated fee will be \_\_\_\_\_.  
**The minimum annual fee for 2017 is \$209.**

The first annual fee is due within 30 days of your signing this Agreement.

(c) The amount of the fee per employee and minimum fee for the second and subsequent contract years of this Agreement shall be an adjustment of the first year's fee per employee and minimum fee based upon the percentage increase or decrease in the United States Consumer Price Index (National, All Items) between September 2016 and September of the year preceding each anniversary date of this Agreement. The license fees based upon the number of employees shall be computed to the nearest cent and the minimum fee to the nearest dollar. BMI will advise you in writing of the amount of each new fee.

(d) The estimated fee for the second and following contract years will be the actual fee for the previous contract year and will be due and payable no later than 30 days after the beginning of each contract year.

**8. REPORTING**

(a) At the same time as the payments required by Paragraph 7 are due, you agree to furnish BMI (on forms available from BMI) with a report, certified either by an officer or by your auditor, setting forth any information regarding the subject matter of this Agreement which BMI may reasonably require, including, without limitation:

- (i) the highest number of employees for the year reported at each licensed location;
- (ii) the name and address of each location for which a fee is paid;
- (iii) the name and address of each subsidiary and the locations of that subsidiary to be licensed hereunder

(b) If, after processing the annual report, the actual fee is greater than the license fee already paid by you for the contract year, you agree to pay BMI the difference, within (30) days of the mailing by BMI to you of an adjusted statement.

(c) If, after processing the annual report, the actual fee is less than the license fee already paid by you to BMI for the contract year, BMI agrees to credit the difference between the actual and estimated license fees to your account, and if such adjustment occurs in the last contract year of the Agreement, BMI shall refund said sum promptly.

**9. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the Agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

**10. OFFER OF COMPARABLE AGREEMENT**

If BMI, during the Term of this Agreement and for the same class and category as yours, issues licenses granting rights similar to those in this Agreement on a more favorable basis, BMI will, for the rest of the Term, offer you a comparable agreement.

**11. MISCELLANEOUS**

This Agreement is our entire understanding, will not be binding until signed by both of us, and no waiver or change will be valid unless in writing and signed by us. This Agreement is signed by the authorized representatives of each of us. Your rights are not assignable. This Agreement, its validity, construction and effect, will be governed by the laws of the State of New York. The fact that any parts of the Agreement may be found by a court of competent jurisdiction to be void or unenforceable will not affect the validity or enforceability of any other parts. The headings are for convenience only and are not a part of the Agreement.

**12. TERM OF AGREEMENT**

The first Term of this Agreement begins on the first day of (month/year) \_\_\_\_\_ and ends on the last day of (month/year) \_\_\_\_\_ (a "contract year"). It will continue annually unless cancelled by either you or BMI at the end of the first Term or any following one (1) year Term by giving thirty (30) days advance written notice to the other of us.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b><u>TRADE NAME</u></b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address) (Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<i>(State of Incorporation, if different from Licensed Premises)</i> <i>(Enter names of partners)</i>	
<input type="checkbox"/> Other _____	<i>(Street Address)</i>
Federal Tax ID No. _____	<i>(City) (State) (Zip)</i>
<b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i>	<i>(Telephone Number) (Fax Number)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<i>(Contact Name) (Title)</i>
<i>(State)</i>	<i>(Email Address – if different from above)</i>
<input type="checkbox"/> Local _____	
<i>(Municipality/City and State)</i>	

<b>TO BE COMPLETED BY LICENSEE</b> 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. <b><i>(SIGN HERE – PLEASE INCLUDE PAYMENT)</i></b>
Signature
Print Name / Title
Signatory Email Address* <i>(if different from above)</i>
<b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b>

<b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b>
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<b>FOR BMI USE ONLY</b>	<b>36C</b>	<b>LI-2016/NOV</b>
ACCOUNT NO.	COID	<b>EFFECTIVE: January 2017</b>

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

® BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.



# Circus Agreement

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Account #

**35C**

**LI-10/05-35C**

AGREEMENT, made at New York, N.Y. on *(Date Will be Entered By BMI Upon Execution)* \_\_\_\_\_ between BROADCAST MUSIC, INC., a corporation organized under the laws of the State of New York (hereinafter called BMI) with principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10019, and

<i>(Legal Name of LICENSEE)</i>	
Please check appropriate box and complete	<input type="checkbox"/> A corporation organized under the laws of the state of _____ <input type="checkbox"/> A partnership composed of _____ <input type="checkbox"/> An individual residing at _____
(hereinafter called "LICENSEE") with offices located at _____	
City of _____	State of _____ Zip _____
Telephone No. (    ) _____	

WITNESSETH:

WHEREAS, BMI is engaged in the business of licensing music for public performance, and  
 WHEREAS, LICENSEE proposes to publicly perform, present or cause the public performance of musical compositions at "facilities" (as herein defined) as parts of one or more circuses (as hereinafter defined);

IT IS HEREBY AGREED AS FOLLOWS:

1. As used in this agreement:
  - (a) "Facilities" shall include, but not be limited to, arenas, tents, stadiums, auditoriums, theaters, amphitheatres, stages and other similar places of performance, whether enclosed or not, located within the United States of America, its territories and possessions.
  - (b) "Circuses" shall mean shows and other similar spectator events (including events sponsored by charitable organizations or for charitable purposes) which include music, whether or not music is the principal type of entertainment.
2. The initial term of this agreement shall begin on *(month/year)* \_\_\_\_\_ and end on December 31 \_\_\_\_\_ and shall be extended for additional terms of one (1) year each unless cancelled by either party as of the end of the initial term of any additional term upon written notice forwarded by regular first-class U.S. mail not less than thirty (30) days prior to the end of any such term.
3. LICENSEE agrees that in the event any other corporation, partnership or individual directly or indirectly affiliated with or controlled by LICENSEE, or which controls LICENSEE, (hereinafter referred to as "New Affiliate") becomes engaged in, during the term of this agreement, performing, presenting or causing the performance of circuses of such a nature that said performances would require a license from BMI, then all performances of said circus shall be embraced by all the terms and conditions of this agreement. LICENSEE shall pay BMI the fees provided for in Paragraph 5 of this agreement for each performance of such circuses unless and until said New Affiliate shall enter into a licensing agreement directly with BMI with respect to the circuses which it presents. BMI agrees to enter into a licensing agreement directly with said New Affiliate under the same terms and conditions as, and at the same rates of payment as, set forth in the agreement upon LICENSEE's notifications in writing to BMI at any applicable time during the term of this agreement of the name and address of said New Affiliate and the owner or owners thereof.
4. BMI hereby grants to LICENSEE for the term of this agreement a non-exclusive license solely to perform, present or cause the performance of, as part of circuses in facilities, all the musical works as to which BMI shall have the right to grant public performance licenses during the term hereof. Said license shall not include the right to simultaneously broadcast, telecast, cablecast or otherwise transmit the performances to persons outside of the facility in which they originate. Said license shall also not include dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein.
5. (a) Subject to the provisions of Sub-paragraph 5 (b) hereof, LICENSEE agrees to pay BMI a fee for each performance of a circus computed on the basis set forth in Schedule A of the agreement.  
 (b) Payment shall be due BMI on the twentieth (20th) day of January, April, July and October of each year of this agreement for all circuses given during the previous calendar quarter of this agreement.

## SCHEDULE A

<b>FEE FOR EACH PERFORMANCE</b>
\$25.50

6. BMI shall have the right by its authorized representatives, at any time during customary business hours and upon thirty (30) days advance written notice, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify any and all statements rendered and accounting made hereunder.

7. In the event that BMI, at any time during the term hereof, shall issue licenses to enterprises of the same class and category as those licensed hereunder granting rights similar to those granted by this agreement at a more favorable rate of payment to the LICENSEE than is set forth herein, BMI shall notify LICENSEE and shall, for the balance of the term hereof, on the written request of LICENSEE, tender to LICENSEE the form of agreement containing such more favorable rate of payment.

8. In the event that LICENSEE engages in the presentation of a circus in conjunction with other persons or entities not licensed by BMI for performances of circuses, it is understood and agreed that LICENSEE shall be liable for payment of the entire amount of the fees required by this agreement. If, however, such other persons or entities are also licensed by BMI for performances of circuses, all such joint licensees shall be deemed liable for a pro rata share of the total fees due for such circus, unless BMI is provided with satisfactory written evidence to the contrary signed by all such joint licensees. In the event BMI receives a fee for a circus from both LICENSEE and one or more of LICENSEE's co-presenter's, the total of which exceeds the amount due, BMI shall refund or credit the excess according to the co-presenter's liability for such fee as indicated herein.

9. 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 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 the works which are licensed by BMI at the time of LICENSEE's performances. BMI's Clearance Department will, upon request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. 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.

10. All disputes of any kind, nature or description arising in connection with the terms and conditions of this agreement shall be submitted to arbitration at the American Arbitration Association in the City, County and State of New York under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators 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 in any court having jurisdiction. Such award shall include the fixing of the costs, expenses and attorney's fees of arbitration, which shall be borne by the unsuccessful party.

11. Upon any breach or default of the terms and conditions herein, BMI may, at its sole option, cancel this agreement if such breach or default continuing thirty (30) days after LICENSEE's receipt of written notice thereof. The right to cancel granted to BMI pursuant to this paragraph shall be in addition to any and all other remedies, including the right to sue for copyright infringement, which BMI may have in law or in equity. 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.

12. Any notice required or permitted to be given under this agreement shall be in writing and shall be deemed duly given when sent by regular first-class U.S. mail to the party for whom it is intended, at its address hereinabove stated, or any other address which either party hereto may from time to time designate for such purposes, and when any such notice is so mailed, it shall be deemed to have been given upon the mailing thereof. All notices directed to BMI must be addressed to the Vice President of Licensing.

13. LICENSEE agrees that it will perform, present or cause the performance of not less than (5) separate circuses in facilities during any consecutive twelve month period of the initial term of this agreement. In the event that less than five (5) separate attractions are presented by LICENSEE during any such consecutive twelve-month period, then BMI shall have the right to terminate this license pursuant to the provisions of Paragraph 11 hereof.

14. 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. The rights of LICENSEE hereunder shall not be assignable. 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

IN WITNESS WHEREOF, this agreement has been executed by the duly authorized representatives of BMI and LICENSEE all as of the date first above written.

<p align="center"><b>TO BE COMPLETED BY LICENSEE</b></p> <p><b>By signing this Agreement you agree that the foregoing is a true and accurate representation of your Music Policy.</b></p> <p>I have read and have understood all of the terms and conditions herein and my signature below is evidence of this.</p> <p>_____</p> <p align="center">Signature</p> <p>_____</p> <p align="center">Print Name / Title</p>
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<b>FOR ADMINISTRATIVE USE ONLY</b> BROADCAST MUSIC, INC.	
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<b>FOR BMI USE ONLY</b>		
<b>Account No.</b>	<b>COID</b>	







## BMI/Commercial Music Service Interim Blanket License Agreement

LI-12/DEC-CMS Interim Ext

The following are the terms and conditions of the BMI/Commercial Music Service Interim Blanket License Agreement (hereinafter "2013 Interim Blanket License Agreement") between Broadcast Music, Inc. ("BMI") and \_\_\_\_\_ (hereinafter "LICENSEE"), pending the outcome of negotiations for a final agreement between BMI and LICENSEE, or, if necessary, a determination by the BMI Rate Court of appropriate final license fees and terms for LICENSEE's commercial music service.

WHEREAS, LICENSEE is in the business of operating a commercial music service ("Commercial Music Service") that delivers commercial music service programming to commercial establishments ("Commercial Subscriber Locations"); and

WHEREAS, LICENSEE launched its Commercial Music Service on \_\_\_\_\_, and, as such, was not previously license by BMI pursuant to the standard form of BMI Commercial Music Service Music Performance Agreement for the period from July 1, 2004 through June 30, 2009 (hereinafter the "2004-09 Agreement"), or the BMI 2010 Commercial Music Service Interim Blanket License Agreement with an effective date July 1, 2009 (the "2010 Interim Agreement"), the rates and terms of which were finalized by court order for the period through December 31, 2012; and

WHEREAS, the 2004-09 Agreement and the 2010 Interim Agreement form the foundation for this 2013 Interim Blanket License Agreement, and copies of each are attached hereto and the rates and terms are incorporated herein; and

WHEREAS, the parties hereto desire to extend the 2004-09 Agreement, as modified by the 2010 Interim Agreement, on an interim month to month basis for the period commencing January 1, 2013, or \_\_\_\_\_ (the "Commencement Date"), to enable negotiations to proceed for new final rates and terms,

NOW, THEREFORE,

It is hereby agreed by the parties that this 2013 Interim Blanket License Agreement shall embody each and every term and condition set forth in the 2004-09 Agreement, as modified by the 2010 Interim Agreement, except for the revisions enumerated below:

It is hereby agreed as follows:

1. The Term of LICENSEE's 2013 Interim Blanket License Agreement shall commence on January 1, 2013, or (the "Commencement Date") and shall continue on a calendar month-to-month basis, unless either party terminates this 2013 Interim Blanket License Agreement as of the last day of any calendar month upon thirty (30) days' prior written notice, and if not terminated pursuant to this Paragraph 1, until a final BMI license agreement is reached through negotiations between BMI and LICENSEE or until a final non-appealable decision has been made by the BMI Rate Court setting appropriate final license fees and terms.
2. This 2013 Interim Blanket License Agreement shall embody each and every term and condition set forth in the 2004-09 Agreement, as modified by the 2010 Interim Agreement, except for the Term.
3. The interim license fees for the Term of this 2013 Interim Blanket License Agreement shall be the same as the now final fees set forth in the 2010 Interim Blanket License Agreement of \$18.91 per Commercial Subscriber Location per year.
4. LICENSEE agrees that the interim blanket license fees set forth herein are non-precedential and may not be relied upon by either party hereto in negotiations as reasonable fees for the license granted herein. LICENSEE further agrees to be bound by the final license fee rate(s) and/or rate formula(s) reached as a result of either negotiations between BMI and LICENSEE or a determination in the BMI Rate Court setting appropriate final license fees and terms with respect to LICENSEE's Commercial Music Service. LICENSEE further agrees that the final blanket license fee rate shall be applied retroactively to the Commencement Date of this 2013 Interim Blanket License Agreement. As such, LICENSEE shall be obligated to pay BMI any additional monies that may be owed BMI as a result of such retroactive adjustment, with six percent (6%) per annum simple interest, and BMI shall be obligated to refund to LICENSEE any monies that may be owed to LICENSEE as a result of such

retroactive adjustment, with six percent (6%) per annum simple interest.

This Agreement shall bind and benefit the heirs, executors, administrators, successors, assigns, parents, members and subsidiaries of BMI and LICENSEE.

IN WITNESS WHEREOF, the parties, by their undersigned duly authorized representatives, have executed this Interim Blanket License Agreement.

Broadcast Music, Inc.

LICENSEE:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.





# Music License for Coffee Shops

## 1. DEFINITIONS

- (a) "LICENSEE" shall mean the coffee shop operator identified on Page 4 herein.
- (b) "Licensed Premises" shall mean LICENSEE's coffee shop location identified on Page 4 herein that has a total Occupancy of not more than fifty (50) persons, does not serve alcoholic beverages, and primarily sells coffee, beverages and snacks.
- (c) "Occupancy" shall mean the total of maximum allowable occupancy loads/capacities for the entire Licensed Premises calculated under adopted building/fire codes, which shall not be limited to the number of available seats. If no such regulations are in effect in the applicable jurisdiction, then maximum occupancy shall mean one (1) person for every twenty (20) square feet of such total premises.

## 2. BMI GRANT

BMI hereby grants to LICENSEE for the Term of this Agreement a non-exclusive license to perform or cause the public performance of all musical works of which BMI shall have the right to grant public performance licenses during the Term. This license does not include:

- (a) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein;
- (b) the right to broadcast, telecast, cablecast or other electronic transmission, including via satellite, the Internet or on-line service, the performances licensed hereunder to persons outside of the Licensed Premises;
- (c) performances by means of a coin-operated phonorecord player Jukebox as formerly defined in the Copyright Law (17 U.S.C. §116);
- (d) performances in or as part of a concert, musical attraction or other activity or event for which a separate admission fee or similar charge is made to attend; or
- (e) performances by any coin-operated digital music service that does not qualify as a Jukebox.

## 3. INDEMNITY BY BMI

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 musical works licensed under this Agreement. Such indemnity shall be limited to musical works which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

## 4. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues for thirty (30) days after the date of BMI's written notice to LICENSEE thereof. 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 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.

## 5. ARBITRATION

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to the American Arbitration Association in the City, County and State of New York for arbitration under its then prevailing arbitration rules. The arbitrator(s) to be selected as follows: Each of the parties 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 in 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.

## **6. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

## **7. TERMINATION OF AGREEMENT**

If LICENSEE shall permanently cease to operate Licensed Premises due to a sale of the premises or otherwise, or in the event that LICENSEE discontinues the use of music at the Licensed Premises, LICENSEE shall notify BMI and may terminate the Agreement effective at the end of the current Contract Year, in accordance with Paragraph 18 herein. If LICENSEE, at any time during the Term, fails to qualify as a Licensed Premises, pursuant to the requirements set forth in Paragraph 1(b), this Agreement shall terminate and LICENSEE will be responsible for licensing any music use under the appropriate BMI music license.

## **8. 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 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.

## **9. WITHDRAWAL OF WORKS**

BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

## **10. FEES**

- (a) In consideration of the license granted herein, LICENSEE agrees to pay BMI an Annual License Fee for each Licensed Premises.
- (b) For the 2017 Contract Year, LICENSEE shall pay an Annual License Fee Per Licensed Premises of \$339.20.
- (c) For each subsequent Contract Year, the Annual License Fee Per Licensed Premises shall be an adjustment of the previous Contract Year fee based upon any percentage increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding January and the next preceding January. The Annual License Fee Per Licensed Premises shall be rounded to the nearest five (5) cents. BMI will advise LICENSEE in writing of the adjusted Annual License Fee Per Licensed Premises as part of its annual billing process.

## **11. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one half percent (1½%) per month from the date any payment or report was due on any payment that is received by BMI more than thirty (30) days after the due date.

## **12. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with license fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

## **13. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

## **14. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

## **15. CUSTOMER OUTREACH**

LICENSEE agrees to accept from time to time pre-recorded telephone messages from BMI that may contain information regarding LICENSEE's account.

**16. NOTICES**

Unless otherwise stated herein, all notices, if any, under this Agreement shall 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 herein 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 designate to BMI in writing.

**17. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, shall not be binding until signed by both parties, and 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. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**18. TERM**

The initial Term of this annual Agreement shall begin on the first day of (*month/year*) \_\_\_\_\_ and end on the last day of (*month/year*) \_\_\_\_\_ and shall continue thereafter unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "Contract Year") upon thirty (30) days advance notice to the other party.

**AGREEMENT**

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

<p><b><u>LEGAL NAME</u></b></p> <p><i>(Name of Corporation, Partnership, or Individual Owner)</i></p> <p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p> <p><b><u>PLEASE CHECK APPROPRIATE BOX</u></b></p> <p><input type="checkbox"/> Individual Ownership</p> <p><input type="checkbox"/> LLC    <input type="checkbox"/> Corporation</p> <p><input type="checkbox"/> LLP    <input type="checkbox"/> Partnership</p> <p><input type="checkbox"/> Other _____</p> <p>Federal Tax ID No. _____</p> <p><b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i></p> <p><input type="checkbox"/> Federal    <input type="checkbox"/> State _____</p> <p><input type="checkbox"/> Local _____</p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Telephone Number) (Fax Number)</i></p> <p><i>(Contact Name) (Title)</i></p> <p><i>(Email Address) (Web Address)</i></p> <p><b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Telephone Number) (Fax Number)</i></p> <p><i>(Contact Name) (Title)</i></p> <p><i>(Email Address- if different from above)</i></p>
<p><b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i></p> <p><input type="checkbox"/> Federal    <input type="checkbox"/> State _____</p> <p><input type="checkbox"/> Local _____</p>	

<p><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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.</p> <p><b><i>(SIGN HERE – PLEASE INCLUDE PAYMENT)</i></b></p>
<p>Signature _____</p>
<p>Print Name / Title _____</p>
<p>Signatory Email Address* <i>(if different from above)</i> _____</p>
<p><b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory</b></p>

<p><b>FOR ADMINISTRATIVE USE ONLY</b></p> <p><b>TO BE COMPLETED BY BMI</b></p> <p><b>BROADCAST MUSIC INC.</b></p>		
<p><b>FOR BMI USE ONLY</b></p>	<p><b>COFF1</b></p>	<p><b>LI-2017/JULY</b></p>
<p>ACCOUNT NO. _____</p>	<p>COID _____</p>	<p>Effective Date January 2017</p>

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

® BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.





# College / University One Tier

## 1. DEFINITIONS

- (a) **"LICENSEE"** as used herein shall include the named institution and any of its constituent bodies, agencies, or organizations which maintain a substantial nexus to the named institution and/or over which the named institution has control or authority, including, but not limited to, fraternities, sororities, social clubs, and other organizations located on or off the LICENSEE's campus.
- (b) **"Premises"** shall include LICENSEE's campus(es) and any site located off LICENSEE's campus(es) which has been engaged for use by LICENSEE, including, but not limited to, those locations where college groups such as bands or choruses perform as part of their nonprofit, community outreach and educational activities, provided that such events are not promoted or sponsored by a third party. However, in the event LICENSEE has a pecuniary interest in an establishment or property which is not directly related to LICENSEE's educational purposes or where the intended primary purpose of such establishment or property is not for the use of LICENSEE's students (e.g. a university related hospital or healthcare institution, other than a college/university infirmary used exclusively by students), at which establishment or property musical compositions are being performed publicly for purposes other than community outreach or education, it is specifically understood and agreed to by LICENSEE that this Agreement shall not apply to such other establishment or property.
- (c) **"Full-time Students"** as used herein shall be the sum of (i) all full-time undergraduate and graduate students and (ii) one-third of all part-time undergraduate and graduate students. If during the Term of this Agreement, the method of converting part-time students to a full-time equivalency as indicated in subsection (ii) of this definition is changed from the Integrated Postsecondary Education Data System (IPEDS) or any superseding survey conducted annually by the U.S. Department of Education, such different method of conversion shall be deemed substituted in said subsection (ii) as of the effective Fall academic term. For the 2016-2017 Contract Year, the number of Full-time Students as for all covered branch campuses shall be reported for the Fall 2016 academic term upon execution of this Agreement.
- (d) **"Base Student Fee"** for the 2016-2017 Contract Year shall be \$0.359 per student and shall be subject to a CPI Adjustment for each subsequent Contract Year, rounded to the nearest tenth of a cent.
- (e) **"Total Base Student Fee"** shall mean the Base Student Fee in any Contract Year multiplied by the number of Full-Time Students in that Contract Year. In no event shall the Total Base Student Fee for any Contract Year be less than the Minimum Annual Total Base Student Fee. The Minimum Annual Total Base Student Fee for the 2016-2017 Contract Year shall be \$284.14 and shall be subject to a CPI Adjustment for each subsequent Contract Year, rounded to the nearest cent.
- (f) **"Compulsory Rate"** shall mean the fee for non-commercial educational radio stations established under Section 118 of the U.S. Copyright Act. The Compulsory Rate, as defined above, for Contract Years 2013-2017 is outlined in Schedule A in Paragraph 2 herein.
- (g) **"Campus Radio Station"** shall mean and be limited to a non-commercial educational radio station that is not affiliated with NPR.
- (h) **"Total Campus Radio Station Fee"** shall mean the total number of Campus Radio Stations multiplied by the Compulsory Rate outlined in Schedule A.
- (i) **"Cable System"** shall mean each Cable Television System operated by LICENSEE on which Locally Originated Programming **only** is performed.
- (j) **"Per Student Cable System Fee"** for the 2016-2017 Contract Year is \$0.0665 and shall be subject to a CPI Adjustment for each subsequent Contract Year.
- (k) **"Total Cable System Fee"** shall be calculated by multiplying the total number of Full-time Students by the Per Student Cable System Fee.
- (l) **"CPI Adjustment"** shall mean the adjustment made to the Base Student Fee, the Minimum Annual Total Base Student Fee and the Per Student Cable System Fee (as applicable) in each subsequent Contract Year in accordance with the percentage change in the Consumer Price Index – All Urban Consumers (CPI-U) as determined by the United States Department of Labor, between the preceding July and the next preceding July. By way of illustration, the Base Student Fee payable for the 2017-2018 Contract Year, as compared to the Base Student Fee payable for the 2016-2017 Contract Year, will be adjusted based upon the percentage difference between the CPI-U in July 2017 and the CPI-U in July 2016.
- (m) **"Term"** shall mean the period commencing July 1, \_\_\_\_\_ and ending June 30, 2017 (the "Initial Term") and shall be extended for additional periods of one (1) year each, unless canceled pursuant to Paragraph 6 herein, or at the end of the Initial Term or any subsequent Contract Year upon thirty (30) days advance written notice. Each twelve (12) month period commencing July 1 and ending the following June 30 shall be referred to as a "Contract Year".
- (n) **"Musical Attractions"** shall mean concerts, stage shows, variety shows, symphonies, operas, recitals, chamber music and other similar performances presented or promoted exclusively by LICENSEE.
- (o) **"Orchestra"** shall mean a college orchestra, which consists primarily of student performers who may be augmented by faculty, staff, or other musicians. The Orchestra is offered by the institution to further education in music, including training musicians for professional careers or to better their general musical skills. The Orchestra staff is employed by the college, which also has ultimate fiscal responsibility for the Orchestra, and is governed by the institution, a college-based steering committee or other similar body, and not a separate board of directors independent from the college.
- (p) **"Web Site"** shall mean the Internet computer service comprising a series of interrelated web pages owned and/or operated by, or under the auspices of, LICENSEE and currently accessible via the Internet at the Uniform Resource Locator (URL) listed on Exhibit A or any other URL owned and/or operated by LICENSEE from which audio and/or audio-visual content containing musical works is made available to individuals; provided, however, that LICENSEE shall endeavor to keep Exhibit A current by providing BMI with an updated Exhibit A annually upon submitting its annual report pursuant to Paragraph 13, so that BMI will know to exclude them from its routine Internet licensing sales efforts. LICENSEE warrants and represents that each such Web Site is generally educational in nature or otherwise operated for the primary purpose of promoting the school and its resources to current and prospective students, faculty, staff, alumni, and the school community. LICENSEE further warrants and represents that, in the event that LICENSEE has a pecuniary interest in a Web Site which is not related to LICENSEE's educational or promotional purposes or where the intended primary purpose of such Web Site is not for the use of LICENSEE's current or prospective students, faculty, staff, alumni, or the school community, it is specifically understood and agreed to by LICENSEE that this Agreement shall not apply to such Web Site(s).
- (q) **"Internet Transmissions"** shall mean all transmissions of content over the Internet to individuals who access such transmissions from LICENSEE's Web Site(s) and receive such transmissions via a personal computer or other device capable of receiving such transmissions.
- (r) **"Locally Originated Programming"** shall mean television programming produced or which is inserted locally by LICENSEE or through an interconnect (an association of two or more cable systems for the purpose of distributing advertising or programming simultaneously) or otherwise originating by or on "LICENSEE's Cable Television System" including, without limitation, (i) programming on locally-originated channels, including advertising and promotional materials thereon; (ii) programming on public, educational and governmental ("PEG") access channels; (iii) public service announcements; (iv) programming on leased access channels; and (v) advertising and promotional materials inserted locally or through an interconnect by or on behalf of LICENSEE into national, regional or local cable programming services.

- (s) **“LICENSEE’s Cable Television System”** shall mean a cable television system, system of closed circuit distribution, MMDS, internet, broadband, including any linear feed via the Internet, broadband or other online service or other means of distribution which is owned and operated by LICENSEE and by which LICENSEE transmits Locally Originated Programming on LICENSEE’s campus, except that it shall not include free over-the-air broadcast television.
- (t) **“Intranet Transmissions”** shall mean transmissions of content that can only be accessed through an internal computer network accessible only to faculty, staff, students, and other members of the campus community who authenticate themselves through a secure access system and who access such transmissions via a personal computer or other device capable of receiving Internet Transmissions.
- (u) **“Territory”** shall mean the United States, its Commonwealth, territories, and possessions.

## **2. GRANT OF RIGHTS**

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

This license does not include:

- (a) performances of music via any form of televised transmission, whether over-the-air broadcast, cable, satellite or otherwise, except performances via (i) LICENSEE’s Web Site(s), subject to the limitations in Paragraph 1 (p); (ii) LICENSEE’s Intranet Transmissions; or (iii) LICENSEE’s Cable Television System, with respect to Locally Originated Programming only;
- (b) dramatic rights, the right to publicly perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to perform the music licensed hereunder in any other context which may constitute an exercise of the “grand rights” therein;
- (c) performances of music by means of a coin-operated phonorecord player (jukebox) or digital jukebox;
- (d) Musical Attractions on the Premises promoted by outside promoters (which shall mean any person or entity other than LICENSEE);
- (e) Musical Attractions occurring outside of the Premises, except as part of community outreach and educational activities; or
- (f) performances by commercial radio stations.

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

## **3. EXAMINATION OF BOOKS AND RECORDS**

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

## **4. INDEMNITY**

BMI agrees to indemnify, save harmless and defend LICENSEE, its officers and employees, from and against any and all claims, demands or suits that may be made or brought against them or any of them with respect to the performance of any material licensed under this Agreement. Such indemnity shall be limited to works which are licensed by BMI at the time of LICENSEE’s performances. BMI will, upon reasonable written request, advise LICENSEE whether specific musical works are available for performance, under this Agreement, if LICENSEE provides the title and the writer/composer of each musical work. LICENSEE agrees to give BMI immediate notice of any such claim, demand or suit, to deliver to BMI any papers pertaining thereto, and to cooperate with BMI with respect thereto, and BMI shall have full charge of the defense of any such claim, demand or suit.

## **5. BREACH OR DEFAULT/WAIVER**

Upon any breach or default of the terms and conditions of this Agreement that continues for thirty (30) days after LICENSEE’s receipt of written notice thereof, BMI may, at its sole option, cancel this Agreement. The right to cancel shall be in addition to any and all other remedies which BMI may have. No waiver by BMI of full performance of this Agreement by LICENSEE in any one or more instances shall be deemed a waiver of the right to require full and complete performance of this Agreement thereafter or of the right to cancel this Agreement in accordance with the terms of this Paragraph. In the event of such cancellation, BMI agrees to refund to LICENSEE any unearned license fees paid in advance to BMI by LICENSEE.

## **6. CANCELLATION BY LICENSEE**

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

## **7. ARBITRATION**

All disputes of any kind, nature or description not subject to the jurisdiction of the BMI Rate Court arising in connection with the terms and conditions of this Agreement shall be submitted to the American Arbitration Association in New York, New York for arbitration under its then prevailing rules, the arbitrator(s) to be selected as follows: Each of the parties hereto shall, by written notice to the other, have the right to appoint one arbitrator. If within ten (10) days following the giving of such notice by one party, the other shall not, by written notice, appoint another arbitrator, the first arbitrator shall be the sole arbitrator. If two arbitrators are so appointed, they shall appoint a third arbitrator. If ten (10) days elapse after the appointment of the second arbitrator and the two arbitrators are unable to agree upon the third arbitrator, then either party may, in writing, request the American Arbitration Association to appoint the third arbitrator. The award made in the arbitration shall be binding and conclusive on the parties and judgment may be, but need not be, entered into any court having jurisdiction. Such award shall include the fixing of the costs, expenses and attorneys’ fees of arbitration, which shall be borne by the unsuccessful party.

## **8. NOTICES**

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

## **9. OFFER OF COMPARABLE AGREEMENT**

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



**10. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and shall not be binding until signed by both parties. This Agreement cannot be waived or added to or modified orally and no waiver, addition or modification shall be valid unless in writing and signed by the parties. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions herein are found by a court of competent jurisdiction to be void or unenforceable shall not affect the validity or enforceability of any other provisions.

**11. RESERVATION OF RIGHTS**

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

**12. FEES / REPORTING**

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

**Schedule A**

	Number of Full-Time Students	Calendar Years				
		2013	2014	2015	2016	2017
Level 1	< 1,000	\$319	\$325	\$332	\$339	\$345
Level 2	1,000 – 4,999	\$369	\$376	\$384	\$392	\$399
Level 3	5,000 – 9,999	\$505	\$515	\$525	\$535	\$546
Level 4	10,000 – 19,999	\$655	\$668	\$681	\$695	\$708
Level 5	20,000 +	\$822	\$838	\$855	\$872	\$890

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 Campus 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 College/University License invoice is sent in January.

- (c) The Total Base Student Fee due BMI pursuant to this Agreement for the 2016-2017 Contract Year shall be paid by LICENSEE to BMI on or before February 1, 2017. For each subsequent Contract Year on or before November 1, LICENSEE shall report to BMI, on forms to be supplied by BMI, the total number of Full-time Students as defined in Paragraph 1(c) for the Fall academic term of the Contract Year, which will establish the license fee for the subsequent Contract Years. In addition, LICENSEE shall report the call letters of its Campus Radio Broadcasting Station(s), whether it desires coverage for LICENSEE's Cable Television System, and such other information as BMI may reasonably require with regard to any Campus Radio Broadcasting Station(s). The license fee due BMI pursuant to the Agreement for the subsequent Contract Year shall be paid by LICENSEE to BMI on or before the 20th day of January in the subsequent Contract Year.
- (d) All license fees based upon the number of Full-time Students shall be computed to the nearest tenth of a cent and all minimums to the nearest cent.

**13. REPORTING OF MUSICAL WORKS**

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

- (a) All Campus Radio Broadcasting Station(s) licensed under the Compulsory Rate shall, upon written request from BMI made on not less than two (2) weeks notice specifying the prospective period to be covered by the request, agree to furnish BMI weekly lists of each station's performances of all musical works, indicating the compositions performed by title and composer or by such other convenient method as may be designated by BMI, and whether such Campus Radio Broadcasting Station's broadcast signal was also transmitted over the Internet; but such lists need not be furnished for more than two (2) weeks for each Contract Year of the Term of this Agreement.
- (b) LICENSEE shall deliver to BMI for each calendar quarter, by the tenth (10th) day following the end of the calendar quarter, copies of any programs of the musical works presented by LICENSEE in its Musical Attractions or on LICENSEE's Web Site(s) during such quarter. Programs prepared for audiences or for the LICENSEE's own use are to be included, and shall include the presentation of encores to the extent possible. Nothing contained herein shall be deemed to require LICENSEE to deliver material not otherwise prepared.
- (c) To assist BMI with the distribution of royalties to its affiliated songwriters, composers and music publishers, at BMI's request, and on forms to be supplied by BMI, LICENSEE will provide BMI true, accurate, and complete lists of all production music libraries and composers directly hired by LICENSEE's Cable Television System to compose original music for programming licensed hereunder. At BMI's written request, LICENSEE will also provide lists of the channel line-up for LICENSEE's Cable Television System licensed hereunder as of the last day of each year (i.e., December 31) within the Term.

**List of Additional Branch Campuses**

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

Attach List If More Space Required

Institution Name	Branch Address	FICE Code Number

**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 New York 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.

<u>LEGAL NAME</u>	<u>NAME OF INSTITUTION</u>
<i>(Legal Name of LICENSEE)</i>	<i>(Name of Institution)</i>
<u>PREMISES ADDRESS</u> A college, university or other post-secondary institution of higher education with its principal offices at:	<u>MAILING ADDRESS</u> (If different from Premises Address)
<i>(Street Address)</i>	<i>(Street Address)</i>
<i>(City) (State) (Zip)</i>	<i>(City) (State) (Zip)</i>
<i>(Telephone Number) (Fax Number)</i>	<i>(Telephone Number) (Fax Number)</i>
<i>(Contact Name) (Title)</i>	<i>(Contact Name) (Title)</i>
<i>(Email Address)</i>	<i>(Email Address)</i>
<i>(Web Address)</i>	<u>GOVERNMENT ENTITIES</u> (if applicable, please check one)
<b>FICE Code Number</b>	<input type="checkbox"/> Federal <input type="checkbox"/> State _____ <span style="margin-left: 150px;"><i>(State)</i></span>
	<input type="checkbox"/> Local _____ <span style="margin-left: 100px;"><i>(Municipality and State)</i></span>
<u>TO BE COMPLETED BY LICENSEE</u> 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.  <b>PLEASE INCLUDE REPORT FORM <u>AND</u> PAYMENT</b>  <b>X</b>	<u>FOR ADMINISTRATIVE USE ONLY</u> <b>TO BE COMPLETED BY BMI</b> BROADCAST MUSIC, INC.
<i>(Signature)</i>	
<i>(Print Name / Title)</i>	
<i>(Signatory Email Address*)</i> <i>(if different from above)</i>	
*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**

<b>FOR BMI USE ONLY</b>		<b>COLL1</b>	<b>LI-2016/NOV</b>
<b>ACCOUNT NO.</b>	<b>COID</b>		<b>EFFECTIVE: September 2016</b>



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# College / University Two Tier

## 1. DEFINITIONS

- (a) **"LICENSEE"** as used herein shall include the named institution and any of its constituent bodies, agencies, or organizations which maintain a substantial nexus to the named institution and/or over which the named institution has control or authority, including, but not limited to, fraternities, sororities, social clubs, and other organizations located on or off the LICENSEE's campus.
- (b) **"Premises"** shall include LICENSEE's campus(es) and any site located off LICENSEE's campus(es) which has been engaged for use by LICENSEE, including, but not limited to, those locations where college groups such as bands or choruses perform as part of their nonprofit, community outreach and educational activities, provided that such events are not promoted or sponsored by a third party. However, in the event LICENSEE has a pecuniary interest in an establishment or property which is not directly related to LICENSEE's educational purposes or where the intended primary purpose of such establishment or property is not for the use of LICENSEE's students (e.g. a university related hospital or healthcare institution, other than a college/university infirmary used exclusively by students), at which establishment or property musical compositions are being performed publicly for purposes other than community outreach or education, it is specifically understood and agreed to by LICENSEE that this Agreement shall not apply to such other establishment or property.
- (c) **"Full-time Students"** as used herein shall be the sum of (i) all full-time undergraduate and graduate students and (ii) one-third of all part-time undergraduate and graduate students. If during the Term of this Agreement, the method of converting part-time students to a full-time equivalency as indicated in subsection (ii) of this definition is changed from the Integrated Postsecondary Education Data System (IPEDS) or any superseding survey conducted annually by the U.S. Department of Education, such different method of conversion shall be deemed substituted in said subsection (ii) as of the effective Fall academic term. For the 2016-2017 Contract Year, the number of Full-time Students as for all covered branch campuses shall be reported for the Fall 2016 academic term upon execution of this Agreement.
- (d) **"Base Student Fee"** for the 2016-2017 Contract Year shall be \$.335 per student and shall be subject to a CPI Adjustment for each subsequent Contract Year, rounded to the nearest tenth of a cent.
- (e) **"Total Base Student Fee"** shall mean the Base Student Fee in any Contract Year multiplied by the number of Full-Time Students in that Contract Year. In no event shall the Total Base Student Fee for any Contract Year be less than the Minimum Annual Total Base Student Fee. The Minimum Annual Total Base Student Fee for the 2016-2017 Contract Year shall be \$227.08 and shall be subject to a CPI Adjustment for each subsequent Contract Year, rounded to the nearest cent.
- (f) **"Compulsory Rate"** shall mean the fee for non-commercial educational radio stations established under Section 118 of the U.S. Copyright Act. The Compulsory Rate, as defined above, for the 2016-2017 Contract Year shall be \$339.00 and shall be subject to a CPI Adjustment for each subsequent Contract Year.
- (g) **"Campus Radio Station"** shall mean and be limited to a non-commercial educational radio station that is not affiliated with NPR.
- (h) **"Total Campus Radio Station Fee"** shall mean the total number of Campus Radio Stations multiplied by the Compulsory Rate.
- (i) **"Cable System"** shall mean each Cable Television System operated by LICENSEE on which Locally Originated Programming **only** is performed.
- (j) **"Per Student Cable System Fee"** for the 2016-2017 Contract Year is \$0.0665 and shall be subject to a CPI Adjustment for each subsequent Contract Year.
- (k) **"Total Cable System Fee"** shall be calculated by multiplying the total number of Full-time Students by the Per Student Cable System Fee.
- (l) **"CPI Adjustment"** shall mean the adjustment made to the Base Student Fee, the Minimum Annual Total Base Student Fee and the Per Student Cable System Fee (as applicable) in each subsequent Contract Year in accordance with the percentage change in the Consumer Price Index – All Urban Consumers (CPI-U) as determined by the United States Department of Labor, between the preceding July and the next preceding July. By way of illustration, the Base Student Fee payable for the 2017-2018 Contract Year, as compared to the Base Student Fee payable for the 2016-2017 Contract Year, will be adjusted based upon the percentage difference between the CPI-U in July 2017 and the CPI-U in July 2016.
- (m) **"Term"** shall mean the period commencing July 1, \_\_\_\_\_ and ending June 30, 2017 (the "Initial Term") and shall be extended for additional periods of one (1) year each, unless canceled pursuant to Paragraph 6 herein, or at the end of the Initial Term or any subsequent Contract Year upon thirty (30) days advance written notice. Each twelve (12) month period commencing July 1 and ending the following June 30 shall be referred to as a "Contract Year".
- (n) **"Musical Attractions"** shall mean concerts, stage shows, variety shows, symphonies, operas, recitals, chamber music and other similar performances presented or promoted exclusively by LICENSEE.
- (o) **"Orchestra"** shall mean a college orchestra, which consists primarily of student performers who may be augmented by faculty, staff, or other musicians. The Orchestra is offered by the institution to further education in music, including training musicians for professional careers or to better their general musical skills. The Orchestra staff is employed by the college, which also has ultimate fiscal responsibility for the Orchestra, and is governed by the institution, a college-based steering committee or other similar body, and not a separate board of directors independent from the college.
- (p) **"Web Site"** shall mean the Internet computer service comprising a series of interrelated web pages owned and/or operated by, or under the auspices of, LICENSEE and currently accessible via the Internet at the Uniform Resource Locator (URL) listed on Exhibit A or any other URL owned and/or operated by LICENSEE from which audio and/or audio-visual content containing musical works is made available to individuals; provided, however, that LICENSEE shall endeavor to keep Exhibit A current by providing BMI with an updated Exhibit A annually upon submitting its annual report pursuant to Paragraph 13, so that BMI will know to exclude them from its routine Internet licensing sales efforts. LICENSEE warrants and represents that each such Web Site is generally educational in nature or otherwise operated for the primary purpose of promoting the school and its resources to current and prospective students, faculty, staff, alumni, and the school community. LICENSEE further warrants and represents that, in the event that LICENSEE has a pecuniary interest in a Web Site which is not related to LICENSEE's educational or promotional purposes or where the intended primary purpose of such Web Site is not for the use of LICENSEE's current or prospective students, faculty, staff, alumni, or the school community, it is specifically understood and agreed to by LICENSEE that this Agreement shall not apply to such Web Site(s).
- (q) **"Internet Transmissions"** shall mean all transmissions of content over the Internet to individuals who access such transmissions from LICENSEE's Web Site(s) and receive such transmissions via a personal computer or other device capable of receiving such transmissions.
- (r) **"Locally Originated Programming"** shall mean television programming produced or which is inserted locally by LICENSEE or through an interconnect (an association of two or more cable systems for the purpose of distributing advertising or programming simultaneously) or otherwise originating by or on "LICENSEE's Cable Television System" including, without limitation, (i) programming on locally-originated channels, including advertising and promotional materials thereon; (ii) programming on public, educational and governmental ("PEG") access channels; (iii) public service announcements; (iv) programming on leased access channels; and (v) advertising and promotional materials inserted locally or through an interconnect by or on behalf of LICENSEE into national, regional or local cable programming services.
- (s) **"LICENSEE's Cable Television System"** shall mean a cable television system, system of closed circuit distribution, MMDS, internet, broadband, including any linear feed via the Internet, broadband or other online service or other means of distribution which is owned and operated by LICENSEE and by which LICENSEE transmits Locally Originated Programming on LICENSEE's campus, except that it shall not include free over-the-air broadcast television.

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

## **2. GRANT OF RIGHTS**

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

This license does not include:

- (a) performances of music via any form of televised transmission, whether over-the-air broadcast, cable, satellite or otherwise, except performances via (i) LICENSEE's Web Site(s), subject to the limitations in Paragraph 1(p); (ii) LICENSEE's Intranet Transmissions; or (iii) LICENSEE's Cable Television System, with respect to Locally Originated Programming only;
- (b) dramatic rights, the right to publicly perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to perform the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein;
- (c) performances of music by means of a coin-operated phonorecord player (jukebox) or digital jukebox;
- (d) Musical Attractions on the Premises promoted by outside promoters (which shall mean any person or entity other than LICENSEE);
- (e) Musical Attractions occurring outside of the Premises, except as part of community outreach and educational activities; or
- (f) performances by commercial radio stations.

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

## **3. EXAMINATION OF BOOKS AND RECORDS**

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

## **4. INDEMNITY**

BMI agrees to indemnify, save harmless and defend LICENSEE, its officers and employees, from and against any and all claims, demands or suits that may be made or brought against them or any of them with respect to the performance of any material licensed under this Agreement. Such indemnity shall be limited to works which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon reasonable written request, advise LICENSEE whether specific musical works are available for performance, under this Agreement, if LICENSEE provides the title and the writer/composer of each musical work. LICENSEE agrees to give BMI immediate notice of any such claim, demand or suit, to deliver to BMI any papers pertaining thereto, and to cooperate with BMI with respect thereto, and BMI shall have full charge of the defense of any such claim, demand or suit.

## **5. BREACH OR DEFAULT/WAIVER**

Upon any breach or default of the terms and conditions of this Agreement that continues for thirty (30) days after LICENSEE's receipt of written notice thereof, BMI may, at its sole option, cancel this Agreement. The right to cancel shall be in addition to any and all other remedies, which BMI may have. No waiver by BMI of full performance of this Agreement by LICENSEE in any one or more instances shall be deemed a waiver of the right to require full and complete performance of this Agreement thereafter or of the right to cancel this Agreement in accordance with the terms of this Paragraph. In the event of such cancellation, BMI agrees to refund to LICENSEE any unearned license fees paid in advance to BMI by LICENSEE.

## **6. CANCELLATION BY LICENSEE**

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

## **7. ARBITRATION**

All disputes of any kind, nature or description not subject to the jurisdiction of the BMI Rate Court arising in connection with the terms and conditions of this Agreement shall be submitted to the American Arbitration Association in New York, New York for arbitration under its then prevailing rules, the arbitrator(s) to be selected as follows: Each of the parties hereto shall, by written notice to the other, have the right to appoint one arbitrator. If within ten (10) days following the giving of such notice by one party, the other shall not, by written notice, appoint another arbitrator, the first arbitrator shall be the sole arbitrator. If two arbitrators are so appointed, they shall appoint a third arbitrator. If ten (10) days elapse after the appointment of the second arbitrator and the two arbitrators are unable to agree upon the third arbitrator, then either party may, in writing, request the American Arbitration Association to appoint the third arbitrator. The award made in the arbitration shall be binding and conclusive on the parties and judgment may be, but need not be, entered into any court having jurisdiction. Such award shall include the fixing of the costs, expenses and attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

## **8. NOTICES**

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

## **9. OFFER OF COMPARABLE AGREEMENT**

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

## **10. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and shall not be binding until signed by both parties. This Agreement cannot be waived or added to or modified orally and no waiver, addition or modification shall be valid unless in writing and signed by the parties. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions herein are found by a court of competent jurisdiction to be void or unenforceable shall not affect the validity or enforceability of any other provisions.

**11. RESERVATION OF RIGHTS**

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

**12. FEES / REPORTING**

- (a) In consideration of the license granted herein, LICENSEE agrees to pay license fees for each Contract Year, which shall be comprised of the sum of (as applicable): a Total Base Student Fee, Total Campus Radio Station Fee, Total Cable System Fee, and In-House Promoters/Presenters Fee. The Total Base Student Fee, Total Campus Radio Station Fee, and Total Cable System Fee shall be reported and paid together. The In-House Promoters/Presenters Fee shall be reported and paid quarterly.
- (b) The Total Base Student Fee due BMI pursuant to this Agreement for the 2016-2017 Contract Year shall be paid by LICENSEE to BMI on or before February 1, 2017. For each subsequent Contract Year on or before November 1, LICENSEE shall report to BMI, on forms to be supplied by BMI, the total number of Full-time Students as defined in Paragraph 1(c) for the Fall academic term of the Contract Year, which will establish the license fee for the subsequent Contract Years. In addition, LICENSEE shall report the call letters of its Campus Radio Broadcasting Station(s), whether it desires coverage for LICENSEE's Cable Television System, and such other information as BMI may reasonably require with regard to any Campus Radio Broadcasting Station(s). The license fee due BMI pursuant to the Agreement for the subsequent Contract Year shall be paid by LICENSEE to BMI on or before the 20th day of January in the subsequent Contract Year.
- (c) All license fees based upon the number of Full-time Students shall be computed to the nearest tenth of a cent and all minimums to the nearest cent.
- (d) LICENSEE shall pay BMI for each Contract Year the following Musical Event Promoter/Presenter Fee for performances presented or promoted exclusively by LICENSEE, the Entertainment Costs of which total \$1,500 or more:

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

**13. REPORTING OF MUSICAL WORKS**

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

- (a) All Campus Radio Broadcasting Station(s) licensed under the Compulsory Rate shall, upon written request from BMI made on not less than two (2) weeks notice specifying the prospective period to be covered by the request, agree to furnish BMI weekly lists of each station's performances of all musical works, indicating the compositions performed by title and composer or by such other convenient method as may be designated by BMI, and whether such Campus Radio Broadcasting Station's broadcast signal was also transmitted over the Internet; but such lists need not be furnished for more than two (2) weeks for each Contract Year of the Term of this Agreement.
- (b) LICENSEE shall deliver to BMI for each calendar quarter, by the tenth (10th) day following the end of the calendar quarter, copies of any programs of the musical works presented by LICENSEE in its Musical Attractions or on LICENSEE's Web Site(s) during such quarter. Programs prepared for audiences or for the LICENSEE's own use are to be included, and shall include the presentation of encores to the extent possible. Nothing contained herein shall be deemed to require LICENSEE to deliver material not otherwise prepared.
- (c) In connection with Paragraph 12(d) LICENSEE shall report to BMI on forms to be supplied by BMI all Musical Attractions as defined in Paragraph 1(n) which were presented or promoted exclusively by LICENSEE during the immediately preceding academic year. Attached to each report of Musical Attractions submitted by LICENSEE shall be lists of the musical works presented in LICENSEE's Musical Attractions indicating the compositions performed by title and composer or by such other convenient method as may be designated by BMI.
- (d) To assist BMI with the distribution of royalties to its affiliated songwriters, composers and music publishers, at BMI's request, and on forms to be supplied by BMI, LICENSEE will provide BMI true, accurate and complete lists of all production music libraries and composers directly hired by LICENSEE's Cable Television System to compose original music for programming licensed hereunder. At BMI's written request, LICENSEE will also provide lists of the channel line-up for LICENSEE's Cable Television System licensed hereunder as of the last day of each year (i.e., December 31) within the Term.

**List of Additional Branch Campuses**

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

<b>Institution Name</b>	<b>Branch Address</b>	<b>FICE Code Number</b>

**Exhibit A**

<b>Web Site Name</b>	<b>URL (Example: school.edu)</b>

**Attach List If More Space Required**

## AGREEMENT

AGREEMENT, made at New York, N.Y. on *(Date will be entered by BMI upon execution)* \_\_\_\_\_ between BROADCAST MUSIC, INC., (herein BMI), a New York 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.

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

<p style="text-align: center;"><b><u>TO BE COMPLETED BY LICENSEE</u></b></p> <p>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.</p> <p style="text-align: center;"><b><i>PLEASE INCLUDE REPORT FORM <u>AND</u> PAYMENT</i></b></p> <p style="font-size: 2em; font-weight: bold; margin-left: 10px;">X</p> <p style="text-align: center;"><i>(Signature)</i></p> <p style="text-align: center;"><i>(Print Name / Title)</i></p> <p style="text-align: center;"><i>(Signatory Email Address*)</i> <i>(if different from above)</i></p> <p style="text-align: center;">*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory</p>	<p><b><u>FOR ADMINISTRATIVE USE ONLY</u></b></p> <p><b>TO BE COMPLETED BY BMI</b></p> <p><b>BROADCAST MUSIC, INC.</b></p>
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**PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:  
BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203**

FOR BMI USE ONLY	COLL2	LI-2016/NOV
ACCOUNT NO.	COID	EFFECTIVE: January 2017

\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.





# Music License for Competitions/Shows

## 1. DEFINITIONS

(a) **Event** shall mean a competition, show or special program, held on consecutive days, in which participants are evaluated, tested and/or rated on skill, ability or presentation. The term "Event" shall include, but is not limited to (a) beauty pageants, (b) skating events, (c) wrestling matches, (d) boxing matches, (e) cheer leading competitions; (f) karate events; (g) dancing competitions; (h) volleyball matches, (i) bowling tournaments, (j) water-skiing events, (k) body-building competitions, (l) equestrian events, (m) rodeos, (n) dog and cat shows or competitions, or (o) any other non-racing, similar spectator activity. An "Event" shall exclude major and minor league sports, including but not limited to, basketball, hockey, football, baseball and soccer sporting events. (Please circle the category above that applies to your event.)

## 2. BMI GRANT

(a) BMI hereby grants to LICENSEE a non-exclusive license to perform, present or cause the live and/or recorded performance during Events of all musical works to which BMI shall have the right to grant public performance licenses during the term hereof. This license does not include: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein; or (ii) the right to broadcast, telecast or otherwise transmit, including via the Internet or on-line service, the performances licensed hereunder to persons outside of any premises in which or any area at which an Event occurs; (iii) performances by means of a coin-operated phonorecord player (jukebox); (iv) performances of music in or as part of a concert, musical attraction or other activity or event for which a separate admission fee, or similar charge is made to attend; (v) the right to perform musical works hereunder in Events which involve paramutual betting.

(b) BMI may withdraw from the license your right to perform any musical work as to which a legal action has been brought or a claim made that BMI does not have the right to license the work or that the work infringes another work.

## 3. INDEMNITY BY BMI

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, and to works which are, pursuant to a written request by LICENSEE, specifically represented in writing by an Officer of BMI in answer to said written request by LICENSEE, to be licensed by BMI at the time of LICENSEE's performance. 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.

## 4. BREACH OR DEFAULT / WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI may, at its sole option, cancel this Agreement with not less than sixty (60) days' notice in writing to LICENSEE. 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.

**5. CANCELLATION BY LICENSEE**

In the event LICENSEE ceases to operate, 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.

**6. 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.

**7. FEES**

LICENSEE agrees to pay BMI as follows:

- (a) For the first and subsequent contract years of this Agreement: a fee based on attendance for the 12 month period immediately preceding the contract year; if LICENSEE did not have any events in this 12 month period, then LICENSEE shall estimate attendance. These figures shall be adjusted at the end of each contract year based on a report of actual attendance for the contract year.
- (b) For the second and subsequent contract years LICENSEE will be billed and pay an estimated annual fee equal to the prior contract year fee and subject to a year-end adjustment upon timely report of actual attendance for the contract year.
- (c) Fees shall be payable immediately upon receipt of invoice.
- (d) FEE COMPUTATION:

**2017 LICENSE FEE SCHEDULE**

<u>Annual Attendance</u>	<u>Attendance Fee Rate</u> (Fee per Thousand Attendees)
500 to 15,000	\$230.70 minimum fee
15,001 to 50,000	\$15.40 per thousand
50,001 to 150,000	\$13.30 per thousand
150,001 to 500,000	\$11.50 per thousand
500,001 to 1,000,000	\$9.60 per thousand
1,000,000 and more	\$8.50 per thousand

**Minimum Annual Fee is \$230.70**

$$\frac{\text{X Applicable Rate} = \$}{\text{(Attendance)} \qquad \qquad \qquad \text{(Annual Fee)}}$$

- (e) Attendance Fee Rate for each Term year after 2016 shall be calculated by an adjustment of the Attendance Fee Rate in Paragraph 7(d) based upon the percentage increase or decrease in the United States Consumer Price Index (Urban, All Items) between September 2015 and the September immediately preceding the anniversary date (or the initial Term as the case may be) of this Agreement, rounded to the nearest ten cents. BMI will advise LICENSEE in writing of the amount of each Attendance Fee Rate.

**8. REPORTING OF EVENTS**

LICENSEE shall, in the first month of each contract year, furnish BMI (on forms provided by BMI) with a report setting forth:

- (i) each Event held during the preceding contract year;
- (ii) the total attendance at each Event and;
- (iii) the total attendance for all Events held during the previous contract year.

Upon cancellation of this Agreement, LICENSEE shall provide, within thirty (30) days of cancellation of this Agreement, a report setting forth the requirements of (i) to (iii) of this Paragraph for that cancellation year.



## **9. 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.

## **10. 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.

## **11. NOTICES**

All notices, if any, shall be in writing and be deemed given upon "mailing," when sent by United States certified mail sent to the party intended at its mailing address. Each party agrees to inform the other, in writing, of any change of address. Any such notice 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 person signing this Agreement on behalf of LICENSEE or such other person as LICENSEE may advise BMI in writing.

## **12. 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.

## **13. TERM OF AGREEMENT**

The initial contract year of this annual Agreement begins on *(month/year)* \_\_\_\_\_ and shall end on *(month/year)* \_\_\_\_\_ and shall continue annually unless canceled by either party at the end of any contract year by giving thirty (30) days' advance written notice to the other party. BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days' advance written notice. If there is any breach or default by you of this Agreement, BMI shall have the right to cancel it, but the cancellation shall become effective only if the breach or default continues thirty (30) days after the date of BMI's written notice to you. The right to cancel is in addition to any other remedies which BMI may have. BMI may enforce any of its rights under this Agreement at any time even if it has not done so earlier.

## AGREEMENT

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

<b><u>LEGAL NAME</u></b>	<b><u>BUSINESS ADDRESS</u></b>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b><u>TRADE NAME</u></b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address) (Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <i>(if different from Business Address)</i>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<i>(State of Incorporation, if different from Business Address)</i> <i>(Enter names of partners)</i>	
<input type="checkbox"/> Other _____	<i>(Street Address)</i>
Federal Tax ID No. _____	<i>(City) (State) (Zip)</i>
<b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i>	<i>(Telephone Number) (Fax Number)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<i>(Contact Name) (Title)</i>
<i>(State)</i>	<i>(Email Address- if different from above)</i>
<input type="checkbox"/> Local _____	
<i>(Municipality/City and State)</i>	

<p><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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.</p> <p><b><i>(SIGN HERE – PLEASE INCLUDE PAYMENT)</i></b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b></p> <p><b>TO BE COMPLETED BY BMI</b></p> <p><b>BROADCAST MUSIC INC.</b></p>
Signature	
Print Name / Title	
Signatory Email Address* <i>(if different from above)</i>	
*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**

<b>FOR BMI USE ONLY</b>	<b>39CS</b>	<b>LI-2016/NOV</b>
<b>ACCOUNT NO.</b>	<b>COID</b>	<b>EFFECTIVE: January 2017</b>

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"Concert Band/Wind Ensemble/Symphonic Band" shall mean and be restricted to the \_\_\_\_\_  
(Name of Organization)

which is best described as a

- PLEASE CHECK  
APPROPRIATE  
BOX
- |  |  |
|--|--|
| <input type="checkbox"/> Concert Band  | <input type="checkbox"/> Symphonic Band          |
| <input type="checkbox"/> Wind Ensemble | <input type="checkbox"/> Wind Symphony Orchestra |

as of the date of this agreement: or

- Other Related Organization \_\_\_\_\_  
(Provide Details)

**1. BMI GRANT**

BMI hereby grants to LICENSEE for the term of this agreement a non-exclusive license to perform or cause the performance of, in concerts presented before an audience physically present at the time of performance, all musical works of which BMI shall have the right to grant public performance licenses during the term. BMI warrants and represents that all composers and publishers who are affiliated with BMI have authorized BMI to license the non-exclusive right to public performance of their works and that all composers and publishers who hereafter become affiliated will give BMI a similar authorization. It is specifically understood that no rights other than those expressly provided for above in this paragraph are included in this license and, without in any way limiting the generality of this sentence, this license does not extend to or include:

- (a) dramatic rights or the right to perform dramatico-musical works in whole or in substantial part; or
- (b) the right to broadcast, telecast or otherwise transmit, by any means now or hereafter known, the performances licensed hereunder, provided that nothing herein contained shall be deemed to prevent the amplification of the performances licensed hereunder within the confines of the place where the performance is presented; or
- (c) the right to record or otherwise mechanically reproduce the performances licensed hereunder by any means now or hereafter known; or
- (d) the right to perform a concert/ classical work (as such terms are commonly understood) which has not previously been publicly performed in the United States, unless written permission to perform such work is first secured from the publisher, composer or copyright proprietor and written notice thereof is given to BMI.

**2. REVIEW OF STATEMENTS AND/OR ACCOUNTINGS**

BMI shall have the right, by its authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify the statements made hereunder. BMI shall consider all data and information coming to its attention as the result of any such examination, or contained in any such statement, as completely confidential.

**3. LATE PAYMENT FEE**

BMI may impose a late payment charge of one and one-half percent (1 ½%) per month from the date any payment is due hereunder on any payment that is received by BMI more than one month after the due date.

**4. BMI COMMITMENT TO CUSTOMER / INDEMNITY**

BMI agrees to indemnify, save harmless and defend LICENSEE, its officers and employees, its artists and the proprietors of places in which LICENSEE gives concerts, 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 include performances of any works of which BMI's Music Works Registration Department has advised LICENSEE are then available for performance as part of BMI's repertoire. Such indemnity shall be limited to

works which are licensed by BMI at the time of LICENSEE's performance. BMI's Clearance Department will, upon written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE agrees to give BMI immediate notice of any claim, demand or suit, to deliver to BMI any papers pertaining thereto, and to cooperate with BMI in respect thereto and BMI shall have full charge of the defense of any such claim, demand or suit. 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 or proceeding and with whom counsel for BMI shall cooperate.

#### **5. BREACH OR DEFAULT/WAIVER**

Upon any breach or default of any of the terms or conditions herein contained, BMI may give thirty (30) days' notice in writing to LICENSEE to cure such breach or default, and in the event that such breach or default shall not have been cured within such thirty (30) days, BMI may, at its sole option, and in addition to any and all other remedies which it may have, cancel this agreement by sending written notice to LICENSEE by registered or certified mail. 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.

#### **6. CLASS AND CATEGORY**

In the event that BMI, at any time during the term hereof, 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.

#### **7. ARBITRATION**

(a) All disputes of any kind, nature or description arising in connection with the terms and conditions of this agreement shall be submitted to the American Arbitration Association in the City, County and State of New York for arbitration under its then prevailing rules, the arbitrator (s) to be selected as follows: Each of the parties 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 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.

(b) If LICENSEE elects to waive the terms set forth in Paragraph 7(a) above, LICENSEE must cross out 7(a) and initial box to the right.

#### **8. NOTICES**

Any notice required or permitted to be given under this agreement, other than the notices required pursuant to Paragraphs 5, 10 and 13 hereof, shall be deemed duly given when sent by ordinary first-class U.S. mail to the party for whom it is intended, at its address herein stated, or any other address which either party hereto may from time to time designate for such purpose, and when any such notice is so mailed, it shall be deemed to have been given upon the mailing thereof.

#### **9. GOVERNING LAW/MISCELLANEOUS**

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. This agreement, its validity, construction and effect, shall be governed by the laws of the State of New York.

#### **10. DEFINITIONS**

**(a) Concerts:** shall mean and be restricted to concerts and similar events given by the Concert Band/Wind Ensemble/Symphonic Band in the United States, its territories and possessions.

**(b) Gross receipts:** shall mean all gross box office receipts from concerts and concert fees for all concerts, exclusive of federal, state, and/or local taxes. Gross receipts shall in no event include income from program advertising, concessions, or recording or broadcasting activities or grants or contributions. As to "run-out" concerts and tours, gross receipts shall be adjusted by deducting transportation and per diem costs incurred in connection therewith; but in no event shall such deductible costs for any such concert or tour exceed the gross receipts thereof.

**(c) Contract year:** shall mean any year of the term commencing September 1 or any partial year commencing on the commencement date of the term (if such date shall be other than September 1) and ending the following August 31.

**11. FEES**

(a) (i) In consideration of the non-exclusive license granted to LICENSEE hereunder, LICENSEE agrees to pay BMI for each contract year of the term a license fee equal to the applicable percentages of its gross receipts for the year immediately preceding such contract year as set forth below:

**LICENSE FEE SCHEDULE**

**PERCENTAGE OF**  
Concert Band/Wind Ensemble/Symphonic Band  
GROSS RECEIPTS DURING THE PRECEDING YEAR

3/5 ths of 1% (.006)

**IN NO EVENT SHALL THE ANNUAL FEE FOR ANY CONTRACT YEAR BE LESS THAN ONE-HUNDRED-FIFTY (\$150.00)**

(ii) If LICENSEE did not operate at all during the preceding year, the license fee for the first contract year shall be calculated upon an estimate of its gross receipts for such first contract year, and an adjustment to reflect LICENSEE's actual gross receipts will be made following submission of the statement required by subparagraph 11(d) for such year.

(b) LICENSEE represents that its gross receipts for purposes of calculating the license fee for the first contract year of the year of the term have been determined in accordance with Sub-paragraph  11(a) (i) or  11(a) (ii), and were \$ \_\_\_\_\_ and that the license fee for the first contract year is accordingly \$ \_\_\_\_\_ which amount shall be payable upon the execution of this agreement. *(Fill in not less than \$150)*

**(c) For each subsequent contract year of the term, the license fee shall be payable on or before January 15.**

(d) The license fee specified hereinabove shall be determined by a statement (on forms to be supplied by BMI), certified either by an officer or the auditor of LICENSEE, setting forth the total gross receipts for the immediately preceding contract year. **This statement shall be due on or before November 1 of each contract year.** A statement shall be submitted for every contract year of the term, regardless of the fact that LICENSEE may not have operated during the preceding year.

**12. REPORTING**

(a) LICENSEE agrees to furnish BMI within thirty (30) days following each concert during the term with a copy of the program utilized for each such concert, provided that LICENSEE shall at the same time furnish to BMI a list of the titles and composers/arrangers of all works performed in any such concert to the extent that such information is not contained in such program (including, without limitation, all encores).

(b) In the event that during the term hereof BMI collects a license fee from LICENSEE for a concert performance for which BMI shall also have collected a license fee from any one other than LICENSEE, it is agreed that BMI shall notify LICENSEE thereof, and LICENSEE shall be entitled to a credit against its next year's license fee of the resulting overpayment, such credit not to exceed that portion of LICENSEE's fee which represents the amount collected by BMI on account of such performance. If such overpayment shall occur during the final contract year of the term hereof, BMI shall refund the amount thereof promptly after the determination of such overpayment.

**13. TERM**

"Term" shall mean an initial period beginning September 1, 20 \_\_\_\_\_ and ending August 31, 20 \_\_\_\_\_ and continuing thereafter unless cancelled by either party at the end of said initial period, or at the end of any subsequent one (1) year period, upon thirty (30) days advance written notice by registered or certified mail.

**PLEASE RETURN THIS ENTIRE SIGNED AGREEMENT WITH YOUR CHECK TO:  
10 MUSIC SQUARE EAST, NASHVILLE, TN 37203**

**AGREEMENT**

THIS AGREEMENT made and entered into on *(Date will be entered by BMI upon execution)* \_\_\_\_\_ between BROADCAST MUSIC, INC., a corporation organized under the laws of the State of New York (hereinafter called BMI) with principal offices located at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030, and

**OFFICE ADDRESS**

**ENTER LEGAL NAME** \_\_\_\_\_

*(Name of corporation, partnership, or individual owner)*

\_\_\_\_\_  
*(Street Address)*

\_\_\_\_\_  
*(City)*

\_\_\_\_\_  
*(State)*

\_\_\_\_\_  
*(Zip)*

**ENTER TRADE NAME** \_\_\_\_\_

*(Doing business under the name of)*

\_\_\_\_\_  
*(Telephone Number)*

\_\_\_\_\_  
*(Fax Number)*

\_\_\_\_\_  
*(Contact Name)*

\_\_\_\_\_  
*(Title)*

**CHECK APPROPRIATE BOX AND COMPLETE**

**MAILING ADDRESS**

*(if different from Office Address)*

Individual Ownership

LLC     Corporation

\_\_\_\_\_  
*(State of incorporation)*

LLP     Partnership

\_\_\_\_\_  
*(Enter names of partners)*

Other \_\_\_\_\_ Fed. Tax ID# \_\_\_\_\_

\_\_\_\_\_  
*(Street Address)*

\_\_\_\_\_  
*(City)*

\_\_\_\_\_  
*(State)*

\_\_\_\_\_  
*(Zip)*

\_\_\_\_\_  
*(Telephone Number)*

\_\_\_\_\_  
*(Fax Number)*

\_\_\_\_\_  
*(Contact Name)*

\_\_\_\_\_  
*(Title)*

**TO BE COMPLETED BY LICENSEE**

**By signing this Agreement you agree that the foregoing is a true and accurate representation of your Music Policy.**

I have read and have understood all of the terms and conditions herein and my signature below is evidence of this.

\_\_\_\_\_  
Signature

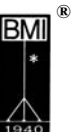
\_\_\_\_\_  
Print Name / Title

**FOR ADMINISTRATIVE USE ONLY**

BROADCAST MUSIC, INC.

**FOR BMI USE ONLY**

<b>Account No.</b>	<b>COID</b>	



® BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.

## BMI Cruise Line Agreement/2017 Extension

The parties agree that each and every term of the attached form 1999-2003 BMI Cruise Line Agreement (“99-03 Agreement”) shall be incorporated herein and made a part of this 2017 BMI Cruise Line Agreement (“2017 Agreement”) with the following modifications to the 99-03 Agreement:

1. Paragraph 3 shall be deleted and replaced with the following language: “The Term of the Agreement shall be for a period commencing on \_\_\_\_\_ and ending December 31, 201\_\_\_. Thereafter, the Term will automatically renew for additional periods of one (1) year each, unless timely canceled by either party at the end of any one-year period, upon 30 days advance written notice. Each one-year period shall be considered a “contract year”.
2. Paragraph 4 shall be modified to include the following language:
  - (e) BMI shall provide LICENSEE with an amended Schedule A and Schedule B with respect to each contract year after 2017. The fees identified on the amended Schedules A and B shall be the fees for the previous contract year as adjusted in accordance with any increase in the Consumer Price Index, All Urban Consumers – (CPI-U) between October of the previous contract year and the next preceding October. Any such adjustment shall be rounded to the nearest \$1.00. Each amended Schedule shall replace the Schedule from the prior contract year. BMI will provide amended Schedules A and B on or before the December 31 preceding the applicable contract year.
3. Paragraphs 5 shall be deleted.
4. Paragraph 6 shall be replaced with the following:

### Calculation and Payment of 2017 License Fees.

- (a) LICENSEE shall, with respect to each Licensed Premises, make an estimated payment for the license fees due for the contract year 2017 (as prescribed in Paragraph 6(b) below) within fifteen (15) days of the signing of this Agreement.
  - (b) (i) If LICENSEE was licensed pursuant to the 99-03 Agreement in contract year 2016, LICENSEE’s estimated license fees for the contract year 2017 shall be the license fees payable under the 2017 Schedules A and B using LICENSEE’s 2016 year ended adjusted Live Music and Entertainment Costs (Schedule A) and Cabins (Schedule B); or (ii) if LICENSEE was not licensed pursuant to the 99-03 Agreement in contract year 2016, or if a particular vessel licensed hereunder was not in operation during the 2016 contract year, LICENSEE shall estimate its 2010 license fee by utilizing its actual number of cabins and a good faith estimate of its entertainment expenditures and applying those figures to the 2017 Schedules A and B.
  - (c) The final license fee due to BMI for contract year 2017 shall be determined, and payable, in the manner set forth in Paragraph 8 hereof.
5. Sub-paragraph 7(a) shall be replaced with the following:
    - (a) For each contract year after 2017, LICENSEE shall, by January 20<sup>th</sup> of that year, make an estimated payment of annual license fees due with respect to each Licensed Premises, in accordance with Paragraph 7(b) hereof. At the option of LICENSEE, payment of the estimated

fee may be made in quarterly installments, provided that said quarterly installments are made no later than twenty (20) days after the start date of each quarterly period. If any quarterly payment is not timely received, the option herein granted to LICENSEE to make quarterly payments shall terminate. Upon such termination, the balance of the then-current year's estimate will immediately become due and payable and all estimated payments for subsequent contract years will thereafter be due and payable annually by January 20<sup>th</sup> of the contract year.

6. Paragraph 8(a) is modified by replacing the words "of the years 2000-2003" with the words "contract year."

LICENSEE's agreement to the above terms and conditions shall be evidenced by the signature below of an individual duly authorized to bind LICENSEE to this agreement.

Accepted: \_\_\_\_\_  
BROADCAST MUSIC, INC. LICENSEE

By: \_\_\_\_\_  
Authorized Signature

Title: \_\_\_\_\_  
Print Name of Signatory

Date: \_\_\_\_\_  
Print Title of Signatory

Date: \_\_\_\_\_





# Music License for Dance Classes

## 1. DEFINITIONS

- (a) **Background Music** shall mean recorded music, whether vocal or instrumental, designed to be used as an unobtrusive accompaniment to routine activities, including, but not limited to, conversation and relaxation, as long as such music is not intended to accompany non-instructional dancing or any other type of entertainment.
- (b) **Instructional Use** shall mean the performance of recorded music in a designated area on the LICENSEE's premises (the "studio") for use during dance instruction including, but not limited to, classes in social dancing, ballroom dancing, jazz dancing, tap dancing, square dancing, modern dancing, and ballet, as those terms are commonly understood in the dance profession.
- (c) **Background Use** shall mean the performance of recorded Background Music on the licensed premises adjacent to or outside of the studio.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE a non-exclusive license to perform, present, or cause the public performance of all musical works of which BMI shall have the right to grant public performance licenses during the Term hereof. Said license shall be restricted to performance on the licensed premises either by the playing of records, prerecorded tapes, or other mechanical devices or via the reception of broadcast audio transmissions on receiving apparatus and amplifications thereof for public performance, and such performances may be reproduced only through loudspeakers on the licensed premises and is granted in consideration of the payment of the license fees as set forth herein and is subject to all of the terms and conditions hereof. This license does not include: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein; (ii) the right to broadcast, cablecast, telecast or otherwise transmit the performances licensed hereunder to persons outside of the premises; or (iii) performances of music by means of a coin-operated phonorecord player (jukebox).
- (b) BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.
- (c) In no event shall this license authorize performances of music outside the perimeter of LICENSEE's premises into an area not owned and/or controlled by LICENSEE. This license shall also extend to performances of incidental live or recorded music on the licensed premises for promotional social dances and to dance recitals by students and instructors, as long as no admission is charged.

## 3. INDEMNITY BY BMI

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 the works which are licensed by BMI at the time of LICENSEE's performances. BMI's Clearance Department will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

## 4. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues thirty (30) days after the date of BMI's written notice to LICENSEE thereof. 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 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.

## 5. CANCELLATION OF ENTIRE CATEGORY

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days' advance written notice.

## 6. OFFER OF COMPARABLE AGREEMENT

In the event that BMI, at any time during the Term hereof, 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.

## 7. TERMINATION OF AGREEMENT BY LICENSEE

If LICENSEE shall permanently cease to operate the premises, whether by reason of sale or lease thereof or otherwise, this Agreement and LICENSEE's obligation to BMI shall thereupon terminate, provided that LICENSEE shall, within ten (10) days thereafter, give written notice of such termination to BMI, setting forth the effective date thereof and the name of the new owner or operator of the premises, and that LICENSEE shall pay to BMI all fees due hereunder until said effective date. The fee due BMI by LICENSEE through the effective date of termination shall be a proration of the fee for the Contract Year of termination, but in no event less than the lowest appropriate fee indicated in the applicable category on the License Fee Schedule.

## 8. ARBITRATION

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to the American Arbitration Association in the City, County and State of New York for arbitration under its then prevailing arbitration rules. The arbitrator(s) to be selected as follows: Each of the parties 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 in 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.

## 9. FEES

LICENSEE agrees to pay to BMI for each Contract Year during the Term of this Agreement a license fee as follows:

- (a) (i) **INSTRUCTIONAL USE ONLY** – If LICENSEE uses recorded music on the premises that is only for dance instruction and the music is not audible other than incidentally outside of the studio when classes are in session and no music is used when classes are not in session, then LICENSEE shall pay the appropriate fee on the License Fee Schedule under the category Instructional Use Only.
  - (ii) **BACKGROUND AND INSTRUCTIONAL USE** – If LICENSEE uses recorded music on the premises both in classes and instruction and the music is also audible other than incidentally anywhere else on the premises outside of the studio while classes are in session or otherwise, then LICENSEE shall pay the appropriate fee on the License Fee Schedule under the category Background and Instructional Use.
  - (iii) **BACKGROUND USE ONLY** – If LICENSEE uses music on the premises that is *only* for "Background Use" as defined in the license and *no* music is used for dance instruction (or no such activities take place), then LICENSEE shall pay the appropriate fee on the License Fee Schedule under the category Background Use Only. Each individual floor (level) where music is audible is to be considered a separate premise, but the annual fee for all floors (levels) after the first shall be \$89.00 regardless of square footage.
- (b) LICENSEE warrants and represents that during the twelve-month period preceding the initial Term of this Agreement (or if LICENSEE did not operate during that full twelve-month period, LICENSEE shall make a good-faith estimate for the first Contract Year of this Agreement) LICENSEE's number of floors (levels) and students are as set forth in the Music Policy Statement and License Fee Schedule which are part of this Agreement.
- (c) The first annual fee due hereunder shall be payable upon the signing of this Agreement by LICENSEE. The fee for each subsequent Contract Year shall be in the respective amount determined in accordance with this Paragraph, subject to any adjustment pursuant to this Paragraph, and shall be paid to BMI no later than ten (10) days following the beginning of each such Contract Year.
- (d) **For Instructional Use Only and Background and Instructional Use** – The amount of the license fee for the second and subsequent Contract Years of this Agreement shall be an adjustment of the first year's fee based upon the percentage increase or decrease in the United States Consumer Price Index (National, All Items) between September 2017, and September of the year preceding each anniversary date of this Agreement, rounded to the nearest dollar. BMI will advise LICENSEE in writing of the amount of each new fee.

## 10. REPORTING OF ANNUAL FEES

- (a) At the same time that LICENSEE pays its license fee hereunder for the second and subsequent Contract Years, LICENSEE shall submit a report, on a form available from BMI, certified by LICENSEE or by the auditor of LICENSEE, indicating the average number of different students or participants per week during the previous Contract Year who attended dance classes using music on the licensed premises (except if Background Use only), whether LICENSEE's music was Instructional Use Only or both Background and Instructional or Background Use only, and the number of floors (levels) comprising the licensed premises. If any such report causes the licensed premises to fall into a Category other than that for which LICENSEE is then currently paying BMI license fees, BMI shall adjust LICENSEE's fee pursuant to Paragraph 11 to reflect LICENSEE's new fee, effective with the Contract Year following such change of Category.
- (b) If the adjusted fee is greater than the license fee already paid by LICENSEE for the Contract Year, LICENSEE agrees to pay BMI the difference within thirty (30) days of the mailing by BMI to LICENSEE of the adjusted statement of license fees.

- (c) If the adjusted fee is less than the license fee already paid by LICENSEE to BMI for the Contract Year, BMI agrees to credit the difference to the account of LICENSEE, and if such adjustment occurs in the last Contract Year of this Agreement, BMI shall refund said sum promptly.
- (d) In the event that LICENSEE fails to submit a report pursuant to this Paragraph, and BMI subsequently is made aware of a current change of Category, BMI shall have the option, in lieu of its right of cancellation pursuant to this Paragraph, to notify LICENSEE in writing by certified mail of its knowledge of such change and adjust LICENSEE's fee for the then current Contract Year in accordance with this Paragraph as if LICENSEE had reported such change for the previous year. LICENSEE shall have thirty (30) days from the date of BMI's notice to submit the missing reports. If such reports are not received by BMI by the end of said 30-day period, LICENSEE agrees to waive its right to submit such past due reports thereafter and authorizes BMI to deem the adjusted fee accurate.

**MUSIC POLICY STATEMENT**

Indicate music use by checking **one** appropriate category below.

- CATEGORY A** - Instructional Use Only  **CATEGORY C** – Background Use Only
- CATEGORY B** - Background and Instructional Use Indicate number of floors (levels) \_\_\_\_\_
- Indicate number of floors (levels) \_\_\_\_\_

**LICENSE FEE SCHEDULE**

1. These rates apply when music is utilized for Instructional Use Only, Background and Instructional Use, or Background Use Only. This includes, but is not limited to, records, tapes, CD's, broadcasts, satellite signals, and/or cablecasts.
2. USING YOUR CATEGORY AS INDICATED ABOVE, CHECK THE APPLICABLE BOX BELOW.

Average Number of Different Students or Participants Per Week	CATEGORY A		CATEGORY B				CATEGORY C		
	INSTRUCTIONAL USE ONLY		BACKGROUND AND INSTRUCTIONAL USE				Square Footage	BACKGROUND USE ONLY	
	✓		✓	Single Floor (level)	✓	Multiple Floor (level)		✓	Single Floor (level)
Under 60 Students		\$167		\$261		\$329	Up to 1500		\$89
60-124		\$329		\$525		\$655	1501-2500		\$180
125-249		\$494		\$787		\$987	2501-5000		\$360
250-374		\$655		\$1,053		\$1,315	Over 5000		\$719
375 & over		\$877		\$1,403		\$1,755	LICENSEE's total annual fee within Category C, including additional floors (levels) (each at \$89), is _____		

LICENSEE's total annual fee within Category A or B is \$\_\_\_\_\_

**11. REVIEW OF STATEMENTS AND/OR ACCOUNTINGS**

BMI shall have the right, by its authorized representatives, at any time during customary business hours, and upon reasonable notice, to examine those portions of LICENSEE's books and records of account to such extent as may be necessary to verify any and all statements and/or accountings made hereunder or under prior agreement with BMI. BMI shall consider all data and information coming to its attention as the result of any such examination of LICENSEE's books and records as confidential.

**12. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of 1% per month from the date any payment is due hereunder on any payment that is received by BMI more than one month after the due date.

**13. NOTICES**

Any notice required or permitted to be given under this Agreement in writing and shall be deemed given when sent by first-class U.S. mail to the party intended, at its mailing address herein stated, or any other address which either party hereto may designate. Any such notice sent to BMI shall be to the attention of the Licensing Department. Any such 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.

**14. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, shall not be binding until signed by both parties, and 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. The rights of LICENSEE shall not be assignable. 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**15. TERM OF AGREEMENT**

The initial Term of this annual Agreement shall begin on the first day of (month/year)\_\_\_\_\_ and end on the last day of (month/year)\_\_\_\_\_ and shall continue thereafter unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "Contract Year") upon thirty (30) days advance notice to the other party.

**AGREEMENT**

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

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b><u>TRADE NAME</u></b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address) (Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<i>(State of Incorporation, if different from Licensed Premises)</i>	
<i>(Enter names of partners)</i>	
<input type="checkbox"/> Other _____	<i>(Street Address)</i>
Federal Tax ID No. _____	<i>(City) (State) (Zip)</i>
<b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i>	<i>(Telephone Number) (Fax Number)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<i>(Contact Name) (Title)</i>
<i>(State)</i>	<i>(Email Address – if different from above)</i>
<input type="checkbox"/> Local _____	
<i>(Municipality and State)</i>	

<b>TO BE COMPLETED BY LICENSEE</b> 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. <b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b>	<b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b>		
Signature			
Print Name / Title			
Signatory Email Address* <i>(if different from above)</i>			
<b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b>	<b>FOR BMI USE ONLY</b>	<b>40</b>	<b>LI-2016/NOV</b>
	<b>ACCOUNT NO.</b>	<b>COID</b>	<b>EFFECTIVE: January 2017</b>



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# Music License for Dance Classes (20-999 Locations)

## 1. DEFINITIONS

- (a) **Background Music** shall mean recorded music, whether vocal or instrumental, designed to be used as an unobtrusive accompaniment to routine activities, including, but not limited to, conversation and relaxation, as long as such music is not intended to accompany non-instructional dancing or any other type of entertainment.
- (b) **Live Music** shall mean music performed by or in conjunction with musicians, singers and other entertainers actually present and performing at any licensed location.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE a non-exclusive license to perform, present or cause the performance of all musical works of which BMI shall have the right to grant public performance licenses during the Term hereof. Said license shall be restricted to performance of music in the manner described herein and is granted in consideration of the payment of the license fees as set forth herein and is subject to all of the terms and conditions hereof. This license does not include: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music license hereunder in any other context which may constitute an exercise of the "grand rights" therein; (ii) the right to broadcast, telecast, cablecast or otherwise transmit the performances licensed hereunder to persons outside of the licensed premises; or (iii) performances of music by means of coin-operated phono-record player (jukebox).
- (b) BMI reserves the right to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.
- (c) The license granted to LICENSEE pursuant to Paragraph 2(a) shall extend to performances of recorded music in designated instructional area(s) (the "studio") on each licensed premises listed and to be listed during the Term of this Agreement on Schedule A hereof (each of which is referred to herein as a "licensed location" or "a licensed premises"), as long as LICENSEE is engaged in operating between 20 and 999 separate licensed locations where recorded music not otherwise licensed by BMI is performed, for use during athletic classes and instruction, including, but not limited to, classes in aerobics, gymnastics, slimnastics, social dancing, ballroom dancing, jazz dancing, tap dancing, square dancing, modern dancing, and ballet, as those terms are commonly understood in the dance profession. This license shall also extend to performances of recorded background music at the license locations adjacent to or outside of the studio. However, in no event shall this license authorize performances of music outside the perimeter of the licensed locations into any area not owned and/or controlled by LICENSEE. This license shall also extend to performances of incidental live or recorded music at the licensed location for promotional social dances and to dance recitals by students and instructors, as long as no admission fee is charged. In no event, however, shall this license authorize the performance of any music in any restaurant, cocktail lounge, nightclub, bar or other similar facility which may be a part of any licensed location.
- (d) LICENSEE hereby warrants and represents that, as of the date of this Agreement, LICENSEE operates between twenty (20) and nine hundred and ninety-nine (999) locations.
- (e) Except as otherwise expressly authorized above, this license shall be limited to performances at the licensed locations either by the playing of records, prerecorded tapes, or other mechanical or electronic devices or via the reception of broadcast audio transmissions on receiving apparatus and amplifications thereof for public performance, and such performances may be produced only through loudspeakers located at the licensed locations.

## 3. INDEMNITY BY BMI

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 the works which are licensed by BMI at the time of LICENSEE's performances. BMI's Clearance Department will, upon request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. 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.

## 4. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues thirty (30) days after LICENSEE's receipt of written notice thereof. 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 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.

## 5. CANCELLATION OF ENTIRE CATEGORY

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

**6. OFFER OF COMPARABLE AGREEMENT**

In the event that BMI, at any time during the Term hereof, 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.

**7. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to arbitration in the City, County and State of New York under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators 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 in any court having jurisdiction. Such award shall include the fixing of the cost, expenses and attorney's fees of arbitration, which shall be borne by the unsuccessful party.

**8. REVIEW OF STATEMENTS AND/OR ACCOUNTINGS**

- (a) BMI shall have the right by its authorized representatives, at any time during customary business hours and upon thirty (30) days advance written notice, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify any and all statements rendered and accountings made hereunder. BMI shall consider all data and information coming to its attention as the result of any such examination of books and records as confidential.
- (b) If any audit conducted reveals a deficiency of twenty-five percent (25%) or more between the amount of fees previously reported as being due by LICENSEE and the amount actually found to be due BMI for the audited period, LICENSEE shall pay, in addition to the sum additionally due, a surcharge of fifteen percent (15%) of the total amount remaining due BMI. If LICENSEE does not pay said surcharge and deficiency within thirty (30) days of written notice by BMI, an interest charge of one percent (1%) per month may be imposed by BMI on said surcharge and deficiency from the date of such written notification.

**9. FEES**

- (a) LICENSEE's annual license fee for the first contract year is the total amount entered below, which shall be payable in full upon the signing of this Agreement. Each payment thereafter shall be made no later than twenty (20) days after the start of each contract year and shall constitute LICENSEE's fee for that contract year.

**LICENSE FEE SCHEDULE**

**Each individual floor where music is audible is to be considered a separate location.**

GROUP	LOCATION	ANNUAL FEE PER LOCATION
A	1st – 149th	\$227
B	150th – 299th	\$210
C	300th – 499th	\$195
D	500th and Remainder	\$177

- (b) In addition to the indicated annual fee per location, if any licensed location gives audio-visual performance of music, LICENSEE shall pay an additional fee equal to thirty-five percent (35%) of the lowest GROUP fee for which LICENSEE is eligible times the number of such locations having audio-visual performances.

**Complete with applicable information from LICENSE FEE SCHEDULE above:**

**NOTE:** The Groups are successive, not cumulative.

**For example:** 520 locations would cover 149 Group A, 150 Group B, 200 Group C and 21 Group D

GROUP A = _____	locations x	\$ _____	=	\$ _____
GROUP B = _____	locations x	\$ _____	=	\$ _____
GROUP C = _____	locations x	\$ _____	=	\$ _____
GROUP D = _____	locations x	\$ _____	=	\$ _____
AUDIO-VISUAL used at = _____		locations x	\$ _____	= \$ _____

(Repeat lowest per location fee entered above)

**TOTAL ANNUAL FEE =** ..... \$ \_\_\_\_\_

**TOTAL NUMBER OF LOCATIONS LICENSED =** .....

- (c) The amount of the license fee for the second and subsequent contract years of this Agreement shall be an adjustment of the first year's fee based upon the percentage increase or decrease in the United States Consumer Price Index (National, All Items) between September 2016, and September of the year preceding each anniversary date of this Agreement, rounded to the nearest dollar. BMI will advise LICENSEE in writing of the amount of each new fee.
- (d) If Paragraph 11 of this Agreement shall become applicable, the fee due BMI by LICENSEE through the effective date of termination shall be a proration of the fee for the contract year of termination, but in no event less than twenty (20) times the lowest Group A fee for the applicable year indicated on the License Fee Schedule.

#### **10. REPORTING**

- (a) Each payment after the first made by LICENSEE hereunder shall be accompanied by a report (on forms to be supplied by BMI) of all additions to and deletions from Schedule A, as of the end of the previous contract year. For purposes of calculating the correct license fee payment, all additions and deletions shall be deemed to be effective on the last day of the contract year in which they occurred, and each annual payment shall reflect those additions and deletions which occurred during the previous contract year. A report shall be submitted for each contract year during the Term of this Agreement whether or not any addition or deletions occurred during that year.
- (b) The license granted hereunder shall be deemed to extend to each addition to Schedule A as of the day on which music is first performed at such location, as long as payment for and reporting of that location is made as required herein.
- (c)
  - (i) In the event that any report submitted by LICENSEE pursuant to Paragraph 10(a) reflects that LICENSEE operated less than twenty (20) licensed locations during the previous contract year, this Agreement shall be deemed terminated as of the end of that contract year, and LICENSEE shall execute instead for each of LICENSEE's locations the then-current license Agreement offered by BMI for dance classes at single location rate effective as of the first day following the termination date of this Agreement.
  - (ii) In the event that any report submitted by LICENSEE pursuant to Paragraph 10(a) reflects that LICENSEE operated more than nine hundred ninety-nine (999) licensed locations during the previous contract year, this Agreement shall be deemed terminated as of the end of that contract year, and LICENSEE shall execute instead the then-current license Agreement offered by BMI for dance classes at multiple locations numbering one thousand (1,000) or more, effective as of the first day following the termination date of this Agreement.
- (d) In the event that LICENSEE fails to submit a report pursuant to Paragraph 10(a) and/or BMI subsequently is made aware of a current change in the number of LICENSEE's locations or number of floors, BMI shall have the option, in addition to any other right hereunder, to notify LICENSEE in writing by certified mail of its knowledge of such change and adjust LICENSEE's fee for the year accordingly. LICENSEE shall have thirty (30) days from date of BMI's notice to submit the missing report. If such report is not received by BMI by the end of said 30-day period, LICENSEE agrees to waive its right to submit such past due report thereafter and authorizes BMI to deem the adjusted fee accurate.
- (e) LICENSEE shall attach to this Agreement a Schedule A listing each location which is operated by LICENSEE as of the date of this Agreement by name, full address, number of floors and whether or not such location has audio-visual uses of music.

#### **11. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one percent (1%) per month from the date payment was due on any payment that is received by BMI more than thirty (30) days after the due date.

#### **12. TERMINATION OF AGREEMENT BY LICENSEE**

If during the Term hereof, LICENSEE shall permanently cease to operate the premises, whether by reason of sale or lease thereof, or otherwise, this Agreement and LICENSEE's obligation to BMI shall thereupon terminate; provided, however, that LICENSEE shall, within ten (10) days thereafter, give written notice of such termination to BMI, setting forth the effective date thereof and the name of the new owner or operator of the premises, as the case may be, and that LICENSEE shall pay to BMI all fees due hereunder until said effective date.

#### **13. TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any tax (whether sales, use, gross receipts, business or otherwise) which is based upon the amount received by BMI from LICENSEE, then LICENSEE agrees to pay to BMI the full amount of such tax together with LICENSEE's fee payment(s) as billed by BMI.

#### **14. NOTICES**

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed duly given when sent by ordinary first-class U.S. mail to the party for whom it is intended, as its address herein above stated, or any other address which either party hereto may from time to time designate for such purpose, and when such notice is so mailed, it shall be deemed given upon the mailing thereof. Any such notice sent to BMI shall be to the attention of the Licensing Department. Any such notice sent to LICENSEE shall be to the attention of the person signing this Agreement on behalf of LICENSEE or such other person a LICENSEE may advise BMI in writing.

#### **15. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties shall not be binding until signed by both parties, and 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. The rights of LICENSEE shall not be assignable. 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.

**16. TERM**

The initial Term of this Agreement shall begin on the first day of (month/year)\_\_\_\_\_ and end on the last day of (month/year)\_\_\_\_\_ and shall continue thereafter unless canceled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "contract year") upon thirty (30) days advance written notice to the other party.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<small>(Name of Corporation, Partnership, or Individual Owner)</small>	<small>(Street Address)</small>
<b><u>TRADE NAME</u></b>	<small>(City) (State) (Zip)</small>
<small>(Doing business under the name of)</small>	<small>(Telephone Number) (Fax Number)</small>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<small>(Contact Name) (Title)</small>
<input type="checkbox"/> Individual Ownership <input type="checkbox"/> LLC <input type="checkbox"/> Corporation <input type="checkbox"/> LLP <input type="checkbox"/> Partnership <small>(State of Incorporation, if different from Licensed Premises)</small> <small>(Enter names of partners)</small> <input type="checkbox"/> Other _____	<small>(Email Address) (Web Address)</small>
<b><u>GOVERNMENT ENTITIES</u></b> <small>(if applicable, please check one)</small>	<b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small>
Federal Tax ID No. _____	<small>(Street Address)</small>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____ <small>(State)</small>	<small>(City) (State) (Zip)</small>
<input type="checkbox"/> Local _____ <small>(Municipality/City and State)</small>	<small>(Telephone Number) (Fax Number)</small>
	<small>(Contact Name) (Title)</small>
	<small>(Email Address- if different from above)</small>

<p><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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.</p> <p><b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b></p> <p><b>TO BE COMPLETED BY BMI</b></p> <p><b>BROADCAST MUSIC INC.</b></p>
Signature	
Print Name / Title	
Signatory Email Address* <small>(if different from above)</small>	
*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory	

	<b>FOR BMI USE ONLY</b>	<b>40C</b>	<b>LI-2016/NOV</b>
<b>ACCOUNT NO.</b>	<b>COID</b>		<b>EFFECTIVE:</b> <b>January 2017</b>

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

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# BMI Digital Jukebox Interim License Agreement

LI-10/Feb-DJ

The following are the terms and conditions of the BMI Digital Jukebox Interim Blanket License Agreement (hereinafter "Interim Blanket License Agreement") between Broadcast Music, Inc. ("BMI") and \_\_\_\_\_ (hereinafter "LICENSEE"), pending the outcome of negotiations for a final agreement between BMI and the LICENSEE, or, if necessary, a determination by the BMI Rate Court of appropriate license fees and terms.

It is hereby agreed as follows:

1. The Blanket License Agreement for Digital Jukeboxes granting a license to publicly perform the BMI music repertoire expired on June 30, 2008 (the "Agreement"). For the period commencing \_\_\_\_\_ Broadcast Music Inc. ("BMI") and \_\_\_\_\_ ("LICENSEE") have agreed that the Agreement should extend from commencement date forward on an interim basis.
2. This Interim Blanket License Agreement shall embody each and every term and condition set forth in the Agreement, except for the Term. This Interim Blanket License Agreement shall commence on \_\_\_\_\_ and shall continue, unless either party terminates this Interim Blanket License Agreement as of the last day of any calendar month upon 30 days' prior written notice, or a final agreement is reached between BMI and LICENSEE or, if necessary, a final determination in the BMI Rate Court.
3. The license fees for the Term of this Interim Blanket License Agreement shall be the same as the final fees set forth in the Agreement for each license year; that is \$47.00 (forty-seven) per digital jukebox per year.
4. The final fees of this Interim Blanket License Agreement agreed to by BMI and LICENSEE for a final license Agreement, or as determined by the BMI Rate Court, shall be applied retroactively to commencement date. As such, LICENSEE shall be obligated to pay BMI any monies owed BMI as a result of such retroactive adjustment of fees, and BMI similarly shall be obligated to pay LICENSEE any monies owed LICENSEE as a result of such retroactive adjustment.

<p align="center"><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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.</p>	<p align="center"><b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b></p>		
LICENSEE / COMPANY			
Signature			
Print Name / Title			
Date			
	<b>FOR BMI USE ONLY</b>		
	<table border="1" style="width: 100%;"> <tr> <td style="width: 50%;"><b>ACCOUNT NO.</b></td> <td style="width: 50%;"><b>COID</b></td> </tr> </table>	<b>ACCOUNT NO.</b>	<b>COID</b>
<b>ACCOUNT NO.</b>	<b>COID</b>		

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# Music License for Digital Jukeboxes

## 1. DEFINITIONS

- (a) **“Attract Mode”** shall mean the occasional performance of Works, or portions of Works, on a free, promotional basis, intended solely to attract consumers' attention to the presence of the Digital Jukebox.
- (b) **“Contract Year”** shall mean the twelve (12) month period commencing July 1<sup>st</sup> and ending the following June 30<sup>th</sup>.
- (c) **“Distribution System”** shall mean the system by which LICENSEE electronically transmits Sound Recordings to Digital Jukeboxes as it may be configured by LICENSEE from time-to-time during the Term and by means of which music is publicly performed by Digital Jukeboxes in Digital Jukebox Establishments.
- (d) **“Digital Jukebox”** shall mean each of LICENSEE's Digital Jukeboxes operating within the Territory which (1) employs a medium upon which digital phonorecords are stored and played, including, but not limited to, a hard drive for the storage of phonorecords or recorded musical compositions; (2) in response to insertion of coins, currency, tokens, or other monetary units or their equivalent, including but not limited to credit cards and debit cards (or in response to free play instructions, for instance, when the Digital Jukebox is in Attract Mode (as defined herein)) makes non-dramatic performances of musical works which are selected from the works available on such digital jukebox by the patrons of the Digital Jukebox Establishment in which it is located (or, with respect to free play in Attract Mode programmed or randomized other than by patrons); (3) allows the Digital Jukebox to play background music as programmed by LICENSEE for each Digital Jukebox, pursuant to a subscription fee paid by each individual Digital Jukebox Establishment, which may request different genres of music; and (4) permits advertising to be displayed on the Digital Jukebox, but not in any way to suggest that any artist or any song is endorsing or is endorsed by any advertiser. As used in this Agreement “operating” shall mean a digital jukebox which has generated revenue within the last sixty (60) days.
- (e) **“Digital Jukebox Establishment”** shall mean the establishment in which LICENSEE's Digital Jukebox is placed for operation which makes no direct or Indirect Charge for Admission, and does not utilize the Digital Jukebox as an accompaniment to live entertainment (i.e. including, but not limited to, adult dancers).
- (f) **“Indirect Charge for Admission”** shall mean any expectation on the part of the Digital Jukebox Establishment that payment must be made by a patron to remain within the Digital Jukebox Establishment, or any portion of the establishment, including, but not limited to, an admission fee, cover charge, minimum purchase requirement, mandatory tipping, or ticket purchased from any source whatsoever.
- (g) **“Play”** shall mean each paid (or free play while in Attract Mode) public performance of a Sound Recording by a Digital Jukebox.
- (h) **“Sound Recording”** shall mean a sound recording embodying a musical composition.
- (i) **“Term”** shall begin on the first day of July 1, 2008 and end on the last day of June 30, 2014, and shall continue on an annual basis thereafter; provided, however, that either party may terminate the Agreement at the end of any contract year beginning in 2014 with thirty (30) days' prior written notice.
- (j) **“Territory”** shall mean the United States, its commonwealths, territories, trust territories and possessions including without limitation the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands and military bases.
- (k) **“Works”** shall mean all of the musical compositions for which BMI controls the right to grant non-dramatic public performing rights at the time of the performance during the Term.

## 2. BMI GRANT

BMI hereby grants to LICENSEE, for the Term, a non-exclusive license to transmit to Digital Jukeboxes via LICENSEE's Distribution System any or all of the Works. BMI further grants to LICENSEE's Digital Jukebox Establishments a license to publicly perform in such Digital Jukebox Establishments only (construed as including adjoining areas such as a deck or patio) and by means of LICENSEE's Digital Jukebox only any or all of the Works. Nothing herein may be expressly or impliedly understood to grant to LICENSEE's Digital Jukebox Establishment a license to perform any Work other than through LICENSEE's Digital Jukebox. The license granted herein expressly excludes performances of a Digital Jukebox as an accompaniment to live entertainment (i.e. adult dancers).

## 3. BREACH OR DEFAULT / WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues thirty (30) days after the date of BMI's written notice to LICENSEE thereof. 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 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.

## 4. ARBITRATION

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

## **5. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one percent (1%) per month from the date any payment is due hereunder on any payment that is received by BMI more than five (5) business days after the due date.

## **6. LICENSE FEES AND PAYMENT**

- (a) LICENSEE shall pay to BMI an annual per Digital Jukebox license fee for each Contract Year of the Term. License fees shall be paid quarterly, and shall be calculated on a monthly basis by determining the monthly fee per Digital Jukebox (i.e. the annual per Digital Jukebox fee divided by 12) and applying that rate for each month to the total number of Digital Jukeboxes that were in operation for any period of time during the applicable month, prorated over a thirty (30) day month for the first month.
- (b) LICENSEE shall pay quarterly license fees, calculated monthly as outlined in Paragraph 6(a) above, forty-five (45) days after the end of each calendar quarter.
- (c) For the Contract Year July 1, 2008 through June 30, 2009, the annual per Digital Jukebox license fee shall be \$47.00. For each Contract Year thereafter, in the event that LICENSEE's average revenue per Digital Jukebox increased over the average revenue per Digital Jukebox in the immediately preceding year, the annual per Digital Jukebox license fee shall be the prior Contract Year's per Digital Jukebox license fee as increased by the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding August and the next preceding August, rounded to the nearest penny. For any Contract Year in which the average revenue per Digital Jukebox did not increase over that of the immediately preceding Contract Year, the annual per Digital Jukebox license fee for the Contract Year shall be unchanged from the annual per Digital Jukebox license fee of the immediately preceding contract year.

## **7. REPORTING**

- (a) Within forty-five (45) days of the end of each calendar quarter, LICENSEE shall provide the following information with respect to each Digital Jukebox in a Digital Jukebox Establishment at any time during that calendar quarter:
  - (i) Digital Jukebox serial or other identification number, and whether the box is connected to the Distribution System;
  - (ii) for any newly-licensed Digital Jukebox, the date on which the Digital Jukebox was placed in operation in a Digital Jukebox Establishment; and
  - (iii) the total number of Digital Jukeboxes in operation hereunder; and
  - (iv) the average coin revenue per Digital Jukebox, which shall be provided on a Contract Year basis, not quarterly.
- (b) LICENSEE shall display by electronic means on the touchscreen of each Digital Jukebox licensed hereunder or in a similar place that is easily visible to the public (i) a notice that the Digital Jukebox is licensed by BMI, consistent with current practices; and (ii) the serial or other identification number of the Digital Jukebox. Such notice shall be visible both when the Digital Jukebox is performing music and when it is not.
- (c) If LICENSEE agrees to provide to any other U.S. musical composition performing rights organization information on the names and locations of the premises where the Digital Jukeboxes are located, LICENSEE shall provide the same information to BMI.
- (d) LICENSEE shall provide to BMI, in electronic form, quarterly music use reports which shall contain information concerning the performance of all musical works. Such information shall identify each musical work by title, composer/writer, publisher, artist, record label, any unique identifier, to the extent available to LICENSEE (e.g. ISWC, ISAN), and specify the number of Plays with respect to each musical work among all Digital Jukeboxes. Such information shall also identify those musical works for which a direct license with the copyright owner for public performances otherwise licensed hereunder exists. This information shall be used solely to determine distributions to members of BMI.
- (e) LICENSEE shall provide to BMI music use reports on or before the forty fifth (45<sup>th</sup>) day following the end of each calendar quarter during the Term. LICENSEE agrees to use commercially reasonable efforts to use software which BMI may provide to LICENSEE to prepare and deliver such reports electronically, or such other commercially reasonable alternative method upon which the parties agree.

## **8. REVIEW OF STATEMENTS AND/OR ACCOUNTINGS**

BMI shall have the right, once with respect to each year of the Term, by its authorized representatives, at any time during customary business hours, and upon reasonable notice, in writing to LICENSEE of not less than thirty (30) business days, to examine, through its Audit Department, only those portions of LICENSEE's books and records of account only to such extent as may be necessary to verify any and all statements and/or accountings made hereunder for the immediately preceding two (2) year period. BMI shall consider all data and information coming to its attention as the result of any such examination of LICENSEE's books and records as confidential. No period shall be examined more than once.

## **9. REPRESENTATIONS / WARRANTIES / INDEMNIFICATION**

- (a) BMI warrants, represents and covenants to LICENSEE that it has the right to grant the public performing rights in the Works.
- (b) BMI shall indemnify, hold harmless and defend LICENSEE and its respective agents, heirs, parents, successors, and assigns (the "Indemnified Parties") from and against any and all claims, demands or suits (and liabilities, expenses and costs associated therewith, including, without limitation, except to the extent BMI elects to control the matter and supplies counsel of its choosing, the reasonable fees of counsel of the Indemnified Party's choosing) that may be made or brought against them or any of them with respect to the performances licensed hereunder. Such indemnity shall be limited to Works which are licensed by BMI to LICENSEE at the time of performance. LICENSEE agrees to give BMI prompt 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, at BMI's election, BMI shall have full charge of the defense of any such claims, demand or suit.
- (c) BMI shall, upon LICENSEE's request, advise LICENSEE whether particular individual Works are available for performance as part of BMI's repertoire.

## **10. WITHDRAWAL OF WORKS**

BMI reserves the right to withdraw from the license granted hereunder any Works as to which any legal action has been instituted or as to which a written claim has been made that BMI does not have the right at its discretion to license the performing rights in such Works or that such Works infringe a composition not in the BMI repertoire, provided that such withdrawal applies prospectively and applies equally to all other similarly situated licensees of BMI.

**11. NON-PRECEDENTIAL NATURE OF AGREEMENT**

BMI and LICENSEE agree that the terms of this Agreement is being entered into without prejudice to any position either party may take in any negotiation or proceeding for determination of reasonable fees for a license for Digital Jukeboxes for any period subsequent to this license period. The parties acknowledge that the annual license fee is not attributable to any specific number of Plays.

**12. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax, other than income tax, which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with license fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

**13. EXPERIMENTAL NATURE OF AGREEMENT**

The parties acknowledge that this Agreement is entered into on a non-prejudicial and experimental basis. The parties have entered into this Agreement expressly without prejudice to their positions regarding what constitutes a reasonable fee for the license granted herein. Further, the parties inclusion of advertising on Digital Jukeboxes without application of a separate fee on LICENSEE'S advertising revenues is non-prejudicial and is offered in consideration of the nominal advertising fees generated by LICENSEE'S Digital Jukeboxes. The parties' execution of this Agreement is without prejudice to their right to negotiate a different form of agreement for any period of time beyond the Term of this Agreement and is not binding on their respective positions in any such negotiations.

**14. CONFIDENTIALITY**

- (a) The parties hereto acknowledge that pursuant to the reporting obligations outlined in Paragraph 7 of this Agreement, or otherwise in connection with this Agreement, LICENSEE will provide to BMI confidential proprietary information. BMI agrees that it shall not publish or otherwise disseminate or disclose any confidential information provided by LICENSEE under this Agreement without the express written permission of LICENSEE, except in the case of disclosure to (i) BMI's owners, officers, employees and directors, (ii) BMI's auditors, insurers, agents or representatives as are required by their job responsibilities to have such knowledge, or (iii) in the context of legal proceedings or government investigations, such other persons to whom BMI is required by law or otherwise deem it prudent to make such disclosure. In the case of any permitted disclosure under this Paragraph, the disclosing party shall take all steps as are commercially reasonable, including, as appropriate, seeking to secure protective orders against public disclosure, to maintain the confidentiality of the disclosed information beyond the parties to whom it has been disclosed. The parties agree to give each other, to the extent feasible, not less than seven (7) days' advance notice (or such shorter notice as is feasible) of any intended disclosure pursuant to sub-paragraph (iii) herein.
- (b) All data and information coming to the attention of the BMI Audit Department as a result of any examination of LICENSEE's books and records shall be held completely confidential by the BMI Audit Department, except that if the results of its examination are that LICENSEE's books and records shall be held completely confidential by the BMI Audit Department, except that if the results of its examination are that LICENSEE owes BMI additional license fees and LICENSEE does not pay any additional amount claimed to be due within ten (10) business days of receipt of a written notice of a claimed deficiency in its payment to BMI, then such data and information may be disclosed to BMI's attorneys and other persons at BMI as is necessary for the purpose of collecting fees owing or otherwise enforcing this Agreement.

**15. MISCELLANEOUS**

- (a) No waiver by either party of full performance of this Agreement by the other in any one or more instances shall be deemed a waiver of the right to require full and complete performance of this Agreement or of the right to cancel this Agreement thereafter. Paragraphs 6 and 7 shall survive any termination of this Agreement.
- (b) All notices and other communications between the parties hereto shall be in writing and deemed received (i) when delivered in person; (ii) when delivered by generally recognized same day or overnight delivery service; or (iii) five (5) days after deposited in the United States mails, postage prepaid, certified or registered mail, addressed to the other party at the address set forth below (or at such other address as such other party may supply by written notice):

BMI:  
 10 Music Square East  
 Nashville, TN 37203  
 Attn: Vice President Licensing

LICENSEE:

- (c) This Agreement contains the full and complete understanding between the parties with respect to the subject matter hereof, supersedes all prior agreements and understandings, whether written or oral, pertaining hereto, and cannot be modified except by a written instrument signed by each party hereto. No waiver of any term or condition of this Agreement shall be construed as a waiver of any other term or condition; nor shall any waiver of any default under this Agreement be construed as a waiver of any other default. The descriptive headings of the sections of this Agreement are for convenience only and do not constitute a part of this Agreement.
- (d) This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts entered into and to be fully performed therein.

(e) With the prior approval of the non-assigning party (which shall not be unreasonably withheld), this Agreement is assignable or transferable by either party, but no assignment shall relieve the parties of their respective obligations as to performances rendered, acts done and obligations incurred prior to the effective date of the assignment. All provisions of this Agreement applicable to the parties shall apply as well to their predecessors, successors and assigns.

**AGREEMENT**

AGREEMENT, made at New York, N.Y. on *(Date will be entered upon execution)* \_\_\_\_\_ between BROADCAST MUSIC, INC. (herein BMI), a New York corporation with its 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.

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>	
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>	
<b><u>TRADE NAME</u></b>	<i>(City)</i>	<i>(State)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number)</i>	<i>(Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name)</i>	<i>(Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address)</i>	<i>(Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b>	
<i>(State of Incorporation, if different from Licensed Premises)</i>	<i>(if different from Licensed Premises)</i>	
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	<i>(Street Address)</i>	
<i>(Enter names of partners)</i>	<i>(City)</i>	
<input type="checkbox"/> Other _____	<i>(State)</i>	
Federal Tax ID No. _____	<i>(Zip)</i>	
<b><u>GOVERNMENT ENTITIES</u></b>	<i>(Telephone Number)</i>	<i>(Fax Number)</i>
<i>(if applicable, please check one)</i>	<i>(Contact Name)</i>	
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<i>(Title)</i>	
<i>(State)</i>	<i>(Email Address – if different from above)</i>	
<input type="checkbox"/> Local _____		
<i>(Municipality/City and State)</i>		

<b>TO BE COMPLETED BY LICENSEE</b>	<b>FOR ADMINISTRATIVE USE ONLY</b>		
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. <b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b>	<b>TO BE COMPLETED BY BMI</b>		
Signature	<b>BROADCAST MUSIC INC.</b>		
Print Name / Title			
Signatory Email Address* <i>(if different from above)</i>			
<b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b>	<b>FOR BMI USE ONLY</b>	<b>DJB2</b>	<b>LI-2012/JAN</b>
<b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b>	<b>ACCOUNT NO.</b>	<b>COID</b>	<b>EFFECTIVE:</b>
<b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b>			<b>January</b>



\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.



# Music License for Digital Messaging Media Services

## 1. DEFINITIONS

- (a) **“LICENSEE”** shall mean the entity identified on Page 4 which is engaged in the business of operating a Digital Messaging Media Service which is distributed to commercial venues.
- (b) **“Distribution System”** shall mean the system by which LICENSEE electronically transmits Sound Recordings and video images to Serviced Establishments as it may be configured by LICENSEE from time-to-time during the Term and by means of which music is publicly performed by Digital Messaging Media Service in Serviced Establishments.
- (c) **“Digital Messaging Media Service”** shall mean services operating within the Territory which employ a medium upon which digital videos and phonorecords are streamed or played, including, but not limited to, recorded musical compositions, streams or other transmissions of musical works from or by the device; and including news and human interest stories, consumer technology information, entertainment and sports highlights, video advertising, or other video music offerings.
- (d) **“Serviced Establishment”** shall mean the establishment in which LICENSEE’s Digital Messaging Media Service is placed for operation which makes no direct or indirect charge for admission.
- (e) **“Play”** shall mean each public performance of a Sound Recording by a Digital Messaging Media Service.
- (f) **“Sound Recording”** shall mean a sound recording embodying a musical work.
- (g) **“Territory”** shall mean the United States, its commonwealths, territories, trust territories and possessions including without limitation the Commonwealth of Puerto Rico, Guam, and the U.S. Virgin Islands.
- (h) **“Works”** shall mean all of the musical compositions for which BMI controls the right to grant non-dramatic public performing rights at the time of the performance during the Term.

## 2. BMI GRANT

BMI hereby grants to LICENSEE, for the Term, a nonexclusive license to transmit via its Digital Messaging Media Service through LICENSEE’s Distribution System. BMI further grants to LICENSEE’s Serviced Establishments a license to publicly perform in such Serviced Establishments only (including adjoining areas such as a deck or patio), and by means of LICENSEE’s Digital Messaging Media Service only, any or all of the Works. Nothing herein may be expressly or impliedly understood to grant to a Serviced Establishment a license to perform any Work other than through LICENSEE’s Digital Messaging Media Service; or to use LICENSEE’s Digital Messaging Media Service as a background, foreground, or commercial service.

## 3. REPRESENTATIONS / WARRANTIES

- (a) BMI warrants, represents and covenants to LICENSEE that it has the right to grant the public performing rights in the Works.
- (b) BMI shall, upon LICENSEE’s request, advise LICENSEE whether particular individual Works are available for performance as part of BMI’s repertoire.

## 4. CUSTOMER OUTREACH

LICENSEE agrees to accept from time to time pre-recorded telephone messages from BMI that may contain information regarding LICENSEE’s account.

## 5. LICENSE FEES AND PAYMENTS

- (a) For each Contract Year of the Term, LICENSEE shall pay an Annual License Fee to BMI for each Serviced Establishment. The Annual License Fee shall be calculated on a monthly basis by determining the monthly rate per system (the annual rate divided by 12) and applying that rate for each month to the total number of Serviced Establishments which feature the Digital Messaging Media Service as of the end of the preceding month. Monthly license fees shall be paid quarterly on or before the forty-fifth (45<sup>th</sup>) day after the end of each calendar quarter.
- (b) The Annual License Fee for the initial Contract Year shall be \$49.00 per Serviced Establishment.
- (c) The Annual License Fee for the Contract Year commencing January 1, 2017, and for each subsequent Contract Year, shall be the previous Contract Year’s license fee adjusted in accordance with the increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding August and the next preceding August, rounded to the nearest dollar.

## **6. REPORTING**

- (a) Within forty-five (45) days of the end of each calendar quarter, LICENSEE shall provide the following information with respect to each Serviced Establishment that was serviced by LICENSEE at any time during that calendar quarter:
- (i) name and address of each Serviced Location;
  - (ii) Digital Messaging Media Service serial or other identification number, and whether the system is connected to the Distribution System;
  - (iii) for any newly-licensed Serviced Establishment, the date on which the Digital Messaging Media Service was placed in operation in a Serviced Establishment; and
  - (iv) for any Serviced Establishment that was inactivated, the date of inactivation; and
  - (v) the total number of Serviced Establishments licensed hereunder.

## **7. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with license fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

## **8. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one half percent (1½%) per month from the date any payment or report was due on any payment that is received by BMI more than thirty (30) days after the due date.

## **9. AUDIT**

BMI shall have the right, once with respect to each year of the Term, during customary business hours, on notice in writing to LICENSEE of not less than thirty (30) business days, to examine, through its Audit Department, the books and records of account of LICENSEE only to such extent as may be necessary to verify any reports and/or statements required by this Agreement.

## **10. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

## **11. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

## **12. 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 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.

## **13. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

## **14. WITHDRAWAL OF WORKS**

BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

## **15. INDEMNITY BY BMI**

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 musical works licensed under this Agreement. Such indemnity shall be limited to musical works which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

## **16. BREACH OR DEFAULT/WAIVER**

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues for thirty (30) days after the date of BMI's written notice to LICENSEE thereof. 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 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.

## **17. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to the American Arbitration Association in the City, County and State of New York for arbitration under its then prevailing arbitration rules. The arbitrator(s) to be selected as follows: Each of the parties 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 in 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.

## **18. EXPERIMENTAL NATURE OF LICENSE**

BMI and LICENSEE agree that the terms of this Agreement shall be deemed experimental and that this Agreement is being entered into without prejudice to any position either party may take in any negotiation or proceeding for determination of reasonable fees for a license for Digital Messaging Media Service for any period subsequent to this license period.

## **19. NOTICES**

Unless otherwise stated herein, all notices, if any, under this Agreement shall 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 herein 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 designate to BMI in writing.

## **20. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, shall not be binding until signed by both parties, and 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. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.



**21. TERM**

The initial Term of this annual Agreement shall begin on the first day of (*month/year*) \_\_\_\_\_ and end on the last day of (*month/year*) \_\_\_\_\_ and shall continue thereafter unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "Contract Year") upon thirty (30) days advance notice to the other party.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<small>(Name of Corporation, Partnership, or Individual Owner)</small>	<small>(Street Address)</small>
<b><u>TRADE NAME</u></b>	<small>(City) (State) (Zip)</small>
<small>(Doing business under the name of)</small>	<small>(Telephone Number) (Fax Number)</small>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<small>(Contact Name) (Title)</small>
<input type="checkbox"/> Individual Ownership	<small>(Email Address) (Web Address)</small>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<small>(State of Incorporation, if different from Licensed Premises)</small>	
<small>(Enter names of partners)</small>	
<input type="checkbox"/> Other _____	<small>(Street Address)</small>
Federal Tax ID No. _____	<small>(City) (State) (Zip)</small>
<b><u>GOVERNMENT ENTITIES</u></b> <small>(if applicable, please check one)</small>	<small>(Telephone Number) (Fax Number)</small>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<small>(Contact Name) (Title)</small>
<small>(State)</small>	<small>(Email Address – if different from above)</small>
<input type="checkbox"/> Local _____	
<small>(Municipality/City and State)</small>	

<p><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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.</p> <p><b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b></p> <p><b>TO BE COMPLETED BY BMI</b></p> <p><b>BROADCAST MUSIC INC.</b></p>
Signature	
Print Name / Title	
Signatory Email Address* <small>(if different from above)</small>	
*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.	FOR BMI USE ONLY
<b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b>	DMM1
<b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b>	LI-2017/JULY
	EFFECTIVE: January 2017

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

® BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.





# Music License for Digital Video Jukebox

## 1. DEFINITIONS

- (a) **Attract Mode** shall mean the occasional performance of Works on a free promotional basis, intended to attract consumers' attention to the presence of the Digital Video Jukebox, during periods of time when no patrons have recently inserted money in the Digital Video Jukebox.
- (b) **Distribution System** shall mean the system by which LICENSEE electronically transmits Sound Recordings to Digital Video Jukeboxes as it may be configured by LICENSEE from time-to-time during the Term and by means of which music is publicly performed by Digital Video Jukeboxes in Digital Video Jukebox Establishments.
- (c) **Digital Video Jukebox** shall mean each and every \_\_\_\_\_ (*Company Name*) Digital Video Jukebox operating within the Territory which (1) employs a medium upon which digital videos and phonorecords are stored and played, including, but not limited to, a hard drive for the storage of videos, phonorecords or recorded musical compositions, whether or not downloads, streams or other transmissions of musical works are made to, from or by the device; (2) in response to insertion of coins, currency, tokens, or other monetary units or their equivalent, including but not limited to credit cards and debit cards (or in response to free play instructions, for instance, when the Digital Video Jukebox is in so-called Attract Mode (as defined herein)) makes non-dramatic performances of musical works (by means of Sound Recordings transmitted by downloads to remote Digital Video Jukeboxes) which are selected from the works available on such Digital Video Jukebox by the patrons of the Digital Video Jukebox Establishment in which it is located (or, with respect to free play in Attract Mode programmed or randomized other than by patrons); and (3) does not generate advertising revenue for LICENSEE or anyone else.
- (d) **Digital Video Jukebox Establishment** shall mean the establishment in which LICENSEE's Digital Video Jukebox is placed for operation which makes no direct or indirect charge for admission.
- (e) **Play** shall mean each paid (or free play while in Attract Mode) public performance of a Sound Recording by a Digital Video Jukebox.
- (f) **Sound Recording** shall mean a sound recording embodying a musical work.
- (g) **Term** shall begin on the first day of \_\_\_\_\_ and end on the last day of June \_\_\_\_\_, and shall continue on an annual basis thereafter; provided, however, that either party may terminate the Agreement at the end of any contract year with thirty (30) days' prior written notice.
- (h) **Territory** shall mean the United States, its commonwealths, territories, trust territories and possessions including without limitation the Commonwealth of Puerto Rico, Guam, and the U.S. Virgin Islands.
- (i) **Works** shall mean all of the musical compositions for which BMI controls the right to grant non-dramatic public performing rights at the time of the performance during the Term.

## 2. BMI GRANT

BMI hereby grants to LICENSEE, for the Term, a nonexclusive license to transmit to Digital Video Jukeboxes via LICENSEE's Distribution System any or all of the Works. BMI further grants to LICENSEE's Digital Video Jukebox Establishments a license to publicly perform in such Digital Video Jukebox Establishments only (construed as including adjoining areas such as a deck or patio) and by means of LICENSEE's Digital Video Jukebox only any or all of the Works. Nothing herein may be expressly or impliedly understood to grant to LICENSEE's Digital Video Jukebox Establishment a license to perform any Work other than through LICENSEE's Digital Video Jukebox; or to use LICENSEE's Digital Video Jukebox as a background, foreground, commercial or any type of subscription music service.

## 3. BREACH OR DEFAULT/WAIVER

In the event LICENSEE breaches or defaults in its payment and/or reporting obligations under this Agreement, BMI shall have the right to cancel this Agreement as follows: If LICENSEE's account remains delinquent for thirty (30) days beyond the payment or report due date, BMI may notify LICENSEE of the breach. After notification of the breach, LICENSEE shall have thirty (30) days to cure the breach. If LICENSEE cures the breach or default within such thirty (30) day period, BMI's right to cancel the Agreement will terminate upon the date of such cure. If LICENSEE fails to cure a delinquent account within the thirty (30) day cure period, BMI shall have the right to cancel this Agreement by written notice to LICENSEE.

## 4. ARBITRATION

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement, not subject to the jurisdiction of the BMI Rate Court, shall be submitted to arbitration in the City, County and State of New York under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators to be selected as follows: Each of the parties 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

in any court having jurisdiction. Such award shall include the fixing of costs, expenses, and attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

## **5. LICENSE FEES AND PAYMENTS**

- (a) For each contract year of the Term, LICENSEE shall pay an annual license fee to BMI for each Digital Video Jukebox in operation in a Digital Video Jukebox Establishment. The annual license fee payable for a given year shall be calculated on a monthly basis and paid quarterly, on or before the forty-fifth (45th) day after the end of each calendar quarter. The monthly license fee shall be computed by determining the monthly rate per box (the annual rate divided by 12) and applying that rate for each month to the total number of Digital Video Jukeboxes that were in operation in a Digital Video Jukebox Establishment for any period of time during or as of the end of the preceding month.
- (b) The annual license fee for the contract year commencing July 1, 2016 is \$136.00 per Digital Video Jukebox.
- (c) The annual license fee for the contract year commencing July 1, 2017, and for each subsequent contract year, will be the previous contract year's license fee adjusted in accordance with the increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding August and the next preceding August, rounded to the nearest dollar.

## **6. REPORTING**

- (a) Within forty-five (45) days of the end of each calendar quarter, LICENSEE shall provide the following information with respect to each Digital Video Jukebox that was in operation in a Digital Video Jukebox Establishment at any time during that calendar quarter:
  - (i) Digital Video Jukebox serial or other identification number, and whether the box is connected to the Distribution System;
  - (ii) for any newly-licensed Digital Video Jukebox, the date on which the Digital Video Jukebox was placed in operation in a Digital Video Jukebox Establishment; and
  - (iii) for any Digital Video Jukebox that was inactivated, the date of inactivation; and
  - (iv) the total number of Digital Video Jukeboxes licensed hereunder.
- (b) LICENSEE shall display by electronic means on the touchscreen of each Digital Video Jukebox licensed hereunder or in a similar place that is easily visible to the public (i) a notice that the Digital Video Jukebox is licensed by BMI; and (ii) the serial or other identification number of the Digital Video Jukebox. Such notice shall be visible both when the Digital Video Jukebox is performing music and when it is not.
- (c) If LICENSEE agrees to provide to any other U.S. performing rights organization information on the names and locations of the premises where the Digital Video Jukeboxes are located, LICENSEE shall provide the same information to BMI.
- (d) LICENSEE shall provide to BMI, in electronic form, quarterly music use reports which shall contain information concerning the performance of all musical compositions. Such information shall identify each musical composition by title, composer/writer, publisher, artist, record label, any unique identifier, to the extent available to LICENSEE (e.g. ISWC, ISAN), and specify the number of Plays with respect to each musical composition among all Digital Video Jukeboxes. Such information shall also identify those musical compositions for which a direct license with the copyright owner for public performances otherwise licensed hereunder exists.
- (e) LICENSEE shall provide to BMI music use reports on or before the forty fifth (45<sup>th</sup>) day following the end of each calendar quarter during the Term. LICENSEE agrees to use commercially reasonable efforts to use software which BMI may provide to LICENSEE to prepare and deliver such reports electronically, or such other commercially reasonable alternative method upon which the parties agree.

## **7. LATE PAYMENT CHARGE**

LICENSEE shall pay a late payment charge of one percent (1%) per month from the date payment was due on any payment to BMI which is received by BMI more than five (5) business days after the due date.

## **8. AUDIT**

BMI shall have the right, once with respect to each year of the Term, during customary business hours, on notice in writing to LICENSEE of not less than thirty (30) business days, to examine, through its Audit Department, the books and records of account of LICENSEE only to such extent as may be necessary to verify any reports and/or statements required by this Agreement.

## **9. REPRESENTATIONS / WARRANTIES / INDEMNIFICATION**

- (a) BMI warrants, represents and covenants to LICENSEE that it has the right to grant the public performing rights in the Works.
- (b) BMI shall indemnify, hold harmless and defend LICENSEE and its respective agents, heirs, parents, successors, and assigns (the "Indemnified Parties") from and against any and all claims, demands or suits (and liabilities, expenses and costs associated therewith, including, without limitation, except to the extent BMI elects to control the matter and supplies counsel of its choosing, the reasonable fees of counsel of the Indemnified Party's choosing) that may be made or brought against them or any of them with respect to the performances licensed hereunder. Such indemnity shall be limited to Works which are licensed by BMI to LICENSEE at the time of performance. LICENSEE agrees to give BMI prompt 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, at BMI's election, BMI shall have full charge of the defense of any such claims, demand or suit.

- (c) BMI shall, upon LICENSEE's request, advise LICENSEE whether particular individual Works are available for performance as part of BMI's repertoire.

**10. WITHDRAWAL OF WORKS**

BMI reserves the right to withdraw from the license granted hereunder any Works as to which any legal action has been instituted or as to which a written claim has been made that BMI does not have the right at its discretion to license the performing rights in such Works or that such Works infringe a composition not in the BMI repertoire, provided that such withdrawal applies prospectively and applies equally to all other similarly situated licensees of BMI.

**11. INTENT OF PARTIES**

BMI and LICENSEE agree that the terms of this Agreement shall be deemed experimental and that this Agreement is being entered into without prejudice to any position either party may take in any negotiation or proceeding for determination of reasonable fees for a license for Digital Video Jukeboxes for any period subsequent to this license period. The parties acknowledge that the annual license fee is not attributable to any specific number of Plays.

**12. CONFIDENTIALITY**

- (a) This Agreement, and the terms thereof, may be disclosed only to (i) the parties' owners, officers, employees and directors, (ii) such of the parties' auditors, insurers, agents or representatives as are required by their job responsibilities to have such knowledge, or (iii) in the context of legal proceedings or government investigations, such other persons to whom the parties are required by law or otherwise deem it prudent to make such disclosure. BMI agrees that it shall not publish or otherwise disseminate or disclose any information provided by LICENSEE under this license, without the express written permission of LICENSEE. In the case of any permitted disclosure under this subparagraph, the disclosing party shall take all steps as are commercially reasonable, including, as appropriate, seeking to secure protective orders against public disclosure, to maintain the confidentiality of the disclosed information beyond the parties to whom it has been disclosed. The parties agree to give each other, to the extent feasible, not less than seven (7) days' advance notice (or such shorter notice as is feasible) of any intended disclosure pursuant to sub-sub-paragraph (iii). Notwithstanding the foregoing, the parties may publicly disclose, without limitation, the provisions of this Agreement with respect to license fee rates (but not amounts paid hereunder), term, scope, and possible adjustments thereto.
- (b) All data and information coming to the attention of the BMI Audit Department as a result of any examination of LICENSEE's books and records shall be held completely confidential by the BMI Audit Department, except that if the results of its examination are that LICENSEE owes BMI additional license fees and LICENSEE does not pay any additional amount claimed to be due within ten (10) business days of receipt of a written notice of a claimed deficiency in its payments to BMI, then such data and information may be disclosed to BMI's attorneys and other persons at BMI as is necessary for the purpose of collecting fees owing or otherwise enforcing this Agreement.

**13. MISCELLANEOUS**

- (a) No waiver by either party of full performance of this Agreement by the other in any one or more instances shall be deemed a waiver of the right to require full and complete performance of this Agreement or of the right to cancel this Agreement thereafter. Paragraphs 3 and 4 shall survive any termination of this Agreement.
- (b) All notices and other communications between the parties hereto shall be in writing and deemed received (i) when delivered in person; (ii) when delivered by generally recognized same day or overnight delivery service; or (iii) five (5) days after deposited in the United States mails, postage prepaid, certified or registered mail, addressed to the other party at the address set forth below (or at such other address as such other party may supply by written notice):

BMI:  
10 Music Square East  
Nashville, TN 37203  
Attn: Vice President General Licensing

LICENSEE:

with a separate copy to:  
Senior Vice President and  
General Counsel

- (c) This Agreement contains the full and complete understanding between the parties with respect to the subject matter hereof, supersedes all prior agreements and understandings, whether written or oral, pertaining hereto, and cannot be modified except by a written instrument signed by each party hereto. No waiver of any term or condition of this Agreement shall be construed as a waiver of any other term or condition; nor shall any waiver of any default under this Agreement be construed as a waiver of any other default. The descriptive headings of the sections of this Agreement are for convenience only and do not constitute a part of this Agreement.
- (d) This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts entered into and to be fully performed therein.

(e) With the prior approval of the non-assigning party (which shall not be unreasonably withheld), this Agreement is assignable or transferable by either party, but no assignment shall relieve the parties of their respective obligations as to performances rendered, acts done and obligations incurred prior to the effective date of the assignment. All provisions of this Agreement applicable to the parties shall apply as well to their predecessors, successors and assigns.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b><u>TRADE NAME</u></b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address) (Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<input type="checkbox"/> Other	
<i>(State of Incorporation, if different from Licensed Premises)</i>	<i>(Street Address)</i>
<i>(Enter names of partners)</i>	<i>(City) (State) (Zip)</i>
Federal Tax ID No. _____	<i>(Telephone Number) (Fax Number)</i>
<b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State	<i>(Email Address – if different from above)</i>
<input type="checkbox"/> Local	
<i>(Municipality/City and State)</i>	

<b>TO BE COMPLETED BY LICENSEE</b>
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. <b><i>(SIGN HERE – PLEASE INCLUDE PAYMENT)</i></b>
Signature
Print Name / Title
Signatory Email Address* <i>(if different from above)</i>
<b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b>

<b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b>		
<b>FOR BMI USE ONLY</b>	<b>DVJ1</b>	<b>LI-2016/OCT</b>
ACCOUNT NO.	COID	<b>EFFECTIVE: January 2017</b>

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

® BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.





# BMI Music License For Eating & Drinking Establishments

## With a BMI Music License You Get a Seal of Compliance & Access to More Than 12 Million Musical Works!

Terms and Conditions of Agreement  
(For Definitions, see Paragraph 10)

### 1. BMI GRANT

BMI grants you a non-exclusive license to publicly perform at the Licensed Premises all of the musical works of which BMI controls the rights to grant public performance licenses during the Term. This license does not include dramatic rights, the right to perform dramatico-musical works in whole or in substantial part or the right to use the musical works in any context which constitutes the exercise of "grand rights." This license also does not convey the right to publicly perform BMI musical works (a) by broadcast, telecast, cablecast or other electronic transmission (including by satellite, the Internet or on-line service) of the performances to persons outside the Licensed Premises; (b) by public performances requiring advance or hard ticket purchases pursuant to Paragraph 10(g); (c) by means of any coin-operated phonorecord player as defined in the Copyright Act ("Jukebox") where a Jukebox License Office agreement has been obtained for such Jukebox; (d) by any BMI-licensed background music service; and (e) by any coin-operated digital music service that does not qualify as a Jukebox. BMI may withdraw from the works licensed hereunder any musical work as to which any legal action has been instituted or claim made that BMI does not have the right to license public performances of that work.

### 2. CHANGES TO YOUR MUSIC POLICY

- (a) Except as provided for herein, you may change your Music Policy upon which fees are assessed under this Agreement prospectively at any time during the Term on 30 days' prior notice to BMI, provided that your current policy has been in effect for at least 30 consecutive calendar days. You may change your fee no more than three times in any Contract Year. You may call your Customer Relations Executive at 1-800-925-8451 to notify BMI of a change in your Music Policy, and the change will be reflected in your next billing by BMI; however, doing so will not preserve your right to dispute BMI billings unless you send BMI timely notice of your policy change in writing. Billings adjusted by BMI hereunder will include a pro rata credit for any unearned license fees paid in advance under the changed policy. You also agree that you will notify BMI of any changes in the music use at the Licensed Premises that would make your representation of Music Policy under Paragraph 11(e) no longer accurate, and that any changes you make to your Music Policy hereunder shall constitute a true and accurate representation of your music usage from the date of the change onward. Any changes in Music Policy or Occupancy are subject to verification by any and all reasonable means which may include, but shall not be limited to, independent contacts by BMI representatives with your business establishment, use of public records, advertisements and third party observations.
- (b) BMI may from time to time review your Music Policy (including any changes made to your policy) and make inquiries in person or by phone as to its accuracy. If BMI thereafter believes that you are not paying proper license fees because the use of music at the Licensed Premises should result in higher license fees under the criteria of this Agreement than is reflected in your current Music Policy, BMI will notify you by mail. If you agree to BMI's assessment of your Music Policy, the change will be reflected on your next billing. If you dispute BMI's assessment of your policy, you must notify BMI within 30 days of the notification by BMI. If within 90 days of such notification by BMI you do not respond or you and BMI cannot agree upon an appropriate fee, either party may commence an arbitration proceeding pursuant to Paragraph 7 to resolve the dispute over the amount of your license fees. Such right shall be in addition to any and all other remedies BMI may have under the Agreement, including the right to cancel this Agreement. You may not change your Music Policy under subparagraph (a) above if your fee is subject to dispute hereunder.
- (c) In the event that you temporarily discontinue the use of all music (see Definitions) and you send written notice of this to BMI by certified mail within 30 days of the discontinuance, BMI will adjust your fees pro rata from the date of discontinuance. If such notice is received more than 30 days after the discontinuance, such discontinuance will be effective commencing on the first of the month following the date of BMI's receipt of the notice and BMI will adjust your fees prospectively for the remainder of the Contract Year in which BMI received the notice. In either event, your credit adjustment hereunder shall not reduce your Annual Fee due BMI below the Annual Minimum Fee applicable under the Agreement. In the event of such discontinuance, this license Agreement shall continue in effect, except that no minimum or other fee shall be payable during the period of discontinuance. You agree to notify BMI promptly when you resume the use of music at the Licensed Premises and your Music Policy in effect at the time of discontinuance will continue to be applicable until you notify BMI of a change. BMI reserves its right under subparagraph (b) hereof to review your Music Policy and take appropriate steps in the event that BMI believes that you have resumed the use of music under this Agreement.

### 3. LATE PAYMENT AND SERVICE CHARGES

BMI shall impose a late payment charge of one and one-half percent (1½%) per month or the maximum rate permitted by law, whichever is less, from the date any payment is due on any payment that is received by BMI more than thirty (30) days after the due date. BMI shall impose a \$25.00 service charge for each unpaid check, draft or other means of payment you submit to BMI.

### 4. BMI COMMITMENT TO CUSTOMER/INDEMNITY

So long as you are not in default or arrears in payment under this Agreement, BMI agrees to indemnify, save harmless and defend you, your officers and employees, from and against any and all claims, demands or suits alleging copyright infringement that may be made or brought against them or any of them with respect to the public performance of any musical works which are licensed by BMI under this Agreement at the time of public performance. You agree to give BMI immediate notice of any such claim, demand or suit, to deliver to BMI any papers pertaining hereto, 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. SALE OF LICENSED PREMISES OR CLOSING OF BUSINESS

In the event that you sell the Licensed Premises or close the business during the Term of this Agreement and you send BMI written notice by certified mail or via the BMI.com licensing website within 30 days of the sale or closing, BMI will adjust your fees *pro rata* from the date of sale or closing, and will refund to you any unearned licensed fees paid hereunder. Your credit adjustment hereunder shall not reduce your Annual Fee due BMI below the Annual Minimum Fee applicable under the Agreement.

## 6. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI has the right to cancel this Agreement. The right to cancel is in addition to any and all other remedies which BMI may have.

## 7. ARBITRATION

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement, except for matters within the jurisdiction of the BMI Rate Court, shall be submitted to the American Arbitration Association in the City, County and State of New York, for arbitration under its then prevailing arbitration rules. The arbitrator(s) shall be selected as follows: Each of the parties 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 a 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 in 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

Unless otherwise stated herein, any notice 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 as stated, or any other address which either party may designate. Any such notice sent to BMI shall be to the attention of the Vice President, Licensing, BMI, 10 Music Square East, Nashville, Tennessee, 37203. Any such notice sent to you shall be to the attention of the person signing this Agreement on your behalf or such other person as you may advise BMI in writing.

## 9. MISCELLANEOUS

This Agreement is the entire understanding between the parties, will not be binding until signed by both parties, and cannot be waived or added to or modified orally, and no waiver, addition or modification will be valid unless in writing and signed by the parties. This Agreement is executed by the duly authorized representative of BMI and you. Your rights are not assignable. This Agreement, its validity, construction and effect, will be governed by the laws of the State of New York other than its choice of law provisions. The fact that any provisions are found by a court of competent jurisdiction to be void or unenforceable will not affect the validity or enforceability of any other provisions. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

## 10. DEFINITIONS

- (a) **Licensed Premises:** The eating or drinking establishment listed on Page 4 or on an attached exhibit.
- (b) **Music Policy:** Any single or combined use of the items defined in 10(c) - (j) and including Jukebox Fee (Box 9) by you at the Licensed Premises during a Contract Year.

### Refer to Boxes 1-7 in the Fee Calculation on Page 3.

- (c) **Live Music-Multiple Singers/Instrumentalists:** Music performed by more than one musician, singer or other entertainer actually present and performing at the Licensed Premises. (Box 1)
- (d) **Live Music-Single Singer/Instrumentalist:** Music performed by one musician, singer or other entertainer actually present and performing at the Licensed Premises. (Box 1)
- (e) **Recorded Music:** The performance of background music, foreground music, or as part of audio-visual presentations, by mechanical or electronic means, including, but not limited to, digital music players (e.g. iPods, MP3 players, etc.), CDs, DVDs, records, and tapes. (Box 2)
- (f) **Enhanced Recorded Music:** Use of video tapes, DVDs and other projected visual images as an accompaniment/enhancement to recorded music performances (Karaoke). Enhanced Recorded Music does not include performances delivered by commercial broadcast, cablecast or satellite delivered television programming. (Box 2)
- (g) **Admission Charge/Cover Charge:** Payment including, but not limited to, minimum required purchases to enter or remain in certain parts of the Licensed Premises, excluding advance or hard ticket purchases sold through

an outside independent ticket service and which are paid for pursuant to a valid separate BMI Music Performance Agreement. (Box 3)

- (h) **Dancing:** Allowing patrons, performers or employees to dance, at any time, to live or recorded music anywhere on the Licensed Premises, whether or not a dance floor, dance stage or an area purposely used for dancing is provided. (Box 4)
  - (i) **Television and/or Radio Only (unless exempt from the U.S. Copyright Law):** Televisions and/or radios that are utilized solely for the reception of commercial broadcast, cablecast or satellite programming and only when no Recorded Music or Enhanced Recorded Music as defined in 10(e) and 10(f) is performed and paid for under this Agreement. (Box 5)
  - (j) **Occupancy:** The total of maximum allowable occupancy loads/capacities for the entire premises of the Licensed Premises calculated under adopted building/fire codes, which shall not be limited to the number of available seats. If no such regulations are in effect in the applicable jurisdiction, then maximum occupancy shall mean one (1) person for every twenty (20) square feet of such total premises. Further, Occupancy is a component of the LICENSEE's Music Policy, which is subject to adjustment per the Agreement. (Box 7)
  - (k) **Seasonal/Occasional Use:** The total aggregate use of music described herein at 10(c) - (j) in an establishment open less than twelve (12) months in any one year, or total aggregate music use as described herein, which occurs four (4) times or less in any one year will require that you contact BMI for their Seasonal/Occasional Use Fee Calculation license.
  - (l) **Chain Operation:** Seven (7) or more licensable locations, that are commonly owned and operated by you, and that books, records and accounts for each are centrally maintained by you, will require that you contact BMI for its Chain Restaurant License.
  - (m) **Jukebox:** A coin-operated phonorecord playing device which is licensable by the JLO (Jukebox License Office) pursuant to a Jukebox Licensing Agreement.
- ## 11. FEES
- (a) You agree to pay to BMI an Annual Fee as determined by your Music Policy.
    - (i) The Annual Fee payment for the initial Contract Year is due in full upon signing of this Agreement. The Annual Fee payment for subsequent Contract Years shall be due no later than 30 days after the anniversary date of this Agreement.
    - (ii) BMI shall discount the Annual Fee by 10% in any Contract Year if (A) you pay the Annual Fee in full and in a timely manner for such Contract Year in accordance with subparagraph (i) above; and (B) you do not otherwise owe BMI any fees under this or any prior BMI agreement.
    - (iii) Upon request, BMI will allow you to pay the Annual Fee on a semi-annual or quarterly basis, provided that your account is current. Semi-annual and quarterly payments are due no later than 30 days following each semi-annual or quarterly period. The discount provided for in subparagraph (ii) shall not be available if the Annual Fee is paid on a semi-annual or quarterly basis.
    - (iv) Notwithstanding subparagraph (iii), if any semi-annual or quarterly payment is not received by the 90<sup>th</sup> day after such payment is due, your ability to make semi-annual or quarterly payments shall immediately terminate for the remainder of this Agreement. In addition, the unpaid portion of the Annual Fee will be immediately due and payable.
  - (b) Your fee is adjusted each year by an adjustment to the Rate Per Year Per Occupant as defined in the Fee Calculation chart. The Rate Per Year Per Occupant adjustment for each Contract Year after 2017 shall be an adjustment of the 2017 rate based upon the percentage increase or decrease in the United States Consumer Price Index (Urban, All Items) between October 2016 and October of the year prior to that Contract Year, rounded to the nearest five cents. BMI will advise you in writing of this adjustment as part of its annual billing process.
  - (c) In no event shall the Annual Fee (per Box 8 of the Fee Calculation chart) due for any Contract Year be less than the Annual Minimum Fee (not including a Jukebox Fee, if any). The Annual Minimum Fee shall be \$364.00 for 2016 (not including a Jukebox Fee, if any). Thereafter, the Annual Minimum Fee shall be adjusted at the same rate as the Rate Per Year Per Occupant pursuant to subsection (b) of this Paragraph, with the exception that all increases shall be rounded to the nearest dollar.
  - (d) The Jukebox Fee shall also be adjusted at the same rate as the Rate Per Year Per Occupant pursuant to subsection (b) of this Paragraph, with the exception that all increases shall be rounded to the nearest dollar.
  - (e) **You agree that the Music Policy set forth herein is, and will continue to be, a true and accurate representation of your music use at the Licensed Premises, unless changed as provided in Changes to Your Music Policy section of this Agreement (Paragraph 2).**

## MUSIC POLICY / FEE CALCULATION

**Check off the corresponding Rate Per Year Per Occupant for the ways music is used in your establishment.  
Enter the amount(s) on the appropriate line(s) to the right.**

**PLEASE NOTE:** We have included a column for **Occasional Music Use** for establishments with total aggregate music use that **occurs four (4) times or less** in any one year. Please check the **OCCASIONAL USE** box if applicable.  
**FOR ALL OTHER USES OF MUSIC:** Please check off the **FULL USE** box. Enter the fee amount(s) on the appropriate line(s) to the right.

Music Type	Frequency Per Week	FULL USE Rate Per Year Per Occupant	Check if Full Use <input checked="" type="checkbox"/>	OCCASIONAL USE Rate Per Year Per Occupant	Check if Occasional Use <input checked="" type="checkbox"/>	Enter Fee Calculation
<b>1. Live Music*</b> (check ALL that apply)						
• Multiple Singers/Instrumentalist  (1 night = no more than 5 times in any one month)	5-7 nights	\$ 5.95	<input type="checkbox"/>			
	2-4 nights	\$ 4.95	<input type="checkbox"/>			
	1 night or less	\$ 4.50	<input type="checkbox"/>	\$ 1.49	<input type="checkbox"/>	
• Single Singer/Instrumentalist  (1 night = no more than 5 times in any one month)	5-7 nights	\$4.35	<input type="checkbox"/>			
	2-4 nights	\$3.60	<input type="checkbox"/>			
	1 night or less	\$3.30	<input type="checkbox"/>	\$ 1.09	<input type="checkbox"/>	
<b>Enter ONLY the highest amount checked above here.....➔</b>						

<b>2. Enhanced Recorded Music*</b> (check ALL that apply)						
<input type="checkbox"/> Karaoke	<input type="checkbox"/> DVDs	<input type="checkbox"/> Video Tapes	<input type="checkbox"/> VJs	5-7 nights	\$3.45	<input type="checkbox"/>
				2-4 nights	\$3.30	<input type="checkbox"/>
				1 night or less	\$3.20	<input type="checkbox"/>
<i>(1 night = no more than 5 times in any one month)</i>						
<b>Recorded Music*</b> (check ALL that apply)						
<input type="checkbox"/> iPod / MP3 / Other Digital Music	<input type="checkbox"/> Free-Play Jukebox				\$2.95	<input type="checkbox"/>
<input type="checkbox"/> CDs / Tapes / Records	<input type="checkbox"/> DJ				\$0.97	<input type="checkbox"/>
<b>Enter ONLY the highest amount checked above here.....➔</b>						

<b>3. Admission or Cover Charge*</b> (at any time)	\$1.85	<input type="checkbox"/>	\$0.61	<input type="checkbox"/>	
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<b>4. Dancing to Live or Recorded Music*</b> (at any time)	\$1.85	<input type="checkbox"/>	\$0.61	<input type="checkbox"/>	
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<b>5. Television and/or Radio*</b> (skip this Section if you have checked any box in Section 2)	\$1.30	<input type="checkbox"/>	\$0.43	<input type="checkbox"/>	
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<b>6. TOTAL RATE PER YEAR PER OCCUPANT (Sum of Boxes 1- 5)..... ➔</b>	\$
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<b>7. Occupancy*</b>	
• Total Premise Occupancy _____ (If greater than 1,000 occupants, enter 1,000)	
OR	
• If Occupancy cannot be established by local building/fire codes, use formula below: Total Square Footage of Entire Premises _____ ÷ 20 = _____ Occupancy	(Enter Occupancy)

<b>8. ANNUAL FEE - FULL USE</b> (Multiply Line 6 by Line 7)	OR	<b>ANNUAL FEE - OCCASIONAL USE ONLY</b> (Multiply Line 6 by Line 7)
If \$364.00 or Less, Enter Annual Minimum Fee of \$364.00..... ➔		If \$182.00 or Less, Enter Annual Minimum Fee of \$182.00..... ➔

<b>9. Jukebox Fee*</b>	
If your jukebox is licensable by the JLO (Jukebox License Office) but is not already licensed under a JLO license, check here. Jukebox Fee = \$364.00 <input type="checkbox"/>	
If the jukebox is already licensed under the JLO license, please enter Vendor name, address and phone no. below.	
Name/Company _____	JLO Cert # _____
Address _____	Phone _____
City _____ State _____	Zip _____

\*Refer to Paragraph 10 (c-m) on Page 2

<b>ANNUAL FEE ALL USES (Add Lines 8 and 9)</b> If More Than \$10,882, Enter Maximum Fee of \$10,882..... ➔
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<b>IF PAYING IN FULL, PLEASE TAKE 10% DISCOUNT..... ➔</b> (If You Wish To Pay By Credit Card, Call Your BMI Representative at 1-888-689-5264) ( )
--

<b>ANNUAL FEE (Less 10% Full Pay Discount, if applicable)..... ➔</b>
--



**12. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of the Agreement.

**13. COLORADO 72 HOUR REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of seventy-two (72) hours after the execution of the Agreement.

**14. CUSTOMER OUTREACH**

LICENSEE agrees to accept from time to time pre-recorded telephone messages from BMI that may contain important information regarding your account.

**15. TERM OF AGREEMENT**

The initial Term of this annual Agreement shall begin on the first day of (month/year) \_\_\_\_\_ and end on the last day of (month/year) \_\_\_\_\_, and this Agreement shall continue for additional periods of one (1) year each, unless canceled by either party at the end of any period, upon 30 days advance written notice sent by certified mail, return receipt requested. Each one (1) year period, including the initial Term, is a "Contract Year."

**AGREEMENT**

AGREEMENT, made at New York, N.Y. on (Date will be entered by BMI upon execution) \_\_\_\_\_ between BROADCAST MUSIC, INC. (herein "BMI"), a New York 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" or "you".

<b>LEGAL NAME</b>	<b>LICENSED PREMISES</b>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b>TRADE NAME</b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b>PLEASE CHECK APPROPRIATE BOX</b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address) (Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b>MAILING ADDRESS</b> <i>(if different from Licensed Premises)</i>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<i>(State of Incorporation, if different from Licensed Premises)</i> <i>(Enter names of partners)</i>	
<input type="checkbox"/> Other _____	<i>(Street Address)</i>
Federal Tax ID No. _____	<i>(City) (State) (Zip)</i>
<b>GOVERNMENT ENTITIES</b> <i>(if applicable, please check one)</i>	<i>(Telephone Number) (Fax Number)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<i>(Contact Name) (Title)</i>
<i>(State)</i>	<i>(Email Address – if different from above)</i>
<input type="checkbox"/> Local _____	
<i>(Municipality and State)</i>	

**Some state or national trade associations have discount agreements with BMI.  
Contact your association to see if you qualify for one association discount only.**

<b>TO BE COMPLETED BY LICENSEE</b>	<b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b>		
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. <b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b>			
Signature			
Print Name / Title			
Signatory Email Address <i>(if different from above)</i>	<b>FOR BMI USE ONLY</b>		<b>EDE1</b>
*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.	ACCOUNT NO.	COID	<b>LI-2016/MAY</b>
			<b>EFFECTIVE: October 2016</b>

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

\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.





# BMI Music License For Eating & Drinking Establishments

## With a BMI Music License You Get a Seal of Compliance & Access to More Than 12 Million Musical Works!

Terms and Conditions of Agreement  
(For Definitions, see Paragraph 10)

### 1. BMI GRANT

BMI grants you a non-exclusive license to publicly perform at the Licensed Premises all of the musical works of which BMI controls the rights to grant public performance licenses during the Term. This license does not include dramatic rights, the right to perform dramatico-musical works in whole or in substantial part or the right to use the musical works in any context which constitutes the exercise of "grand rights." This license also does not convey the right to publicly perform BMI musical works (a) by broadcast, telecast, cablecast or other electronic transmission (including by satellite, the Internet or on-line service) of the performances to persons outside the Licensed Premises; (b) by public performances requiring advance or hard ticket purchases pursuant to Paragraph 10(g); (c) by means of any coin-operated phonorecord player as defined in the Copyright Act ("Jukebox") where a Jukebox License Office agreement has been obtained for such Jukebox; (d) by any BMI-licensed background music service; and (e) by any coin-operated digital music service that does not qualify as a Jukebox. BMI may withdraw from the works licensed hereunder any musical work as to which any legal action has been instituted or claim made that BMI does not have the right to license public performances of that work.

### 2. CHANGES TO YOUR MUSIC POLICY

- (a) Except as provided for herein, you may change your Music Policy upon which fees are assessed under this Agreement prospectively at any time during the Term on 30 days' prior notice to BMI, provided that your current policy has been in effect for at least 30 consecutive calendar days. You may change your fee no more than three times in any Contract Year. You may call your Customer Relations Executive at 1-800-925-8451 to notify BMI of a change in your Music Policy, and the change will be reflected in your next billing by BMI; however, doing so will not preserve your right to dispute BMI billings unless you send BMI timely notice of your policy change in writing. Billings adjusted by BMI hereunder will include a pro rata credit for any unearned license fees paid in advance under the changed policy. You also agree that you will notify BMI of any changes in the music use at the Licensed Premises that would make your representation of Music Policy under Paragraph 11(e) no longer accurate, and that any changes you make to your Music Policy hereunder shall constitute a true and accurate representation of your music usage from the date of the change onward. Any changes in Music Policy or Occupancy are subject to verification by any and all reasonable means which may include, but shall not be limited to, independent contacts by BMI representatives with your business establishment, use of public records, advertisements and third party observations.
- (b) BMI may from time to time review your Music Policy (including any changes made to your policy) and make inquiries in person or by phone as to its accuracy. If BMI thereafter believes that you are not paying proper license fees because the use of music at the Licensed Premises should result in higher license fees under the criteria of this Agreement than is reflected in your current Music Policy, BMI will notify you by mail. If you agree to BMI's assessment of your Music Policy, the change will be reflected on your next billing. If you dispute BMI's assessment of your policy, you must notify BMI within 30 days of the notification by BMI. If within 90 days of such notification by BMI you do not respond or you and BMI cannot agree upon an appropriate fee, either party may commence an arbitration proceeding pursuant to Paragraph 7 to resolve the dispute over the amount of your license fees. Such right shall be in addition to any and all other remedies BMI may have under the Agreement, including the right to cancel this Agreement. You may not change your Music Policy under subparagraph (a) above if your fee is subject to dispute hereunder.
- (c) In the event that you temporarily discontinue the use of all music (see Definitions) and you send written notice of this to BMI by certified mail within 30 days of the discontinuance, BMI will adjust your fees pro rata from the date of discontinuance. If such notice is received more than 30 days after the discontinuance, such discontinuance will be effective commencing on the first of the month following the date of BMI's receipt of the notice and BMI will adjust your fees prospectively for the remainder of the Contract Year in which BMI received the notice. In either event, your credit adjustment hereunder shall not reduce your Annual Fee due BMI below the Annual Minimum Fee applicable under the Agreement. In the event of such discontinuance, this license Agreement shall continue in effect, except that no minimum or other fee shall be payable during the period of discontinuance. You agree to notify BMI promptly when you resume the use of music at the Licensed Premises and your Music Policy in effect at the time of discontinuance will continue to be applicable until you notify BMI of a change. BMI reserves its right under subparagraph (b) hereof to review your Music Policy and take appropriate steps in the event that BMI believes that you have resumed the use of music under this Agreement.

### 3. LATE PAYMENT AND SERVICE CHARGES

BMI shall impose a late payment charge of one and one-half percent (1½%) per month or the maximum rate permitted by law, whichever is less, from the date any payment is due on any payment that is received by BMI more than thirty (30) days after the due date. BMI shall impose a \$25.00 service charge for each unpaid check, draft or other means of payment you submit to BMI.

### 4. BMI COMMITMENT TO CUSTOMER/INDEMNITY

So long as you are not in default or arrears in payment under this Agreement, BMI agrees to indemnify, save harmless and defend you, your officers and employees, from and against any and all claims, demands or suits alleging copyright infringement that may be made or brought against them or any of them with respect to the public performance of any musical works which are licensed by BMI under this Agreement at the time of public performance. You agree to give BMI immediate notice of any such claim, demand or suit, to deliver to BMI any papers pertaining hereto, 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. SALE OF LICENSED PREMISES OR CLOSING OF BUSINESS

In the event that you sell the Licensed Premises or close the business during the Term of this Agreement and you send BMI written notice by certified mail or via the BMI.com licensing website within 30 days of the sale or closing, BMI will adjust your fees *pro rata* from the date of sale or closing, and will refund to you any unearned licensed fees paid hereunder. Your credit adjustment hereunder shall not reduce your Annual Fee due BMI below the Annual Minimum Fee applicable under the Agreement.

## 6. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI has the right to cancel this Agreement. The right to cancel is in addition to any and all other remedies which BMI may have.

## 7. ARBITRATION

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement, except for matters within the jurisdiction of the BMI Rate Court, shall be submitted to the American Arbitration Association in the City, County and State of New York, for arbitration under its then prevailing arbitration rules. The arbitrator(s) shall be selected as follows: Each of the parties 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 a 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 in 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

Unless otherwise stated herein, any notice 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 as stated, or any other address which either party may designate. Any such notice sent to BMI shall be to the attention of the Vice President, Licensing, BMI, 10 Music Square East, Nashville, Tennessee, 37203. Any such notice sent to you shall be to the attention of the person signing this Agreement on your behalf or such other person as you may advise BMI in writing.

## 9. MISCELLANEOUS

This Agreement is the entire understanding between the parties, will not be binding until signed by both parties, and cannot be waived or added to or modified orally, and no waiver, addition or modification will be valid unless in writing and signed by the parties. This Agreement is executed by the duly authorized representative of BMI and you. Your rights are not assignable. This Agreement, its validity, construction and effect, will be governed by the laws of the State of New York other than its choice of law provisions. The fact that any provisions are found by a court of competent jurisdiction to be void or unenforceable will not affect the validity or enforceability of any other provisions. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

## 10. DEFINITIONS

- (a) **Licensed Premises:** The eating or drinking establishment listed on Page 4 or on an attached exhibit.
- (b) **Music Policy:** Any single or combined use of the items defined in 10(c) - (j) and including Jukebox Fee (Box 9) by you at the Licensed Premises during a Contract Year.

### Refer to Boxes 1-7 in the Fee Calculation on Page 3.

- (c) **Live Music-Multiple Singers/Instrumentalists:** Music performed by more than one musician, singer or other entertainer actually present and performing at the Licensed Premises. (Box 1)
- (d) **Live Music-Single Singer/Instrumentalist:** Music performed by one musician, singer or other entertainer actually present and performing at the Licensed Premises. (Box 1)
- (e) **Recorded Music:** The performance of background music, foreground music, or as part of audio-visual presentations, by mechanical or electronic means, including, but not limited to, digital music players (e.g. iPods, MP3 players, etc.), CDs, DVDs, records, and tapes. (Box 2)
- (f) **Enhanced Recorded Music:** Use of video tapes, DVDs and other projected visual images as an accompaniment/enhancement to recorded music performances (Karaoke). Enhanced Recorded Music does not include performances delivered by commercial broadcast, cablecast or satellite delivered television programming. (Box 2)
- (g) **Admission Charge/Cover Charge:** Payment including, but not limited to, minimum required purchases to enter or remain in certain parts of the Licensed Premises, excluding advance or hard ticket purchases sold through

an outside independent ticket service and which are paid for pursuant to a valid separate BMI Music Performance Agreement. (Box 3)

- (h) **Dancing:** Allowing patrons, performers or employees to dance, at any time, to live or recorded music anywhere on the Licensed Premises, whether or not a dance floor, dance stage or an area purposely used for dancing is provided. (Box 4)
- (i) **Television and/or Radio Only (unless exempt from the U.S. Copyright Law):** Televisions and/or radios that are utilized solely for the reception of commercial broadcast, cablecast or satellite programming and only when no Recorded Music or Enhanced Recorded Music as defined in 10(e) and 10(f) is performed and paid for under this Agreement. (Box 5)
- (j) **Occupancy:** The total of maximum allowable occupancy loads/capacities for the entire premises of the Licensed Premises calculated under adopted building/fire codes, which shall not be limited to the number of available seats. If no such regulations are in effect in the applicable jurisdiction, then maximum occupancy shall mean one (1) person for every twenty (20) square feet of such total premises. Further, Occupancy is a component of the LICENSEE's Music Policy, which is subject to adjustment per the Agreement. (Box 7)
- (k) **Seasonal/Occasional Use:** The total aggregate use of music described herein at 10(c) - (j) in an establishment open less than twelve (12) months in any one year, or total aggregate music use as described herein, which occurs four (4) times or less in any one year will require that you contact BMI for their Seasonal/Occasional Use Fee Calculation license.
- (l) **Chain Operation:** Seven (7) or more licensable locations, that are commonly owned and operated by you, and that books, records and accounts for each are centrally maintained by you, will require that you contact BMI for its Chain Restaurant License.
- (m) **Jukebox:** A coin-operated phonorecord playing device which is licensable by the JLO (Jukebox License Office) pursuant to a Jukebox Licensing Agreement.

## 11. FEES

- (a) You agree to pay to BMI an Annual Fee as determined by your Music Policy.
  - (i) The Annual Fee payment for the initial Contract Year is due in full upon signing of this Agreement. The Annual Fee payment for subsequent Contract Years shall be due no later than 30 days after the anniversary date of this Agreement.
  - (ii) BMI shall discount the Annual Fee by 10% in any Contract Year if (A) you pay the Annual Fee in full and in a timely manner for such Contract Year in accordance with subparagraph (i) above; and (B) you do not otherwise owe BMI any fees under this or any prior BMI agreement.
  - (iii) Upon request, BMI will allow you to pay the Annual Fee on a semi-annual or quarterly basis, provided that your account is current. Semi-annual and quarterly payments are due no later than 30 days following each semi-annual or quarterly period. The discount provided for in subparagraph (ii) shall not be available if the Annual Fee is paid on a semi-annual or quarterly basis.
  - (iv) Notwithstanding subparagraph (iii), if any semi-annual or quarterly payment is not received by the 90<sup>th</sup> day after such payment is due, your ability to make semi-annual or quarterly payments shall immediately terminate for the remainder of this Agreement. In addition, the unpaid portion of the Annual Fee will be immediately due and payable.
- (b) Your fee is adjusted each year by an adjustment to the Rate Per Year Per Occupant as defined in the Fee Calculation chart. The Rate Per Year Per Occupant adjustment for each Contract Year after 2017 shall be an adjustment of the 2017 rate based upon the percentage increase or decrease in the United States Consumer Price Index (Urban, All Items) between October 2016 and October of the year prior to that Contract Year, rounded to the nearest five cents. BMI will advise you in writing of this adjustment as part of its annual billing process.
- (c) In no event shall the Annual Fee (per Box 8 of the Fee Calculation chart) due for any Contract Year be less than the Annual Minimum Fee (not including a Jukebox Fee, if any). The Annual Minimum Fee shall be \$364.00 for 2016 (not including a Jukebox Fee, if any). Thereafter, the Annual Minimum Fee shall be adjusted at the same rate as the Rate Per Year Per Occupant pursuant to subsection (b) of this Paragraph, with the exception that all increases shall be rounded to the nearest dollar.
- (d) The Jukebox Fee shall also be adjusted at the same rate as the Rate Per Year Per Occupant pursuant to subsection (b) of this Paragraph, with the exception that all increases shall be rounded to the nearest dollar.
- (e) **You agree that the Music Policy set forth herein is, and will continue to be, a true and accurate representation of your music use at the Licensed Premises, unless changed as provided in Changes to Your Music Policy section of this Agreement (Paragraph 2).**

**MUSIC POLICY / FEE CALCULATION**

**Check off the corresponding Rate Per Year Per Occupant for the ways music is used in your establishment.  
Enter the amount(s) on the appropriate line(s) to the right.**

Music Type	Frequency Per Week	Rate Per Year Per Occupant	☑	Enter Fee Calculation
<b>1. Live Music*</b> <span style="float:right;"><i>(Check only one rate box, if applicable)</i></span>				
• Multiple Singers/Instrumentalists	5-7 nights	\$5.95	<input type="checkbox"/>	
	2-4 nights	\$4.95	<input type="checkbox"/>	
<i>( 1 night = no more than 5 times in any one month)</i>	1 night or less	\$4.50	<input type="checkbox"/>	
• Single Singer/Instrumentalist	5-7 nights	\$4.35	<input type="checkbox"/>	
	2-4 nights	\$3.60	<input type="checkbox"/>	
<i>( 1 night = no more than 5 times in any one month)</i>	1 night or less	\$3.30	<input type="checkbox"/>	
<b>Enter ONLY the highest amount checked above here.....→</b>				\$
<b>2. Enhanced Recorded Music*</b>				
<input type="checkbox"/> Karaoke <input type="checkbox"/> DVDs <input type="checkbox"/> Video Tapes <input type="checkbox"/> VJs	5-7 nights	\$3.45	<input type="checkbox"/>	
	2-4 nights	\$3.30	<input type="checkbox"/>	
<i>( 1 night = no more than 5 times in any one month)</i>	1 night or less	\$3.20	<input type="checkbox"/>	
<b>Recorded Music*</b>				
<input type="checkbox"/> iPod / MP3 / Other Digital Music <input type="checkbox"/> Free-Play Jukebox		\$2.95	<input type="checkbox"/>	
<input type="checkbox"/> CDs / Tapes / Records <input type="checkbox"/> DJ				
<b>Enter ONLY the highest amount checked above here.....→</b>				\$
<b>3. Admission or Cover Charge* (at any time)</b>				
		\$1.85	<input type="checkbox"/>	\$
<b>4. Dancing To Live or Recorded Music* (at any time)</b>				
		\$1.85	<input type="checkbox"/>	\$
<b>5. Television and/or Radio* (skip this Section if you have checked any box in Section 2)</b>				
		\$1.30	<input type="checkbox"/>	\$
<b>6. TOTAL RATE PER YEAR PER OCCUPANT (Sum of Boxes 1-5).....→</b>				\$
<b>7. Occupancy*</b>				
• Total Premise Occupancy _____ <i>(If greater than 1,000 occupants, enter 1,000)</i>				(Enter Occupancy)
OR				
• If Occupancy <b>cannot be</b> established by local building/fire codes, use formula below:				
Total Square Footage of Entire Premises _____ ÷ 20 = _____ Occupancy				
<b>8. ANNUAL FEE (Multiply Line 6 by Line 7)</b>				
If \$364.00 or Less, Enter Annual Minimum Fee of \$364.00.....→				\$
<b>9. Jukebox Fee*</b>				
<i>If your jukebox is licensable by the JLO (Jukebox License Office) but is not already licensed under a JLO license, check here. If the jukebox is already licensed under the JLO license, please enter Vendor name, address and phone no. below.</i>				
	Jukebox Fee =	\$364.00	<input type="checkbox"/>	
Name/Company _____	JLO Cert. # _____			
Address _____	Phone _____			
City _____	State _____	Zip _____		
			\$	
<b>*Refer to Paragraph 10(c-m) on Page 2</b>				
<b>ANNUAL FEE ALL USES (Add Lines 8 and 9)</b>				
If More Than \$10,882, Enter Maximum Fee of \$10,882.....→				\$
<b>IF PAYING IN FULL, PLEASE TAKE 10% DISCOUNT.....→</b>				
<i>(If You Wish To Pay By Credit Card, Call Your BMI Representative at 1-888-689-5264)</i>				\$(                    )
<b>ANNUAL FEE (Less 10% Full Pay Discount, if applicable).....→</b>				\$

**12. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of the Agreement.

**13. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

**14. CUSTOMER OUTREACH**

LICENSEE agrees to accept from time to time pre-recorded telephone messages from BMI that may contain important information regarding your account.

**15. TERM OF AGREEMENT**

The initial Term of this annual Agreement shall begin on the first day of (month/year) \_\_\_\_\_ and end on the last day of (month/year) \_\_\_\_\_, and this Agreement shall continue for additional periods of one (1) year each, unless canceled by either party at the end of any period, upon 30 days advance written notice sent by certified mail, return receipt requested. Each one (1) year period, including the initial Term, is a "Contract Year."

**AGREEMENT**

AGREEMENT, made at New York, N.Y. on (Date will be entered by BMI upon execution) \_\_\_\_\_ between BROADCAST MUSIC, INC. (herein "BMI"), a New York 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" or "you".

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b><u>TRADE NAME</u></b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address) (Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<i>(State of Incorporation, if different from Licensed Premises)</i> <i>(Enter names of partners)</i>	
<input type="checkbox"/> Other _____	<i>(Street Address)</i>
Federal Tax ID No. _____	<i>(City) (State) (Zip)</i>
<b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i>	<i>(Telephone Number) (Fax Number)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<i>(Contact Name) (Title)</i>
<i>(State)</i>	<i>(Email Address – if different from above)</i>
<input type="checkbox"/> Local _____	
<i>(Municipality and State)</i>	

**Some state or national trade associations have discount agreements with BMI.  
Contact your association to see if you qualify for one association discount only.**

<p><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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. <b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b></p>
Signature	
Print Name / Title	
Signatory Email Address <i>(if different from above)</i>	<b>FOR BMI USE ONLY</b>
<b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b>	EDE1
	LI-2017/JULY
	EFFECTIVE: October 2016
	ACCOUNT NO.      COID

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

\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.





# Venue

## Musical Attractions Rider

For Eating and Drinking Establishments with  
Advance or Hard Ticket Purchases of \$25 or Greater

### 1. DEFINITIONS

- (a) **“LICENSEE”** shall mean the entity more fully described on Page 4 of the Music License for Eating and Drinking Establishments with the legal name and trade name as listed therein and as entered on Page 4 of this Rider.
- (b) **“Attractions”** shall mean concerts, variety shows (excluding circuses), pageants and other similar spectator events (including events sponsored by charitable organizations or for charitable purposes) that include music, whether or not music is the principal type of entertainment.
- (c) **“Occupancy”** shall mean the total of maximum allowable occupancy loads/capacities for the entire premises of the Licensed Premises calculated under adopted building/fire codes, which shall not be limited to the number of available seats. If no such regulations are in effect in the applicable jurisdiction, then maximum occupancy shall mean one (1) person for every twenty (20) square feet of such total premises.
- (d) **“Gross Ticket Revenues”** shall mean the total monies received, directly or indirectly, by LICENSEE or their authorized representatives from all ticket sales per Attraction. The term “Gross Ticket Revenues” shall not include: 1) federal, state and/or local taxes; 2) building/facility charge per ticket sold; 3) ticketing agent/service charge placed on each ticket sold; or 4) facility parking fees. Should the artist/performing act(s) choose to donate a portion of their fees from each ticket sale to a particular charity, then the appropriate deduction may be taken from the “Gross Ticket Revenues”; provided however, that BMI be given copies of said artist/performing act(s) agreement(s) stipulating the exact amount of the charitable donation per ticket sold.
- (e) **“Benefit Event”** shall mean a public entertainment performance or social event held to raise funds for a specific person or cause in which all proceeds less direct expenses are donated to charity.

### 2. BMI GRANT

Subject to the terms and conditions set forth herein, in addition to the Grant outlined in LICENSEE’s Music Performance Agreement for Eating and Drinking Establishments (“EDE license”), BMI grants LICENSEE the right to publicly perform BMI musical works at Attractions held at such licensed Eating and Drinking establishment which require advance or hard ticket purchases sold through an outside independent ticket service with an Occupancy of 2500 seats or less.

### 3. REVIEW OF STATEMENTS/ACCOUNTINGS

- (a) BMI shall have the right to verify such data or information that is required to be furnished by LICENSEE pursuant to Paragraph 5(a) and (b), by reference to a reliable, published, third-party industry source (e.g., Pollstar) and by BMI’s authorized representatives, at any time during customary business hours. BMI shall also have the right upon thirty (30) days advance written notice, to examine those portions of LICENSEE’s books and records of account to such extent as may be necessary to verify any and all statements and/or accountings made hereunder. BMI shall consider all data and information coming to its attention as the result of any such examination of LICENSEE’s books and records confidential.
- (b) In the event that BMI discovers an inaccuracy in any information reported by LICENSEE pursuant to Paragraph 5(b), either through an examination of LICENSEE’s books and records, or otherwise, and as a result it is revealed that LICENSEE underpaid license fees to BMI, and the correct license fee is not paid to BMI within thirty (30) days of BMI’s notice to LICENSEE of the inaccuracy or underpayment, then LICENSEE shall pay a late payment charge on the additional license fees due as a result of the examination(s) of one and one-half percent (1 ½%) per month, or the maximum rate permitted by law, whichever is less, from the date(s) the license fees should have been paid pursuant to this Agreement.

### 4. FEES

- (a) LICENSEE agrees to pay BMI a license fee for each Attraction for which the admission, advance ticket purchases, or hard ticket purchases are \$25.00 or greater, except where another person, entity or venue is responsible for paying the BMI license fee for that performance. Such fee shall be computed on the basis set forth in Schedule A of this Agreement.

- (b) License fees for Attractions with paid admission shall be calculated pursuant to Schedule A of the License Fee Schedule. License fees for Benefit Events for which the admission, advance ticket purchases, or hard ticket purchases are \$25.00 or greater shall be calculated pursuant to Schedule B of the License Fee Schedule. License fees outlined in Schedule B for subsequent Contract Years will be adjusted by the Consumer Price Index, as described in subparagraph 4(c) hereunder.
- (c) In no event shall an Attraction's annual license fee for any Contract Year be less than the Minimum Annual Fee for the applicable year. The Minimum Annual Fee for the 2017 Contract Year is \$236. The Minimum Annual Fee for subsequent Contract Year shall be an adjustment of the previous Contract Year rates based upon any percentage increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding July and the next preceding July, and shall be rounded to the nearest dollar.
- (d) When an Attraction is believed to be comprised entirely of musical compositions for which BMI shall not have the right to grant public performance licenses, LICENSEE may, at its option, submit a schedule, including writer and publisher information, for all those musical compositions performed at said Attraction, *including opening acts and recorded music, if any*, and in those instances in the opinion of BMI, where all of the musical compositions performed at said Attraction are ones to which BMI does not have the right to grant public performance licenses, no fee shall be due and payable to BMI under this Rider. In the event no schedule is submitted to BMI, LICENSEE must pay the applicable fee for said Attraction pursuant to Schedule A of this Rider.

**LICENSE FEE SCHEDULE**

<b>SCHEDULE A EVENTS WITH PAID ADMISSION</b>	
<u>Seating Capacity</u>	<u>% of Gross Ticket Revenue</u>
0 to 2,500	0.80%
<b>SCHEDULE B BENEFIT EVENTS</b>	
<u>Seating Capacity</u>	<u>Fee Per Benefit Event</u>
0 to 250	\$16.00
251 to 750	\$19.00
751 to 1,500	\$31.00
1,501 to 2,500	\$51.00

**Minimum Annual Fee is \$236**

- (e) Notwithstanding anything to the contrary in the Agreement, the fees payable pursuant to this Rider shall not be subject to any discount set forth in the Agreement.

**5. REPORTING OF ATTRACTIONS / PAYMENT**

- (a) Upon signing this Agreement, LICENSEE shall pay at least the Minimum Annual Fee, plus any additional amounts immediately due as initially reported. LICENSEE shall submit reports and payments for those Attractions which actually were presented during each period on a quarterly basis and shall pay all fees due. For all quarterly periods, reports and payments shall be due on the twentieth (20<sup>th</sup>) day of January, April, July and October of each year of this Agreement for all Attractions presented by LICENSEE during the prior calendar quarter. Should LICENSEE fail to report and submit payments to BMI within thirty (30) days after the specified date, then BMI will apply estimated billings to the account based on either LICENSEE's prior year's corresponding quarter figures or reports from a reliable, published, third-party industry source (e.g., Pollstar), whichever is higher. BMI shall give written notice to LICENSEE of the estimated fee calculated. LICENSEE shall have thirty (30) days after such written notice by BMI to submit the report. If BMI does not receive the report from LICENSEE within those thirty (30) days, BMI and LICENSEE agree that BMI's Estimated License Fee shall then be established as the Actual License Fee for the period unreported by LICENSEE. BMI and LICENSEE further agree that such established Actual License Fee (subject to adjustment by audit) shall also become the Estimated License Fee for the following contract period. LICENSEE agrees to waive its right to file its report for any period in which BMI's Estimated License Fee becomes the Actual License Fee. Any differences between the estimated and the actual reported fee shall be payable by LICENSEE when the report is submitted. If BMI's Estimated License Fee is greater than the actual reported fee, then LICENSEE's account shall be credited with the difference, provided however that LICENSEE's Annual License Fee shall not fall below the Minimum Annual Fee.

- (b) Upon payment of license fees to BMI, LICENSEE shall furnish to BMI, a statement, on forms available from BMI, signed by an officer or auditor of LICENSEE, setting forth all performances of **all** Attractions occurring during the applicable calendar quarter in LICENSEE's Facility. Such statement shall include the name of each Attraction, the Seating Capacity for each Attraction, the dates of each Attraction, the number of performances each day and the Gross Ticket Revenues (as defined in Paragraph 1(d)) for a regularly scheduled performance of each Attraction. LICENSEE's statement shall also include performances of Attractions where another person, entity or venue is responsible for paying the license fee. A statement shall be furnished to BMI by LICENSEE for each calendar quarter during the Term of the Agreement, regardless of whether or not any performances occurred during that calendar quarter.
- (c) In the event that LICENSEE engages in the presentation of an Attraction in conjunction with, or sells or otherwise transfers the promotional responsibility of an Attraction to other persons or entities licensed separately by BMI under another BMI Music Performance Agreement, LICENSEE shall indicate on the statement required by Paragraph 5(b) the names of all other persons, entities or venues promoting or co-promoting, or otherwise responsible for, each Attraction and shall identify which party is responsible for payment of the BMI license fee for such Attraction. Transferring liability for promoted Attractions to anyone **but** a licensed promoter or co-promoter of the Attractions is not permitted. If the responsible promoter, co-promoter or person, entity, or venue is not licensed by BMI under a BMI Music Performance Agreement, LICENSEE shall be deemed liable for payment of the fees due for such Attraction. In the event BMI receives a fee for an Attraction from both LICENSEE and one or more of its co-promoters or other promoter, or person, entity or venue, the total of which exceeds the amount due, BMI shall refund or credit the excess proportionally among all promoters, co-promoters, persons, entities, or venues who made payment.
- (d) LICENSEE shall deliver to BMI for each calendar quarter, by the twentieth (20<sup>th</sup>) day following the end of the calendar quarter, copies of any programs or lists of the musical works presented by LICENSEE in its Attractions during such quarter. Programs prepared for audiences or for 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.

## 6. MISCELLANEOUS

This Agreement constitutes the entire understanding between the parties, will not be binding until signed by both parties, and 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. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

## 7. TERM OF AGREEMENT

The initial Term of this Agreement shall begin on the first day of (*month/year*) \_\_\_\_\_ and end on the last day of December \_\_\_\_\_ and shall continue thereafter for additional Terms of one (1) year each unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (sometimes referred to herein as a "Contract Year") upon thirty (30) days advance written notice to the other party.



## AGREEMENT

Attached and forming a part of BMI's Music Performance Agreement for Eating and Drinking Establishments by and between \_\_\_\_\_ (LICENSEE) and Broadcast Music, Inc. (BMI) on \_\_\_\_\_ (the "Agreement").

This Rider ("Rider") is made to the BMI Music Performance Agreement for Eating and Drinking Establishments. BMI and LICENSEE hereby agree that the provisions set forth in this Rider will be deemed to be a part of the Agreement, the terms of which, to the extent not inconsistent with the terms herein, are incorporated herein by reference and shall supplement the Agreement. All defined terms used in this Rider, unless specifically defined in this Rider, shall have the same meaning as such terms have in the Agreement. Except as amended herein, the Agreement is ratified and affirmed in all respects.

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b><u>TRADE NAME</u></b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address) (Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<i>(State of Incorporation, if different from Licensed Premises)</i> _____ <i>(Enter names of partners)</i>	
<input type="checkbox"/> Other _____	<i>(Street Address)</i>
Federal Tax ID No. _____	<i>(City) (State) (Zip)</i>
<b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i>	<i>(Telephone Number) (Fax Number)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<i>(Contact Name) (Title)</i>
<i>(State)</i>	<i>(Email Address – if different from above)</i>
<input type="checkbox"/> Local _____	
<i>(Municipality/City and State)</i>	

<p style="text-align: center;"><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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.</p> <p style="text-align: center;"><b><i>(SIGN HERE – PLEASE INCLUDE PAYMENT)</i></b></p>	<p style="text-align: center;"><b>FOR ADMINISTRATIVE USE ONLY</b></p> <p style="text-align: center;"><b>TO BE COMPLETED BY BMI</b></p> <p style="text-align: center;"><b>BROADCAST MUSIC INC.</b></p>
Signature	
Print Name / Title	
Signatory Email Address* <i>(if different from above)</i>	
*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**

<b>FOR BMI USE ONLY</b>	<b>VEDE1</b>	<b>LI-2016/AUG</b>
<b>ACCOUNT NO.</b>	<b>COID</b>	<b>EFFECTIVE: January 2017</b>

\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.





# Music License for Endurance/Racing Events

## 1. DEFINITIONS

- (a) **LICENSEE** shall mean the entity identified on Page 4 herein that presents an Event(s).
- (b) **Endurance/Racing Event** ("Event") shall mean a physical event such as a running, biking, swimming, and/or walking race, and other similar events where entry fees are charged and the participation in the event is open to the general public that includes music, whether or not music is the principal type of entertainment which occurs within the United States of America, its territories and possessions. It shall include, but not be limited to: 5K and 10K events, half and full marathons and ultramarathons, cross country and long distance races, track and relay style events, trail running, obstacle courses, fun runs, color runs, cycling, duathlons, triathlons, ultra-triathlons, and Ironman events (including charitable event(s) sponsored by charitable organizations or for charitable purposes). Event(s) **shall not** include professional or collegiate track and field type events open to participants only through qualification or invitation, vehicle racing (automobile, stock car, hot rod, truck, tractor or any other conveyance), horse racing (thoroughbred, harness and quarter horse, or any other type of horse racing), or dog racing of any kind.
- (c) **Benefit Event** shall mean an Endurance/Racing Event that includes a public entertainment performance or social gathering where the Event is held to raise funds for a specific charitable cause in which all proceeds less direct expenses are donated to charity.
- (d) **Free Event** shall mean any non Benefit Event where no entry fees are charged to participants, resulting in no gross revenues.
- (e) **Gross Revenues** shall mean the total monies received, directly or indirectly, by LICENSEE or its authorized representatives from all entry fees per Event. The term "Gross Revenues" shall not include: 1) federal, state and/or local taxes; 2) building/facility charge per entry fee sold; 3) ticketing agent/service charge placed on each entry fee sold; or 4) facility parking fees.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE a non-exclusive license to perform, present or cause the live and/or recorded performance of all musical works to which BMI shall have the right to grant public performance licenses during the term hereof during Endurance/Racing Events, including Benefit Events. This license does not include: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein; or (ii) the right to broadcast, telecast or otherwise transmit, including via the Internet or on-line service, the performances licensed hereunder to persons outside of any premises in which or any area at which an Event(s) occurs; (iii) or performances of music in or as part of a concert, musical attraction or other musical activity or event for which a separate ticket price, admission fee, or similar charge is paid by the audience to attend.
- (b) BMI may withdraw from the license your right to perform any musical work as to which a legal action has been brought or a claim made that BMI does not have the right to license the work or that the work infringes another work.

## 3. FEES

LICENSEE agrees to pay BMI as follows:

- (a) For each Contract Year of this Agreement: a percentage of revenue fee for all Endurance/Racing Events held by LICENSEE based on total participation for any/all Event(s) that LICENSEE promoted for the twelve (12) month period. For the first Contract Year LICENSEE shall pay an estimated amount due at the beginning of the year and submit final reports and payments at year end. For subsequent years, the estimated fee shall be based on the final fee for the immediately preceding Contract Year. Such estimated and final license fees shall be computed on the basis set forth in the License Fee Schedule of this Agreement. These figures shall be adjusted at the end of each Contract Year based on a report of actual total participation for such Contract Year.
- (b) License fees for Endurance/Racing Event(s) **with** paid entry fees for admission/participation shall be calculated pursuant to Schedule A of the License Fee Schedule based on combined total annual participants for all Events. License fees for Free or Benefit Events shall be calculated pursuant to Schedule B of the License Fee Schedule for each such Free or Benefit Event.
- (c) License fees outlined in Schedule B and the Minimum Annual Fee for subsequent Contract Years will be adjusted by the Consumer Price Index, as described in subparagraph 3(d) hereunder.
- (d) In no event shall an Event(s) annual license fee for any Contract Year be less than the Minimum Annual Fee for the applicable year. The Minimum Annual Fee for the 2017 Contract Year, which includes agreements commencing between October 2017 and September 2018 is \$245. The Minimum Annual Fee and the Fee Per Benefit Event in Schedule B for subsequent Contract Years shall be an adjustment of the previous Contract Year rates based upon any percentage increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding April and the next preceding April and shall be rounded to the nearest dollar.

## LICENSE FEE SCHEDULE

<b>SCHEDULE A</b>	
<b>EVENTS WITH PAID ENTRY FEES FOR ADMISSION</b>	
<b>Annual Participation</b>	<b>% of Gross Revenue</b>
0 to 9,999	0.30%
10,000 and more	0.23%

<b>SCHEDULE B</b>	
<b>FREE OR BENEFIT EVENTS</b>	
<b>Number of Participants in Event</b>	<b>Fee Per Benefit Event*</b>
0 to 250	\$19.00
251 to 750	\$22.00
751 to 1,500	\$35.00
1,501 to 2,500	\$58.00
2,501 to 5,000	\$86.00
5,001 to 7,500	\$113.00
7,501 to 9,999	\$158.00
10,000 to 15,000	\$240.00
15,001 to 20,000	\$328.00
20,001 to 25,000	\$396.00
25,001 to 40,000	\$435.00
40,001 and Over	\$604.00

***The Minimum Annual Fee for the 2017 Contract Year is \$245***

#### 4. REPORTING OF EVENT(S)/PAYMENT

Upon signing this Agreement, LICENSEE shall pay at least the Minimum Annual Fee, plus any additional amounts immediately due as initially reported. LICENSEE shall submit reports and payments for those Event(s) which actually were presented during each period on an annual basis and shall pay all fees due.

- (a) LICENSEE shall, in the first month of each contract year, furnish BMI (on forms provided by BMI) with a report setting forth:
  - (i) each Event(s) held during the preceding Contract Year;
  - (ii) the total number of participants and total amount of Gross Revenue at each Event; and
  - (iii) the total number of participants and total amount of Gross Revenue for all Events held during the previous contract year
- (b) For each Contract Year of the Agreement, reports and payments shall be due on the twentieth (20<sup>th</sup>) day following the end of each Contract Year for all Event(s) presented by LICENSEE during that Contract Year. Should LICENSEE fail to report to BMI within sixty (60) days after the Contract Year, then BMI's estimated billings to the account based on LICENSEE's prior year's corresponding annual figures shall apply. BMI and LICENSEE agree that BMI's Estimated License Fee shall then be established as the Actual License Fee for the period unreported by LICENSEE. BMI and LICENSEE further agree that such established Actual License Fee (subject to adjustment by audit) shall also become the Estimated License Fee for the following Contract Year. LICENSEE agrees to waive its right to file its report for any period in which BMI's Estimated License Fee becomes the Actual License Fee. Any differences between the estimated and the actual reported fee shall be payable by LICENSEE when the report is submitted. If BMI's Estimated License Fee is greater than the actual reported fee, then LICENSEE's account shall be credited with the difference, provided however that LICENSEE's Annual License Fee shall not fall below the Minimum Annual Fee.

Upon cancellation of this Agreement, LICENSEE shall provide, within thirty (30) days of cancellation of this Agreement, a report setting forth the requirements of (i) to (iii) of Paragraph 4(a) for that cancellation year.

#### 5. STATE OR LOCAL TAX

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with license fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

#### 6. LATE PAYMENT CHARGE

BMI may impose a late payment charge of one and one half percent (1½%) per month from the date any payment or report was due on any payment that is received by BMI more than thirty (30) days after the due date.

#### 7. 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.

## **8. CUSTOMER OUTREACH**

LICENSEE agrees to accept from time to time pre-recorded telephone messages from BMI that may contain information regarding LICENSEE's account.

## **9. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

## **10. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

## **11. 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 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.

## **12. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

## **13. TERMINATION OF AGREEMENT**

If LICENSEE shall permanently cease to present Event(s), this Agreement and LICENSEE's obligation to BMI shall thereupon terminate, provided that LICENSEE shall, within ten (10) days thereafter, give written notice of such termination to BMI, setting forth the effective date thereof and that LICENSEE shall submit all reports and pay to BMI all fees due hereunder until said effective date.

## **14. WITHDRAWAL OF WORKS**

BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

## **15. INDEMNITY BY BMI**

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 musical works licensed under this Agreement. Such indemnity shall be limited to musical works which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

## **16. BREACH OR DEFAULT/WAIVER**

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues for thirty (30) days after the date of BMI's written notice to LICENSEE thereof. 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 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.

## **17. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to the American Arbitration Association in the City, County and State of New York for arbitration under its then prevailing arbitration rules. The arbitrator(s) to be selected as follows: Each of the parties 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 in 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.

## **18. NOTICES**

Unless otherwise stated herein, all notices, if any, under this Agreement shall 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 herein 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 designate to BMI in writing.

**19. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, shall not be binding until signed by both parties, and 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. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**20. TERM**

The initial Term of this annual Agreement shall begin on the first day of (*month/year*) \_\_\_\_\_ and end on the last day of (*month/year*) \_\_\_\_\_ and shall continue thereafter unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "Contract Year") upon thirty (30) days advance notice to the other party.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<small>(Name of Corporation, Partnership, or Individual Owner)</small>	<small>(Street Address)</small>
<b><u>TRADE NAME</u></b>	<small>(City) (State) (Zip)</small>
<small>(Doing business under the name of)</small>	<small>(Telephone Number) (Fax Number)</small>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<small>(Contact Name) (Title)</small>
<input type="checkbox"/> Individual Ownership	<small>(Email Address) (Web Address)</small>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<small>(State of Incorporation, if different from Licensed Premises)</small> <small>(Enter names of partners)</small>	
<input type="checkbox"/> Other _____	<small>(Street Address)</small>
Federal Tax ID No. _____	<small>(City) (State) (Zip)</small>
<b><u>GOVERNMENT ENTITIES</u></b> <small>(if applicable, please check one)</small>	<small>(Telephone Number) (Fax Number)</small>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<small>(Contact Name) (Title)</small>
<input type="checkbox"/> Local _____	<small>(Email Address- if different from above)</small>
<small>(Municipality/City and State)</small>	

<p><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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.</p> <p><b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b></p> <p><b>TO BE COMPLETED BY BMI</b></p> <p><b>BROADCAST MUSIC INC.</b></p>
Signature	
Print Name / Title	
Signatory Email Address* <small>(if different from above)</small>	
*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**

<b>FOR BMI USE ONLY</b>	<b>ENRAC1</b>	<b>LI-2017/JULY</b>
ACCOUNT NO.	COID	<b>EFFECTIVE: October 2017</b>

## 1. DEFINITIONS

- (a) **Facility** shall include, but not be limited to, a concert hall, stadium, auditorium, civic center, coliseum, theatre, amphitheater, museum, library, stage, restaurants/nightclubs or similar venues whether enclosed or not, where an Attraction may be presented, located within the United States of America, its territories and possessions.
- (b) **Attractions** shall mean concerts, variety shows (excluding circuses), pageants and other similar spectator events (including events sponsored by charitable organizations or for charitable purposes) that include music, whether or not music is the principal type of entertainment.
- (c) **Seating Capacity** shall mean the total number of seats permanently affixed in the Facility where the Attraction is presented plus any temporary seats added within the Facility for a particular Attraction. If the total number of seats available for the Attraction shall be less than that of the permanent Seating Capacity of the Facility, "Seating Capacity" shall mean the total number of seats available for the particular Attraction. If a Facility does not have permanent seating, "Seating Capacity" shall mean the total number of persons attending a particular Attraction. If a Facility has lawn seating, then "Seating Capacity" shall mean the total number of seats permanently affixed in the Facility, in addition to total lawn Seating Capacity as determined by the local Fire Marshall.
- (d) **Gross Ticket Revenues** shall mean the total monies received, directly or indirectly, by LICENSEE or their authorized representatives from all ticket sales per Attraction. The term "Gross Ticket Revenues" shall not include: 1) federal, state and/or local taxes; 2) building/facility charge per ticket sold; 3) ticketing agent/service charge placed on each ticket sold; or 4) facility parking fees. Should the artist/performing act(s) choose to donate a portion of their fees from each ticket sale to a particular charity, then the appropriate deduction may be taken from the "Gross Ticket Revenues"; provided however, that BMI be given copies of said artist/performing act(s) agreement(s) stipulating such with the exact amount of the charitable donation per ticket sold.
- (e) **Benefit Concert** shall mean a public entertainment performance or social event held to raise funds for a specific person or cause in which all proceeds less direct expenses are donated to charity.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE, for the Term of this Agreement, a non-exclusive license solely to perform, present or cause the performance of, as part of Attractions in Facilities, **including recorded music** performed in conjunction with Attractions before, after or during the intermissions thereof, all the musical works as to which BMI shall have the right to grant public performance licenses during the Term hereof. Such license shall be restricted to performance of music in the manner described herein, and is granted in consideration of payment of the license fees as set forth herein and is subject to all of the terms and conditions hereof. This license does not include: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any context which may constitute an exercise of the "grand rights" therein; or (ii) the right to simultaneously broadcast, telecast, cablecast, or otherwise transmit (including by the Internet or on-line service) the performances licensed hereunder to persons outside of the Facility in which they originate; (iii) performances of music by means of a coin-operated phonorecord player (jukebox).
- (b) BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

## 3. REVIEW OF STATEMENTS/ACCOUNTINGS

- (a) BMI shall have the right to verify such data or information that is required to be furnished by LICENSEE pursuant to Paragraph 11(a) and (b), by reference to a reliable, published, third-party industry source (such as Pollstar) and by BMI's authorized representatives, at any time during customary business hours, and upon thirty (30) days advance written notice, examining those portions of LICENSEE's books and records of account to such extent as may be necessary to verify any and all statements and/or accountings made hereunder. BMI shall consider all data and information coming to its attention as the result of any such examination of LICENSEE's books and records confidential.
- (b) In the event BMI discovers an inaccuracy in any information reported by LICENSEE pursuant to Paragraph 11(b), either through an examination of LICENSEE, or otherwise, and as a result it is revealed that LICENSEE underpaid license fees to BMI, and the correct license fee is not paid to BMI within thirty (30) days of BMI's notice to LICENSEE of the inaccuracy or underpayment, then LICENSEE shall pay a late payment charge on the additional license fees due as a result of the examination(s) of one and one-half percent (1 ½%) per month, or the maximum rate permitted by law, whichever is less, from the date(s) the license fees should have been paid pursuant to this Agreement.

## 4. LATE PAYMENT CHARGE

BMI may impose a late payment charge of one and one-half percent (1 ½%) per month from the date any payment is due hereunder on any payment that is received by BMI more than one month after the due date.

## **5. INDEMNITY BY BMI**

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. This 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 particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

## **6. TERMINATIONS OF AGREEMENT BY LICENSEE**

If LICENSEE permanently ceases to present Attractions, this Agreement and LICENSEE's obligation to BMI shall thereupon terminate, provided, that LICENSEE shall, within ten (10) days thereafter, give written notice of such termination to BMI, setting forth the effective date thereof and that LICENSEE shall submit all reports and pay to BMI all fees due hereunder until said effective date.

## **7. BREACH OR DEFAULT/WAIVER**

Upon any breach or default of the terms and conditions of this Agreement, BMI has the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues thirty (30) days after the date of BMI's written notice to LICENSEE. 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 will be 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.

## **8. OFFER OF COMPARABLE AGREEMENT**

In the event that BMI, at any time during the Term hereof, 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.

## **9. ARBITRATION**

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

## **10. FEES**

- (a) LICENSEE agrees to pay BMI a fee for each performance of an Attraction that the LICENSEE promotes, except where another person, entity or venue is responsible for paying the license fee for that performance, computed on the basis set forth in Schedule A (or in the case of a Benefit Concert or no charge Attraction, Schedule B) of this Agreement.
- (b) The minimum annual fee billed and payable shall be \$150.00 per year.
- (c) When an Attraction is believed to be comprised entirely of musical compositions for which BMI shall not have the right to grant public performance licenses, LICENSEE may, at its option, submit a schedule, including writer and publisher information, for all those musical compositions performed at said Attraction, *including opening acts and recorded music, if any*, and in those instances in the opinion of BMI, where all of the musical compositions performed at said Attraction are ones to which BMI does not have the right to grant public performance licenses, no fee shall be due and payable to BMI. In the event no schedule is submitted to BMI, LICENSEE must pay the applicable fee for said Attraction pursuant to Schedule A (or in the case of a Benefit Concert or no charge Attraction, Schedule B) of this Agreement.

## **11. REPORTING OF ATTRACTIONS/PAYMENT**

- (a) LICENSEE shall submit reports and payments quarterly. LICENSEE shall submit the reports setting forth the Attractions which actually were presented during each period. For all quarterly periods, reports and payments shall be due on the twentieth (20<sup>th</sup>) day of January, April, July and October of each year of this Agreement for all Attractions presented by LICENSEE during the prior calendar quarter. Should LICENSEE fail to report and submit payments to BMI within thirty (30) days after the specified date, then BMI will apply estimated billings to the account based on the prior quarter's figures for such LICENSEE. Any differences between the estimated and the actual reported fee shall be payable by LICENSEE when the report is submitted. If BMI's estimated fee is greater than the actual reported fee, then LICENSEE's account shall be credited with the difference.
- (b) As required in this Paragraph, LICENSEE shall furnish to BMI, when it makes payment of license fees pursuant to this Agreement, a statement, on forms available from BMI, signed by an officer or auditor of LICENSEE, setting forth all performances of *all* Attractions occurring during the applicable calendar quarter reporting period in LICENSEE's Facility. Such statement shall include the name of each Attraction, the Seating Capacity for each Attraction, the dates of each Attraction, the number of performances each day and the Gross Ticket Revenues (as defined in Paragraph 1(d)) for a regularly scheduled performance of each Attraction. LICENSEE's statement shall also include performances of Attractions where another person, entity or venue is responsible for paying the license fee. A statement shall be furnished to BMI by LICENSEE for each reporting period during the Term of the Agreement, regardless of whether or not any performances occurred during that period.

- (c) In the event that LICENSEE engages in the presentation of an Attraction in conjunction with, or sells or otherwise transfers the promotional responsibility of an Attraction to, other persons or entities licensed separately by BMI under its Musical Attractions or Facility Music Performance Agreements, LICENSEE shall indicate on the statement required by Sub-paragraph 5(b) hereof the names of all other persons, entities or venues promoting or co-promoting, or otherwise responsible for, each Attraction and who is responsible for payment of the BMI license fee for such Attraction. Transferring liability for promoted Attractions to anyone **but** a licensed promoter or co-promoter of the Musical Attractions is not permitted. If the responsible promoter, co-promoter or person, entity, or venue is not licensed by BMI under its Musical Attractions or Facility Music Performance Agreements, LICENSEE shall be deemed liable for payment of the fees due for such Attraction. In the event BMI receives a fee for an Attraction from both LICENSEE and one or more of its co-promoters or other promoter, or person, entity or venue, the total of which exceeds the amount due, BMI shall refund or credit the excess proportionally among all promoters, co-promoters, persons, entities, or venues who made payment.
- (d) LICENSEE shall deliver to BMI for each calendar quarter, by the twentieth (20<sup>th</sup>) day following the end of the calendar quarter, copies of any programs or lists of the musical works presented by LICENSEE in its Musical Attractions 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.

<b>SCHEDULE A. LICENSEE FEE SCHEDULE</b>	
<b>SEATING CAPACITY</b>	<b>FEE BASIS PERCENTAGE APPLIED TO GROSS TICKET REVENUES PER ATTRACTION</b>
10,000 AND MORE SEATS	0.15%

<b>SCHEDULE B. LICENSEE FEE SCHEDULE</b>			
<b>SEATING CAPACITY</b>			<b>FEE PER BENEFIT CONCERT OR ATTRACTIONS WITH NO CHARGES</b>
0	to	250	\$15.00
251	to	750	\$18.00
751	to	1,500	\$28.00
1,501	to	2,500	\$45.00
2,501	to	5,000	\$67.00
5,001	to	7,500	\$90.00
7,501	to	10,000	\$125.00
10,001	to	15,000	\$190.00
15,001	to	20,000	\$260.00
20,001	to	25,000	\$315.00
25,001	to	40,000	\$345.00
40,001	to	over	\$480.00

## 12. NOTICES

Any notice 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 notice 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.

## 13. MISCELLANEOUS

- (a) This Agreement shall not be prejudicial to any position taken by either of the parties as to what is a reasonable license fee or as to the form of license for any subsequent licensing period.
- (b) This Agreement is the entire understanding between the parties, will not be binding until signed by both parties, and cannot be waived or added to or modified orally, and no waiver, addition or modification will be valid unless in writing and signed by the parties. This Agreement is executed by the duly authorized representative of BMI and LICENSEE. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, will be governed by the substantive laws of the State of New York. The fact that any provisions are found by a court of competent jurisdiction to be void or unenforceable will not affect the validity or enforceability of any other provisions. All headings on this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.



**14. TERM OF AGREEMENT**

The initial Term of this Agreement shall begin on \_\_\_\_\_ and end on December 31, \_\_\_\_\_ (“Term”) and shall continue thereafter for additional periods of one (1) year each, unless canceled by either party at the end of the Term or any subsequent one-year period, upon not less than sixty (60) days advance written notice by regular U.S. mail to the other party. Each one (1) year period is a “contract year.” BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, at the end of the Term or at the end of any month during any subsequent one-year period, upon sixty (60) days advance written notice.

**AGREEMENT**

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

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

**ENTER LEGAL NAME:**

**LICENSED PREMISES**

\_\_\_\_\_  
*(Name of Corporation, Partnership, or Individual Owner)*

\_\_\_\_\_  
*(Street Address)*

\_\_\_\_\_  
*(City) (State) (Zip)*

**ENTER TRADE NAME:**

\_\_\_\_\_  
*(Telephone Number) (Fax Number)*

\_\_\_\_\_  
*(Doing business under the name of)*

\_\_\_\_\_  
*(Contact Name) (Title)*

\_\_\_\_\_  
*(Email Address) (Web Address)*

**CHECK APPROPRIATE BOX AND COMPLETE**

**MAILING ADDRESS**

*(if different from Licensed Premises)*

- Individual Ownership
  - LLC  Corporation \_\_\_\_\_  
*(State of Incorporation, if different from Licensed Premises)*
  - LLP  Partnership \_\_\_\_\_  
*(Enter names of partners)*
  - Other \_\_\_\_\_
- Fed. Tax ID # \_\_\_\_\_

\_\_\_\_\_  
*(Street Address)*

\_\_\_\_\_  
*(City) (State) (Zip)*

\_\_\_\_\_  
*(Telephone Number) (Fax Number)*

\_\_\_\_\_  
*(Contact Name) (Title)*

\_\_\_\_\_  
*(Email Address)*

**TO BE COMPLETED BY LICENSEE**

**By signing this Agreement you agree that the foregoing is a true and accurate representation of your Music Policy.**

I have read and have understood all of the terms and conditions herein and my signature below is evidence of this.  
***(SIGN HERE – PLEASE INCLUDE PAYMENT)***

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name / Title

**FOR ADMINISTRATIVE USE ONLY**

**TO BE COMPLETED BY BMI**

**BROADCAST MUSIC, INC.**

FOR BMI USE ONLY	
Account No.	COID





# Music License for Festivals / Special Events

## 1. DEFINITIONS

- (a) **"Benefit Event(s)"** shall mean a public entertainment, performance or social event held to raise funds for a specific person or cause in which all proceeds, less Direct Expenses, are donated to charity.
- (b) **"Direct Expenses"** shall include, but is not limited to, normal stage props and equipment unless the entity or person rendering or presenting entertainment services specifically requires specialized stage props and equipment.
- (c) **"Entertainment Costs"** shall mean the total monies expended for a Festival or Special Event by LICENSEE or LICENSEE's authorized representatives for main and supporting artists and/or acts, and all monies paid (including the cost of room, board and transportation) to performers, supporting musicians, booking agents, and agents of the performers. The term "Entertainment Costs" shall not include "Direct Expenses".
- (d) **"Facility"** shall include, but not be limited to, a concert hall, stadium, auditorium, civic center, coliseum, theatre, amphitheater, museum, library, stage, restaurants/nightclubs or similar venues whether enclosed or not, where a Festival or Special Event may be presented, located within the United States of America, its territories and possessions.
- (e) **"Festival(s)"** shall mean any musical event(s) lasting more than one consecutive day, not to exceed 14 days duration, that features multiple musical acts/headliners which vary from day to day and for which one ticket is available for all days (regardless of whether daily passes can be purchased). Festival(s) in this Agreement **do not extend to concert series or like performances.**
- (f) **"Gross Ticket Revenues"** shall mean the total monies received, directly or indirectly, by LICENSEE or their authorized representatives from all ticket sales per musical event or Festival. The term "Gross Ticket Revenues" shall not include: 1) federal, state and/or local taxes; 2) building/facility charge per ticket sold; 3) ticketing agent/service charge placed on each ticket sold; or 4) facility parking fees. Should the artist/performing act(s) choose to donate a portion of their fees for a specific musical event or Festival from each ticket sale to a particular charity, then the appropriate deduction may be taken from the "Gross Ticket Revenues"; provided however, that BMI be given copies of said artist/performing act(s) agreement(s) stipulating such with the exact amount of the charitable donation per ticket sold.
- (g) **"Special Event(s)"** shall mean any musical event(s) which shall include variety shows (excluding circuses), pageants and other similar spectator events (including events sponsored by charitable organizations or for charitable purposes) that include music, whether or not music is the principal type of entertainment.
- (h) **"Seating Capacity"** shall mean the total number of seats permanently affixed in the Facility where the musical event is presented plus any temporary seats added within the Facility for a particular musical event. If the total number of tickets available for the musical event shall be less than that of the permanent Seating Capacity of the Facility, "Seating Capacity" shall mean the total number of seats available for the particular musical event. If a Facility does not have permanent seating, "Seating Capacity" shall mean the total number of persons attending a particular musical event. If a Facility has lawn seating, then "Seating Capacity" shall mean the total number of seats permanently affixed in the Facility, in addition to total general admission tickets available to the lawn area as determined by the local Fire Marshall.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE, for the Term of this Agreement, a non-exclusive license solely to perform, present or cause the performance of, as part of Festival(s), Benefit Event(s) or Special Event(s), all the musical works as to which BMI shall have the right to grant public performance licenses during the Term hereof. This grant shall extend to performances of live or recorded music performed in conjunction with the musical event before, after or during the intermission. Such license shall be restricted to the performance of music in the manner described herein, and is granted in consideration of payment of the license fees as set forth herein and is subject to all of the terms and conditions hereof. This license does not include: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any context which may constitute an exercise of the "grand rights" therein; (ii) the right to simultaneously broadcast, telecast, cablecast, or otherwise transmit (including by the Internet or on-line service) the performances licensed hereunder to persons outside of the Facility in which they originate; or (iii) performances of music by means of a coin-operated phonorecord player (jukebox).
- (b) BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

## 3. INDEMNITY BY BMI

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 public performance of any copyrighted works licensed under this Agreement. This 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 particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

## 4. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI has the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues thirty (30) days after the date of BMI's written notice to LICENSEE. 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 will be 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.

5. **FEES**

- (a) LICENSEE agrees to pay BMI a fee for each performance of a Festival/Special Event, for which there is paid admission, computed on the basis set forth in **Schedule A** of this Agreement; LICENSEE agrees to pay BMI a fee for each performance of a Festival/Special Event, which is free to attendees, computed on the basis set forth in **Schedule B**; or, in the case of a Benefit Event, LICENSEE agrees to pay BMI a fee for each performance computed on the basis set forth in **Schedule C** of this Agreement.

**SCHEDULE A**

<b>LICENSE FEE SCHEDULE FOR EACH FESTIVAL OR SPECIAL EVENT <i>WITH PAID ADMISSION</i></b>	
<b>Attendance</b>	<b>License Fee</b>
0 – 9,999	0.4% of gross ticket revenue (or \$239*, whichever is higher)
10,000 or More	0.3% of gross ticket revenue (or \$239*, whichever is higher)

**SCHEDULE B**

<b>LICENSE FEE SCHEDULE FOR EACH FESTIVAL OR SPECIAL EVENT WHICH IS <i>FREE TO ATTENDEES</i></b>
The License Fee Rate for Festivals or Special Events which are free to attendees (no ticket cost) shall be one and one half percent (1½%) of LICENSEE's Total Entertainment Costs <i>for each Festival or Special Event</i> or \$239.00* <i>for each Festival or Special Event</i> , whichever is higher.

**SCHEDULE C**

<b>LICENSE FEE SCHEDULE FOR BENEFIT EVENT</b>					
<b>Seating Capacity</b>		<b>Fee Per Benefit Event</b>	<b>Seating Capacity</b>		<b>Fee Per Benefit Event</b>
0	to 250	\$18.00	7,501	to 10,000	\$154.00
251	to 750	\$21.00	10,001	to 15,000	\$234.00
751	to 1,500	\$34.00	15,001	to 20,000	\$321.00
1,501	to 2,500	\$56.00	20,001	to 25,000	\$387.00
2,501	to 5,000	\$84.00	25,001	to 40,000	\$426.00
5,001	to 7,500	\$110.00	40,001	or over	\$590.00

\* **\$239 minimum fee for contract year 2017 shall be CPI adjusted annually pursuant to Paragraph 5(c)**

- (b) The minimum fees billed and payable for:
- (i) Schedule A Festival/Special Event for which there is *Paid Admission*: minimum fees shall be \$239 per Festival/Special Event for contract year 2017 and shall be CPI adjusted annually pursuant to Paragraph 5(c) for each subsequent contract year.
  - (ii) Schedule B Festival/Special Event which is *Free To Attendees*: minimum fees shall be \$239 per Festival/Special Event for contract year 2017 and shall be CPI adjusted annually pursuant to Paragraph 5(c) for each subsequent contract year.
  - (iii) Schedule C Benefit Event: minimum fees shall be \$239 for contract year 2017 and shall be CPI adjusted annually pursuant to Paragraph 5(c) for each subsequent contract year, or total Schedule C fees, whichever is higher.
- (c) The minimum fee for each contract year after 2017 will be adjusted in accordance with the increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding July and the next preceding July, rounded to the nearest dollar.
- (d) When a musical event is believed to be comprised entirely of musical compositions for which BMI shall not have the right to grant public performance licenses, LICENSEE may, at its option, submit a schedule, including writer and publisher information, for all those musical compositions performed at said musical event, *including opening acts and recorded music, if any*, and in those instances in the opinion of BMI, where all of the musical compositions performed at said musical event are ones to which BMI does not have the right to grant public performance licenses, no fee shall be due and payable to BMI. In the event no schedule is submitted to BMI, LICENSEE must pay the applicable fee for said musical event pursuant to Schedule A or Schedule B, or in the case of a Benefit Event, LICENSEE must pay the applicable fee for said musical event pursuant to Schedule C of this Agreement.
- (e) For each contract year after 2009 to which this Agreement extends, the license fees outlined in Schedule C shall be adjusted in accordance with the increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding July and the next preceding July, rounded to the nearest dollar.

6. **REPORTING OF FESTIVALS OR SPECIAL EVENTS/PAYMENT**

- (a) At the time that LICENSEE makes payment to BMI pursuant to this Agreement, LICENSEE shall furnish BMI, with a report on forms available from BMI, signed by an officer or auditor or otherwise authorized signatory of LICENSEE, covering performances of musical events occurring during the applicable reporting period. Such report shall include the date(s) of the Festival, Special Event or Benefit Event, name of each Festival, Special Event or Benefit Event, Facility name (including address, city and state) where the musical event took place, and:
- (i) In the case of a Festival or Special Event With Paid Admission (Schedule A), such statement shall include the attendance and Gross Ticket Revenue (as defined in Paragraph 1(f) herein) for each Festival of Special Event.
  - (ii) In the case of a Festival or Special Event Which is Free to Attendees (no ticket cost) (Schedule B), such statement shall include the Total Entertainment Costs (as defined in Paragraph 1(c) herein) for each such Festival or Special Event.
  - (iii) In the case of a Benefit Event (Schedule C), such statement shall include the Seating Capacity (as defined in Paragraph 1(h) herein) of the venue and the designated benefactor of such Benefit Event.
- (b) A statement shall be furnished to BMI by LICENSEE for each reporting period during the Term of the Agreement, regardless of whether or not any performances occurred during that period. LICENSEE's report shall also include performances of musical events where another person, entity or venue is responsible for paying the license fee on behalf of LICENSEE.

(c) During each contract year of this Agreement, LICENSEE estimates that it will present:

**CHECK  
APPROPRIATE  
BOX**

- |  |
|--|
| <input type="checkbox"/> One Festival, Special Event or Benefit Event per year (herein called “ <b>Class 1 Presenter</b> ”) or         |
| <input type="checkbox"/> Two or More Festivals, Special Events or Benefit Events per year (herein called “ <b>Class 2 Presenter</b> ”) |

(d) If LICENSEE is a **Class 1 Presenter**, LICENSEE shall submit its first report for the period beginning on the first day of this Agreement and ending December 31<sup>st</sup> of same year. The first report shall be estimated for period beginning on the first day of this Agreement. The license fee payable pursuant to said report shall be payable in full upon execution of this Agreement by LICENSEE. For all calendar years following the period of this first report, LICENSEE shall submit its report and make payment to BMI no later than twenty (20) days following the occurrence of the Festival or Special Event. Should LICENSEE fail to report and submit payments to BMI within thirty (30) days after the specified date, then BMI will apply estimated billings to the account based on the prior year's figures for such LICENSEE. Any difference between the actual and estimated fee shall be payable at that time. If LICENSEE overestimated its first period's fee, then LICENSEE's account shall be credited with the difference.

(e) If LICENSEE is a **Class 2 Presenter**, LICENSEE shall report and pay quarterly. The first report shall be estimated for the period beginning on the first day of this Agreement and ending March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup> or December 31<sup>st</sup>, whichever comes first in same year. The license fee payable pursuant to the first estimated report shall be payable upon execution of this Agreement by LICENSEE. Within twenty (20) days after the end of the first estimated report period, LICENSEE shall submit its report setting forth the Festival(s) or Special Event(s) which actually were presented during that period. Any difference between the actual and estimated fee shall be payable at that time. If LICENSEE overestimated its first period's fee, LICENSEE's account shall be credited with the difference. For all subsequent quarterly periods, reports and payments shall be due on the twentieth (20<sup>th</sup>) day of January, April, July and October of each year of this Agreement for all Festival(s) or Special Event(s) presented during the prior calendar quarter. Should LICENSEE fail to report and submit payments to BMI within thirty (30) days after the specified date, then BMI will apply estimated billings to the account based on the prior quarter's figures for such LICENSEE.

**7. EXAMINATION OF BOOKS AND RECORDS**

(a) BMI shall have the right to verify such data or information that is required to be furnished by LICENSEE pursuant to Paragraph 6, by BMI's authorized representatives, at any time during customary business hours, and upon thirty (30) days advance written notice, examining those portions of LICENSEE's books and records of account to such extent as may be necessary to verify any and all statements and/or accountings made hereunder. BMI shall consider all data and information coming to its attention as the result of any such examination of LICENSEE's books and records confidential.

(b) In the event BMI discovers an inaccuracy in any information reported by LICENSEE pursuant to Paragraph 6, either through an examination of LICENSEE, or otherwise, and as a result it is revealed that LICENSEE underpaid license fees to BMI, and the correct license fee is not paid to BMI within thirty (30) days of BMI's notice to LICENSEE of the inaccuracy or underpayment, then LICENSEE shall pay a late payment charge on the additional license fees due as a result of the examination(s) of one and one-half percent (1½%) per month, or the maximum rate permitted by law, whichever is less, from the date(s) the license fees should have been paid pursuant to this Agreement. If such payment is still not received within ninety (90) days of BMI's notice to LICENSEE of the inaccuracy or underpayment, then the license granted by this Agreement shall be terminated by BMI immediately.

**8. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one-half percent (1½%) per month from the date any payment is due hereunder on any payment that is received by BMI more than one month after the due date.

**9. ARBITRATION**

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

**10. 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.

**11. CANCELLATION BY LICENSEE**

If LICENSEE permanently ceases to present Festival(s), Special Event(s) or Benefit Event(s), this Agreement and LICENSEE's obligation to BMI shall thereupon terminate, provided, that LICENSEE shall, within ten (10) days thereafter, give written notice of such termination to BMI, setting forth the effective date thereof and that LICENSEE shall submit all reports and pay to BMI all fees due hereunder until said effective date.

**12. 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.

**13. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

**14. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

**15. MISCELLANEOUS**

This Agreement is the entire understanding between the parties, will not be binding until signed by both parties, and cannot be waived or added to or modified orally, and no waiver, addition or modification will be valid unless in writing and signed by the parties. This Agreement is executed by the duly authorized representative of BMI and LICENSEE. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, will be governed by the substantive laws of the State of New York. The fact that any provisions are found by a court of competent jurisdiction to be void or unenforceable will not affect the validity or enforceability of any other provisions. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**16. TERM OF AGREEMENT**

The initial Term of this Agreement shall begin on \_\_\_\_\_ and end on December 31, \_\_\_\_\_ and shall continue thereafter for additional periods of one (1) year each, unless cancelled by either party at the end of the initial contract year or any subsequent contract year, upon not less than sixty (60) days advance written notice by regular U.S. mail to the other party. Each one (1) year period is a "contract year". BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, at the end of the initial contract year or as of the end of any month during any subsequent contract year, upon sixty (60) days advance written notice.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b><u>TRADE NAME</u></b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address) (Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <b>(if different from Licensed Premises)</b>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<i>(State of Incorporation, if different from Licensed Premises)</i>	
<i>(Enter names of partners)</i>	
<input type="checkbox"/> Other _____	<i>(Street Address)</i>
Federal Tax ID No. _____	<i>(City) (State) (Zip)</i>
<b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i>	<i>(Telephone Number) (Fax Number)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<i>(Contact Name) (Title)</i>
<i>(State)</i>	<i>(Email Address – if different from above)</i>
<input type="checkbox"/> Local _____	
<i>(Municipality/City and State)</i>	

<p align="center"><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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. <b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b></p>	<p align="center"><b>FOR ADMINISTRATIVE USE ONLY</b> <b>TO BE COMPLETED BY BMI</b> <b>BROADCAST MUSIC INC.</b></p>
Signature _____	
Print Name / Title _____	
Signatory Email Address* <i>(if different from above)</i> _____	
<b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b>	
<b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b>	
<b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b>	

<b>FOR BMI USE ONLY</b>	<b>FSE1</b>	<b>LI-2017/JULY</b>
ACCOUNT NO.	COID	<b>EFFECTIVE:</b> <b>January 2017</b>



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# Music License for Fitness Clubs

## 1. DEFINITIONS

- (a) **Licensed Premises** shall mean LICENSEE's fitness club location identified on Page 4 herein, or, in the event of multiple locations, LICENSEE's fitness club locations identified on Schedule A, which shall be attached hereto.
- (b) **Member** shall mean each paying customer with a membership to Licensed Premises.
- (c) **Group Fitness Classes** shall mean any fitness class held at Licensed Premises for groups of participants, including, but not limited to, classes in aerobics, hip-hop, kick boxing, spinning, and other similar group exercise classes.
- (d) **Recorded Music** shall mean the performance of background music, foreground music, or as part of audio-visual presentations, by mechanical or electronic means, including, but not limited to, CDs, DVDs, digital audio files (e.g., MP3, WAV), records and tapes.
- (e) **Live Music** shall mean music performed by musicians, singers or other entertainers actually present and performing at the Licensed Premises. For purposes of this Agreement, Live Music shall specifically exclude any music performed by musicians, singers or other entertainers present at Licensed Premises for which a separate fee is charged to hear the performers.
- (f) **Ambient Music** shall mean, for purposes of this Agreement, Recorded Music or Live Music, whether vocal or instrumental, used as an accompaniment to: (i) non-class fitness training, including, but not limited to, individual/non-class weight-lifting and individual/non-class use of exercise equipment, and (ii) conversation and relaxation. Ambient Music does not include music used in Group Fitness Classes.
- (g) **TV and Radio** shall mean, for purposes of this Agreement, commercial broadcast television and radio.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE a non-exclusive license to perform, present, or cause the public performance at the Licensed Premises of all musical works of which BMI shall have the right to grant public performance licenses during the Term. This license does not include: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein; (ii) the right to broadcast, cablecast, telecast or otherwise transmit (including by the Internet or on-line service) the performances licensed hereunder to persons outside of Licensed Premises; (iii) performances of music by means of a coin-operated phonorecord player (jukebox); or (iv) performances of music in commercial music services or commercial music video services at the Licensed Premises that are not part of Group Fitness Classes.
- (b) BMI reserves the right to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

## 3. INDEMNITY BY BMI

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 musical works licensed under this Agreement. Such indemnity shall be limited to musical works which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

## 4. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues for thirty (30) days after the date of BMI's written notice to LICENSEE thereof. 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 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.

## 5. CANCELLATION OF ENTIRE CATEGORY

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days' advance written notice.

**6. 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.

**7. TERMINATION OF AGREEMENT BY LICENSEE**

If LICENSEE shall permanently cease to operate the Licensed Premises, whether by reason of sale or lease thereof or otherwise, this Agreement and LICENSEE's obligation to BMI shall thereupon terminate, provided that: (i) LICENSEE shall, within ten (10) days of cessation of operation, give written notice of such termination to BMI, setting forth the effective date thereof and the name of the new owner or operator of the premises, and (ii) LICENSEE shall pay to BMI all license fees due hereunder until the effective date of cessation of operation. The license fee due BMI by LICENSEE through the effective date of termination shall be a proration of the license fee for the Contract Year of termination, but in no event shall the license fee be prorated to an amount less than the minimum annual fee, outlined in Paragraph 9(c) herein.

**8. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to the American Arbitration Association in the City, County and State of New York for arbitration under its then prevailing arbitration rules. The arbitrator(s) to be selected as follows: Each of the parties 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 in 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.

**9. FEES**

For each Contract Year during the Term of this Agreement, LICENSEE agrees to pay to BMI a license fee pursuant to the License Fee Schedule. LICENSEE warrants and represents that during the twelve-month period preceding the initial Term of this Agreement (or if Licensed Premises was not in operation during that full twelve-month period, LICENSEE shall make a good-faith estimate for the first Contract Year of this Agreement) LICENSEE's music use policy, highest number of Total Members and license fee are as follows:

**2017-2018 LICENSE FEE SCHEDULE**

For clarification, refer to Sub-paragraph 9(a) below

<u>Category</u> (choose only one)		<u>Music Use</u>	<u>Member Fee</u> (per member)
<input type="checkbox"/>	A	Group Fitness Classes	\$0.288
<input type="checkbox"/>	B	Ambient Music	\$0.201
<input type="checkbox"/>	C	TV and/or Radio <u>Only</u>	\$0.124

$$\frac{\text{(Category)}}{\text{(Total Members)}} \times \text{(Member Fee)} = \$ \text{(Total Annual License Fee*)}$$

\*Pursuant to Sub-paragraph 9(c), the total annual license fee per Licensed Premises shall not be less than \$321, shall not be greater than \$2,188 and should be rounded to the nearest penny.

NOTE: If Licensed Premises music use falls under more than one category, the higher per Member Fee shall apply.

- (a) (i) **Group Fitness Classes** – If LICENSEE offers Group Fitness Classes at Licensed Premises which utilize Recorded Music or Live Music, either exclusively or in addition to performances of Ambient Music and/or performances of TV and/or Radio, LICENSEE shall pay a license fee for each Member pursuant to Category A of the License Fee Schedule.
- (ii) **Ambient Music** – If LICENSEE does not utilize music in connection with Group Fitness Classes at Licensed Premises, but uses Recorded Music or Live Music at the Licensed Premises as Ambient Music, either exclusively or in addition to performances of TV and/or Radio, LICENSEE shall pay a license fee for each Member pursuant to Category B of the License Fee Schedule.
- (iii) **TV and/or Radio** – If the performance of music at Licensed Premises is limited to performances via television(s) and radio(s) and LICENSEE does not offer Group Fitness Classes and does not use Ambient Music, LICENSEE shall pay a license fee for each Member pursuant to Category C of the License Fee Schedule.

- (b) The annual license fee for the first Contract Year, as calculated in Paragraph 9 herein, shall be payable upon the signing of this Agreement by LICENSEE.
- (c) Regardless of the calculated license fee, there is a minimum annual license fee per Licensed Premises for the 2017-2018 Contract Year of \$321 and a maximum annual license fee per Licensed Premises for the 2017-2016 Contract Year of \$2,188.
- (d) All license fees for Contract Years after the first Contract Year shall be an adjustment of the immediately preceding Contract Year's license fees based upon the percentage increase or decrease in the United States Consumer Price Index (All Urban Consumers—CPI-U) between the preceding September and the next preceding September. The per Member license fee for each Music Use Category, as identified in the License Fee Schedule, shall be rounded to the nearest tenth of a cent and the Minimum and Maximum annual license fees shall be rounded to the nearest dollar. BMI will advise LICENSEE in writing of the license fee rates for each subsequent Contract Year.
- (e) License fee payments for subsequent Contract Years shall be based upon the highest number of Members at Licensed Premises at anytime during the preceding Contract Year and shall be paid to BMI no later than ten (10) days following the beginning of each such Contract Year.
- (f) BMI shall discount the annual license fee by 5% in any Contract Year if: (i) the annual license fee is paid in full and in a timely manner for such Contract Year in accordance with Sub-paragraph 9(e) above and (ii) LICENSEE does not otherwise owe BMI any fees under this or any prior BMI agreement.

#### **10. REPORTING**

- (a) At the same time that LICENSEE pays its license fee for the second and subsequent Contract Years, LICENSEE shall submit a report, on a form available from BMI, certified by LICENSEE or by the auditor of LICENSEE, indicating the highest number of Members, as well as the music uses at Licensed Premises, in the preceding Contract Year.
- (b) In the event that LICENSEE fails to submit a report pursuant to Sub-paragraph 10 (a) and BMI subsequently is made aware of the change in music use at Licensed Premises such that a change in License Fee Category is appropriate, BMI shall have the option, in lieu of its right to cancel the Agreement, to notify LICENSEE in writing by certified mail of its knowledge of such change and to adjust LICENSEE's license fee for the then current Contract Year in accordance with this Paragraph as if LICENSEE had reported such change for the previous Contract Year. LICENSEE shall have thirty (30) days from the date of BMI's notice to submit the missing report. If such report is not received by BMI by the end of the said thirty (30) day period, LICENSEE agrees to waive its right to submit such past due reports thereafter and authorizes BMI to deem the adjusted fee accurate.

#### **11. REVIEW OF STATEMENTS AND/OR ACCOUNTINGS**

BMI shall have the right, upon reasonable notice to LICENSEE, by its authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify any and all statements and reports rendered and accountings made hereunder or under any prior agreement with BMI. BMI shall consider all data and information coming to its attention as the result of any such examination of books and records as confidential.

#### **12. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one-half percent (1½%) per month from the date any payment is due hereunder on any payment that is received by BMI more than one (1) month after the due date.

#### **13. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with license fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

#### **14. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

#### **15. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

#### **16. 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 herein 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.

#### **17. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, will not be binding until signed by both parties, and 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. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**18. TERM OF AGREEMENT**

The initial Term of this Agreement shall begin on the first day of (month/year) \_\_\_\_\_ and end on the last day of (month/year) \_\_\_\_\_ and shall continue thereafter for additional Terms of one (1) year each unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "Contract Year") upon thirty (30) days advance notice to the other party.

**AGREEMENT**

AGREEMENT, made at New York, N.Y. on (Date will be entered by BMI upon execution) \_\_\_\_\_ between BROADCAST MUSIC, INC., (herein BMI), a New York 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:

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<small>(Name of Corporation, Partnership, or Individual Owner)</small>	<small>(Street Address)</small>
<b><u>TRADE NAME</u></b>	<small>(City) (State) (Zip)</small>
<small>(Doing business under the name of)</small>	<small>(Telephone Number) (Fax Number)</small>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<small>(Contact Name) (Title)</small>
<input type="checkbox"/> Individual Ownership	<small>(Email Address) (Web Address)</small>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<small>(State of Incorporation, if different from Licensed Premises)</small> <small>(Enter names of partners)</small>	
<input type="checkbox"/> Other _____	<small>(Street Address)</small>
Federal Tax ID No. _____	<small>(City) (State) (Zip)</small>
<b><u>GOVERNMENT ENTITIES</u></b> <small>(if applicable, please check one)</small>	<small>(Telephone Number) (Fax Number)</small>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<small>(Contact Name) (Title)</small>
<input type="checkbox"/> Local _____	<small>(Email Address- if different from above)</small>
<small>(Municipality and State)</small>	

<b>TO BE COMPLETED BY LICENSEE</b>
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. <b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b>
Signature _____
Print Name / Title _____
Signatory Email Address* <small>(if different from above)</small> _____
<small>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory</small>

<b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b>			
<b>FOR BMI USE ONLY</b>		<b>FIT1</b>	<b>LI-2017/JULY</b>
ACCOUNT NO.	COID		<b>EFFECTIVE: August 2017</b>

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

® BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.





# Music License for Funeral Homes

## 1. DEFINITIONS

- (a) **Licensed Premises** shall mean LICENSEE's funeral home location identified on Page 4 herein, or, in the event of multiple locations, LICENSEE's funeral home locations identified on Schedule A attached hereto.
- (b) **LICENSEE** shall mean the individual or entity described herein that owns and/or operates the "Licensed Premises".
- (c) **Recorded Music** shall mean the performance of music by mechanical or electronic devices for background, foreground, or as part of audio-visual presentations, which include, but are not limited to, records, tapes, CDs, digital audio files (e.g., MP3, WAV), broadcasts, satellite signals and/or cablecasts.
- (d) **Live Music** shall mean the music performed by musicians, singers or other performers actually present and performing at the Licensed Premises.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE a non-exclusive license to publicly perform or allow to be publicly performed at the Licensed Premises all of the musical works of which BMI shall have the right to grant public performance licenses during the Term of this Agreement. This license does not include: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein; (ii) the right to broadcast, telecast, cablecast, or otherwise transmit (including by the Internet or on-line service) the performances licensed hereunder to persons outside of the Licensed Premises, except to the extent that music on telephone hold lines originating at a Licensed Premises is audible at remote locations on telephone lines as part of "music-on-hold"; (iii) performances of music by means of a coin-operated phonorecord player (jukebox).
- (b) BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

## 3. INDEMNITY BY BMI

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 musical works licensed under this Agreement. Such indemnity shall be limited to musical works which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

## 4. BREACH OR DEFAULT / WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues for thirty (30) days after the date of BMI's written notice to LICENSEE thereof. 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 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.

## 5. 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.

## **6. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

## **7. DISCONTINUANCE OF MUSIC**

In the event that LICENSEE discontinues the use of all music at Licensed Premises or ceases to operate the Licensed Premises during the Term and so notifies BMI in writing, within thirty (30) days after receipt of such notice a pro rata adjustment shall be made by BMI to license fees due BMI for such Licensed Premises for that Contract Year. In no event shall the annual license fee due BMI be prorated to a fee less than the minimum annual license fee outlined in Paragraph 10. LICENSEE will not be obligated to make future payments to BMI for the discontinued music (provided all previously due license fees have been paid) unless LICENSEE resumes the use of music. LICENSEE will send written notice of any resumption of music to BMI within thirty (30) days thereof. If discontinuance and resumption occur in the same Contract Year, license fees shall be payable as if discontinuance never occurred and LICENSEE's estimated fee immediately prior to discontinuance shall be reinstated.

## **8. ARBITRATION**

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

## **9. REVIEW OF BOOKS AND RECORDS**

BMI will have the right, by its authorized representatives, at any time during customary business hours, and upon thirty (30) days advance written notice, to examine those portions of LICENSEE's books and records of account to such extent as may be necessary to verify any and all payments and/or reports made hereunder or under any prior agreement with BMI, if applicable. BMI, in its sole discretion, will determine whether an examination shall be made. BMI shall consider all data and information coming to its attention as the result of any such examination of LICENSEE's books and records as confidential.

## **10. FEES**

- (a) LICENSEE agrees to pay to BMI for each Contract Year a license fee for each Licensed Location. The license fee per Licensed Location for the 2017 Contract Year shall be \$329.73. License fees for the 2017 Contract Year shall be due upon the signing of the Agreement.
- (b) For Contract Year 2017, in the event of a discontinuance of music as outlined in Paragraph 7 herein, the annual license fee shall not be prorated to an amount less than the minimum annual license fee which is \$149.86.
- (c) For each subsequent Contract Year the per Licensed Location license fee shall be adjusted in accordance with the increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding August and the next preceding August. For each subsequent Contract Year, LICENSEE will receive an invoice notifying LICENSEE of the annual license fee for each subsequent Contract Year. License fees for such subsequent Contract Year shall be due no later than twenty (20) days after each anniversary date of this Agreement.

## **11. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one-half percent (1½%) per month from the date any payment is due hereunder on any payment that is received by BMI more than one month after the due date.

## **12. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with license fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

## **13. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

## **14. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

## **15. 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 herein 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.

## **16. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, will not be binding until signed by both parties, and 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. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**17. TERM OF AGREEMENT**

The initial Term of this annual Agreement shall begin on the first day of \_\_\_\_\_ and end on the last day of \_\_\_\_\_ and continue for additional periods of one (1) year each, unless canceled by either party at the end of any period, upon thirty (30) days advance written notice. Each one (1) year period is a "Contract Year."

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b><u>TRADE NAME</u></b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address) (Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<i>(State of Incorporation, if different from Licensed Premises)</i>	
<input type="checkbox"/> Other _____	<i>(Street Address)</i>
Federal Tax ID No. _____	<i>(City) (State) (Zip)</i>
<b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i>	<i>(Telephone Number) (Fax Number)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<i>(Contact Name) (Title)</i>
<i>(State)</i>	<i>(Email Address – if different from above)</i>
<input type="checkbox"/> Local _____	
<i>(Municipality/City and State)</i>	

<p><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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.</p> <p><b><i>(SIGN HERE – PLEASE INCLUDE PAYMENT)</i></b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b></p> <p><b>TO BE COMPLETED BY BMI</b></p> <p><b>BROADCAST MUSIC INC.</b></p>
Signature	
Print Name / Title	
Signatory Email Address* <i>(if different from above)</i>	
*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.	FOR BMI USE ONLY
<b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b>	FNL1
<b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b>	LI-2017/JULY
	EFFECTIVE: January 2017
ACCOUNT NO.	COID



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# Music License for INDEPENDENTLY OWNED AND OPERATED HALLMARK GOLD CROWN STORE(S)

## 1. DEFINITIONS

- (a) "LICENSEE" shall mean the "Hallmark Gold Crown Store" independent owner/operator described herein.
- (b) "Licensed Premises" shall mean the "Hallmark Gold Crown Store(s)" location(s) identified herein, or on a list of locations amended hereto, which is/are owned and operated by LICENSEE.
- (c) "Hallmark Compilation CDs" shall mean the compilation compact discs manufactured, packaged and/or distributed under the Hallmark trademark by Hallmark Cards, Incorporated or a licensee of the Hallmark trademark.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE a non-exclusive license to perform, present, or cause the public performance of all musical works of which BMI shall have the right to grant public performance licenses during the Term hereof. Said license shall be restricted to performances of the Hallmark Compilation CD at the Licensed Premises. This license does not include: (i) performances of music via any other form of recorded music other than the Hallmark Compilation CD, including but not limited to prerecorded tapes, CDs, or other mechanical devices or via the reception of broadcast audio transmissions on receiving apparatus and amplifications thereof for public performance; (ii) performances of music via live entertainers or musicians performing at the Licensed Premises; (iii) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein; (iv) the right to broadcast, cablecast, telecast or otherwise transmit the performances licensed hereunder to persons outside of the premises including by satellite, the Internet or on-line service; or (v) performances of music by means of a coin-operated phonorecord player (jukebox).
- (b) BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

## 3. TERM OF AGREEMENT

The initial Term of this annual Agreement shall begin on \_\_\_\_\_ and end on December 31 of the same calendar year and shall continue thereafter unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "contract year") upon thirty (30) days advance written notice to the other party.

## 4. FEES AND PAYMENT

LICENSEE agrees to pay to BMI for each contract year during the Term of this Agreement a license fee as follows:

- (a) The annual fee for calendar year 2017 shall be \$262.00 per Licensed Premises and shall be due upon receipt of an invoice from BMI.
- (b) The amount of the license fee for subsequent calendar years of this Agreement shall be the license fee for the prior calendar year adjusted in accordance with the percentage increase or decrease in the United States Consumer Price Index – All Urban Consumers (CPI-U) between the preceding July and the next preceding July, rounded to the nearest dollar. BMI will advise LICENSEE in writing of the amount of the annual license fee due by January 10<sup>th</sup> of the year to which the fee applies. License fees for each subsequent calendar year of this Agreement shall be payable on or before January 31 of each calendar year.
- (c) In the event that the LICENSEE operates the Licensed Premises for a portion of a calendar year (e.g. less than 12 months) due to the mid-year purchase or sale of the Licensed Premises, cessation of operation of Licensed Premises, and LICENSEE notifies BMI and provides documentation of such to BMI, annual license fees shall be prorated. In no event shall license fees be prorated to an amount less than one-half (1/2) the annual license fee prescribed in Paragraph 4 (a) and (b) above.
- (d) In the event that LICENSEE commences or discontinues the use of music requiring this Agreement during any part of a calendar year and LICENSEE notifies BMI and provides documentation of such to BMI, annual license fees shall be prorated. In no event shall license fees be prorated to an amount less than one-half (1/2) the annual license fee prescribed in Paragraph 4 (a) and (b) above.

## 5. TERMINATION OF AGREEMENT

If LICENSEE shall permanently cease to operate the Licensed Premises, whether by reason of sale or otherwise, this Agreement shall terminate upon sale or otherwise. In the event that LICENSEE discontinues performances of Hallmark Compilation CDs at the Licensed Premises, LICENSEE shall notify BMI, and may terminate the Agreement effective at the end of the current contract year, in accordance with Paragraph 3 herein.

## 6. LATE PAYMENT CHARGE

BMI may impose a late payment charge of 1.5% per month from the date any payment is due hereunder on any payment that is received by BMI more than one (1) month after the due date and interest shall accrue thereafter from the date payment was due.

## 7. INDEMNITY BY BMI

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 the works which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

## 8. CANCELLATION OF ENTIRE CATEGORY

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

## 9. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues thirty (30) days after the date of BMI's written notice to LICENSEE thereof. 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 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.

## 10. ARBITRATION

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement, not subject to the jurisdiction of the BMI Rate Court, shall be submitted to arbitration in the City, County and State of New York under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators to be selected as follows: Each of the parties 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 a 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 in any court having jurisdiction. Such award shall include the fixing of costs, expenses, and attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

**11. NOTICES**

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed given when sent by first-class U.S. mail to the party intended, at its mailing address herein stated, or any other address which either party hereto may designate. Any such notice sent to BMI shall be to the attention of the Vice President, Licensing Department, BMI, 10 Music Square East, Nashville, Tennessee 37203. Any such 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.

**12. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, shall not be binding until signed by both parties, and 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. The rights of LICENSEE shall not be assignable. 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b><u>TRADE NAME</u></b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address) (Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<i>(State of Incorporation, if different from Licensed Premises)</i> _____ <i>(Enter names of partners)</i>	
<input type="checkbox"/> Other _____	<i>(Street Address)</i>
Federal Tax ID No. _____	<i>(City) (State) (Zip)</i>
<b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i>	<i>(Telephone Number) (Fax Number)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<i>(Contact Name) (Title)</i>
<i>(State)</i>	<i>(Email Address – if different from above)</i>
<input type="checkbox"/> Local _____	
<i>(Municipality/City and State)</i>	

<p><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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.</p> <p><b><i>(SIGN HERE – PLEASE INCLUDE PAYMENT)</i></b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b></p> <p><b>TO BE COMPLETED BY BMI</b></p> <p><b>BROADCAST MUSIC INC.</b></p>		
Signature			
Print Name / Title			
Signatory Email Address* <i>(if different from above)</i>			
<b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b>	<b>FOR BMI USE ONLY</b>		<b>HGC</b>
<b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b>			<b>LI-2016/AUG</b>
<b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b>	<b>ACCOUNT NO.</b>	<b>COID</b>	<b>EFFECTIVE: January 2017</b>

**BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203**

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# Music License for Health Care

## - Multiple Use License -

### 1. DEFINITIONS

- (a) **"Licensed Premises"** shall mean all locations operated and owned or leased by LICENSEE or LICENSEE's subsidiaries which operate as health care facilities for the treatment of illness or provision of custodial care which have full-service professional staffs such as hospitals, nursing homes, ambulatory care centers, assisted care centers and clinics. In all cases, the term "Licensed Premises" shall specifically exclude (1) doctors, dentists or other professional offices not located within a health care facility, and (2) any location, other than Licensed Premises, which is used by LICENSEE for a trade show, convention or exposition.
- (b) **"Subsidiary"** shall mean an entity wholly-owned by LICENSEE for which payment of license fees and reports are made by LICENSEE.

### 2. BMI GRANT

- (a) BMI grants to LICENSEE a non-exclusive license to publicly perform or allow to be publicly performed at the Licensed Premises all musical works of which BMI shall have the right to grant public performance licenses during the Term of this Agreement. This grant of rights includes but is not limited to music performed: (i) in rehabilitation areas; (ii) in television and radio programming received by LICENSEE on the Licensed Premises; (iii) in audio-visual presentations; (iv) as recorded background music or live music; (v) over teleconferencing at the Licensed Premises; (vi) over telephones in the form of music-on-hold; or (vii) in-room music on demand, movies on demand or interactive games which the LICENSEE provides to patients or staff without charge to the patients or staff, and which is received in patient rooms, waiting rooms or staff lounges.
- (b) This license does not include: (i) the right to present musical works in any way which may be a use of the "grand rights"; (ii) the right to broadcast, telecast, cablecast or otherwise transmit the performances outside of the Licensed Premises, except to the extent that music on telephone hold lines originating at a Licensed Premises is audible at remote locations on telephone lines as part of "music-on-hold"; (iii) performances of music by a jukebox; or (iv) any performance of music by interactive software or interactive games, for which there is a direct charge to the patient(s) or staff member(s), whether (1) delivered by media such as CD-ROM, CD-I, diskette or cartridge, (2) delivered by on-line service such as interactive cable, interactive TV, computer network, telephone or satellite, or (3) rendered by multimedia hardware such as computer or computer-driven handheld devices.
- (c) BMI may withdraw from this license the right to perform any musical work as to which a legal action has been brought or a claim made that BMI does not have the right to license the work or that the work infringes another work.

### 3. INDEMNITY BY BMI

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 any of them with respect to the performance of any musical works licensed under this Agreement. Such indemnity shall be limited to the musical works which are licensed by BMI at the time of LICENSEE's performance. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

### 4. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues for thirty (30) days after the date of BMI's written notice to LICENSEE thereof. 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 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.

### 5. ARBITRATION

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

### 6. 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 herein 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, General 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.

### 7. CANCELLATION OF ENTIRE CATEGORY

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.



**8. 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.

**9. FEES**

(a) LICENSEE agrees to pay BMI license fees for each contract year of this Agreement as follows:

- (i) If LICENSEE operates a facility primarily for in-patient treatment, the license fee based upon the per bed fee outlined in Category 1 of the License Fee Schedule.
- (ii) If LICENSEE operates a facility primarily providing ambulatory care at a freestanding facility, the per facility license fee outlined in Category 2 of the License Fee Schedule.

<b>2017 – 2018 LICENSE FEE SCHEDULE</b>	
<b>Category 1</b> Annual Fee Per Bed	<b>Category 2</b> Annual Fee Per Facility
<b>\$4.68</b>	<b>\$480.00</b>

(b) LICENSEE agrees to pay to BMI for each contract year an estimated license fee as an advance of the actual license fee.

(c) For the first contract year, LICENSEE estimates that:

For Category 1 LICENSEEs, the highest number of beds licensed hereunder will be \_\_\_\_\_ and the estimated license fee (# of beds x \$4.68) will be \_\_\_\_\_.

For Category 2 LICENSEEs, the number of facilities licensed hereunder will be \_\_\_\_\_ and the estimated license fee (# of facilities x \$480.00) will be \_\_\_\_\_.

The total estimated license fee for your in-patient treatment or ambulatory care, or both, will be \_\_\_\_\_.

The annual fee for the first contract year is due within thirty (30) days of LICENSEE’s signing this Agreement.

- (d) Notwithstanding Paragraph 9(b), there shall be a minimum annual license fee of \$480.
- (e) The estimated license fee for all subsequent contract years will be the actual fee for the previous contract year and will be due and payable no later than 30 days after the beginning of each contract year.
- (f) The license fees outlined in the License Fee Schedule and the minimum annual license fee outlined in Paragraph 9(c) for subsequent contract years will be adjusted in accordance with the increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding August and the next preceding August, rounded to the nearest dollar.

**10. REPORTING**

(a) At the same time as the payments outlined in Paragraph 9 are due, LICENSEE agrees to furnish BMI (on forms available from BMI) with a report, certified either by an officer or auditor, setting forth any information regarding the subject matter of this Agreement which BMI may reasonably require, including, without limitation:

- (i) the highest number of beds for the year reported, including Subsidiaries (if applicable).
- (ii) the name and address of each Subsidiary for which a fee is paid, and the highest number of beds of that Subsidiary.
- (iii) the name and address of each ambulatory care facility.

- (b) If, after processing the annual report, the actual fee is greater than the license fee already paid by LICENSEE for the contract year, LICENSEE agrees to pay BMI the difference within thirty (30) days of the mailing by BMI to LICENSEE of an adjusted statement.
- (c) If, after processing the annual report, the actual fee is less than the license fee already paid by LICENSEE to BMI for the contract year, BMI agrees to credit the difference between the actual and estimated license fees to LICENSEE’s account, and if such adjustment occurs in the last contract year of the Agreement, BMI shall refund said sum to LICENSEE promptly.
- (d) In the event that LICENSEE utilizes an independent programming provider, or otherwise maintains or has access to music use information, LICENSEE shall provide quarterly music use reports concerning the musical works performed at each Licensed Premises. Such music use reports shall identify each musical composition performed by the title, artist, composer/writer, publisher and record label, if reasonably available.

**11. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one-half percent (1 1/2%) per month from the date any payment is due hereunder on any payment that is received by BMI more than one month after the due date.

**12. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with license fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

**13. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

**14. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

**SCHEDULE A**

Name and address of each Subsidiary in-patient treatment facility or ambulatory care facility for which a fee is paid and highest number of beds at each in-patient treatment facility.

SUBSIDIARY IN-PATIENT TREATMENT FACILITY / OR AMBULATORY CARE FACILITY DBA	ADDRESS	CITY	STATE	ZIP	HIGHEST # OF BEDS FOR THE REPORT YEAR.

TOTAL AMBULATORY CARE FACILITIES

TOTAL BEDS

ENTER TOTAL HERE AND ON PAGE 2 IN SPACE PROVIDED

ENTER TOTAL HERE AND ON PAGE 2 IN SPACE PROVIDED

**15. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, will not be binding until signed by both parties, and 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. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**16. TERM OF AGREEMENT**

The initial Term of this Agreement shall begin on the first day of (month/year) \_\_\_\_\_ and end on the last day of (month/year) \_\_\_\_\_ and shall continue thereafter for additional Terms of one (1) year each unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "Contract Year") upon thirty (30) days advance written notice to the other party.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<small>(Name of Corporation, Partnership, or Individual Owner)</small>	<small>(Street Address)</small>
<b><u>TRADE NAME</u></b>	<small>(City) (State) (Zip)</small>
<small>(Doing business under the name of)</small>	<small>(Telephone Number) (Fax Number)</small>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<small>(Contact Name) (Title)</small>
<input type="checkbox"/> Individual Ownership	<small>(Email Address) (Web Address)</small>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<input type="checkbox"/> Other _____	
<small>(State of Incorporation, if different from Licensed Premises)</small>	<small>(Street Address)</small>
<small>(Enter names of partners)</small>	<small>(City) (State) (Zip)</small>
Federal Tax ID No. _____	<small>(Telephone Number) (Fax Number)</small>
<b><u>GOVERNMENT ENTITIES</u></b> <small>(if applicable, please check one)</small>	<small>(Contact Name) (Title)</small>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<small>(Email Address – if different from above)</small>
<input type="checkbox"/> Local _____	
<small>(Municipality/City and State)</small>	

<b>TO BE COMPLETED BY LICENSEE</b> 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. <b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b>	<b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b>		
Signature			
Print Name / Title			
Signatory Email Address* <small>(if different from above)</small>			
<b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b>	<b>FOR BMI USE ONLY</b>	<b>36H</b>	<b>LI-2017/JULY</b>
<b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b>			<b>EFFECTIVE: May 2017</b>
<b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b>	<b>ACCOUNT NO.</b>	<b>COID</b>	



® BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.

**1. BMI GRANT**

BMI grants to LICENSEE, at the Licensed Premises, a non-exclusive license to publicly perform or cause the public performance of all the musical works of which BMI controls the rights to grant public performance licenses during the Term. This license does not include:

- (a) Dramatic Rights, the right to perform Dramatico-musical Works in whole or in substantial part, or the right to use the musical works in any context which constitutes the exercise of "grand rights";
- (b) the right to publicly perform BMI musical works by broadcast, telecast, cablecast or other electronic transmission (including by satellite, the Internet or on-line service) of the performances to persons outside the Licensed Premises;
- (c) the right to perform music by means of any coin-operated phonorecord player as defined in the Copyright Act ("Jukebox") where a Jukebox License Office ("JLO") agreement may be obtained for such Jukebox, or, by any coin-operated digital music service that does not qualify as a Jukebox;
- (d) the right to publicly perform music by any commercial music service;
- (e) the right to perform musical works as part of industrial or trade shows, expositions, or business presentations at the Licensed Premises;
- (f) the right to perform music at a premises, whether or not on the Licensed Premises (as defined below), in theme/amusement parks; or
- (g) the right to perform BMI musical works contained in pay-per-view television programming.

BMI may withdraw from the works licensed hereunder any musical work as to which any legal action has been instituted or claim made that BMI does not have the right to license the public performances of that work.

**2. REVIEW OF STATEMENTS AND / OR ACCOUNTINGS**

- (a) BMI shall have the right to require such reasonable data or information relating to (1) the annual expenditures for Live Music and Entertainment Costs, (2) Recorded Music at the Licensed Premises as provided by this Agreement, in addition to that furnished pursuant to Paragraph 15, as may, in BMI's discretion, be necessary in order to ascertain the Annual License Fee.
- (b) BMI shall have the right, by its authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify the statements made hereunder. BMI shall consider all data and information coming to its attention as a result of any such examination of books and records as completely confidential.
- (c) BMI may conduct an audit pursuant to this Paragraph for a period not to exceed three calendar years preceding the year in which the audit is made. In the event such audit reveals a deficiency, then BMI may conduct an audit for the additional preceding three calendar years. In the event LICENSEE, after written notice from BMI, refuses to permit an audit, or refuses to produce the books and records of account of LICENSEE necessary to verify the statements and reports required hereunder, BMI shall not be restricted to the time limitation set forth herein. BMI shall have the right to audit for periods licensed under the previous license agreements between BMI and LICENSEE, provided, however, BMI shall be limited to three years or six years (as the case may be) for all audits under said license agreements.
- (d) In the event BMI conducts an audit of LICENSEE, and such audit reveals that LICENSEE underpaid license fees to BMI to the extent of ten percent (10%) or more, then LICENSEE shall pay a late payment charge on the additional license fees due as a result of the audit(s) only of one and one-half percent (1½%) per month, or the maximum rate permitted by law, whichever is less, from the date(s) the license fees should have been paid pursuant to this Agreement.

If such audit reveals that LICENSEE underpaid license fees to the extent of less than ten percent (10%) then LICENSEE shall pay the same late payment fee, as provided above, if payment is not made to BMI by LICENSEE within sixty (60) days after BMI demands payment of said licensee fees found due as a result of the audit(s).

**3. DISCONTINUANCE**

In the event that LICENSEE discontinues the use of all live and recorded music at the premises during the Term of this Agreement and so notifies BMI in writing, within sixty (60) days after receipt of such notice an adjustment shall be made by BMI for that partial calendar year, provided that, in the case of live music, LICENSEE has submitted a statement of Costs incurred up to the date of discontinuance. In no event, however, shall any such adjusted live music license fee be less than the lowest listed license fee on Schedule A for the year of discontinuance or any such adjusted recorded music license fee, which shall be a proration of the full year's license fee, be less than the lowest license fee on Schedule B or Schedule C, whichever is applicable to LICENSEE, for the year of discontinuance. LICENSEE shall not be obligated to make future payments to BMI thereafter for the discontinued music (provided the balance of any previously due license fee has been paid) until such time as LICENSEE shall resume the use of such music at the premises, and LICENSEE agrees to send written notice of any resumption to BMI within thirty (30) days thereof. Such resumption shall be treated in all respects as though the Term of this Agreement had commenced on the date of resumption. If LICENSEE discontinues the use of either live or recorded music, but not both, the provisions of this Agreement shall continue to be applicable to that music which continues to be used at the premises. The term "discontinuance" as used herein shall mean the total abandonment, rather than a seasonal or periodic cessation, of the use of music and entertainment. Notwithstanding such discontinuance, LICENSEE agrees to continue to furnish to BMI statements as provided in Paragraph 15 hereof unless or until this Agreement has been canceled.

**4. LATE PAYMENT AND SERVICE CHARGES**

BMI may impose a late payment charge of one and one-half percent (1½%) per month, or the maximum rate permitted by law, whichever is less, from the date payment is due on any payment that is received by BMI more than sixty (60) days after the due date. BMI may impose a \$25.00 service charge for each unpaid check, draft or other means of payment LICENSEE submits to BMI. For the applicable late payment charges which may result from audits, see Paragraph 2 of this Agreement.

**5. BMI COMMITMENT TO CUSTOMER / INDEMNITY**

So long as LICENSEE is not in default or breach of this Agreement, BMI agrees to indemnify, save harmless, and defend LICENSEE and its officers, and employees, from and against any and all claims, demands, or suits that may be made or brought against them with respect to the performance of any musical works which is licensed under this Agreement at the time of performance. 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.

**6. SALE OR CESSATION OF OPERATIONS OF LICENSED PREMISES**

In the event that LICENSEE sells the Licensed Premises or close the business during the Term of this Agreement and LICENSEE sends BMI written notice by certified mail within thirty (30) days of the sale or closing and include annual reports pursuant to subparagraph 15(a) of this Agreement for the year in which the sale or closing occurred, BMI will adjust LICENSEE's fees *pro rata* from the date of sale or closing, and will refund to LICENSEE any unearned license fees paid hereunder. If LICENSEE does not timely notify BMI in accordance with this Paragraph prior to the end of the contract year in which the sale or closing occurred and file the outstanding annual reports, this Agreement will remain in effect for the entire year, and LICENSEE will be responsible for the entire Annual Fee due to BMI hereunder. Estimated License Fees and payments for any period in which required reports have not been filed shall be deemed final in accordance with subparagraph 15(d) of this Agreement. In no event shall the total annual license fee payable under this Agreement be less than the minimum annual fee as set forth in this Agreement.

**7. BREACH OR DEFAULT / WAIVER**

Upon any breach or default of the terms and conditions contained herein, BMI shall have the right to cancel this Agreement if such breach or default continues thirty (30) days after LICENSEE's receipt of written notice thereof. The right to cancel granted to BMI 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 with the terms of this Paragraph.

**8. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel the Agreement along with the simultaneous cancellation of the Agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days' advance written notice.

## 9. ARBITRATION

All disputes of any kind, nature, or description arising in connection with the terms and conditions of this Agreement, except for matters within the jurisdiction of the BMI Rate Court, shall be submitted to the American Arbitration Association in the City, County, and State of New York, for arbitration under its then prevailing arbitration rules. The arbitrator(s) to be selected as follows: Each of the parties 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 a 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 not need be, entered in 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.

## 10. NOTICES

Any notice 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 notice sent to BMI shall be to the attention of the Vice President, Licensing Department at 10 Music Square East, Nashville, TN 37203. Any such notice sent to LICENSEE shall be to the attention of the person signing the Agreement on LICENSEE's behalf or such person as LICENSEE may advise BMI in writing.

## 11. ASSIGNMENT

This Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, but no assignment shall relieve the parties hereto of their respective obligations hereunder.

## 12. GOVERNING LAW / MISCELLANEOUS

This Agreement, its validity, construction and effect, will be governed by the laws of the State of New York other than its choice of law provisions. The fact that any provisions are found by a court of competent jurisdiction to be void or unenforceable will not affect the validity or enforceability of any other provisions. This Agreement constitutes the entire understanding between the parties and cannot be waived or added to or modified orally and no waiver, addition or modification shall be valid unless in writing and signed by both parties.

## 13. DEFINITIONS

- (a) **Licensed Premises** shall mean the hotel or motel premises, located at the United States Business Address listed on the last page of this Agreement (and "hotel" shall be used hereafter in this Agreement to mean either hotel or motel), including all public rooms or public areas directly on the hotel premises, except that for purposes of Recorded Music performances, Licensed Premises will be limited to include only those restaurants, nightclubs, casinos and shops that are owned and/or operated by the LICENSEE and on the hotel premises. Licensed Premises shall not include theme/amusement parks whether on the hotel premises or not.
- (b) **Live Music and Entertainment Costs** (herein sometimes referred to as "Costs") shall mean all expenditures of every kind and nature (whether in money or any other form of consideration) made by LICENSEE or on LICENSEE's behalf, for all live music and entertainment in connection with LICENSEE's activities on the Licensed Premises.
  - (i) Such Costs shall include the agreed value of room and board and any other accommodations or services which are made available to any person or entity as part of the consideration for their rendering or presenting entertainment services in connection with LICENSEE's activities. For purposes of this Agreement, the agreed value of accommodations or services shall be deemed to be one-half of the prevailing rate charged to LICENSEE's guests for similar accommodations or services.
  - (ii) Such Costs shall exclude: (1) any costs by LICENSEE in connection with a production incorporating performances of Dramatico-musical Works as defined in subparagraph 13(j), including costs for rights acquisition and payments to performers and technicians, provided that the performance of all musical compositions in the production is dramatic and LICENSEE provides BMI upon request a copy of any agreements between LICENSEE and the owners of Dramatic Rights of the works in the production establishing that LICENSEE has obtained authorization for dramatic performance and (2) costs of services of a disc jockey, video jockey or other services in connection with a Discotheque or any entertainment services rendered by LICENSEE's regular employees, except to the extent that such employees shall be engaged primarily for the purposes of rendering entertainment services.
- (c) **Recorded Music** shall mean the performance of music by mechanical or electronic devices, which include, but are not limited to, compact discs (CDs), tapes, records and free-play jukeboxes, and by the reception of broadcast audio transmissions on receiving apparatus and amplification thereof for public performance. Such performances may not be reproduced other than by loudspeakers located only on the Licensed Premises. Recorded music does not include performances by means of a coin-operated phonorecord player (jukebox) licensable by the JLO.
- (d) **Rooms** shall mean the total number of guest rooms at the Licensed Premises.
- (e) **Dancing** shall mean allowing patrons, performers or employees to dance, at any time, to live or recorded music anywhere on the Licensed Premises.
- (f) **Cover, Minimum or Admission Charge** shall mean payment including, but not be limited to, minimum required purchases to enter or remain anywhere in the Licensed Premises.
- (g) **Shows or Acts** shall include, but not be limited to, the use of a disc jockey, video jockey, master of ceremonies, or comedian or similar vocal commentary to patrons, or the use of special visual effects commonly associated with

nightclubs, including, but not limited to, special lighting effects other than normal hotel or cocktail lounge illumination, "light shows", smoke or fog machines, or special moving visual or artistic constructs used as part of such entertainment.

- (h) **Audio-visual Performances** shall mean audio-visual performances of recorded music (including, but not limited to large screen televisions, karaoke), unless exempt under 17 U.S.C. § 110(5).
  - (i) **Dramatic Rights** shall include, but not be limited to, performance of a "dramatico-musical work" in its entirety; performance of one or more musical compositions from a "dramatico-musical work" accompanied by dialogue, pantomime, dance, stage action, or visual representation of the work from which the music is taken; 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 presentation; performance of a concert version a "dramatico-musical work".
  - (j) **Dramatico-musical Works** for purposes of this Agreement only, shall include, but not be limited to, a musical comedy, opera, ballet or play with music.
- ## 14. FEES
- (a) LICENSEE shall pay to BMI an annual fee as determined by the BMI Hotel/Motel License Fee Calculation, as follows:
    - (1) The Estimated License Fee for the initial contract year calculated pursuant to the License Fee Calculation Worksheet (Page 4) is due and payable in full upon signing of the Agreement. The Estimated License Fee for each subsequent calendar year shall be the Actual License Fee for the prior year and shall be due and payable on January 20th of each year during the Term of this Agreement. The Actual License Fee for the prior year (based on actual Costs and music use for each year) shall also be due on the 20th of January of each calendar year with LICENSEE's completed statement pursuant to Paragraph 15, "Reporting".
    - (2) LICENSEE may be entitled to a **one percent (1%) discount** in LICENSEE's license fees if, as verified by BMI, LICENSEE is a member of The American Hotel & Lodging Association ("AH&LA"). By accepting this discount, LICENSEE acknowledges that it is not eligible to receive any other BMI trade association discount.
    - (3) If the initial period of the Term is a partial calendar year, LICENSEE's Costs for such initial period shall be determined by multiplying its average monthly Costs in such partial calendar year by twelve (12), and the applicable license fee for both live music and entertainment and recorded music shall be prorated on a monthly basis.
    - (4) The license fee for each calendar year of the Term (other than an initial partial calendar year) in which any live music and entertainment are performed in connection with LICENSEE's activities at the premises shall be not less than the lowest fee provided on Schedule A for such year.
    - (5) For the first contract year of this Agreement, the Schedule A "Bracket of Annual Live Music and Entertainment Costs" to be used to determine the applicable license fee shall be that bracket which would have been applicable for the twelve (12) month period immediately preceding the commencement date of this Agreement (herein called the "prior year"). If LICENSEE operated with a policy of live music and entertainment for less than the full prior year, the applicable Schedule A bracket shall be deemed to be that which includes the amount equal to twelve (12) times LICENSEE's average monthly Costs during such partial prior year. If LICENSEE did not offer live music and entertainment during any part of the prior year, the applicable Schedule A bracket shall be that which includes the amount equal to twelve (12) times LICENSEE's actual (or estimated) costs during the first full month live music and entertainment was (or will be) offered during the Term.
    - (6) Upon request, payment of the Estimated License Fee may be made in quarterly installments, provided that the account is current and said quarterly installments are made no later than twenty (20) days after the start of each quarterly period. If any quarterly payment is not received by the 90th day after such payment is due, the option to make quarterly payments under this Agreement shall immediately terminate for the remainder of this Agreement, and the balance of the then-current year's Estimated License Fee will immediately become due and payable. Any subsequent Estimated License Fees shall then be paid pursuant to subparagraph 14(a)(1).
  - (b) The Annual License Fees in Schedules A, B and C for each calendar year shall be the license fee for the preceding calendar year, adjusted in accordance with the increase or decrease in the United States Consumer Price Index (Urban, All Items) between the preceding October and the next preceding October, rounded to the nearest dollar. BMI shall advise LICENSEE in writing of these adjustments as part of its annual billing process.
  - (c) In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.
- ## 15. REPORTING
- (a) On or before the 20th day of January following each calendar year of this Agreement, LICENSEE shall furnish BMI (on forms to be supplied by BMI) with a statement, certified either by an officer or by the auditor of LICENSEE, which shall include the following information for such calendar year: (1) the hotel establishments including restaurants, nightclubs and non-restaurant, non-nightclub establishments LICENSEE is including in this Agreement, under the definition of Licensed Premises, pursuant to the limitations set forth in

Paragraph 13; (2) the total Actual Live Music and Entertainment Costs for the prior calendar year; (3) if Recorded Music was performed, the number of guest rooms on the Licensed Premises, whether dancing is permitted, whether a cover, minimum or admission charge is made, whether shows or acts are presented and whether audio-visual performances take place.

- (b) If the Actual License Fee for any prior calendar year due BMI is greater than the Estimated License Fee already paid by LICENSEE to BMI for the prior calendar year (or part thereof), LICENSEE agrees to pay to BMI an amount equal to the difference between the Actual and the Estimated License Fees together with its certified statement pursuant to subparagraph 15(a).
- (c) If the Actual License Fee due BMI is less than the Estimated License Fee already paid to BMI during the prior calendar year (or part thereof), BMI agrees to credit the difference to the account of LICENSEE and if such difference shall occur during the last calendar year of the Term, BMI agrees to refund the same.
- (d) If LICENSEE fails to submit to BMI the annual report(s) required by Paragraph 3 and subparagraph 15(a), BMI shall have the right to assess a reasonable Estimated License Fee for such contract year. BMI shall give written notice to

LICENSEE of the fee calculated. LICENSEE shall have ninety (90) days after such written notice by BMI to submit the report. If BMI does not receive from LICENSEE the report within those 90 days, BMI and LICENSEE agree that BMI's Estimated License Fee shall then be established as the Actual License Fee for the year unreported by LICENSEE. BMI and LICENSEE further agree that such established Actual License Fee (subject to adjustment by audit) shall also become the Estimated License Fee for the following contract year. LICENSEE agrees to waive its right to file its report for any contract year in which BMI's Estimated License Fee becomes the Actual License Fee.

**16. TERM OF AGREEMENT**

Term shall mean the period beginning on \_\_\_\_\_ and ending on December 31, 2017. Thereafter, this Agreement will automatically renew for additional one-year periods, unless timely cancelled. This Agreement may be cancelled as of December 31, 2017 or December 31 of any additional one-year period by either party on thirty (30) days' advance written notice.

**SCHEDULE A - LIVE MUSIC AND ENTERTAINMENT FEE\***

Bracket of Annual Live Music and Entertainment Costs	Annual License Fee for Calendar Year* 2017	Bracket of Annual Live Music and Entertainment Costs	Annual License Fee for Calendar Year* 2017
Less Than \$2,000.00	\$233	\$250,000.00 to \$299,999.99	\$8,803
\$2,000.00 to \$4,999.99	\$323	\$300,000.00 to \$349,999.99	\$9,592
\$5,000.00 to \$9,999.99	\$487	\$350,000.00 to \$399,999.99	\$10,660
\$10,000.00 to \$14,999.99	\$638	\$400,000.00 to \$449,999.99	\$11,195
\$15,000.00 to \$24,999.99	\$959	\$450,000.00 to \$499,999.99	\$11,993
\$25,000.00 to \$34,999.99	\$1,277	\$500,000.00 to \$599,999.99	\$12,744
\$35,000.00 to \$49,999.99	\$1,589	\$600,000.00 to \$749,999.99	\$13,906
\$50,000.00 to \$64,999.99	\$1,899	\$750,000.00 to \$999,999.99	\$16,222
\$65,000.00 to \$79,999.99	\$2,400	\$1,000,000.00 to \$1,499,999.99	\$18,540
\$80,000.00 to \$99,999.99	\$3,198	\$1,500,000.00 to \$1,999,999.99	\$20,858
\$100,000.00 to \$119,999.99	\$4,000	\$2,000,000.00 to \$2,999,999.99	\$23,179
\$120,000.00 to \$139,999.99	\$4,798	\$3,000,000.00 to \$3,999,999.99	\$25,493
\$140,000.00 to \$159,999.99	\$5,598	\$4,000,000.00 to \$4,999,999.99	\$30,127
\$160,000.00 to \$179,999.99	\$6,397	\$5,000,000.00 to \$5,999,999.99	\$33,604
\$180,000.00 to \$199,999.99	\$7,197	\$6,000,000.00 to \$6,999,999.99	\$41,716
\$200,000.00 to \$249,999.99	\$7,994	\$7,000,000.00 and over	\$43,570

\* CPI adjustment per subparagraph 14(b)

**SCHEDULE B**

**RECORDED MUSIC ONLY FEE (NO LIVE MUSIC PERFORMED)\***

1. (a) No Dancing; (b) No Cover, Minimum or Admission Charge; and (c) No Shows or Acts **		
No. of Rooms	2017 (Without AV)	2017 (With AV)
1 – 100	\$377	\$565
101 – 300	\$447	\$670
301 – 500	\$518	\$781
501 – 750	\$691	\$1,039
Over 750	\$921	\$1,380
2. One of: (a) Dancing; (b) Cover, Minimum or Admission Charge; or (c) Shows or Acts**		
No. of Rooms	2017 (Without AV)	2017 (With AV)
1 – 100	\$501	\$753
101 – 300	\$690	\$1,037
301 – 500	\$1,044	\$1,565
501 – 750	\$1,380	\$2,071
Over 750	\$1,835	\$2,754
3. Two of: (a) Dancing; (b) Cover, Minimum or Admission Charge; or (c) Shows or Acts**		
No. of Rooms	2017 (Without AV)	2017 (With AV)
1 – 100	\$690	\$1,037
101 – 300	\$1,044	\$1,565
301 – 500	\$1,548	\$2,321
501 – 750	\$2,067	\$3,199
Over 750	\$2,750	\$4,128
4. All of: (a) Dancing; (b) Cover, Minimum or Admission Charge; and (c) Shows or Acts**		
No. of Rooms	2017 (Without AV)	2017 (With AV)
1 – 100	\$1,148	\$1,721
101 – 300	\$1,773	\$2,662
301 – 500	\$2,377	\$3,571
501 – 750	\$2,965	\$4,449
Over 750	\$3,945	\$5,916

\* CPI adjustment per subparagraph 14(b)  
\*\* See definitions – Paragraph 13

**SCHEDULE C**

**RECORDED MUSIC FEE (LIVE AND RECORDED MUSIC USED)\***

1. (a) No Dancing; (b) No Cover, Minimum or Admission Charge; and (c) No Shows or Acts **		
No. of Rooms	2017 (Without AV)	2017 (With AV)
1 - 100	\$219	\$332
101 - 300	\$267	\$404
301 - 500	\$314	\$469
501 - 750	\$415	\$630
Over 750	\$558	\$836
2. One of: (a) Dancing; (b) Cover, Minimum or Admission Charge; or (c) Shows or Acts**		
No. of Rooms	2017 (Without AV)	2017 (With AV)
1 - 100	\$299	\$448
101 - 300	\$415	\$630
301 - 500	\$543	\$817
501 - 750	\$709	\$1,067
Over 750	\$942	\$1,417
3. Two of: (a) Dancing; (b) Cover, Minimum or Admission Charge; or (c) Shows or Acts**		
No. of Rooms	2017 (Without AV)	2017 (With AV)
1 - 100	\$415	\$630
101 - 300	\$546	\$817
301 - 500	\$773	\$1,160
501 - 750	\$1,128	\$1,693
Over 750	\$1,501	\$2,252
4. All of: (a) Dancing; (b) Cover, Minimum or Admission Charge; and (c) Shows or Acts**		
No. of Rooms	2017 (Without AV)	2017 (With AV)
1 - 100	\$1,148	\$1,721
101 - 300	\$1,760	\$2,662
301 - 500	\$2,361	\$3,571
501 - 750	\$2,943	\$4,449
Over 750	\$3,921	\$5,916

**BMI HOTEL / MOTEL ANNUAL LICENSE FEE CALCULATION WORKSHEET**

<b>ENTER NUMBER OF GUEST ROOMS AT LICENSEE'S PREMISES.....</b>		
<b>Section I: Live Music and Entertainment Fee (COMPLETE IF LICENSEE USES LIVE MUSIC AND ENTERTAINMENT)</b>		
(a) Enter LICENSEE's Live Music and Entertainment Costs for the services of musicians and other entertainers (such as karaoke hosts, emcees, dancers, disc or video jockey services, etc.) for the prior year.....	<b>1.</b>	\$
(b) Based on Live Music and Entertainment Costs on Line 1, enter appropriate Annual License Fee from Schedule A.....	<b>2.</b>	\$
<b>Section II: Live and Recorded Music Fee (COMPLETE ONLY IF FEE IS INDICATED IN SECTION I ABOVE)</b>		
(c) Check uses of recorded music other than background use: <input type="checkbox"/> Dancing <input type="checkbox"/> Cover, Minimum or Admission Charge <input type="checkbox"/> Shows or Acts <i>Please specify:</i> DJ ___ VJ ___ Karaoke Hosts ___ Other (Comedians, Emcees, etc.) _____		
(d) Check other uses of recorded music below: CDs ___ Tapes ___ Records ___ Radio ___ Free-play Jukebox ___ Music-On-Hold ___		
(e) Indicate uses of audio-visual:                      Karaoke _____ (yes or no) No. of TV's in:    Lounge ___ Lobby ___ Restaurant ___ Other ___    No. of TV's over 55" ___		
(f) Based on the number of rooms entered above and the number of boxes checked in (c), enter appropriate fee from Schedule C	<b>3.</b>	\$
<b>Section III: Recorded Music Only Fee (COMPLETE IF LICENSEE HAS <u>NO</u> LIVE MUSIC OR ENTERTAINMENT)</b>		
(g) Check uses of recorded music other than background use: <input type="checkbox"/> Dancing <input type="checkbox"/> Cover, Minimum or Admission Charge <input type="checkbox"/> Shows or Acts <i>Please specify:</i> DJ ___ VJ ___ Karaoke Hosts ___ Other (Comedians, Emcees, etc.) _____		
(h) Check other uses of recorded music below: CDs ___ Tapes ___ Records ___ Radio ___ Free-play Jukebox ___ Music-On-Hold ___		
(i) Indicate uses of audio-visual:                      Karaoke _____ (yes or no) No. of TV's in:    Lounge ___ Lobby ___ Restaurant ___ Other ___    No. of TV's over 55" ___		
(j) Based on the number of rooms entered above and the number of boxes checked in (g), enter appropriate fee from Schedule B	<b>4.</b>	\$
<b>ESTIMATED LICENSE FEE</b> (Add Line 2 and Line 3 or, if no Live Music or Entertainment, enter Total from Line 4).....	<b>5.</b>	\$
<b>IF AH&amp;LA MEMBER, INSERT MEMBER # _____, DEDUCT THE 1% AH&amp;LA DISCOUNT (SUBPARAGRAPH 14(a)(2)) FROM ESTIMATED ANNUAL LICENSE FEE AND ENTER ON LINE TO RIGHT.....</b>	<b>6.</b>	\$

The Estimated License Fee for each contract year subsequent to the first contract year of the Term hereof shall be the Actual License Fee reported by LICENSEE for the prior calendar year, pursuant to Paragraph 15 hereof.

**AGREEMENT**

AGREEMENT, made at New York, N.Y. on (Date will be entered by BMI upon execution) \_\_\_\_\_ between BROADCAST MUSIC, INC., (herein "BMI"), a State of New York corporation with its principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030 and the legal or trade name described below and referred to herein as "LICENSEE" (the "Agreement"). This Agreement includes all of the terms and conditions set forth herein.

**PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT WITH YOUR CHECK TO: BMI, 10 MUSIC SQUARE EAST, NASHVILLE, TN 37203**

<p align="center"><b><u>ENTER LEGAL NAME</u></b></p> <p align="center"><i>(Name of Corporation, Partnership, or Individual Owner)</i></p> <p align="center"><b><u>ENTER TRADE NAME</u></b></p> <p align="center"><i>(Doing business under the name of)</i></p>	<p align="center"><b><u>LICENSED PREMISES</u></b></p> <p align="center"><i>(Street Address)</i></p> <p align="center"><i>(City) (State) (Zip)</i></p> <p align="center"><i>(Telephone Number) (Fax Number)</i></p> <p align="center"><i>(Contact Name) (Title)</i></p> <p align="center"><i>(Email Address) (Web Address)</i></p>
<p align="center"><b><u>CHECK APPROPRIATE BOX AND COMPLETE</u></b></p> <p><input type="checkbox"/> Individual Ownership</p> <p><input type="checkbox"/> LLC    <input type="checkbox"/> Corporation    _____  <i>(State of incorporation, if different from Licensed Premises)</i></p> <p><input type="checkbox"/> LLP    <input type="checkbox"/> Partnership    _____  <i>(Enter names of partners)</i></p> <p><input type="checkbox"/> Other _____ Fed. Tax ID# _____</p>	<p align="center"><b><u>MAILING ADDRESS</u></b></p> <p align="center"><i>(Street Address)</i></p> <p align="center"><i>(City) (State) (Zip)</i></p> <p align="center"><i>(Telephone Number) (Fax Number)</i></p> <p align="center"><i>(Contact Name) (Title)</i></p>

<p align="center"><b>TO BE COMPLETED BY LICENSEE</b></p> <p>By signing this Agreement you agree that the foregoing is a true and accurate representation of your Music Policy.</p> <p>I have read and have understood all of the terms and conditions herein and my signature below is evidence of this.</p> <p align="center"><b>(SIGN HERE - PLEASE INCLUDE PAYMENT)</b></p> <p align="center">_____ Signature</p> <p align="center">_____ Print Name / Title</p>	<p align="center"><b>FOR ADMINISTRATIVE USE ONLY</b></p> <p align="center">TO BE COMPLETED BY BMI BROADCAST MUSIC, INC.</p>
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FOR BMI USE ONLY	
<b>Account No.</b>	<b>COID</b>



# Music License for Individual Bus, Vehicles and Motorcoaches

## 1. BMI GRANT

- (a) BMI grants to LICENSEE a non-exclusive license to publicly perform, present, or cause to be performed, on any bus, vehicle or coach owned, leased or operated by LICENSEE and equipped with audio, visual or audio/visual capabilities (hereinafter referred to as "Coaches"), all musical works by recorded/mechanical means only, of which BMI controls the right to grant public performance licenses during the Term (the "Works").
- (b) This license does not include: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of "grand rights" therein; (ii) the right to broadcast, telecast, cablecast or otherwise transmit the performances licensed hereunder to persons outside of Coaches, including by satellite, the Internet or on-line services; (iii) performances of music by means of a coin-operated phonorecord player (jukebox); (iv) performances by any coin-operated digital music service that does not qualify as a Jukebox; or (v) live performances of musical works.
- (c) BMI reserves the right to withdraw from the license granted hereunder any Work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such Work or that such Work infringes another.

## 2. INDEMNITY BY BMI

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 musical works licensed under this Agreement. Such indemnity shall be limited to musical works which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

## 3. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues for thirty (30) days after the date of BMI's written notice to LICENSEE thereof. 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 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.

## 4. ARBITRATION

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

## 5. 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 herein 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.

## 6. CANCELLATION OF ENTIRE CATEGORY

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

## 7. 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.

## 8. FEES

- (a) The license fee payment for the initial Contract Year is due upon execution of the Agreement. The annual license fee payment for subsequent Contract Years shall be due no later than January 31st of each Contract Year.
- (b) The per Coach license fee rate for the 2017 Contract Year shall be \$85.53. LICENSEE hereby warrants and represents that, as of the date of this Agreement the total number of Coaches is \_\_\_\_\_. The license fee for the initial Contract Year is \$\_\_\_\_\_ and is due upon signing this Agreement.
- (c) For each subsequent Contract Year of this Agreement, the per Coach license fee shall be adjusted in accordance with the increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding July and the next preceding July.
- (d) Upon execution of this Agreement and on or before January 31st of each Contract Year, LICENSEE shall supply BMI with a report identifying the number of Coaches operated by LICENSEE during the previous year and the location at which such Coaches are located.

## 9. REPORTING

In the event that LICENSEE utilizes an independent music programming provider, or otherwise maintains or has access to music use information, LICENSEE shall provide to BMI quarterly music use reports identifying the musical works performed on each Coach. Such music use reports shall identify each musical composition performed by the title, artist, composer/writer, publisher and record label, if reasonably available.

## 10. LATE PAYMENT CHARGE

BMI may impose a late payment charge of one and one-half percent (1½%) per month from the date any payment is due hereunder on any payment that is received by BMI more than one month after the due date.



**11. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with license fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

**12. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

**13. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

**14. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, will not be binding until signed by both parties, and 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. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**15. TERM**

The initial Term of this Agreement shall begin on the first day of \_\_\_\_\_ and end on December 31, \_\_\_\_\_ and shall be extended for additional periods of one (1) year each, unless canceled by either party as of the initial Contract Year or any additional Contract Year upon not less than sixty (60) days notice prior to the end of any such Contract Year. A "Contract Year" shall mean each consecutive twelve-month period beginning with the first month of the Agreement.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b><u>TRADE NAME</u></b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address) (Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation <i>(State of Incorporation, if different from Licensed Premises)</i>	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership <i>(Enter names of partners)</i>	
<input type="checkbox"/> Other _____	
Federal Tax ID No. _____	
<b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i>	<i>(Street Address)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State <i>(State)</i>	<i>(City) (State) (Zip)</i>
<input type="checkbox"/> Local <i>(Municipality/City and State)</i>	<i>(Telephone Number) (Fax Number)</i>
	<i>(Contact Name) (Title)</i>
	<i>(Email Address – if different from above)</i>

<p align="center"><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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. <b><i>(SIGN HERE – PLEASE INCLUDE PAYMENT)</i></b></p>	<p align="center"><b>FOR ADMINISTRATIVE USE ONLY</b> <b>TO BE COMPLETED BY BMI</b> <b>BROADCAST MUSIC INC.</b></p>						
Signature							
Print Name / Title							
Signatory Email Address* <i>(if different from above)</i>							
<b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; text-align:center;"><b>FOR BMI USE ONLY</b></td> <td style="width:10%; text-align:center;"><b>IBVM</b></td> <td style="width:40%; text-align:center;"><b>LI-2017/JULY</b></td> </tr> <tr> <td style="text-align:center;"><b>ACCOUNT NO.</b></td> <td style="text-align:center;"><b>COID</b></td> <td style="text-align:center;"><b>EFFECTIVE: January 2017</b></td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>IBVM</b>	<b>LI-2017/JULY</b>	<b>ACCOUNT NO.</b>	<b>COID</b>	<b>EFFECTIVE: January 2017</b>
<b>FOR BMI USE ONLY</b>	<b>IBVM</b>	<b>LI-2017/JULY</b>					
<b>ACCOUNT NO.</b>	<b>COID</b>	<b>EFFECTIVE: January 2017</b>					

**PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:**

**BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203**



**1. DEFINITIONS**

- (a) **Contract Year** shall mean each consecutive twelve-month period.
- (b) **Licensed Locations** shall mean indoor recreational facilities of not more than 20,000 square feet owned and operated or franchised by LICENSEE which publicly perform musical works and are listed or will be listed on Schedule A. Such indoor recreational facilities licensed hereunder do not include health clubs, dance studios, or similar facilities.
- (c) **LICENSEE** shall mean the entity described herein which own and/or operates or franchises the Licensed Locations.

**2. GRANT**

BMI grants to LICENSEE a non-exclusive license to publicly perform or cause the public performance at the Licensed Locations by means of recorded and live music all musical works of which BMI controls the right to grant public performance licenses, at the time of the performance, during the Term of this Agreement. This license includes, but is not limited to, music performed: (1) over telephones in the form of music-on-hold; (2) as recorded background music; (3) in audiovisual presentations; and (4) in television and radio programming received by LICENSEE at the Licensed Locations.

This license does not include: (a) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, or the right to use the musical works in any context which constitutes the exercise of "grand rights"; (b) the right to broadcast, telecast, cablecast or otherwise transmit (including by satellite, the Internet or on-line service) the performances outside of the Licensed Locations, except to the extent that music on telephone hold lines originating at a Licensed Location is audible at remote locations on telephone lines as part of "music-on-hold"; (c) the right to perform music by means of any coin-operated phonorecord player as defined in the Copyright Act ("Jukebox") where a Jukebox License Office ("JLO") agreement may be obtained for such Jukebox, or, by any coin-operated digital music service that does not qualify as a Jukebox; and (d) any performances of live music at more than four shows, acts or events at each Licensed Location during any month or by more than seven musicians.

BMI may withdraw from the works licensed hereunder any musical work as to which a legal action has been instituted or a claim made that BMI does not have the right to license public performances of that work.

**3. REVIEW OF STATEMENT / ACCOUNTINGS**

BMI shall have the right, by its authorized representatives, at any time during customary business hours, and upon thirty (30) days advance written notice, to examine those portions of LICENSEE's books and records of account to such extent as may be necessary to verify any and all statements and/or accountings made hereunder or under any prior agreement with BMI. BMI shall consider all data and information coming to its attention as the result of any such examination of LICENSEE's books and records as confidential.

**4. INDEMNITY BY BMI**

Provided that LICENSEE is not in default or breach of this Agreement, BMI agrees to indemnify, save harmless, and defend its officers and employees against any and all claims that may be made against them with respect to the performance of any musical works licensed under this Agreement at the time of LICENSEE's performances. LICENSEE agrees to give BMI immediate notice of any claim demand or suit, to deliver to BMI any papers pertaining thereto, and to cooperate with BMI in the matter, of which BMI will be in full charge.

**5. TERMINATION OF AGREEMENT BY LICENSEE**

If LICENSEE permanently ceases operations of any of the Licensed Locations, this Agreement will end with respect to that Licensed Location, provided that within ten (10) days of the cessation LICENSEE gives written notice to BMI, stating the effective date that the location ceased operation, and if applicable, the name of the new owner/operator of the location. LICENSEE must pay all license fees and file all reports due hereunder through the effective date of the cessation of business at the Licensed Location.

**6. BREACH OR DEFAULT / WAIVER**

Upon any breach or default of the terms and conditions contained herein, BMI shall have the right to cancel this Agreement if such breach or default continues for thirty (30) days after LICENSEE's receipt of written notice thereof. The right to cancel granted to BMI 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.

**7. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

**8. OFFER OF COMPARABLE AGREEMENT**

In the event that BMI, at any time during the Term hereof, 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.

## 9. ASSIGNMENT

This Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, but no assignment shall relieve the parties hereto of their respective obligations hereunder.

## 10. ARBITRATION

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement (except for those falling within the jurisdiction of the BMI rate court) shall be submitted to arbitration in the City, County and State of New York for arbitration under the then prevailing Commercial Arbitration Rules of the American Arbitration Association. The award made in the arbitration shall be binding and conclusive on the parties and the judgment may be, but need not be, entered in any court having jurisdiction, including but not limited to the courts of New York State. Such award shall include the fixing of the costs, expenses and reasonable attorney's fees of arbitration, which shall be borne by the unsuccessful party.

## 11. NOTICES

Any notice under this Agreement shall 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 notice sent to BMI shall be to the attention of the Vice President, Licensing Department at 10 Music Square East, Nashville, TN 37203. Any such notice sent to LICENSEE shall be to the attention of the person signing the Agreement on LICENSEE's behalf or such person as LICENSEE may advise BMI in writing.

## 12. STATE OR LOCAL TAX

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

## 13. MISCELLANEOUS

This Agreement is the entire understanding between the parties, will not be binding until signed by both parties, cannot be waived or added to or modified orally, and no waiver, addition or modification will be valid unless in writing and signed by the parties. This Agreement is executed by the duly authorized representative of BMI and of LICENSEE. This Agreement, its validity, construction and effect, will be governed by the laws of the State of New York other than its choice of law provisions. The fact that any provisions are found by a court of competent jurisdiction to be void or unenforceable will not affect the validity or enforceability of any other provisions. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

## 14. FEES

LICENSEE agrees to pay BMI an annual license fee for each Licensed Location for each Contract Year of the Term as follows:

- (a) LICENSEE shall pay an annual license fee of \$660 per Licensed Location.
- (b) The annual license fee for the initial Contract Year is due upon the signing of this Agreement.
- (c) LICENSEE warrants that as of the date of this Agreement the total number of Licensed Locations owned and/or operated by or franchised by LICENSEE is \_\_\_\_\_ . As such, LICENSEE's annual fee for the initial Contract Year is \_\_\_\_\_ .
- (d) For each subsequent Contract Year, license fees are due no later than twenty (20) days after the beginning of the Contract Year.

## 15. REPORTING

LICENSEE agrees to submit a Schedule A report to BMI annually listing all locations to be licensed hereunder as follows:

- (a) For the initial Contract Year, LICENSEE shall complete the Schedule A report attached hereto which identifies all Licensed Locations owned and/or operated by or franchised by LICENSEE and licensed hereunder. Such Schedule A shall be submitted to BMI as part of this Agreement.
- (b) For each subsequent Contract Year, LICENSEE shall submit a Schedule A report, on forms to be supplied by BMI, listing all Licensed Locations to be licensed hereunder. Such Schedule A will provide the basis for LICENSEE's fee calculation for the commencing Contract Year and will be due, along with payment of LICENSEE's annual license fee, within twenty (20) days after the beginning of the Contract Year.
- (c) This Agreement shall extend to each Licensed Location as of the date that LICENSEE commences ownership or operation of the location provided that such location is reported to BMI on the Schedule A submitted to BMI for the next commencing Contract Year.

**SCHEDULE A – Licensed Locations**

NAME	ADDRESS	CITY	STATE	ZIP CODE	SIZE (Square Feet)

**TOTAL LICENSED LOCATIONS** \_\_\_\_\_ x **\$660 (Fee Per Licensed Location)** = \$ \_\_\_\_\_

*IF MORE SPACE IS REQUIRED, ATTACH SHEET(S)*

**16. TERM OF AGREEMENT**

The initial Term of this Agreement shall begin on \_\_\_\_\_ and shall end on \_\_\_\_\_. The Term shall continue for additional periods of one (1) year each, unless cancelled by either party at the end of any period upon thirty (30) days advance written notice, or otherwise cancelled pursuant to Paragraphs 5, 6 and 7.

**AGREEMENT**

AGREEMENT, made at New York, N.Y. on *(Date will be entered by BMI)* \_\_\_\_\_ between BROADCAST MUSIC, INC. ("BMI"), a New York corporation with its principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030, and the entity described below ("LICENSEE").

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

**ENTER LEGAL NAME:**

\_\_\_\_\_  
*(Name of Corporation, Partnership, or Individual Owner)*

**ENTER TRADE NAME:**

\_\_\_\_\_  
*(Doing business under the name of)*

**LICENSEE ADDRESS**

\_\_\_\_\_  
*(Street Address)*

\_\_\_\_\_  
*(City) (State) (Zip)*

\_\_\_\_\_  
*(Telephone Number) (Fax Number)*

\_\_\_\_\_  
*(Contact Name) (Title)*

\_\_\_\_\_  
*(Email Address)*

**CHECK APPROPRIATE BOX AND COMPLETE**

- Individual Ownership
  - LLC  Corporation \_\_\_\_\_  
*(State of Incorporation, if different from Licensee Address)*
  - LLP  Partnership \_\_\_\_\_  
*(Enter names of partners)*
  - Other \_\_\_\_\_
- Fed. Tax ID # \_\_\_\_\_

**MAILING ADDRESS**

*(if different from Licensee Address)*

\_\_\_\_\_  
*(Street Address)*

\_\_\_\_\_  
*(City) (State) (Zip)*

\_\_\_\_\_  
*(Telephone No.) (Fax Number)*

\_\_\_\_\_  
*(Contact Name) (Title)*

\_\_\_\_\_  
*(Email Address)*

**TO BE COMPLETED BY LICENSEE**  
By signing this Agreement you represent that you have read, understood, and agree to all of the terms and conditions herein and your signature below is evidence of this.

***(SIGN HERE – PLEASE INCLUDE PAYMENT)***

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name / Title

**FOR ADMINISTRATIVE USE ONLY**  
**TO BE COMPLETED BY BMI**  
**BROADCAST MUSIC, INC.**

FOR BMI USE ONLY	
<b>Account No.</b>	<b>COID</b>



® BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.

**1. DEFINITIONS**

- (a) **Contract Year** shall mean each consecutive twelve-month period.
- (b) **Licensed Locations** shall mean indoor recreational facilities of not more than 20,000 square feet owned and operated or franchised by LICENSEE, which publicly perform musical works and are listed or will be listed on Schedule A. Such indoor recreational facilities licensed hereunder do not include health clubs, dance studios, or similar facilities.
- (c) **LICENSEE** shall mean the entity described herein which owns and/or operates or franchises the Licensed Locations. LICENSEE must own or operate **at least 25 locations** to be licensable hereunder.

**2. GRANT**

BMI grants to LICENSEE a non-exclusive license to publicly perform or cause the public performance at the Licensed Locations by means of recorded and live music all musical works of which BMI controls the right to grant public performance licenses, at the time of the performance, during the Term of this Agreement. This license includes, but is not limited to, music performed: (1) over telephones in the form of music-on-hold; (2) as recorded background music; (3) in audiovisual presentations; and (4) in television and radio programming received by LICENSEE at the Licensed Locations.

This license does not include: (a) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, or the right to use the musical works in any context which constitutes the exercise of "grand rights"; (b) the right to broadcast, telecast, cablecast or otherwise transmit (including by satellite, the Internet or on-line service) the performances outside of the Licensed Locations, except to the extent that music on telephone hold lines originating at a Licensed Location is audible at remote locations on telephone lines as part of "music-on-hold"; (c) the right to perform music by means of any coin-operated phonorecord player as defined in the Copyright Act ("Jukebox") where a Jukebox License Office ("JLO") agreement may be obtained for such Jukebox, or, by any coin-operated digital music service that does not qualify as a Jukebox; and (d) any performances of live music at more than four shows, acts or events at each Licensed Location during any month or by more than seven musicians.

BMI may withdraw from the works licensed hereunder any musical work as to which a legal action has been instituted or a claim made that BMI does not have the right to license public performances of that work.

**3. REVIEW OF STATEMENT / ACCOUNTINGS**

BMI shall have the right, by its authorized representatives, at any time during customary business hours, and upon thirty (30) days advance written notice, to examine those portions of LICENSEE's books and records of account to such extent as may be necessary to verify any and all statements and/or accountings made hereunder or under any prior agreement with BMI. BMI shall consider all data and information coming to its attention as the result of any such examination of LICENSEE's books and records as confidential.

**4. INDEMNITY BY BMI**

Provided that LICENSEE is not in default or breach of this Agreement, BMI agrees to indemnify, save harmless, and defend its officers and employees against any and all claims that may be made against them with respect to the performance of any musical works licensed under this Agreement at the time of LICENSEE's performances. LICENSEE agrees to give BMI immediate notice of any claim demand or suit, to deliver to BMI any papers pertaining thereto, and to cooperate with BMI in the matter, of which BMI will be in full charge.

**5. TERMINATION OF AGREEMENT BY LICENSEE**

If LICENSEE permanently ceases operations of any of the Licensed Locations, this Agreement will end with respect to that Licensed Location, provided that within ten (10) days of the cessation LICENSEE gives written notice to BMI, stating the effective date that the location ceased operation, and if applicable, the name of the new owner/operator of the location. LICENSEE must pay all license fees and file all reports due hereunder through the effective date of the cessation of business at the Licensed Location.

**6. BREACH OR DEFAULT / WAIVER**

Upon any breach or default of the terms and conditions contained herein, BMI shall have the right to cancel this Agreement if such breach or default continues for thirty (30) days after LICENSEE's receipt of written notice thereof. The right to cancel granted to BMI 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.

**7. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

**8. OFFER OF COMPARABLE AGREEMENT**

In the event that BMI, at any time during the Term hereof, 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.

**9. ASSIGNMENT**

This Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, but no assignment shall relieve the parties hereto of their respective obligations hereunder.

**10. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement (except for those falling within the jurisdiction of the BMI rate court) shall be submitted to arbitration in the City, County and State of New York for arbitration under the then prevailing Commercial Arbitration Rules of the American Arbitration Association. The award made in the arbitration shall be binding and conclusive on the parties and the judgment may be, but need not be, entered in any court having jurisdiction, including but not limited to the courts of New York State. Such award shall include the fixing of the costs, expenses and reasonable attorney's fees of arbitration, which shall be borne by the unsuccessful party.

**11. NOTICES**

Any notice under this Agreement shall 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 notice sent to BMI shall be to the attention of the Vice President, Licensing Department at 10 Music Square East, Nashville, TN 37203. Any such notice sent to LICENSEE shall be to the attention of the person signing the Agreement on LICENSEE's behalf or such person as LICENSEE may advise BMI in writing.

**12. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

**13. MISCELLANEOUS**

This Agreement is the entire understanding between the parties, will not be binding until signed by both parties, cannot be waived or added to or modified orally, and no waiver, addition or modification will be valid unless in writing and signed by the parties. This Agreement is executed by the duly authorized representative of BMI and of LICENSEE. This Agreement, its validity, construction and effect, will be governed by the laws of the State of New York other than its choice of law provisions. The fact that any provisions are found by a court of competent jurisdiction to be void or unenforceable will not affect the validity or enforceability of any other provisions. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**14. FEES**

LICENSEE agrees to pay BMI an annual license fee for each Licensed Location for each Contract Year of the Term. LICENSEE shall pay an annual license fee for each Licensed Location as follows:

- (a) For **LICENSEE's with up to 99 locations**, the annual license fee per Licensed Location shall be \$550 per Contract Year.
- (b) For **LICENSEE's with 100 or more locations**, the annual license fee per Contract Year shall be as follows:

<u>Number of Licensed Locations</u>		<u>Annual Fee Per Location</u>
1 <sup>st</sup>	- 100 <sup>th</sup>	\$440
101 <sup>st</sup>	- 200 <sup>th</sup>	\$390
201 <sup>st</sup>	- 300 <sup>th</sup>	\$330
301 <sup>st</sup>	and more	\$280

**NOTE: The License Fees herein are successive, not cumulative. Therefore, if a LICENSEE has 250 locations, fees would be \$440 per Licensed Location for the first 100 Licensed Locations, \$390 per Licensed Location for the 101<sup>st</sup> through the 200<sup>th</sup> Licensed Location and \$330 per Licensed Location for the 201<sup>st</sup> through the 250<sup>th</sup> Licensed Location.**

- (c) The annual license fee for the initial Contract Year is due upon the signing of this Agreement.
- (d) LICENSEE warrants that as of the date of this Agreement the total number of Licensed Locations owned and/or operated by or franchised by LICENSEE is \_\_\_\_\_ . As such, LICENSEE's annual fee for the initial Contract Year is \_\_\_\_\_ .
- (e) For each subsequent Contract Year, license fees are due no later than twenty (20) days after the beginning of the Contract Year.

**15. REPORTING**

LICENSEE agrees to submit a Schedule A report to BMI annually listing all locations to be licensed hereunder as follows:

- (a) For the initial Contract Year, LICENSEE shall complete the Schedule A report attached hereto which identifies all Licensed Locations owned and/or operated by or franchised by LICENSEE and licensed hereunder. Such Schedule A shall be submitted to BMI as part of this Agreement.
- (b) For each subsequent Contract Year, LICENSEE shall submit a Schedule A report, on forms to be supplied by BMI, listing all Licensed Locations to be licensed hereunder. Such Schedule A will provide the basis for LICENSEE's fee calculation for the commencing Contract Year and will be due, along with payment of LICENSEE's annual license fee, within twenty (20) days after the beginning of the Contract Year.
- (c) This Agreement shall extend to each Licensed Location as of the date that LICENSEE commences ownership or operation of the location provided that such location is reported to BMI on the Schedule A submitted to BMI for the next commencing Contract Year.

### SCHEDULE A – Licensed Locations

NAME	ADDRESS	CITY	STATE	ZIP CODE	SIZE (Square Feet)

**IF MORE SPACE IS REQUIRED, ATTACH SHEET(S)**



**16. TERM OF AGREEMENT**

The initial Term of this Agreement shall begin on \_\_\_\_\_ and shall end on \_\_\_\_\_. The Term shall continue for additional periods of one (1) year each, unless cancelled by either party at the end of any period upon thirty (30) days advance written notice, or otherwise cancelled pursuant to Paragraphs 5, 6 and 7.

**AGREEMENT**

AGREEMENT, made at New York, N.Y. on *(Date will be entered by BMI)* \_\_\_\_\_ between BROADCAST MUSIC, INC. ("BMI"), a New York corporation with its principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030, and the entity described below ("LICENSEE").

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

**ENTER LEGAL NAME:**

\_\_\_\_\_  
*(Name of Corporation, Partnership, or Individual Owner)*

**ENTER TRADE NAME:**

\_\_\_\_\_  
*(Doing business under the name of)*

**LICENSEE ADDRESS**

\_\_\_\_\_  
*(Street Address)*

\_\_\_\_\_  
*(City) (State) (Zip)*

\_\_\_\_\_  
*(Telephone Number) (Fax Number)*

\_\_\_\_\_  
*(Contact Name) (Title)*

\_\_\_\_\_  
*(Email Address)*

**CHECK APPROPRIATE BOX AND COMPLETE**

- Individual Ownership
  - LLC  Corporation \_\_\_\_\_  
*(State of Incorporation, if different from Licensee Address)*
  - LLP  Partnership \_\_\_\_\_  
*(Enter names of partners)*
  - Other \_\_\_\_\_
- Fed. Tax ID # \_\_\_\_\_

**MAILING ADDRESS**

*(if different from Licensee Address)*

\_\_\_\_\_  
*(Street Address)*

\_\_\_\_\_  
*(City) (State) (Zip)*

\_\_\_\_\_  
*(Telephone No.) (Fax Number)*

\_\_\_\_\_  
*(Contact Name) (Title)*

\_\_\_\_\_  
*(Email Address)*

**TO BE COMPLETED BY LICENSEE**  
By signing this Agreement you represent that you have read, understood, and agree to all of the terms and conditions herein and your signature below is evidence of this.

***(SIGN HERE – PLEASE INCLUDE PAYMENT)***

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name / Title

**FOR ADMINISTRATIVE USE ONLY**  
**TO BE COMPLETED BY BMI**  
**BROADCAST MUSIC, INC.**

FOR BMI USE ONLY	
<b>Account No.</b>	<b>COID</b>



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AGREEMENT, made at New York, N.Y. on (Date Will Be Entered By BMI Upon Execution) \_\_\_\_\_ between BROADCAST MUSIC, INC. ("BMI"), a New York corporation with its principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030 and the entity described below ("LICENSEE" or "you"):

<b>ENTER LEGAL NAME</b> _____	
Name of Corporation, Partnership or Individual Owner	
<b>ENTER TRADE NAME</b> _____	
(Doing business under the name of)	
<b>CHECK APPROPRIATE BOX AND COMPLETE</b>	<input type="checkbox"/> <b>Corporation</b> _____ (State of Incorporation)
	<input type="checkbox"/> <b>Partnership</b> (Enter names of partners) _____ _____ _____
	<input type="checkbox"/> <b>Individual Owner</b> <i>(show residence address below under Mailing Address)</i>
<b>PREMISES ADDRESS</b>	<b>MAILING ADDRESS</b>
_____ <i>(Street Address)</i>	_____ <i>(Street Address)</i>
<i>(City)</i> <i>(State)</i> <i>(Zip)</i>	<i>(City)</i> <i>(State)</i> <i>(Zip)</i>
<i>(Contact Name)</i> <i>(Title)</i> <i>(Telephone No.)</i> (       )	<i>(Contact Name)</i> <i>(Title)</i> <i>(Telephone No.)</i> (       )

**1. DEFINITIONS**

Session: each program or card of jai alai games for which either separate admission is charged or separate entry is required of any patrons, e.g. an afternoon program and evening program on the same calendar day are considered two sessions.

**2. BMI GRANT**

BMI hereby grants to LICENSEE a non-exclusive license to perform, present or cause the performance at the licensed premises of all musical works of which BMI shall have the right to grant public performance licenses during the term hereof. Said license shall be restricted to performance of music in the manner described herein and is granted in consideration of the payment of the license fees as set forth herein and is subject to all of the terms and conditions hereof:

This license does not include:

- (a) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein; nor to performances as set forth in Paragraph 13 of this Agreement; or
- (b) the right to broadcast, telecast, cablecast or otherwise transmit the performances licensed hereunder to persons outside of the licensed premises.
- (c) This license does not authorize performances of music by means of a coin-operated phonorecord player (jukebox).
- (d) This license shall not extend to any performances originating outside of the licensed premises, except that if LICENSEE is a subscriber to a commercial subscription music service which is licensed by BMI, then only this license shall authorize performances on the licensed premises of music which is provided to LICENSEE by such subscription music service.

**3. TERM OF AGREEMENT**

The term of this Agreement shall begin on January 1, \_\_\_\_\_ and end on December 31, \_\_\_\_\_ and shall continue thereafter unless cancelled by either party as of the end of said initial term or any subsequent one (1) year period (herein sometimes referred to as a "contract year" or "calendar year") upon thirty (30) days advance written notice to the other party. BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the Agreement of all other licensees of the same class and category as LICENSEE, as of the end of any month during the term, upon sixty (60) days advance written notice.

**4. FEES**

- (a) LICENSEE agrees to pay BMI, subject to the minimum fee, for each calendar year an estimated fee as an advance of the actual fee. The estimated fee shall then be adjusted in accordance with Paragraph 5. The first estimated annual fee due shall be payable upon the signing of the Agreement by LICENSEE. The resulting actual fee, subject to the minimum fee, shall be determined by multiplying the sessions by the rate in the License Fee Schedule for each applicable calendar year.
- (b) The estimated fee for the second and subsequent calendar years shall be the actual fee for the previous calendar year and shall be due and payable in full by January 20th of each such year.

**STATEMENT OF JAI ALAI SESSIONS**

*(To estimate fees (for the first calendar year) complete areas below)*

LICENSEE represents that during the calendar year preceding the initial term of this Agreement (or if LICENSEE did not operate during that full calendar year period, LICENSEE shall make a good-faith estimate for the first calendar year of this Agreement), LICENSEE conducted \_\_\_\_\_ number of jai alai sessions.

Accordingly, LICENSEE's estimated fee, from the License Fee Schedule below, is \$ \_\_\_\_\_ which is due and payable in full upon the signing of this Agreement by LICENSEE.

**LICENSEE FEE SCHEDULE**

<u>RATE PER JAI ALAI SESSION</u>	<u>MINIMUM ANNUAL FEE</u>
\$ 10.00	\$ 100.00

**5. REPORTING OF JAI ALAI SESSIONS**

- (a) At the same time that LICENSEE pays its estimated license fee hereunder for the second and subsequent calendar years, LICENSEE shall submit a report, on BMI forms, certified by an officer or by the auditor of LICENSEE, setting forth for the previous calendar year the actual number of jai alai sessions.
- (b) If the actual fee is greater than the license fee already paid by LICENSEE for the calendar year, LICENSEE agrees to pay BMI the difference, within (30) days of the mailing by BMI to LICENSEE of the adjusted statement of license fees.
- (c) If the actual fee is less than the license fee already paid by LICENSEE to BMI for the calendar year, BMI agrees to credit the difference between the actual and estimated license fees to the account of LICENSEE, and if such adjustment occurs in the last calendar year of the Agreement, BMI shall refund said sum promptly.

**6. OFFER OF COMPARABLE AGREEMENT**

In the event that BMI, at any time during the term hereof, 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.

**7. INDEMNITY BY BMI**

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 the works which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. 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.

**8. WITHDRAWAL OF MUSICAL WORKS**

BMI reserves the right to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

**9. BREACH OR DEFAULT / WAIVER**

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues thirty (30) days after LICENSEE's receipt of written notice thereof. 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 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.

**10. REVIEW OF STATEMENTS / ACCOUNTINGS**

BMI shall have the right upon reasonable notice to LICENSEE, by its authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE to such an extent as may be necessary to verify the statements made hereunder. BMI shall consider all data and information coming to its attention as the result of any such examination as confidential.

**11. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to arbitration in the City, County and State of New York under its then prevailing rules of the American Arbitration Association by an arbitrator or 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 in 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.

**12. NOTICES**

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed given when sent by first-class U.S. mail to the party for whom it is intended at its address hereinabove stated, or any other address which either party hereto may from time to time designate for such purpose, and when such notice is so mailed, it shall be deemed given upon the mailing thereof. Any such notice sent to BMI shall be to the attention of the Licensing Department. Any such 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.

**13. ADDITIONAL EXCLUSIONS**

This license shall not extend to any hotel, motel, restaurant or similar facility situated within the area of the licensed premises, whether or not such facility is owned or operated by LICENSEE. This license also shall not at any time extend to performances of music at concerts or other musical attractions presented on any day with a jai alai session before or after the first or last game or on any days without a jai alai session.

**14. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, shall not be binding until signed by both parties, and 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. The rights of LICENSEE shall not be assignable. 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

<p><b>TO BE COMPLETED BY LICENSEE</b>  <b>By signing this Agreement you agree that the foregoing is a true and accurate representation of your Music Policy.</b></p> <p>I have read and have understood all of the terms and conditions herein and my signature below is evidence of this.  <b>(SIGN HERE - PLEASE INCLUDE PAYMENT)</b></p> <hr style="border: 0; border-top: 1px solid black; margin: 10px 0;"/> <p style="text-align: center;">Signature</p> <hr style="border: 0; border-top: 1px solid black; margin: 10px 0;"/> <p style="text-align: center;">Print Name / Title</p>
--

<p><b><u>FOR ADMINISTRATIVE USE ONLY</u></b>  <b>TO BE COMPLETED BY BMI</b>  <b>BROADCAST MUSIC, INC.</b></p>
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AGREEMENT made at New York, N.Y. on \_\_\_\_\_ between BROADCAST MUSIC, INC., a corporation organized under the laws of the State of New York (hereinafter called BMI) with principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030, and

(Legal Name of LICENSEE)

Strike Out A corporation organized under the laws of the State of \_\_\_\_\_
Inapplicable A partnership composed of \_\_\_\_\_
Lines An individual residing at \_\_\_\_\_

(hereinafter called "LICENSEE") with offices located at \_\_\_\_\_
City of \_\_\_\_\_ State of \_\_\_\_\_ Zip \_\_\_\_\_

WITNESSETH

WHEREAS, BMI is engaged in licensing music for public performance and
WHEREAS, LICENSEE is engaged in operating the premises hereinafter in this agreement described,
IT IS HEREBY AGREED AS FOLLOWS:

1. BMI hereby grants to LICENSEE a non-exclusive license to perform publicly by \_\_\_\_\_
at the premises known as \_\_\_\_\_
Street address \_\_\_\_\_ in the City of \_\_\_\_\_
State of \_\_\_\_\_ Zip \_\_\_\_\_ solely for (describe activity) \_\_\_\_\_

all of the musical works, the right to grant public performance licenses of which BMI shall during the term hereof control. Said license shall not include dramatic rights or the right to perform dramatico-musical works in whole or in substantial part.

2. The term of the license shall commence as of \_\_\_\_\_ and end on \_\_\_\_\_. The parties hereto agree that this agreement shall be automatically extended and renewed for further periods of one year each after the expiration of the foregoing term or any extended term hereof unless either party on or before thirty (30) days next preceding the termination of the foregoing term or any extended term, shall give notice to the other in writing by registered or certified mail of the intention to terminate the same at the conclusion of such term.

3. LICENSEE agrees to pay BMI for the license granted herein the sum of See Schedule "A" Dollars (\$ \_\_\_\_\_).

4. In the event that BMI, at any time during the term hereof, shall, for the individual licensing of establishments of the same class and category as that of the LICENSEE, be issuing licenses granting rights similar to those conveyed by this agreement at a more favorable rates of payment than are set forth herein, BMI shall, for the balance of the term hereof, tender to LICENSEE a contract containing such more favorable rates of payment.

5. 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 under this license agreement of any material licensed hereunder. Such indemnity shall specifically apply to all works which are licensed by BMI at the time of LICENSEE's performance hereof. BMI's Index Department will at any time, upon request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE agrees to give BMI immediate notice of any such claim, demand or suit, to deliver to BMI any

repertoire. 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.

6. If the LICENSEE shall cease to operate the premises above named, whether by reason of the sale or lease of the said premises, or otherwise, this agreement and the obligation of the LICENSEE to BMI shall thereupon terminate; provided, however, that the LICENSEE shall, within ten (10) days thereafter, give written notice of such termination to BMI setting forth the effective date thereof and the name of any vendee or lessee of the premises, as the case may be, and that the LICENSEE shall pay to BMI all fees due hereunder until said date.

7. Upon any breach or default of any term or condition herein contained, BMI may, at its sole option, and in addition to any and all other remedies which it may have at law or in equity, cancel this license upon ten (10) days notice in writing to LICENSEE, addressed to the licensed premises. No waiver by BMI of full performance of this license by LICENSEE in any one or more instances shall be deemed a waiver of the right to require full and complete performance of this license thereafter or of the right to cancel this license in accordance with the terms of this paragraph.

8. Any controversy or claim arising out of, or relating to, this agreement or the breach thereof, shall be settled by arbitration in the City of New York, in accordance with the Rules of the American Arbitration Association, and judgment upon the award of the arbitrator may be entered in any Court having jurisdiction thereof.

9. All notices given by BMI hereunder shall be duly and properly given if mailed to the premises.

10. This agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, but no assignment shall relieve the parties hereto of their respective obligations hereunder.

11. This agreement constitutes the entire understanding between the parties with respect to the subject matter hereof. The 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.

IN WITNESS WHEREOF: the parties hereto have duly executed this agreement the day and date hereinbefore set forth.

**TO BE COMPLETED BY LICENSEE**

**By signing this Agreement you agree that the foregoing is a true and accurate representation of your Music Policy.**

I have read and have understood all of the terms and conditions herein and my signature below is evidence of this.

\_\_\_\_\_

Signature

\_\_\_\_\_

Print Name / Title

**FOR ADMINISTRATIVE USE ONLY**  
**TO BE COMPLETED BY BMI**  
**BROADCAST MUSIC, INC.**

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<b>Account No.</b>	<b>COID</b>



## **SCHEDULE A**

LICENSEE agrees to pay BMI at the following rates during each contract year of the term hereof:

- (a) Fifty cents (\$.50) for each performance up to forty-five hundred (4500) performances
- (b) Thirty-five cents (\$.35) for each performance in excess of forty-five hundred (4500) performances
- (c) The minimum fee under this agreement shall not be less than \$240.00

Payments shall be made on a contract quarterly basis at the end of each quarterly period and shall be accompanied by a statement. Such statement shall set forth the name and address of each location; and the number of performances in each location; and such other data of information as BMI may reasonably require.



## Music License for Local Governmental Entities

### 1. DEFINITIONS

- (a) **LICENSEE** shall include the named entity and any of its constituent bodies, departments, agencies or leagues.
- (b) **Premises** means buildings, hospitals, airports, zoos, museums, athletic facilities, and recreational facilities, including, but not limited to, community centers, parks, swimming pools, and skating rinks owned and/or operated by LICENSEE and any site which has been engaged by LICENSEE for use by LICENSEE.
- (c) **Recorded Music** means music which is performed at the Premises by means other than by live musicians who are performing at the Premises, including, but not limited to (1) compact disc, audio record or audio tape players (but not including "jukeboxes"); (2) videotape, videodisc or DVD players; (3) music performed as an accompaniment to karaoke; (4) the reception and communication at the premises of radio or television transmissions which originate outside the Premises, and which are not exempt under the Copyright Law; or (5) a music-on-hold telephone system operated by LICENSEE at the Premises.
- (d) **Live Entertainment** means music that is performed at the Premises by musicians, singers and/or other performers.
- (e) **BMI Repertoire** means all copyrighted musical compositions written and/or published by BMI affiliates or members of BMI-affiliated foreign performing rights societies, including compositions written or published during the Term of this Agreement and of which BMI has the right to license non-dramatic public performances.
- (f) **Events and Functions** means any activity conducted, sponsored, or presented by or under the auspices of LICENSEE. Except as set forth in Paragraph 2 (d) below, "Events" and "Functions" shall include, but are not limited to, aerobics and exercise classes, athletic events, dances and other social events, concerts, festivals, arts and crafts fairs, and parades held under the auspices of, or sponsored or promoted by, LICENSEE on the Premises.
- (g) **Special Events** means musical events, concerts, shows, pageants, sporting events, festivals, competitions, and other events of limited duration presented by LICENSEE for which the "Gross Revenue" (as defined in Schedule B) of such Special Event exceeds \$25,000.

### 2. BMI GRANT

- (a) BMI grants and LICENSEE accepts a non-exclusive license to perform, present or cause the live and/or recorded public performance on the "Premises" and at "Events" and "Functions", and not elsewhere or otherwise, non-dramatic renditions of the separate musical compositions in the "BMI Repertoire". The performances licensed under this Agreement may be by means of "Live Entertainment" or "Recorded Music".
- (b) This license does not authorize (1) the broadcasting, telecasting or transmission or retransmission by wire, Internet, website or otherwise, of renditions of musical compositions in BMI's Repertoire to persons outside of the Premises, other than by means of a music-on-hold telephone system operated by LICENSEE at the Premises; and (2) performances by means of background music (such as *Muzak*) or other services delivered to the Premises. Nothing in this Paragraph shall be deemed to limit LICENSEE's right to transmit renditions of musical compositions in the BMI Repertoire to those who attend Events or Functions on the Premises by means of teleconferencing, videoconferencing or similar technology.
- (c) 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: (1) performance of a "dramatico-musical work" (as hereinafter defined) in its entirety; (2) 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; (3) 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; and (4) performance of a concert version of a "dramatico-musical work" (as hereinafter defined). The term "dramatico-musical work" as used in the Agreement, shall include, but not be limited to, a musical comedy, opera, play with music, revue, or ballet.
- (d) This license does not authorize performances: (1) at any convention, exposition, trade show, conference, congress, industrial show or similar activity presented by LICENSEE or on the Premises unless it is presented or sponsored solely by and under the auspices of LICENSEE, is presented entirely on LICENSEE's Premises, and is not open to the general public; (2) by or at colleges and universities; (3) at any professional sports events or game played on the Premises; (4) at any permanently situated theme or amusement park owned or operated by LICENSEE; (5) by any symphony or community orchestra; and (6) by means of a coin operated jukebox.

### 3. REVIEW OF STATEMENTS AND / OR ACCOUNTINGS

- (a) BMI shall have the right to require such reasonable data necessary in order to ascertain the Annual License Fee.
- (b) BMI shall have the right, by its authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify the statements made hereunder. BMI shall consider all data and information coming to its attention as a result of any such examination of books and records as completely confidential.
- (c) BMI shall have the right to adjust LICENSEE's Annual License Fee based upon the most recently available revised population figures provided by the U. S. Census Department.



#### **4. LATE PAYMENT AND SERVICE CHARGES**

BMI may impose a late payment charge of one and one-half percent (1½%) per month, or the maximum rate permitted by law, whichever is less, from the date payment is due on any payment that is received by BMI more than thirty (30) days after the due date. BMI may impose a \$25.00 service charge for each unpaid check, draft or other means of payment LICENSEE submits to BMI.

#### **5. BMI COMMITMENT TO CUSTOMER / INDEMNITY**

So long as LICENSEE is not in default or breach of this Agreement, BMI agrees to indemnify, save harmless, and defend LICENSEE and its officers, and employees, from and against any and all claims, demands, or suits that may be made or brought against them with respect to the performance of any musical works which is licensed under this Agreement at the time of performance. 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.

#### **6. BREACH OR DEFAULT / WAIVER**

Upon any breach or default of the terms and conditions contained herein, BMI shall have the right to cancel this Agreement if such breach or default continues for thirty (30) days after LICENSEE's receipt of written notice thereof. The right to cancel granted to BMI 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 with the terms of this Paragraph.

#### **7. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel the Agreement along with the simultaneous cancellation of the Agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

#### **8. ASSIGNMENT**

This license is not assignable or transferable by operation of law or otherwise. This license does not authorize LICENSEE to grant to others any right to perform publicly in any manner any of the musical compositions licensed under this Agreement, nor does it authorize any public performances at any of the Premises in any manner except as expressly herein provided.

#### **9. ARBITRATION**

All disputes of any kind, nature, or description arising in connection with the terms and conditions of this Agreement, except for matters within the jurisdiction of the BMI Rate Court, shall be submitted to the American Arbitration Association in the City, County, and State of New York, for arbitration under its then prevailing arbitration rules. The arbitrator(s) to be selected as follows: Each of the parties 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 a 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 not need be, entered in 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.

#### **10. NOTICES**

Any notice 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 notice sent to BMI shall be to the attention of the Vice President, Licensing Department at 10 Music Square East, Nashville, TN 37203. Any such notice sent to LICENSEE shall be to the attention of the person signing the Agreement on LICENSEE's behalf or such person as LICENSEE may advise BMI in writing.

#### **11. MISCELLANEOUS**

The fact that any provisions are found by a court of competent jurisdiction to be void or unenforceable will not affect the validity or enforceability of any other provisions. This Agreement constitutes the entire understanding between the parties and cannot be waived or added to or modified orally and no waiver, addition and modification shall be valid unless in writing and signed by both parties.

#### **12. FEES**

- (a) In consideration of the license granted herein, LICENSEE agrees to pay BMI a license fee which includes the total of the "Base License Fee" and any applicable "Special Events License Fees", all of which shall be calculated in accordance with the Rate Schedule on Page 3. For purposes of this Agreement,
- (i) "Base License Fee" means the annual fee due in accordance with Schedule A of the Rate Schedule and based on LICENSEE's population as established in the most recent published U.S. Census data. It does not include any fees due for Special Events.
  - (ii) "Special Events License Fees" means the amount due in accordance with Schedule B of the Rate Schedule when Special Events are presented by or on behalf of LICENSEE. It does not include any Base License Fee due.
  - (iii) LICENSEES who are legally organized as state municipal and/or county leagues or state associations of municipal and/or county attorneys shall be required to pay only the fee under the Schedule C of the Rate Schedule. Such leagues or associations are not subject to Schedule A or Schedule B of the Rate Schedule. Fees paid by such leagues or associations do not cover performances of the municipality, county, or other local government entity represented by the league or association. Schedule C fees are not applicable to municipal, county or other government entities.

## 2017 RATE SCHEDULE FOR LOCAL GOVERNMENTS

<b>SCHEDULE A</b>				
<b>Check Population Range (√)</b>	<b>LICENSEE's Population</b>		<b>Base License Fee</b>	<b>Enter Fee Based Upon Population</b>
<input type="checkbox"/>	1	-	50,000	\$342
<input type="checkbox"/>	50,001	-	75,000	\$680
<input type="checkbox"/>	75,001	-	100,000	\$818
<input type="checkbox"/>	100,001	-	125,000	\$1,090
<input type="checkbox"/>	125,001	-	150,000	\$1,364
<input type="checkbox"/>	150,001	-	200,000	\$1,772
<input type="checkbox"/>	200,001	-	250,000	\$2,180
<input type="checkbox"/>	250,001	-	300,000	\$2,591
<input type="checkbox"/>	300,001	-	350,000	\$2,999
<input type="checkbox"/>	350,001	-	400,000	\$3,410
<input type="checkbox"/>	400,001	-	450,000	\$3,817
<input type="checkbox"/>	450,001	-	500,000	\$4,227
<input type="checkbox"/>	500,001	-	plus	\$5,180 plus \$500 for every 100,000 population increment or portion thereof above 500,000 up to a maximum annual fee of \$68,151
	If 500,001 or more, enter population _____			
<b>SCHEDULE A FEE</b>				<b>\$</b>

<b>SCHEDULE B</b>	
<b>Special Events Fee</b>	
<b>(to be reported 90 days after each event*, see Par. 13(d))</b>	
<b>The rate for Special Events shall be 1% of Gross Revenue.</b>	
<ul style="list-style-type: none"> <li>▪ <b>"Special Events"</b> means musical events, concerts, shows, pageants, sporting events, festivals, competitions, and other events of limited duration presented by LICENSEE for which the "Gross Revenue" of such Special Events exceeds \$25,000.</li> <li>▪ <b>"Gross Revenue"</b> means all monies received by LICENSEE or on LICENSEE's behalf from the sale of tickets for each Special Event. If there are no monies from the sale of tickets, "Gross Revenue" shall mean contributions from the sponsors or other payments received by LICENSEE for each Special Event.</li> </ul>	
<b>SCHEDULE B FEE</b>	<i>BMI will provide a report form to report your events*</i>

<b>SCHEDULE C</b>	
<b>State Municipal and/or County Leagues or State Associations of Attorneys</b>	
<b>(to be completed if you are a State Municipal and/or County Leagues or State Associations of Attorneys)</b>	
The annual license fee for LICENSEES who are legally organized as state municipal and/or county leagues, or state associations of municipal and/or county attorneys shall be <b>\$342.00</b> . No Special Events fee applies to LICENSEES qualifying under this schedule.	
<b>SCHEDULE C FEE</b>	<b>\$</b>

### 13. REPORTING

- (a) Upon the execution of this Agreement, LICENSEE shall submit:
- (i) a report stating LICENSEE's population based on the most recent published U.S. Census data. The population set forth in the report shall be used to calculate the Base License Fee under this Agreement; and
  - (ii) a report containing the information set forth in Paragraph 13 (d) below for all Special Events that were presented between the effective date of this Agreement and the execution of this Agreement.
- (b) The Base License Fee for the first year of this Agreement and any license fees due for Special Events that were presented between the effective date of this Agreement and the execution of this Agreement shall be payable upon the execution of this Agreement.
- (c) Base License Fees for subsequent years shall be due and payable within 30 days of the renewal date of this Agreement and shall be accompanied by a statement confirming whether any Special Events were presented during the previous calendar year.
- (d) Ninety (90) days after the conclusion of each Special Event, LICENSEE shall submit to BMI payment for such Special Event and a report in printed or computer readable form stating:
- (i) the date presented;
  - (ii) the name of the attraction(s) appearing;
  - (iii) the "Gross Revenue" of the event (as defined above);
  - (iv) the license fee due for each Special Event.

- (e) If LICENSEE presents, sponsors or promotes a Special Event that is reportable under Rate Schedule B with another person or entity licensed under a BMI License Agreement, LICENSEE shall indicate the name, address, phone number and BMI account number of the other person(s) or entity(ies) and the party responsible for payment for such Special Event. If the other party is not licensed by BMI, LICENSEE shall pay the license fee due hereunder, notwithstanding any agreement to the contrary between LICENSEE and the other party.
- (f) LICENSEE agrees to furnish to BMI, where available, copies of all programs of musical works performed, which are prepared for distribution to the audience or for the use or information of LICENSEE or any department thereof. The programs shall include all encores to the extent possible. LICENSEE shall be under no obligation to furnish programs when they have not been otherwise prepared.

**14. RATE ADJUSTMENTS / LICENSE FEE FOR YEAR 2017 AND THEREAFTER**


For each calendar year commencing 2018, all dollar figures set forth in Schedules A, B and C (except the \$500 add-on for populations of 500,001 or more) shall be the license fee for the preceding calendar year, adjusted in accordance with any percentage increase in the Consumer Price Index – All Urban Consumers (CPI-U)) between the preceding October and the next preceding October, rounded to the nearest dollar. Any additional license fees due resulting from the CPI adjustment shall be payable upon billing by BMI.

**15. TERM OF AGREEMENT**

This Agreement shall be for an initial Term of one (1) year, commencing \_\_\_\_\_, which shall be considered the effective date of this Agreement, and continuing thereafter for additional terms of one (1) year each. Either party may give notice of termination to the other 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.

**AGREEMENT**

AGREEMENT, made at New York, N.Y. on (Date will be entered by BMI upon execution) \_\_\_\_\_ between BROADCAST MUSIC, INC., a State of New York corporation with its principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030 (hereinafter "BMI") and the legal or trade name described below and referred to thereafter as "LICENSEE" (the "Agreement"). This Agreement includes all of the terms and conditions set forth herein.

<b>LEGAL NAME</b>	<b>LICENSED PREMISES</b>		
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<b>(All locations are licensed by LICENSEE)</b>		
<b>TRADE NAME</b>	<i>(Street Address)</i>		
<i>(Doing business under the name of)</i>	<i>(City)</i>	<i>(State)</i>	<i>(Zip)</i>
<b>PLEASE CHECK APPROPRIATE BOX</b>	<i>(Telephone Number)</i>	<i>(Fax Number)</i>	
<input type="checkbox"/> Individual Ownership	<i>(Contact Name)</i>	<i>(Title)</i>	
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<i>(Email Address)</i>	<i>(Web Address)</i>	
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	<b>MAILING ADDRESS</b>		
<i>(State of Incorporation, if different from Licensed Premises)</i>	<b>(if different from Licensed Premises)</b>		
<i>(Enter names of partners)</i>	<i>(Street Address)</i>		
<input type="checkbox"/> Other _____	<i>(City)</i> <i>(State)</i> <i>(Zip)</i>		
Federal Tax ID No. _____	<i>(Telephone Number)</i> <i>(Fax Number)</i>		
<b>GOVERNMENT ENTITIES</b>	<i>(Contact Name)</i> <i>(Title)</i>		
<i>(if applicable, please check one)</i>	<i>(Email Address- if different from above)</i>		
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<b>FOR ADMINISTRATIVE USE ONLY</b> <b>TO BE COMPLETED BY BMI</b> <b>BROADCAST MUSIC INC.</b>		
<input type="checkbox"/> Local _____			
<i>(Municipality and State)</i>			
<b>TO BE COMPLETED BY LICENSEE</b>	<b>FOR BMI USE ONLY</b>		
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.	<b>LGE</b>		
<b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b>	<b>LI-2016/DEC</b>		
Signature _____	<b>EFFECTIVE:</b>		
Print Name / Title _____	<b>January 2017</b>		
Signatory Email Address* _____	<b>ACCOUNT NO.</b>		
<i>(if different from above)</i>	<b>COID</b>		
*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory			
<b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b>	<b>BMI</b>		
<b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b>	<b>1340</b>		

\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.

**BROADCAST MUSIC, INC.**  
**LOW POWER FM NON-COMMERCIAL LICENSE**

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AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, between BROADCAST MUSIC, INC., a corporation organized under the laws of the State of New York (hereinafter called "BMI") with principal offices at 7 World Trade Center, 250 Greenwich St, New York, NY 10007-0030, and

\_\_\_\_\_  
FCC Licensee

A corporation organized under the laws of the State of \_\_\_\_\_

An LLC organized under the laws of the State of \_\_\_\_\_

A partnership organized under the laws of the State of \_\_\_\_\_ and consisting of \_\_\_\_\_

An individual residing at \_\_\_\_\_

(hereinafter called "Low Power FM Broadcaster") with offices located at

\_\_\_\_\_  
City of \_\_\_\_\_ State of \_\_\_\_\_ Zip Code \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-Mail: \_\_\_\_\_

1. Definitions:

a) "Low Power Radio Broadcasting" shall mean over-the-air aural broadcasting in all of its forms. It does not include Internet or other online transmissions.

b) "Station" shall mean and be restricted to the low power radio broadcasting station presently located at \_\_\_\_\_, having the call letters \_\_\_\_\_ and the frequency of \_\_\_\_\_.

c) The "Term" of the license shall begin on \_\_\_\_\_ and end on December 31, 2017. Each calendar year within the Term is a "Contract Year".



d) "Works" shall mean all of the musical compositions for which BMI controls the right to grant non-dramatic public performing rights at the time of the performance during the Term.

2. BMI hereby grants to Low Power FM Broadcaster, for the term hereof, a non-exclusive license to publicly perform by radio broadcasting on Low Power FM Broadcaster's station any or all of the Works. The performances licensed hereunder may originate at any place, whether or not such place is licensed to publicly perform any Works, and regardless of the manner, means or methods of such origination. Nothing in this agreement shall be deemed to grant a license to anyone authorizing any public performance in such other place of any Works.

3. The annual license fee for each Contract Year of the Term is as follows:

<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
\$319	\$325	\$332	\$339	\$345

The annual license fee for the initial Contract Year is payable upon execution of this License Agreement, and will be pro-rated on a monthly basis if the initial Contract Year is less than a full calendar year. The fee for each subsequent Contract Year will be billed annually and will be due and payable to BMI on or before January 15 of each Contract Year. BMI may impose a late charge of 1.5% per month on any payment received by BMI more than thirty (30) days late.

4. As long as Low Power FM Broadcaster is not in default or arrears in payment under this License Agreement, BMI agrees to indemnify, save and hold harmless and to defend Low Power FM Broadcaster, its advertisers and their advertising agencies, its officers, employees, and artists, from and against all claims, demands and suits that may be made or brought against them or any of them with respect to the performance under this License Agreement of any Works; provided that this indemnity shall not apply: (a) to broadcasts of any Works performed by Low Power FM Broadcaster after written request from BMI to Low Power FM Broadcaster that Low Power FM Broadcaster refrain from performance thereof or (b) with respect to Works for which BMI's affiliates have exercised their right to restrict pursuant to Paragraph 10 below. Low Power FM Broadcaster agrees to give BMI immediate notice of any such claim, demand or suit and agrees immediately to deliver to BMI all papers pertaining thereto. BMI shall have full charge of the defense of any such claim, demand or suit and Low Power FM Broadcaster shall cooperate fully with BMI therein.

5. LOW POWER FM BROADCASTER WARRANTS THAT IT OPERATES SOLELY FOR RELIGIOUS, CHARITABLE, EDUCATIONAL OR GOVERNMENTAL PURPOSES, OPERATES UNDER THE LOW POWER FM GUIDELINES SET FORTH BY THE FCC AND THAT NONE OF ITS REVENUES INURES DIRECTLY OR INDIRECTLY TO THE BENEFIT OF ANY PRIVATE SHAREHOLDER OR INDIVIDUAL.



6. Low Power FM Broadcaster may not assign this license except to an entity acquiring the Station's FCC license, and assignment to such entity and acceptance in form approved by BMI of the application of the Station hereunder (the date of such assignment and acceptance, the "Assignment Effective Date"), the Station shall be relieved of liability for any obligations from the date of assignment going forward under this License Agreement as long as all information required to be furnished to BMI pursuant to paragraph 9 and all fees due BMI under this License Agreement prior to the Assignment Effective Date have been delivered and paid, respectively, to BMI. Any assignment contrary to this paragraph shall be void ab initio. This License Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and permitted assigns.

7. With the specific exception of disputes which may be within the jurisdiction of the United States district court having jurisdiction under the Final Judgment entered on November 18, 1994 in United States v. Broadcast Music, Inc., No. 64-civ-3787, all disputes of any kind, nature or description arising in connection with the terms and conditions of this License Agreement shall be submitted to the American Arbitration Association in the City and State of 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 a third arbitrator, then either party may, in writing, request the American Arbitration Association to appoint a 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 in any court having jurisdiction. Such award shall include the fixing of the costs, expenses and reasonable attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

8. This License Agreement will terminate automatically and immediately if the Station engages in any commercial broadcasting or if, for any reason, Low Power FM Broadcaster fails to maintain its FCC license as required in paragraph 5 herein, or is otherwise forbidden to broadcast. BMI may terminate this License Agreement upon thirty (30) days' notice if Low Power FM Broadcaster fails to timely make any payment or submit any reports required hereunder; or upon sixty (60) days' notice if BMI also simultaneously cancels the license agreements of all other licensees of the same class and category as Low Power FM Broadcaster. Termination hereunder shall be in addition to any and all other remedies that BMI may have at law or in equity.

9. Upon reasonable notice, Low Power FM Broadcaster agrees to furnish BMI lists and certain required information concerning its performances of all musical works on forms provided by BMI. Such lists need not be furnished for more than one (1) week of each year of the term.



10. On notice, BMI may, effective upon such notice, withdraw from the license granted hereunder any Work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such Work or that such Work infringes another composition.

11. All notices shall be in writing and mailed to the party of whom such notice is required or permitted to be given, by United States mail, postage prepaid addressed to said party at its mail office for the transaction of business or by such other method as the parties agree to in writing. Any notice sent to BMI shall be to the attention of the Senior Vice President of Licensing. Any notice sent to the Station shall be sent, at BMI's option, to the attention of the person signing this License Agreement on behalf of the Station or to the General Manager, Business Manager or owner of the Station. This License Agreement constitutes the entire understanding between the parties, 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 License Agreement, its validity, construction and effect shall be governed by New York law, without giving effect to the conflicts of law principles which would result in the application of any law other than New York law. The fact that any provisions herein are found to be void or unenforceable by a court of competent jurisdiction shall in no way affect the validity or enforceability of any other provisions. No waiver by BMI of full performance of this License Agreement by the Station in any one or more instances shall be deemed a waiver of the right to require full and complete performance of this License Agreement thereafter or of the right to terminate this License Agreement in accordance with its terms. This License Agreement may be executed in counterparts and by facsimile signature, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**LOW POWER FM BROADCASTER**

**BROADCAST MUSIC, INC.**

By \_\_\_\_\_  
Signature

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name of Signatory

\_\_\_\_\_  
Print Name of Signatory

\_\_\_\_\_  
Title of Signatory

\_\_\_\_\_  
Title of Signatory



## Station Profile Information

Program Format: \_\_\_\_\_

FCC Licensee Name: \_\_\_\_\_

Station Address: \_\_\_\_\_

Station Phone Number: \_\_\_\_\_ Station Fax Number: \_\_\_\_\_

Billing Address: \_\_\_\_\_

General Manager: \_\_\_\_\_

Billing Contact: \_\_\_\_\_ Billing Contact Title: \_\_\_\_\_

Billing Contact Phone: \_\_\_\_\_ Billing Contact Fax: \_\_\_\_\_

Billing Contact E-Mail: \_\_\_\_\_ Tax ID Number: \_\_\_\_\_

Station Website Address: \_\_\_\_\_

Are you using music on your station's website? Yes  No

The information requested below is **REQUIRED** to open your new account

1. Date Sale Closed (if new station, enter actual on-air date) \_\_\_\_\_  
Month/Date/Year

**Business Type:**

- Corporation - incorporated in the state of \_\_\_\_\_
- LLC - incorporated in the state of \_\_\_\_\_
- Partnership
- Individual







**IT IS HEREBY AGREED AS FOLLOWS:**

**1. GRANT OF RIGHTS**

- (a) BMI hereby grants to LICENSEE, for the term hereof, a non-exclusive license to publicly perform all musical works, the right to grant public performance licenses of which BMI may during the Term hereof control:
  - (i) by Television Broadcasting, on LICENSEE's Programs by the Station in the United States, its territories, commonwealth and possessions; and
  - (ii) in and as part of a single Station Web Site transmitted or caused to be transmitted either directly or indirectly over the Internet in the United States, its territories, commonwealth and possessions, but only in connection with:
    - (A) the simultaneous retransmission of the Station's locally produced and aired programming;
    - (B) the retransmission of all or a portion of Station's local newscasts and local news based public affairs programming that aired during the Term of this Agreement; and
    - (C) other transmissions the primary purpose of which are to promote viewership of Station and its television programming; *provided, however*, that: (1) no single performance licensed under this subsection (C) may exceed thirty (30) seconds in duration; and (2) the total duration of all performances of BMI-repertoire works under this subsection (C) available at any single time for listening on Station Web Site may not exceed fifteen (15) minutes in duration.
- (b) Notwithstanding the foregoing, the license granted herein shall not include transmissions described in subparagraphs 1(a)(ii)(A) and 1(a)(ii)(B) above where such transmissions contain programming which is nationally or regionally aired regularly scheduled series programming (e.g., Regis and Kelly, The Oprah Winfrey Show, and Major League Baseball). In the event that Station airs locally-produced programming, and such programming also appears on one or more additional stations (which programming for purposes of this Agreement would not be considered locally produced and aired programming for the additional station(s)), only the Station may retransmit BMI music contained in such programming in the manner described in subparagraphs 1(a)(ii)(A) and 1(a)(ii)(B) above, while the additional station(s) may not.
- (c) The license granted herein does not cover transmissions on the Station Web Site of BMI music where members of the public are charged a fee for the right to access such transmissions. Such transmissions shall be subject to appropriate separate licensing. Notwithstanding the foregoing, the fact that a Station may charge members of the public for access to discrete areas of the Station Web Site other than those areas containing the performances licensed hereunder shall not limit the scope of this license.
- (d) The license granted herein shall include on a non-precedential, experimental basis the right to engage in such non-dramatic public performances of musical works in BMI's repertoire as may result from Station's free, over-the-air broadcasts of BMI music within its existing geographic market(s) over FCC assigned frequencies, by means of a digital television signal. It is understood that the right to perform works in the BMI repertoire by means of a digital television signal is being included in this Agreement because digital television is a new technology and such grant of rights reflects the experimental character of such broadcasts.
- (e) The license granted herein shall not include transmissions of audio programs of any kind capable of reception on terrestrial radio receivers. Such transmissions shall be subject to appropriate separate licensing. In the event that LICENSEE intends to transmit through its Station's broadcasting facilities audio programs of any kind capable of reception on terrestrial radio receivers, LICENSEE shall notify BMI of its intent to do so prior to launching such a service.
- (f) The performances licensed hereunder may originate at any place, whether or not such place is licensed to publicly perform the musical works licensed hereunder, and regardless of the manner, means or method of such origination.
- (g) The license granted herein shall not include dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein.
- (h) BMI will, upon specific reasonable written request made by LICENSEE, indicate whether one or more specified musical compositions listed by LICENSEE are licensed by BMI. LICENSEE shall provide title and writer/composer of each musical composition requested to be identified.
- (i) Nothing herein shall be construed as authorizing LICENSEE to grant to others any right to reproduce or publicly perform by any means, method or process whatsoever, any of the musical compositions licensed hereunder or as authorizing any receiver of any television broadcast to publicly perform or reproduce the

same by any means, method or process whatsoever.

- (j) The license granted herein shall not include the right to adapt the musical works licensed hereunder or to make any other versions thereof.

## 2. INDEMNIFICATION

BMI agrees to indemnify, save and hold harmless and to defend LICENSEE, its advertisers and their advertising agencies, and its and their officers, employees and artists, from any against all claims, demands and suits that may be made or brought against them or any of them with respect to the performance under this license agreement of any works licensed hereunder, provided that this indemnity shall not apply to broadcasts of any musical work performed by LICENSEE after written request from BMI to LICENSEE that LICENSEE refrain from performances thereof. LICENSEE agrees to give BMI immediate notice of any such claim, demand or suit, and agrees to deliver immediately all papers pertaining thereto. BMI shall have full charge of the defense of any such claim, demand or suit, and LICENSEE shall cooperate fully with BMI therein.

## 3. TERM

The "Term" of this Agreement shall be the period beginning \_\_\_\_\_ and ending December 31, 20 \_\_, and continuing thereafter for additional periods of one year each, unless canceled by either party as of December 31, 20\_\_ or at the end of any additional one-year period upon no less than 30 days advance written notice to the other party.

## 4. DEFINITIONS

As used in this Agreement, the following terms shall have the following respective meanings:

- (a) "**Station**" shall mean and be restricted to the "low-power" or "Class A" television broadcasting station (as those terms are defined by the Federal Communications Commission), whose ownership and call letters are indicated above.
- (b) "**Television Broadcasting**" shall mean free unscrambled point-to-multipoint over-the-air local broadcasting by means of television, but in no event shall Television Broadcasting include cable television in any context recognized by the cable industry, or Internet transmission or on-line service(s).
- (c) "**Station Web Site**" shall mean the Web Site operated by or for Station as the Station's Web Site.
- (d) "**Web Site**" shall mean an Internet computer service comprising a series of interrelated web pages registered with a domain name registration service that Station transmits or causes to be transmitted either directly or indirectly to persons who receive the service over the Internet by means of a personal computer or by means of another device capable of receiving Internet transmissions.
- (e) "**Program**" shall mean any television program broadcast by the Station, including advertisements, promotional announcements and public service announcements, whether such program originates from the Station or is furnished to the Station from another source, such as a television network.
- (f) "**Gross Revenues**" shall consist of:
  - (i) all billings (standard accrual method) charged to or on behalf of sponsors and donors;
  - (ii) the reasonable value of goods and/or services received as a result of trade sales or barter as those terms are understood in the television industry, including but not limited to merchandise or services (or the use thereof) received by LICENSEE from "time brokers," "barter companies," providers of "program services" or received by LICENSEE in exchange for LICENSEE's providing promotional announcements; and
  - (iii) bad debts recovered (to the extent they arise from receivables that would have constituted Gross Revenues if originally recovered).
- (g) "**Net Revenues**" shall consist of Gross Revenues less (i) advertising agency commissions actually incurred and payable to an outside agency (not to exceed 15% of commissionable sales) and (ii) bad debts actually written off during the reporting period and which are related to billings previously reported.

## 5. LICENSE FEES

- (a) For each Station, the license fee payable per calendar year pursuant to this Agreement shall be an amount equal to the fee amount corresponding to such Station's Net Revenues for such calendar year as set forth on Exhibit A. Notwithstanding anything in this Agreement to the contrary, a Station's 2009 annual fee shall be \$669 if (i) the Station is owned and operated during the applicable year by a non-profit organization that is exempt from federal taxation pursuant to Section 501(c) of the Internal Revenue Code or (ii) the programming that the Station broadcasted during the applicable year was exclusively home shopping programming. In the event that this Agreement shall not, during any year, be in effect for the full year, the minimum fee for such year shall be proportionally reduced. Except as otherwise provided herein, the license fee per calendar year shall be payable in twelve (12) equal monthly installments on or before the 20th day of the month following

the month for which the payment is due. The minimum fee payable pursuant to this Agreement shall be adjusted on an annual basis to reflect the percentage increase in the Consumer Price Index (All Urban Consumers) between August of the preceding year and August of the next preceding year.

- (b) For the first calendar year of this Agreement LICENSEE shall make a good-faith estimate of its first year's annual fee (by providing BMI, upon execution of this Agreement, with a statement, substantially in the form of Exhibit A hereto, indicating such estimate by checking the appropriate box) and pay one-twelfth of the estimated amount each month, as provided above (if less than a calendar year, said sum shall be annualized). For subsequent years of this Agreement, LICENSEE shall adjust its estimated monthly payment upon filing its Annual Report for the previous year so that its estimated payments for the year will be equal to the actual fee due for the prior year. If LICENSEE shall fail to timely file its Annual Report, BMI shall (i) estimate LICENSEE's Net Revenues for the calendar year to which the Annual Report which was not timely filed would have related by adjusting LICENSEE's Net Revenues for the prior calendar year to reflect the percentage increase in the Consumer Price Index (All Urban Consumers) between August of the preceding year and August of the next preceding year and (ii) assessing LICENSEE's estimated fees for the calendar year following the calendar year to which the Annual Report which was not timely filed would have related based upon the Net Revenues for such calendar year as determined by clause (i) of this sentence. Such estimation of imputed revenues and fees by BMI shall not constitute a waiver or forbearance of LICENSEE's obligation to supply such reports pursuant to paragraph 6 of this Agreement and to pay final fees pursuant to paragraph 5(a) of this Agreement.
- (c) BMI may impose a late payment charge of 1½% per month from the date the payment was due on any monthly or annual payment that is received by BMI more than one month after the date payment was due.
- (d) In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from licensees, LICENSEE agrees to pay to BMI the full amount of such tax together with LICENSEE's fee payment(s) as invoiced by BMI; provided, however, that BMI is permitted by law to pass through such tax to LICENSEE.

## **6. ANNUAL REPORTS**

LICENSEE shall render annual reports ("Annual Reports") to BMI, substantially in the form of Exhibit A, on or before April 1st of the year following each calendar year covered by the term of this Agreement, calculating the final license fee due for the preceding calendar year in accordance with Paragraph 5 hereof. In the event that LICENSEE shall fail to make payment or render any Annual Report under this Agreement, when and as due, BMI may, in addition to any and all other remedies which it may have, terminate this Agreement upon 30 (thirty) days' notice in writing, and this Agreement shall thereupon so terminate at the end of such period unless said default shall previously have been cured.

## **7. ADJUSTMENTS**

If the actual annual license fee for any calendar year of the term hereof exceeds the total estimated monthly installments applicable to such year's fee, LICENSEE shall pay any such excess to BMI concurrently with the payment relating to the first month of the following year. If the estimated monthly fee paid by LICENSEE for any calendar year of the term hereof exceeds the annual license fee due for such year, LICENSEE will be entitled to a credit of the overage paid and to commensurately deduct such overage from the payment relating to the first month of the following year.

## **8. AUDITS**

- (a) BMI shall have the right, by its duly authorized representatives, during customary business hours, on notice in writing of not less than ten (10) business days, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify any reports or statements required by this Agreement. All data and information coming to BMI's attention as a result of any such examination of LICENSEE's books and records shall be held completely and entirely confidential and shall not be used by BMI other than in connection with its administration of this license.
- (b) The period for which BMI may audit pursuant to Sub-paragraph 8(a) hereof shall be limited to four (4) calendar years preceding the year in which the audit is made; provided, that if any audit is postponed at the request of LICENSEE, and BMI grants such postponement, BMI shall have the right to audit for the period commencing with the second calendar year preceding the year in which notification of intention to audit was first given by BMI to LICENSEE; provided further that if LICENSEE is late filing an Annual Report, BMI's right to audit shall be extended for a comparable period.
- (c) In the event that any BMI audit reveals that additional license fees are owed to BMI, LICENSEE shall pay interest on such additional license fees of 1½% per month from the date(s) such fees should have been paid pursuant to this Agreement. LICENSEE shall pay interest on such additional license fees of 1½% per month beginning thirty (30) days after the date BMI invoices such additional license fees to LICENSEE.

- (d) If LICENSEE disputes all or part of BMI's claim for such additional license fees arising from an audit, LICENSEE shall, within thirty (30) days from the date BMI invoices additional fees, (i) notify BMI in writing, of the basis for such dispute and (ii) pay to BMI any license fees not in dispute together with the applicable interest on additional license fees not in dispute in accordance with subparagraph (c) above. If there is a good faith dispute between LICENSEE and BMI with respect to all or part of the additional license fees which BMI has invoiced pursuant to this Paragraph, upon resolution of the disputed amount, subparagraph (c) shall govern payment of the interest due; provided, however, that no interest will be charged LICENSEE for the disputed license fees for the period beginning on the date of LICENSEE's written notice to BMI of the dispute and ending sixty (60) days after BMI responds to LICENSEE's notice of the dispute.
- (e) Interest calculated in accordance with this Paragraph and concerning additional license fees which LICENSEE disputes in accordance with subparagraph (d) above shall be adjusted pro-rata to the amount arrived at by LICENSEE and BMI in resolution of the dispute with respect to additional license fees due.

## **9. MUSIC PERFORMANCE REPORTS**

LICENSEE, upon written request from BMI made on not less than four (4) weeks notice specifying the period to be covered, agrees to furnish, on forms to be supplied by BMI (which forms BMI may require LICENSEE to submit to BMI via electronic transmission), lists of LICENSEE's performances by Station of all musical works (other than those performances that are part of transmissions of syndicated programs or motion pictures initially produced for theatrical exhibition), indicating the compositions performed by title and writer/composer or by such other convenient method as may be designated by BMI, but such lists need not be furnished for more than one (1) week of each 12-month period of the term. With respect to any syndicated programs or motion pictures initially produced for theatrical exhibition, LICENSEE shall provide BMI with the title and episode name or number of such program(s) or motion picture(s); and if no cue sheet is available, LICENSEE shall cooperate with BMI in attempting to obtain such cue sheets and/or in providing BMI with access to a tape or recording of the program or motion picture involved. At BMI's reasonable request, LICENSEE shall also request cue sheets or logs from licensors and outside producers with respect to programming produced by others and distributed as Programs of the Station (including via the Station Web Site) during the Term of this Agreement and shall furnish to BMI copies of any such cue sheets or logs received by LICENSEE.

## **10. WITHDRAWAL OF WORKS**

BMI reserves the right to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

## **11. ASSIGNMENT**

This license shall be non-assignable except to the person, firm or corporation acquiring the Federal Communications Commission license of Station, and upon assignment of the acquiring person, firm or corporation and upon the acceptance in form approved by BMI of the application of LICENSEE hereunder, LICENSEE shall be relieved of future liability under this Agreement provided that all Annual Reports have been filed by LICENSEE and all fees due BMI under this Agreement have been paid to BMI.

## **12. BREACH OR DEFAULT**

Upon any breach or default by LICENSEE of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues 30 (thirty) days after LICENSEE's receipt of written notice thereof. 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.

## **13. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of all other licenses of the same class and category as LICENSEE, at the end of any month during the Term, upon sixty (60) days advance written notice.

## **14. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement, except for those within the jurisdiction of the BMI Rate Court under Article XIV of the BMI Consent Decree, 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 shall, by written notice to the other, have the right to appoint one arbitrator. If, within ten 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 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 thereon in 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.

**15. NOTICE**

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed duly given when sent by ordinary first-class U.S. mail to the party for whom it is intended, at its office address stated above, or any other address which either party may from time to time designate for such purpose, and when notice is so mailed, it shall be deemed given upon the mailing thereof. Any notice sent to BMI shall be to the attention of Senior Vice President of the Licensing Department, BMI, 7 World Trade Center, 250 Greenwich Street, New York, New York 10007-0030. 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.

**16. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, shall not be binding until signed by both parties, and 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 except for its choice of law provisions. The fact that any provisions herein are found to be void or unenforceable by a court of competent jurisdiction shall in no way affect the validity of enforceability of any other provisions. This Agreement may be executed in any number of counterparts and by facsimile signature or signature delivered via email attachment, each of which shall be deemed an original, and all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have duly executed this Agreement the day and date hereinbefore set forth.

<b>BROADCAST MUSIC INC.</b>
<b>By:</b>
<i>Signature</i>
<i>Print Name of Signer</i>
<i>Title of Signer</i>

<b>LICENSEE (Legal Name of Owner)</b>
<b>By:</b>
<i>Signature</i>
<i>Print Name of Signer</i>
<i>Title of Signer</i>



10 Music Square East, Nashville, Tennessee 37203-4399  
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# EXHIBIT A



## LOW-POWER TELEVISION BLANKET ESTIMATED ANNUAL FEE 2017

CALL LETTERS

ACCOUNT NUMBER

ANNUAL NET REVENUE

REPORTING PERIOD\*




FROM:

TO:

If applicable, please check the following:

- Home Shopping Programming\*\* \_\_\_\_\_  
(Primary Network Affiliation)
- Operating as a 501(c)\*\*

### ESTIMATED LICENSE FEE COMPUTATION:

Licensee's Net Revenue *	Applicable License Fee	Licensee's Net Revenue	Applicable License Fee
\$155,000 or Less	\$747***	\$2,100,001 to \$2,400,000	\$11,250
\$155,001 to \$175,000	\$825	\$2,400,001 to \$2,700,000	\$12,750
\$175,001 to \$200,000	\$938	\$2,700,001 to \$3,000,000	\$14,250
\$200,001 to \$225,000	\$1,063	\$3,000,001 to \$3,300,000	\$15,750
\$225,001 to \$250,000	\$1,188	\$3,300,001 to \$3,800,000	\$17,750
\$250,001 to \$275,000	\$1,313	\$3,800,001 to \$4,300,000	\$20,250
\$275,001 to \$300,000	\$1,438	\$4,300,001 to \$4,800,000	\$22,750
\$300,001 to \$350,000	\$1,625	\$4,800,000 to \$5,300,000	\$25,250
\$350,001 to \$400,000	\$1,875	\$5,300,001 to \$6,050,000	\$28,375
\$400,001 to \$450,000	\$2,125	\$6,050,001 to \$6,800,000	\$32,125
\$450,001 to \$500,000	\$2,375	\$6,800,001 to \$7,550,000	\$35,875
\$500,001 to \$575,000	\$2,688	\$7,550,001 to \$8,300,000	\$39,625
\$575,001 to \$650,000	\$3,063	\$8,300,001 to \$9,550,000	\$44,625
\$650,001 to \$725,000	\$3,438	\$9,550,001 to \$10,800,000	\$50,875
\$725,001 to \$800,000	\$3,813	\$10,800,001 to \$12,050,000	\$57,125
\$800,001 to \$925,000	\$4,313	\$12,050,001 to \$13,300,000	\$63,375
\$925,001 to \$1,050,000	\$4,938	\$13,300,001 to \$15,050,000	\$70,875
\$1,050,001 to \$1,175,000	\$5,563	\$15,050,001 to \$16,800,000	\$79,625
\$1,175,001 to \$1,300,000	\$6,188	\$16,800,001 to \$18,550,000	\$88,375
\$1,300,001 to \$1,500,000	\$7,000	\$18,550,001 to \$20,300,000	\$97,125
\$1,500,001 to \$1,700,000	\$8,000	\$20,300,001 to \$23,050,000	\$108,375
\$1,700,001 to \$1,900,000	\$9,000	\$23,050,001 to \$25,800,000	\$122,125
\$1,900,001 to \$2,100,000	\$10,000	\$25,800,001 to \$28,550,000	\$135,875
		\$28,550,001 to \$31,300,000	\$149,625

\* Licensee's Net Revenues are defined in Paragraph 4(g) of the Agreement.

\*\* As referenced in Paragraph 5 (a) in the Agreement.

\*\*\* The minimum fee is subject to adjustment based upon the Consumer Price Index as provided for in Paragraph 5(a) of the Agreement.

BILLING CONTACT:	SUBMITTED BY:
Billing Contact: _____	Name: _____
Billing Contact Title: _____	Signature: _____
Billing Contact Address: _____	Title: _____
Billing Contact Phone #: _____	Date: _____
Billing Contact E-Mail: _____	

**1. DEFINITIONS**

- (a) **“LICENSEE”** shall mean the Office of the Commissioner of Baseball, on its own behalf and as agent for the Major League Baseball Clubs and The Arizona Fall League, Inc. (“AFL”).
- (b) **“Regular Season Baseball Games”** shall mean all regularly-scheduled Major League Baseball (“MLB”) games presented by the Major League Baseball Clubs at the Licensed Premises, including all regular season home games (“Home Games”), Spring Training games and exhibition games, but specifically excluding all Jewel Event Baseball Games.
- (c) **“Other Seasonal Baseball Events”** shall mean all AFL games, RBI and other youth competitions, Yardball competitions, and baseball-related activities presented by Major League Baseball Clubs or the Office of the Commissioner of Baseball for which no admission fee is charged, such as parades and other community events; provided, however, that in no event shall “Other Seasonal Baseball Events” include concerts or other musical attractions, whether or not a separate admission is charged to attend, except as otherwise provided in paragraph 2 (c) below.
- (d) **“Jewel Event Baseball Games”** shall mean all All-Star Week Games and skills competitions, Division Series Games, League Championship Series Games, and World Series Games presented by the Office of the Commissioner of Baseball at the Licensed Premises.
- (e) **“Baseball Games”** shall mean, collectively, all Regular Season Baseball Games, Other Seasonal Baseball Events and Jewel Event Baseball Games, as defined herein.
- (f) **“Baseball Season”** shall mean the annual period that commences with the first Other Seasonal Baseball Event or first Spring Training game (whichever is earlier), continues through all Regular Season Baseball Games and concludes with the final World Series Game or final Other Seasonal Baseball Event (whichever is later) of the Contract Year as defined below.
- (g) **“Licensed Premises”** shall mean such baseball stadiums and other premises within the United States, its possessions and territories, and Puerto Rico, as are the site of Regular Season Baseball Games, Other Seasonal Baseball Events, and Jewel Event Baseball Games.
- (h) **“Contract Year”** shall mean each consecutive twelve-month period of the Term of this Agreement, containing one complete Baseball Season, beginning January 1 and ending December 31 (except for Contract Year 2006, which shall reference April 1, 2006 through December 31, 2006).
- (i) **“Initial Term”** shall mean the period commencing April 1, 2006 and ending December 31, 2012.
- (j) **“Term”** shall mean the Initial Term and any additional Contract Years through which the Agreement extends.
- (k) **“U.S. Club”** shall mean a Major League Baseball Club that plays its Home Games in Licensed Premises.

**2. BMI GRANT**

- (a) BMI hereby grants to LICENSEE for the Term of this Agreement a non-exclusive license to perform, present or cause the performance at Baseball Games, but solely as incident to such Baseball Games and for the entertainment of the spectators immediately before, after and at intervals during Baseball Games, of all of the musical works for which BMI controls the right to grant public performance licenses during the Term (the “Works”).
- (b) This license shall not include: (1) the right to broadcast, telecast, cablecast, webcast or otherwise transmit the performances to persons outside of the Licensed Premises; (2) the right to record or otherwise mechanically reproduce the performances by any means; and (3) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the “grand rights” therein.
- (c) This license shall not extend to any hotel, motel, restaurant or other facility situated within the area of the Licensed Premises, whether or not such facility is owned or operated by LICENSEE except to the extent that the music accompanying the Baseball Game can, at the same time, be heard in these other areas of Licensed Premises. This license also shall not at any time extend to performances of music at concerts or other musical attractions presented on any game day before or after the first or last Baseball Game, or on any non-game days; however, this Agreement will extend to concerts or musical attractions held in connection with a Baseball Game on a game day before, after or during the Baseball Game, provided, that (i) there is no separate ticket cost to attend the concert/musical attraction; (ii) the ticket price of the Baseball Game is not higher than the ticket price for other similar Baseball Games held at Licensed Premises; and (iii) the total duration of such concert/musical attraction(s) before, during and after such Baseball Game does not exceed six (6) songs or twenty (20) minutes, whichever is longer, of the Works.



**3. INDEMNITY BY BMI**

BMI agrees to indemnify, save harmless and defend LICENSEE, Major League Baseball Enterprises, Inc., Major League Baseball Properties, Inc., and the Major League Baseball Clubs, and their owners, officers, directors, employees, agents, representatives, successors and assigns, from and against any and all claims, demands or suits that may be brought against them or any of them with respect to the performance of any musical works licensed hereunder. Such indemnity shall be limited to musical compositions, which are licensed by BMI at the time of LICENSEE's performances. BMI shall, upon reasonable written request, advise LICENSEE whether particular musical compositions are available for performance as part of BMI's repertoire. 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.

**4. BREACH OR DEFAULT/WAIVER**

Upon any breach or default of the terms and conditions contained herein, BMI may, at its sole option, cancel this Agreement if such breach or default continues thirty (30) days after LICENSEE's receipt of written notice thereof. The right to cancel granted to BMI pursuant to this Paragraph shall be in addition to any and all other remedies, including the right to sue for copyright infringement, which BMI may have in law or in equity. 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.

**5. FEES**

(a) In consideration of the license granted herein, LICENSEE agrees to pay to BMI license fees for each Contract Year of this Agreement as follows:

<b>LICENSE FEE SCHEDULE</b>		
<b><u>CONTRACT YEAR / BASEBALL SEASON BEGINNING IN</u></b>	<b><u>ANNUAL PER-U.S. CLUB BASEBALL SEASON FEE</u></b>	<b><u>JEWEL EVENT BASEBALL GAME FEE</u></b>
2006	\$8,100	\$385
2007	\$8,910	\$440
2008	\$9,315	\$480
2009	\$9,720	\$500
2010	\$10,125	\$515
2011 Contract Year Forward	Prior Contract Year license fees adjusted by CPI	

(b) The Annual Per-U.S. Club Baseball Season Fee and the Jewel Event Baseball Game Fee for each Contract Year after 2010 shall be the corresponding license fee for the preceding Contract Year adjusted in accordance with the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding August and the next preceding August, rounded to the nearest dollar. For each Contract Year commencing with 2011, BMI shall notify LICENSEE of the Annual Per-U.S. Club Baseball Season Fee and the Jewel Event Baseball Game Fee no later than January 5 of the Contract Year.

(c) The Annual Per-U.S. Club Baseball Season Fee for each Contract Year commencing in 2008 shall be due within forty-five (45) days following the beginning of each such Contract Year. The Jewel Event Baseball Game Fee for each Contract Year commencing in 2007 shall be due within forty-five (45) days following the beginning of the next Contract Year.

(d) In the event that either (i) the number of Major League Baseball Clubs that play their Home Games at Licensed Premises changes during any Contract Year; or (ii) the number of Home Games actually played by the Major League Baseball Clubs at Licensed Premises is more than or less than eighty-one (81) games during any Contract Year, then LICENSEE's fee for the ensuing Contract Year shall be adjusted accordingly, provided, however, that any adjustment required for the final Contract Year shall be credited or paid accordingly when final payment is due under Paragraph 5 (c) above.

(e) In addition to the Annual Per-U.S. Club Baseball Season Fees and any Jewel Event Baseball Game Fees paid by LICENSEE to BMI for each Contract Year of the Term, LICENSEE agrees to pay to BMI for each Contract Year in which AFL plays games in Licensed Premises with paid attendance that use the Works the total sum of two-thousand dollars (\$2,000) for a license to perform the Works at such AFL games.

## **6. REPORTING**

- (a) LICENSEE shall furnish to BMI lists of performances of all musical works performed at Licensed Premises during ten (10) Home Games in each Baseball Season ("Music Use Reports"). By March 20 of each Contract Year, LICENSEE shall provide, by written notification to BMI, the ten (10) dates for which LICENSEE will provide Music Use Reports to BMI for each U.S. Club. Such Music Use Reports shall indicate the compositions performed by title and composer (to the extent identification is possible) or artist, and shall be provided to BMI within forty-five (45) days of the completion of the Regular Baseball Season. LICENSEE may change the date of a game for which a Club intended to provide a Music Use Report on two (2) weeks advance written notice to BMI. Notwithstanding anything to the contrary herein, LICENSEE shall not be required to report musical works synchronized in scoreboard features, advertisements and other jumbotron video programs, which LICENSEE represents to be insignificant.
- (b) No casual or inadvertent failure to provide specified Music Use Report(s) shall constitute a material breach of this Agreement nor shall any monetary damages accrue therefor.

## **7. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one-half percent (1½%) per month from the date any payment is due hereunder on any payment that is received by BMI more than thirty (30) days after the due date.

## **8. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax (not including income tax) which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

## **9. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to arbitration in the City, County and State of New York under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators 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 in any court having jurisdiction. Such award shall include the fixing of the costs, expenses and attorney's fees of arbitration, which shall be borne by the unsuccessful party.

## **10. OFFER OF COMPARABLE AGREEMENT**

BMI represents that as of the date hereof, it has not issued a license to enterprises of the same class and category as those licensed hereunder granting rights similar to those granted by this Agreement at a more favorable rate of payment to any such licensee than is set forth herein. In the event that BMI, at any time during the Term, shall issue licenses to enterprises of the same class and category as those licensed hereunder granting rights similar to those granted by this Agreement at a more favorable rate of payment to any such licensee than is set forth herein, BMI shall notify LICENSEE and shall, for the balance of the Term hereof, at the written request of LICENSEE, tender to LICENSEE the form of agreement containing such more favorable rate of payment.

## **11. NOTICES**

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed duly given when sent by regular first-class U.S. mail to the party for whom it is intended, at its address herein stated, or any other address which either party hereto may from time to time designate for such purpose, and when such notice is so mailed, it shall be deemed to have been given upon the mailing thereof. Any notice 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.

## **12. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, will not be binding until signed by both parties, and 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. The rights of LICENSEE hereunder shall not be assignable. 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.

**13. TERM**

The Initial Term of this Agreement shall begin on April 1, 2006 and end on December 31, 2012. Thereafter, the Agreement Term shall continue for additional Contract Years of one (1) year each unless cancelled by either party by written notice tendered no later than June 30<sup>th</sup> of the Contract Year at the end of which the cancelling party desires the termination. In no event, however, may the Agreement be terminated prior to December 31, 2012. Notice of termination shall be made by regular first-class U.S. mail and shall be sent to the attention of the parties identified in Paragraph 11 herein.

**AGREEMENT**

AGREEMENT made at New York, N.Y. on *(Date will be entered by BMI upon execution)* \_\_\_\_\_ between BROADCAST MUSIC, INC., a corporation organized under the laws of the State of New York (herein called "BMI") with principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030 and:

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

**ENTER LEGAL NAME (herein referenced as "LICENSEE")**

\_\_\_\_\_  
*(Name of Corporation, Partnership, or Individual Owner)*

**ENTER TRADE NAME:**

\_\_\_\_\_  
*(Doing business under the name of)*

**BUSINESS ADDRESS**

\_\_\_\_\_  
*(Street Address)*

\_\_\_\_\_  
*(City) (State) (Zip)*

\_\_\_\_\_  
*(Telephone Number) (Fax Number)*

\_\_\_\_\_  
*(Contact Name) (Title)*

\_\_\_\_\_  
*(Email Address) (Web Address)*

**CHECK APPROPRIATE BOX AND COMPLETE**

- Individual Ownership
  - LLC     Corporation \_\_\_\_\_  
*(State of Incorporation, if different from Business Address)*
  - LLP     Partnership \_\_\_\_\_  
*(Enter names of partners)*
  - Other \_\_\_\_\_
- Fed. Tax ID # \_\_\_\_\_

**MAILING ADDRESS**

*(if different from Business Address)*

\_\_\_\_\_  
*(Street Address)*

\_\_\_\_\_  
*(City) (State) (Zip)*

\_\_\_\_\_  
*(Telephone Number) (Fax Number)*

\_\_\_\_\_  
*(Contact Name) (Title)*

\_\_\_\_\_  
*(Email Address)*

**TO BE COMPLETED BY LICENSEE**

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.

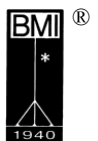
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name / Title

**FOR ADMINISTRATIVE USE ONLY**

**TO BE COMPLETED BY BMI  
BROADCAST MUSIC, INC.**

FOR BMI USE ONLY	
<b>Account No.</b>	<b>COID</b>



\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.



http://www.bmi.com

# MICROCASTER WEB SITE MUSIC PERFORMANCE AGREEMENT

AGREEMENT, made on \_\_\_\_\_, 20\_\_\_\_, by and between BROADCAST MUSIC, INC. ("BMI"), a New York corporation with its principal offices at 7 World Trade Center, 250 Greenwich Street, New York, New York 10007-0030 and \_\_\_\_\_ ("LICENSEE"), a \_\_\_\_\_ (State)

- (check one)  corporation
- partnership
- limited liability company
- individual d/b/a \_\_\_\_\_

with its principal offices at \_\_\_\_\_, for the public performance of BMI music on the LICENSEE's Web Site located at [http://\\_\\_\\_\\_\\_](http://_____) (the "Agreement").

WHEREAS, LICENSEE uses Live365, Inc.'s stream hosting services exclusively to stream its DMCA-complaint (i.e. eligible for a statutory license for the public performance of sound recordings by means of digital audio transmissions under section 114(d)(2) of the U.S. Copyright Act) radio-style programming ("Programming") over the Internet from its Web Site located at the URL above; and

WHEREAS, LICENSEE's Programming is available to a maximum of 25 simultaneous listeners, LICENSEE generates no more than \$500.00 in Gross Revenue per month from the Web Site, and LICENSEE's main offices and the majority of its employees are located in the U.S. Territory; and

WHEREAS, LICENSEE desires a license from BMI to cover the public performance of BMI music in its Programming in and as part of its Web Site.

## NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. **TERM:** This Agreement begins on \_\_\_\_\_ (date on or after January 1, 2004 on which Programming is first made available from the Web Site), continues through the end of December of the then current year, and automatically renews on a calendar year-to-year basis thereafter until it is terminated ("Term").

2. **DEFINITIONS:** As used in this Agreement, the following terms have the following meanings:

- A. "Gross Revenue" means all revenue generated in connection with the Web Site.
- B. "New Media Territories List" shall mean the list of territories and performing right licensing organizations on the schedule posted in the weblicensing section of BMI's web site (located at <http://www.bmi.com/>) and designated as such (a copy of which is attached hereto). Please note that BMI may add and delete territories and performing right organizations on this schedule at any time and without notice.
- C. "Territory" means the U.S. Territory and those territories listed on the New Media Territories List.
- D. "U.S. Territory" shall mean the United States, its commonwealths, territories, and possessions.
- E. "Web Site" shall mean LICENSEE's Internet domain comprising a series of interrelated web pages currently registered with a domain name registration service and located at the URL identified above.

3. **GRANT OF RIGHTS:**

A. BMI hereby grants LICENSEE a non-exclusive license to perform publicly over the Internet within the Territory (subject to sub-paragraph 3(b) below) during the Term all musical works, the right to grant public performing right licenses of which BMI owns or controls during the Term. This Agreement includes only public performances of musical works by transmission over the Internet, and only where such transmissions are accessed from a Web Page on the Web Site; it does not cover any transmissions accessed from a Web Page on a third party web site. Public performances outside of the Territory may



be subject to appropriate separate licensing. This Agreement does not include dramatic rights or the right to perform dramatico-musical works in whole or in substantial part. This Agreement also does not license public performances in any commercial establishments, including, but not limited to, where all or a portion of the music available on the Web Site is used as a commercial music service (as that term is customarily understood in the industry); such performances of BMI music shall be subject to appropriate separate licensing.

B. The territorial scope of the grant of rights with respect to any musical works which are affiliated with BMI through a non-U.S. performing right licensing organization not listed on the New Media Territories List is limited to public performances in the U.S. Territory. Public performances of such musical works outside of the U.S. Territory may be subject to appropriate separate licensing.

C. This license does not cover any transmission which is not part of the Web Site, and does not authorize LICENSEE to grant to others (including, but not limited to, third party web sites, online services, cable television system operators and open video systems) any license or right to perform publicly or cause to be performed by any means, method or process whatsoever, any of the musical compositions licensed hereunder. BMI and LICENSEE expressly agree that this Agreement does not cover those instances where all or a portion of the Web Site is made available from a third party web site or included on a tier of services by a third party for additional revenue; such uses shall be subject to appropriate separate licensing.

D. This Agreement grants only public performing rights in musical works and does not grant any reproduction, distribution, or any other intellectual property right(s) in such musical works, or any digital performance, reproduction, distribution, or any other intellectual property right(s) in any sound recordings, to any person or entity, including those that may receive and/or download or otherwise store the transmission of the musical works licensed hereunder.

#### 4. LICENSE FEES:

A. In consideration of the license granted in this Agreement, LICENSEE will pay License Fees to BMI for 2004 in monthly installments of \$10.00 for each month of the Term. LICENSEE agrees to pay such License Fees to Live365, Inc., which will remit payment to BMI on LICENSEE's behalf. In the event that BMI does not receive a monthly installment on or before the last day of the month immediately following the month for which such payment should have been made, BMI may, in addition to any other remedies it may have available to it, cancel this Agreement retroactive to the end of the last calendar month for which a monthly installment was received.

B. For each year of the Term after 2004, the License Fee will be adjusted to reflect the percentage change in the United States Consumer Price Index (All Urban Consumers, All Items) between October of the preceding year and October of the next preceding year, rounded to the nearest dollar amount.

5. STATEMENT(S) OF ACCOUNT: On or before January 30 of each year of the Term, LICENSEE shall provide BMI with an electronic statement of account certifying that, with respect to the previous calendar year: (i) LICENSEE used Live365, Inc.'s stream hosting services exclusively to make its Programming available from its Web Site; (ii) LICENSEE's Programming was not available to more than 25 simultaneous listeners at any time; and (iii) LICENSEE did not generate more than \$500.00 in Gross Revenue during any month. In the event that BMI does not receive an annual statement of account by January 30, BMI may, in addition to any other remedies it may have available to it, cancel this Agreement retroactive to the end of the last calendar year. If, at any point during any calendar year of the Agreement, LICENSEE is unable to make all of the representations in (i), (ii) and (iii) above, LICENSEE will immediately notify BMI and this Agreement will be canceled effective at the end of the last day on which LICENSEE was able to make such representations.

6. AUDIT: BMI has the right to require that LICENSEE provide BMI with data or information sufficient to ascertain the License Fee due under this Agreement. BMI (and its duly authorized representatives) may, at BMI's expense and during customary business hours, on at least 10 days prior written notice, examine LICENSEE's books and records of account relating to any and all statements, accountings and reports required under this Agreement in order to verify their accuracy and/or determine LICENSEE's eligibility for this Agreement.

7. MUSIC USE REPORTS: LICENSEE will work with Live365, Inc. to ensure that Live365, Inc. can provide BMI with detailed music use reports identifying all of the musical works in LICENSEE's Programming by song title, performing artist, and the number of times each such musical work was performed.

8. INDEMNIFICATION: So long as LICENSEE is not in default or arrears in payment under this Agreement, BMI shall indemnify, save and hold harmless and defend LICENSEE and its officers and employees from and against any and all claims, demands and suits alleging copyright infringement that may be made or brought against them or any of them with respect to the public performance within the Territory of any musical works licensed hereunder. BMI's obligations under this paragraph, however, are limited to those claims, demands or suits that are made or brought within the U.S. Territory, and only with respect to those works that are BMI-affiliated works at the time LICENSEE performed them. This indemnity also shall not apply to transmissions of any musical work by LICENSEE after written request from BMI that LICENSEE refrain from performance of such 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; provided, however, that LICENSEE may retain counsel on its behalf and at its own expense and participate in the defense of such claim, demand or suit.

9. WARRANTY; RESERVATION OF RIGHTS: This Agreement is experimental in nature. BMI hereby expressly reserves its right to re-evaluate the appropriateness of the fees and terms herein, including, but not limited to, the reasonable value of a license that covers transmissions beyond the U.S. Territory, for periods following the Term.

10. TERMINATING THE AGREEMENT:

A. LICENSEE can request to terminate the Agreement at the end of December of 2004, or at the end of December of any year after 2004, by notifying BMI in writing at least sixty days before the requested date of termination. Additionally, if LICENSEE permanently discontinues its use of music on the Web Site (as opposed to temporarily disabling the Web Site and/or the music on the Web Site), LICENSEE can request to terminate this Agreement at any time during the Term by notifying BMI in writing. The Agreement will be terminated at the end of the last day of the month during which LICENSEE notified BMI so long as all reports and payments due under the Agreement through that date have been made.

B. BMI may terminate this Agreement at the end of December of any year of the Term by notifying LICENSEE in writing at least sixty days before the effective date of termination. Additionally, if BMI terminates its agreements with all other customers in LICENSEE's class and category, BMI can terminate this Agreement at any time during the Term by notifying LICENSEE in writing at least sixty days before the effective date of termination.

11. ARBITRATION: All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement (except for matters within the jurisdiction of the BMI rate court) shall be submitted to arbitration in the City, County, and State of New York under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators to be selected as follows: Each of the parties 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 in any court having jurisdiction. Such award shall include the fixing of costs, expenses, and attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

12. WITHDRAWAL OF WORKS: BMI reserves the right at its discretion to withdraw from the license granted by this Agreement any musical work as to which legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

13. NOTICE: All notices and other communications under this Agreement shall be in writing; statement requests and other correspondence between the parties relating to reporting under the Agreement can be sent electronically. Printed notices and other communications are deemed given upon mailing when sent by ordinary first-class U.S. mail to the party intended, at its mailing address as stated herein (or any other address that a party may designate in writing). Electronic report requests and other correspondence relating to reporting under the Agreement are deemed given upon sending when sent by electronic mail to the address designated (or any other address that a party may designate in writing).

14. MISCELLANEOUS:

A. LICENSEE cannot assign this Agreement to any other person or entity without BMI's prior written consent.

B. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE will provide BMI with the title and the writer/composer of each musical composition requested to be identified.

C. BMI will make reasonable efforts to be exempted or excused from paying state or local taxes on the License Fees received pursuant to this Agreement. In the event that BMI is not excused from paying such taxes, however, and BMI is permitted by law to pass through such tax to LICENSEE, LICENSEE will pay BMI the full amount of such tax when LICENSEE submits its License Fee payment(s).

D. BMI treats the financial and music usage information ("Information") that LICENSEE provides under this Agreement (or that BMI obtains through an audit) as confidential. LICENSEE's Information is made available to BMI agents and employees who need to know such information in order to administer this Agreement. LICENSEE's Information may also be made available to BMI-represented songwriters, composers, music publishers, as well as foreign rights organizations, but only to show the royalties generated from LICENSEE's use of their works (i.e., song X was played Y times and earned \$Z in royalties). BMI will not otherwise disclose LICENSEE's Information unless required to do so by law or legal process. BMI may, however, use the information in LICENSEE's music use reports and the music use reports from other customers to compile aggregate market data, and may disclose such aggregate market data publicly so long as BMI does not specifically identify LICENSEE's information as coming from LICENSEE.

E. This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof. This Agreement cannot be waived, 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.

BROADCAST MUSIC, INC.

**PLEASE COMPLETE ALL OF THE FOLLOWING:**

By: \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Print Name of Signer)  
\_\_\_\_\_  
(Title of Signer)

LICENSEE's main offices are located in the U.S. Territory  
YES \_\_\_\_\_ NO \_\_\_\_\_  
The majority of LICENSEE's employees are located in the U.S. Territory  
YES \_\_\_\_\_ NO \_\_\_\_\_  
LICENSEE's annual accounts are audited in the U.S. Territory  
YES \_\_\_\_\_ NO \_\_\_\_\_

Please return signed agreement together with minimum fee to:

BMI  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007-0030  
ATTN: Web Site Licensing

\_\_\_\_\_  
(LICENSEE)  
By: \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Print Name of Signer)  
\_\_\_\_\_  
(Title of Signer)



http://www.bmi.com

# MINICASTER WEB SITE MUSIC PERFORMANCE AGREEMENT

AGREEMENT, made on \_\_\_\_\_, 20\_\_\_\_, by and between BROADCAST MUSIC, INC. ("BMI"), a New York corporation with its principal offices at 7 World Trade Center, 250 Greenwich Street, New York, New York 10007-0030 and \_\_\_\_\_ ("LICENSEE"), a \_\_\_\_\_ (State) (check one) \_\_\_ corporation \_\_\_ partnership \_\_\_ limited liability company \_\_\_ individual d/b/a \_\_\_\_\_ with its principal offices at \_\_\_\_\_, for the public performance of BMI music on the LICENSEE's Web Site located at http:// \_\_\_\_\_ (the "Agreement").

WHEREAS, LICENSEE uses Live365, Inc.'s stream hosting services exclusively to stream its DMCA-complaint (i.e. eligible for a statutory license for the public performance of sound recordings by means of digital audio transmissions under section 114(d)(2) of the U.S. Copyright Act) radio-style programming ("Programming") over the Internet from its Web Site located at the URL above; and

WHEREAS, LICENSEE's Programming is available to a maximum of 500 simultaneous listeners, LICENSEE generates no more than \$1,200.00 in Gross Revenue per month from the Web Site, and LICENSEE's main offices and the majority of its employees are located in the U.S. Territory; and

WHEREAS, LICENSEE desires a license from BMI to cover the public performance of BMI music in its Programming in and as part of its Web Site.

## NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. **TERM:** This Agreement begins on \_\_\_\_\_ (launch date), continues through the end of December of 2010, and automatically renews on a calendar year-to-year basis thereafter until it is terminated ("Term").
2. **DEFINITIONS:** As used in this Agreement, the following terms have the following meanings:
  - A. "Gross Revenue" means all revenue generated in connection with the Web Site.
  - B. "New Media Territories List" shall mean the list of territories and performing right licensing organizations on the schedule posted in the weblicensing section of BMI's web site (located at <http://www.bmi.com/>) and designated as such (a copy of which is attached hereto). Please note that BMI may add and delete territories and performing right organizations on this schedule at any time and without notice.
  - C. "Territory" means the U.S. Territory and those territories listed on the New Media Territories List.
  - D. "U.S. Territory" shall mean the United States, its commonwealths, territories, and possessions.
  - E. "Web Site" shall mean LICENSEE's Internet domain comprising a series of interrelated web pages currently registered with a domain name registration service and located at the URL identified above.





### 3. GRANT OF RIGHTS:

A. BMI hereby grants LICENSEE a non-exclusive license to perform publicly over the Internet within the Territory (subject to sub-paragraph 3(b) below) during the Term all musical works, the right to grant public performing right licenses of which BMI owns or controls during the Term. This Agreement includes only public performances of musical works by transmission over the Internet, and only where such transmissions are accessed from a Web Page on the Web Site; it does not cover any transmissions accessed from a Web Page on a third party web site. Public performances outside of the Territory may be subject to appropriate separate licensing. This Agreement does not include dramatic rights or the right to perform dramatico-musical works in whole or in substantial part. This Agreement also does not license public performances in any commercial establishments, including, but not limited to, where all or a portion of the music available on the Web Site is used as a commercial music service (as that term is customarily understood in the industry); such performances of BMI music shall be subject to appropriate separate licensing.

B. The territorial scope of the grant of rights with respect to any musical works which are affiliated with BMI through a non-U.S. performing right licensing organization not listed on the New Media Territories List is limited to public performances in the U.S. Territory. Public performances of such musical works outside of the U.S. Territory may be subject to appropriate separate licensing.

C. This license does not cover any transmission which is not part of the Web Site, and does not authorize LICENSEE to grant to others (including, but not limited to, third party web sites, online services, cable television system operators and open video systems) any license or right to perform publicly or cause to be performed by any means, method or process whatsoever, any of the musical compositions licensed hereunder. BMI and LICENSEE expressly agree that this Agreement does not cover those instances where all or a portion of the Web Site is made available from a third party web site or included on a tier of services by a third party for additional revenue; such uses shall be subject to appropriate separate licensing.

D. This Agreement grants only public performing rights in musical works and does not grant any reproduction, distribution, or any other intellectual property right(s) in such musical works, or any digital performance, reproduction, distribution, or any other intellectual property right(s) in any sound recordings, to any person or entity, including those that may receive and/or download or otherwise store the transmission of the musical works licensed hereunder.

### 4. LICENSE FEES:

A. In consideration of the license granted in this Agreement, LICENSEE will pay License Fees to BMI for 2010 in monthly installments of \$23.75 for each month of the Term. LICENSEE agrees to pay such License Fees to Live365, Inc., which will remit payment to BMI on LICENSEE's behalf. In the event that BMI does not receive a monthly installment on or before the last day of the month immediately following the month for which such payment should have been made, BMI may, in addition to any other remedies it may have available to it, cancel this Agreement retroactive to the end of the last calendar month for which a monthly installment was received.

B. For each year of the Term after 2010, the License Fee will be increased to reflect the percentage change increase in the United States Consumer Price Index (All Urban Consumers, All Items) between October of the preceding year and October of the next preceding year, rounded to the nearest dollar amount.

5. STATEMENT(S) OF ACCOUNT: On or before January 30 of each year of the Term, LICENSEE shall provide BMI with an electronic statement of account certifying that, with respect to the previous calendar year: (i) LICENSEE used Live365, Inc.'s stream hosting services exclusively to make its Programming available from its Web Site; (ii) LICENSEE's Programming was not available to more than 500 simultaneous listeners at any time; and (iii) LICENSEE did not generate more than \$1,200.00 in Gross Revenue during any month. In the event that BMI does not receive an annual statement of account by January 30, BMI may, in addition to any other remedies it may have available to it, cancel this Agreement retroactive to the end of the last calendar year. If, at any point during any calendar year of the Agreement, LICENSEE is unable to make all of the representations in (i), (ii) and (iii) above, LICENSEE will immediately notify BMI and this Agreement will be canceled effective at the end of the last day on which LICENSEE was able to make such representations.

6. AUDIT: BMI has the right to require that LICENSEE provide BMI with data or information sufficient to ascertain the License Fee due under this Agreement. BMI (and its duly authorized representatives) may, at BMI's expense and during customary business hours, on at least 10 days prior written notice, examine LICENSEE's books and records of account relating to any and all statements, accountings and reports

required under this Agreement in order to verify their accuracy and/or determine LICENSEE's eligibility for this Agreement.

7. MUSIC USE REPORTS: LICENSEE will work with Live365, Inc. to ensure that Live365, Inc. can provide BMI with detailed music use reports identifying all of the musical works in LICENSEE's Programming by song title, performing artist, and the number of times each such musical work was performed.

8. INDEMNIFICATION: So long as LICENSEE is not in default or arrears in payment under this Agreement, BMI shall indemnify, save and hold harmless and defend LICENSEE and its officers and employees from and against any and all claims, demands and suits alleging copyright infringement that may be made or brought against them or any of them with respect to the public performance within the Territory of any musical works licensed hereunder. BMI's obligations under this paragraph, however, are limited to those claims, demands or suits that are made or brought within the U.S. Territory, and only with respect to those works that are BMI-affiliated works at the time LICENSEE performed them. This indemnity also shall not apply to transmissions of any musical work by LICENSEE after written request from BMI that LICENSEE refrain from performance of such 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; provided, however, that LICENSEE may retain counsel on its behalf and at its own expense and participate in the defense of such claim, demand or suit.

9. WARRANTY; RESERVATION OF RIGHTS: This Agreement is experimental in nature. BMI hereby expressly reserves its right to re-evaluate the appropriateness of the fees and terms herein, including, but not limited to, the reasonable value of a license that covers transmissions beyond the U.S. Territory, for periods following the Term.

10. TERMINATING THE AGREEMENT:

A. LICENSEE can request to terminate the Agreement at the end of December of 2010, or at the end of December of any year after 2010 by notifying BMI in writing at least sixty days before the requested date of termination. Additionally, if LICENSEE permanently discontinues its use of music on the Web Site (as opposed to temporarily disabling the Web Site and/or the music on the Web Site), LICENSEE can request to terminate this Agreement at any time during the Term by notifying BMI in writing. The Agreement will be terminated at the end of the last day of the month during which LICENSEE notified BMI so long as all reports and payments due under the Agreement through that date have been made.

B. BMI may terminate this Agreement at the end of December of any year of the Term by notifying LICENSEE in writing at least sixty days before the effective date of termination. Additionally, if BMI terminates its agreements with all other customers in LICENSEE's class and category, BMI can terminate this Agreement at any time during the Term by notifying LICENSEE in writing at least sixty days before the effective date of termination.

11. ARBITRATION: All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement (except for matters within the jurisdiction of the BMI rate court) shall be submitted to arbitration in the City, County, and State of New York under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators to be selected as follows: Each of the parties 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 in any court having jurisdiction. Such award shall include the fixing of costs, expenses, and attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

12. WITHDRAWAL OF WORKS: BMI reserves the right at its discretion to withdraw from the license granted by this Agreement any musical work as to which legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

13. **NOTICE:** All notices and other communications under this Agreement must be in writing, as described in the following paragraph. Report requests and other correspondence between the parties relating to reporting under the Agreement can be sent electronically and are deemed given upon sending, when sent by electronic mail to the address designated by the parties.

All other notices and communications between the parties hereto shall be in writing addressed to the other party at the address or fax number set forth below (or at such other address or fax number that may be supplied by written notice to the other party) and deemed received: (i) when delivered in person; or (ii) upon confirmed transmission by facsimile device; or (iii) five (5) days after postmarked by ordinary postage prepaid first-class U.S. mail; or (iv) date of confirmed delivery by private courier service:

**BMI:** 7 World Trade Center  
250 Greenwich Street  
New York, NY 10007-0030  
Attn: Senior Vice President, Corporate Strategy, Communications & New Media

BMI New Media Department Fax number: (212) 220 - 4504

with a separate copy to:

Senior Vice President and General Counsel (sent to the address above)

BMI Legal Department Fax number: (212) 220 - 4474

**LICENSEE:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Fax number: \_\_\_\_\_

e-mail: \_\_\_\_\_

14. **MISCELLANEOUS:**

A. LICENSEE cannot assign this Agreement to any other person or entity without BMI's prior written consent.

B. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE will provide BMI with the title and the writer/composer of each musical composition requested to be identified.

C. BMI will make reasonable efforts to be exempted or excused from paying state or local taxes on the License Fees received pursuant to this Agreement. In the event that BMI is not excused from paying such taxes, however, and BMI is permitted by law to pass through such tax to LICENSEE, LICENSEE will pay BMI the full amount of such tax when LICENSEE submits its License Fee payment(s).

D. BMI treats the financial and music usage information ("Information") that LICENSEE provides under this Agreement (or that BMI obtains through an audit) as confidential. LICENSEE's Information is made available to BMI agents and employees who need to know such information in order to administer this Agreement. LICENSEE's Information may also be made available to BMI-represented songwriters, composers, music publishers, as well as foreign rights organizations, but only to show the royalties generated from LICENSEE's use of their works (i.e., song X was played Y times and earned \$Z in

royalties). BMI will not otherwise disclose LICENSEE's Information unless required to do so by law or legal process. BMI may, however, use the information in LICENSEE's music use reports and the music use reports from other customers to compile aggregate market data, and may disclose such aggregate market data publicly so long as BMI does not specifically identify LICENSEE's information as coming from LICENSEE.

E. This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof. This Agreement cannot be waived, 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.

**PLEASE COMPLETE THE FOLLOWING:**

**BROADCAST MUSIC, INC.**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name of Signer)

\_\_\_\_\_  
(Title of Signer)

LICENSEE's main offices are located in the U.S. Territory  
YES \_\_\_\_\_ NO \_\_\_\_\_

\_\_\_\_\_  
(LICENSEE)

By: \_\_\_\_\_  
(An Authorized Signer)

\_\_\_\_\_  
(Print Name of Signer)

\_\_\_\_\_  
(Title of Signer)

**PLEASE RETURN SIGNED AGREEMENT  
TOGETHER WITH ANNUAL MINIMUM FEE TO:**

**BMI  
ATTN: Web Site Licensing  
10 Music Square East  
Nashville, TN 37203-4399**



Music  
Performance  
Agreement

## Music-On-Hold Service

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Account #

**36M**

**LI-10/05-36M**

AGREEMENT made at New York, NY on \_\_\_\_\_ between BROADCAST MUSIC, INC. (BMI), a New York corporation with its principal place of business at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030 and \_\_\_\_\_, a State of \_\_\_\_\_ corporation and their respective subsidiaries (“LICENSEES”), with their principal place of business at \_\_\_\_\_

<b>ENTER LEGAL NAME</b> _____ <i>Name of corporation, Partnership or Individual Owner</i>	
<b>ENTER TRADE NAME</b> _____ <i>(Doing business under the name of)</i>	
<b>CHECK APPROPRIATE BOX AND COMPLETE</b>	<input type="checkbox"/> <b>Corporation</b> _____ <i>(State of Incorporation)</i>
	<input type="checkbox"/> <b>Partnership</b> (Enter names of partners) _____ _____
	<input type="checkbox"/> <b>Individual Owner</b> <i>(Indicate residence below under Mailing Address)</i>
<b>BUSINESS ADDRESS</b>	<b>MAILING ADDRESS</b>
<i>Street Name</i>	
<i>City State Zip</i>	
<i>Telephone No. Contact Name</i>	
<i>Title</i>	

- The term of this agreement shall be the period of one (1) year beginning on \_\_\_\_\_ and ending on \_\_\_\_\_ and shall continue thereafter for additional periods of one year each unless cancelled by either party as of the end of the initial term or any subsequent term upon thirty (30) days advance written notice to the other party. Each one-year period during the initial term or any additional term is hereafter referred to as a “contract year.”
- As used in this agreement, the following words shall have the following respective meanings:
  - “Music-on-hold”: a telephonic transmission service whereby music is performed for telephone callers while they are being held on the line;
  - “Music-on-hold service”: a business operation which provides audio tapes to its customers for music-on-hold use;
  - “Custom audio production”: audio music programming produced (whether via the provision of tapes, telephonic delivery or other means) for a particular music-on-hold service customer according to specifications and which may include advertising messages and information in addition to music;
  - “Gross revenues”: all consideration (in money or in any other form including, but not limited to, trade and barter arrangements) due to LICENSEES from any source in connection with the providing of custom audio productions to its music-on-hold customers. It is understood and agreed that “gross

revenues” shall not include the consideration received by LICENSEES solely for hardware, non-musical productions, or for custom audio productions created for a client who supplies LICENSEES with music to be used in conjunction with its own advertising or promotional messages, where the performance rights to that music have been obtained by the client prior to its being supplied to LICENSEES, non-musical productions.

3. (a) LICENSEES warrant and represent that they operate a music-on-hold service which provides custom audio productions to business and industry. In consideration of the payment of the license fees described in Paragraph 4, BMI hereby grants to LICENSEES a non-exclusive license to cause and permit its customers to perform over telephone lines at locations where LICENSEES’ custom audio productions are received all of the musical works of which BMI shall have the right to grant public performance licenses during the term. In no event shall this license extend to performances of music other than on telephones calling a location where LICENSEES’ custom audio productions are received.

(b) This license does not include: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the “grand rights” therein; or (ii) the right to broadcast, telecast, cablecast or otherwise transmit (other than via music-on-hold) the performances licensed hereunder to persons outside of the licensed premises; or (iii) the authorization of performances of music by means of a coin-operated phonorecord player (jukebox). BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

4. (a) LICENSEES agree to pay BMI for the license granted herein an annual license fee equal to a percentage of LICENSEES’ gross revenues [as defined in Paragraph 1(d) above] during each contract year of this agreement. The percentage upon which the annual license fee is calculated shall be 3% for 1994 and 3.5% for 1995 and any subsequent years of this agreement. Each annual fee shall be an estimated fee based upon LICENSEES’ gross revenues during the preceding contract year. LICENSEES shall append to this agreement a statement, certified by an officer or auditor of LICENSEES, attesting to such revenues for the twelve-month period immediately preceding the initial term of this agreement, and calculating the estimated license fee for the initial contract year. Not later than \_\_\_\_\_ and each \_\_\_\_\_ thereafter during the term, LICENSEES shall submit such a certified statement for the previous contract year. The license fee calculated on said figures shall then become both the actual fee for the previous contract year and the estimated fee for the then-current contract year.

(b) At the same time that the certified statement is due, LICENSEES shall pay the first of four (4) quarterly installments of a) the estimated fee for the then-current contract year, plus b) any deficiency between the estimated fee and the actual fee for the previous contract year. The second through fourth installments shall be payable on the 4th month, the 7th month and the 10th month of each contract year, respectively. In the event that the actual fee is less than the estimated fee paid for the previous contract year, BMI shall credit LICENSEES with the difference, or, if the actual fee is for the last year of the term of this agreement, BMI shall refund the difference to LICENSEES.

5. At a frequency of no more than once every thirty (30) days during the term of this agreement, BMI may elect to provide LICENSEES with a written list of locations and/or entities who have advised BMI that the music performed on their premises is supplied by or through LICENSEES. Upon receipt of any

such list, LICENSEES agree, within ten (10) days thereafter, to advise BMI in writing as to whether or not each location and/or entity listed has, in fact, been supplied with music by or through LICENSEES and if so, the effective date thereof.

6. The granting and taking of this license and the terms thereof are deemed experimental and without prejudice to any position taken by either party in connection therewith following the expiration of this agreement.

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

8. BMI agrees to indemnify, save harmless and defend LICENSEES, their 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 the works which are licensed by BMI at the time of LICENSEES' performances. BMI's Clearance Department will, upon request, advise LICENSEES whether particular musical works are available for performance as part of BMI's repertoire. LICENSEES agree 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.

9. Upon any breach or default of the terms and conditions of this agreement, BMI shall have the right to cancel this agreement, but any such cancellation shall only become effective if such breach or default continues thirty (30) days after the date of BMI's written notice to LICENSEES' thereof. 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 LICENSEES in any one or more instances shall be 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.

10. BMI shall have the right upon reasonable notice to LICENSEES, by its authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEES to such extent as may be necessary to verify the statements made hereunder. BMI shall consider all data and information coming to its attention as the result of any such examination as confidential.

11. All disputes of any kind, nature or description arising in connection with the terms and conditions of this agreement shall be submitted to the American Arbitration Association in the City, County and State of New York under its then prevailing rules, the arbitrators 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 in any court having jurisdiction. Such award shall include the fixing of the costs, expenses and attorney's fees of arbitration, which shall be borne by the unsuccessful party.

12. Any notice required or permitted to be given under this agreement shall be in writing and shall be deemed duly given when sent by ordinary first-class U.S. mail (unless it is stated elsewhere in this agreement that a notice is to be sent certified mail) to the party for whom it is intended at its address hereinabove stated, or any other address which either party hereto may from time to time designate for such purpose. Any such notice sent to BMI shall be to the attention of the Vice President of Licensing with a copy to the General Counsel. Any such notice sent to LICENSEES shall be to the attention of the person signing this agreement on behalf of LICENSEES or such other person as LICENSEES may advise BMI in writing.

13. BMI may impose a late payment charge of one and one-half percent (1 1/2%) per month from the date any payment is due on any payment that is received by BMI more than one month after the due date.

14. This agreement constitutes the entire understanding between the parties, shall not be binding until signed by both parties, and 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. The rights of LICENSEES shall not be assignable. 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.

<p><b>TO BE COMPLETED BY LICENSEE</b>  <b>By signing this Agreement you agree that the foregoing is a true and accurate representation of your Music Policy.</b></p> <p>I have read and have understood all of the terms and conditions herein and my signature below is evidence of this.</p> <p>_____</p> <p style="text-align: center;">Signature</p> <p>_____</p> <p style="text-align: center;">Print Name / Title</p>
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<p><b><u>FOR ADMINISTRATIVE USE ONLY</u></b>          BROADCAST MUSIC, INC.</p>
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<b>FOR BMI USE ONLY</b>		
<b>Account No.</b>	<b>COID</b>	

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# Music License for Motion Picture Theatres

AGREEMENT, made at New York, N.Y. on (Date Will Be Entered by BMI Upon Execution) \_\_\_\_\_ between BROADCAST MUSIC, INC. (hereinafter BMI), a State of New York corporation with its principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030 and the entity described below and referred to thereafter as LICENSEE:

<b>ENTER LEGAL NAME</b> _____ <i>Name of Corporation, Partnership or Individual Owner</i>	
<b>ENTER TRADE NAME</b> _____ <i>(Doing business under the name of)</i>	
<b>CHECK APPROPRIATE BOX AND COMPLETE</b>	<input type="checkbox"/> <b>Corporation</b> _____ <i>(State of Incorporation)</i>
	<input type="checkbox"/> <b>Partnership</b> (Enter names of partners) _____ _____ _____
	<input type="checkbox"/> <b>Individual Owner</b> <i>(indicate residence address below under Mailing Address)</i>
<b>ADDRESS</b>	<b>MAILING ADDRESS</b>
<i>Street Name</i>	<i>Street Name</i>
<i>City State Zip</i>	<i>City State Zip</i>
<i>Telephone No. Contact Name</i>	<i>Telephone No. Contact Name</i>
<i>Title</i>	<i>Title</i>

### 1. DEFINITIONS

(a) "Recorded background music" shall mean performances of recorded music, whether vocal or instrumental, designed to be used as an unobtrusive accompaniment to routine activities, including, but not limited to, work, conversation, dining and relaxation, as long as such music is not intended to accompany dancing or any other form of entertainment.

### 2. BMI GRANT

BMI hereby grants to LICENSEE, by means of recorded background music only, a non-exclusive license to perform, present or cause the performance at the licensed premises only all musical works of which BMI shall have the right to grant public performance licenses during the Term hereof. This license shall be limited to performances of music at the theatres either by the playing of records, pre-recorded tapes, or other mechanical devices or via the reception of broadcast audio transmissions on receiving apparatus and amplifications thereof for public performance, and such performances may be amplified only through loudspeakers located at the theatres. Said license shall be restricted to performance of music in the manner described herein and is granted in consideration of the payment of the license fees as set forth herein and is subject to all of the terms and conditions hereof. This license does not include:

- (a) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein; or
- (b) the right to broadcast, telecast, cablecast or otherwise transmit the performances licensed hereunder to persons outside of the licensed premises or
- (c) Performances of music during the course of live stage presentations at the theatres.
- (d) This license does not authorize performances of music by means of a coin-operated phonorecord player (jukebox).
- (e) BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

### 3. TERM OF AGREEMENT

The initial Term of this Agreement shall begin on the first day of \_\_\_\_\_ and end on the last day of \_\_\_\_\_ and shall continue thereafter unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "contract year") upon thirty (30) days advance written notice to the other party.

### 4. TERMINATION OF AGREEMENT BY LICENSEE

If LICENSEE shall cease to operate all of the licensed premises during the Term hereof, whether by reason of the sale or lease of the premises or otherwise, this Agreement and LICENSEE's obligation to BMI shall thereupon terminate; provided, however, that LICENSEE shall, within ten (10) days thereafter, give written notice of such termination to BMI, setting forth the effective date thereof and the name of the new owner or operator of the premises, as the case may be, and that LICENSEE shall pay to BMI all fees due hereunder until said date. The fees due BMI by LICENSEE through the effective date of termination shall be a proration of the fee for the contract year of termination, but in no event less than the number of screens then owned or operated by LICENSEE times the appropriate Class 1 (A or B) fee indicated on the LICENSE FEE SCHEDULE.

## **5. REPORT REQUIREMENTS**

(a) At the same time that LICENSEE pays its license fee hereunder for the second and subsequent contract years, LICENSEE shall submit a completely revised Theatre Complex Schedule, listing by name and address all of LICENSEE's theatre complexes embrace by this Agreement as of the end of the previous contract year, indicating the number of screens and the seating or automobile capacity at each. For purposes of calculating the correct license fee payment, all additions and deletions of screens shall be deemed to be effective on the first day of the contract year following the contract year in which they occurred, and each annual payment shall reflect those additions and deletions which occurred during the previous contract year. The license granted hereunder shall be deemed to extend to each addition to the Theatre Complex Schedule provided for herein as of the day on which recorded music is first performed at such location, as long as payment for and reporting of that location is made as required herein.

(b) In the event that LICENSEE fails to submit an updated Theatre Complex Schedule pursuant to Paragraph 5(a) and BMI subsequently is made aware of a current change of Class for any complex or of any unreported additional screens, BMI shall have the option, in lieu of its right of cancellation pursuant to Paragraph 9, to notify LICENSEE in writing by certified mail of its knowledge of such change and adjust LICENSEE's fee for the then current contract year in accordance with this Paragraph as if LICENSEE had reported such changes or additions. LICENSEE shall have thirty (30) days from the date of BMI's notice to submit the missing schedule. If such schedule is not received by BMI by the end of said 30-day period, LICENSEE agrees to waive its right to submit such past due schedule thereafter and authorizes BMI to deem the adjusted fee as being accurate.

## **6. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

## **7. OFFER OF COMPARABLE AGREEMENT**

In the event that BMI, at any time during the Term hereof, 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.

## **8. INDEMNITY BY BMI**

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 the works which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon reasonable request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. 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.

## **9. BREACH OR DEFAULT / WAIVER**

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues thirty (30) days after the date of BMI's written notice to LICENSEE thereof. 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 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.

## **10. REVIEW OF STATEMENTS / ACCOUNTINGS**

BMI shall have the right upon reasonable notice to LICENSEE, by its authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify the statements made hereunder or under any previous Agreement with BMI. BMI shall consider all data and information coming to its attention as the result of any such examination as confidential.

## **11. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to the American Arbitration Association in the City, County and State of New York 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 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 in any court having jurisdiction. Such award shall include the fixing of the costs, expenses and attorney's fees of arbitration, which shall be borne by the unsuccessful party.

## **12. NOTICES**

Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed duly given when sent by ordinary first-class U.S. mail (unless it is stated elsewhere in this Agreement that a notice is to be sent certified mail) to the party for whom it is intended at its mailing address hereinabove stated, or any other address which either party hereto may from time to time designate for such a purpose. Any such notice sent to BMI shall be to the attention of the Licensing Department. Any such 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.

## **13. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one-half percent (1 ½%) per month from the date any payment is due hereunder on any payment that is received by BMI more than one month after the due date.

## **14. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, shall not be binding until signed by both parties, and 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. The rights of LICENSEE shall not be assignable. 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**15. FEES**

(a) LICENSEE agrees to pay BMI an annual fee based upon the LICENSE FEE SCHEDULE on page 3 hereof. The first year's fee shall be payable in full upon the signing of this Agreement.

(b) The amount of the per screen license fee(s) for the second and subsequent contract years of this Agreement shall be an adjustment of the first year's per screen fee(s) based upon the report requirements of Paragraph 5 and the percentage increase or decrease in the United States Consumer Price Index (National, All Items) between September 2016 and September of the year preceding the anniversary date of this Agreement. BMI will advise LICENSEE in writing of the amount of each new fee. The total of all fees shall be paid in full no later than ten (10) days following the beginning of each contract year.

(c) LICENSEE warrants and represents that, as of the date of this Agreement, it owns and/or operates all of the theatre complexes listed on the Theatre Complex Schedule herein and has accurately indicated the total seating or automobile capacity of each.

**LICENSE FEE SCHEDULE**

(FILL IN APPLICABLE CLASS AND FEE UNDER FEE COMPUTATION)

ENCLOSED THEATRE COMPLEX			DRIVE-IN THEATRE COMPLEX		
Class	Average Complex Seating Capacity Per Screen	First Year's Fee Per Screen	Class	Average Complex Seating Capacity Per Screen	First Year's Fee Per Screen
1A	Under 150	\$31.54	1B	Under 150	\$63.06
2A	150 - 299	\$42.06	2B	150 - 299	\$84.08
3A	300 - 599	\$73.55	3B	300 - 449	\$147.14
4A	600 - 899	\$105.08	4B	450 - 599	\$210.56
5A	900 & Over	\$157.62	5B	600 & Over	\$315.25

**THERE SHALL BE A TOTAL MINIMUM FEE OF \$157.62**

**FEE COMPUTATION**

Using the totals from the THEATRE COMPLEX SCHEDULE (page 4) and the appropriate Class and Fee from the LICENSE FEE SCHEDULE (page 3) calculate the following:

**PER SCREEN**

**TOTALS**

From THEATRE COMPLEX SCHEDULE

From LICENSE FEE SCHEDULE

From THEATRE COMPLEX SCHEDULE

From FIRST YEAR'S FEE

**ALL ENCLOSED COMPLEXES**

BOX A

(average complex seating capacity)

CLASS	FEE	X	=	\$
-------	-----	---	---	----

(ENTER GRAND TOTAL ENCLOSED SCREENS NUMBER)

ADD

**ALL DRIVE-IN COMPLEXES**

BOX B

(average complex auto capacity)

CLASS	FEE	X	=	\$
-------	-----	---	---	----

(ENTER GRAND TOTAL DRIVE-IN SCREENS NUMBER)

**TOTAL**

The **Total First Year's Fee** for both Enclosed and Drive-In Complexes is.....  
which shall be **payable in full upon the signing of this Agreement.**

\_\_\_\_\_

**DO NOT ENTER LESS THAN \$157.62**

**TO BE COMPLETED BY LICENSEE**

By signing this Agreement you agree that the foregoing is a true and accurate representation of your Music Policy.

I have read and have understood all of the terms and conditions herein and my signature below is evidence of this.

**(SIGN HERE - PLEASE INCLUDE PAYMENT)**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name / Title

**FOR ADMINISTRATIVE USE ONLY**

**TO BE COMPLETED BY BMI BROADCAST MUSIC, INC.**

<b>FOR BMI USE ONLY</b>		<b>41</b>	LI-2016/NOV
Account No.	COID		EFFECTIVE: January 2017



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# THEATRE COMPLEX SCHEDULE

NAME OF COMPLEX	ADDRESS, CITY, STATE, OF COMPLEX	ENCLOSED COMPLEXES		DRIVE-IN COMPLEXES	
		TOTAL SEATING CAPACITY EACH COMPLEX	TOTAL NO. OF SCREENS EACH COMPLEX	TOTAL AUTOMOBILE CAPACITY EACH COMPLEX	TOTAL NO. OF SCREENS EACH COMPLEX

TOTAL NUMBER OF COMPLEXES LISTED ON ALL PAGES

USE ADDITIONAL SHEETS IF MORE ROOM IS NEEDED BUT TOTAL ALL PAGES HERE ▶

Seating Capacity Total This Page	Enclosed Screens Total This Page	Auto Capacity Total This Page	Drive-In Screens Total This Page
Seating Capacity Total Other Pages	Enclosed Screens Total Other Pages	Auto Capacity Total Other Page	Drive-In Screens Total Other Page
Grand Total Seating Capacity	Grand Total Enclosed Screens	Grand Total Auto Capacity	Grand Total Drive-In Screens
DIVIDE THE NUMBER IN GRAND TOTAL SEATING CAPACITY BY THE NUMBER IN GRAND TOTAL ENCLOSED SCREENS AND ENTER BELOW:		DIVIDE THE NUMBER IN GRAND TOTAL AUTO CAPACITY BY THE NUMBER IN GRAND TOTAL DRIVE-IN SCREENS AND ENTER BELOW:	
<b>AVERAGE COMPLEX SEATING CAPACITY</b>		<b>AVERAGE COMPLEX AUTO CAPACITY</b>	
ALSO ENTER IN BOX "A" UNDER FEE COMPUTATION ON PAGE 3.		ALSO ENTER IN BOX "B" UNDER FEE COMPUTATION ON PAGE 3.	



# Music License for Museum

## 1. DEFINITIONS

- (a) **LICENSEE** shall mean the entity identified on Page 4 herein that owns and/or operates the Licensed Premises.
- (b) **Licensed Premises** shall mean LICENSEE's museum location identified on Page 4 herein, or, in the event of multiple locations, LICENSEE's museum locations identified on Schedule A, which shall be attached hereto by LICENSEE.
- (c) **Attendee(s)** shall mean any person who enters the Licensed Premises, whether or not any admission charge, registration fee, membership fee, or other payment is required to be made in connection with the entrance, but shall not include employees working at the Licensed Premises, including, but not limited to, personnel, exhibitor personnel, administrative staff, service contractors, temporary personnel, or credentialed members of the press.
- (d) **Ambient Music** shall mean music performed by mechanical or electronic means, including, but not limited to, CDs, DVDs, digital audio files (e.g., MP3, WAV), records, and tapes performed as background music, foreground music, or as part of audio-visual presentations.
- (e) **Live Music** shall include performances of live music by singers or musicians, as well as performances of recorded music by a disc jockey, video jockey or other similar hosts or emcees.
- (f) **Live Music Entertainment Costs** shall mean all direct and indirect expenditures paid by LICENSEE, or on LICENSEE's behalf, for all entertainment utilizing Live Music in connection with LICENSEE's activities at the Licensed Premises. The term "Entertainment Costs" shall not include normal stage props and equipment unless the entity or person rendering or presenting entertainment services specifically requires specialized stage props and equipment. If any regularly or temporarily employed staff member of LICENSEE performs as part of an act containing Live Music entertainment in addition to performing other duties, that is part of employees base wages (inclusive of overtime, if any) which equals the proportion of his or her time spent performing Live Music and entertainment services shall be included in Entertainment Costs. The term "Entertainment Costs" shall include the value of any accommodations or services (including without limitation, room and board) which are made available to any entity, person rendering, or presenting entertainment activities as part of the consideration for such entertainment services. For purposes of this Agreement, the value of such accommodations or services shall be deemed to be one-half (1/2) of the prevailing rate charged to guests for similar accommodations or services at the facility where the person or entity is being accommodated and/or served.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE a non-exclusive license to perform, present, or cause the public performance at the Licensed Premises of all musical works of which BMI shall have the right to grant public performance licenses during the Term. This license does not include: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein; (ii) the right to broadcast, cablecast, telecast or otherwise transmit (including by the Internet or on-line service) the performances licensed hereunder to persons outside of Licensed Premises; or (iii) performances of music by means of a coin-operated phonorecord player (jukebox).
- (b) BMI reserves the right to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

## 3. INDEMNITY BY BMI

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 musical works licensed under this Agreement. Such indemnity shall be limited to musical works, which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

## 4. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues for thirty (30) days after the date of BMI's written notice to LICENSEE thereof. 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 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.

## 5. CANCELLATION OF ENTIRE CATEGORY

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days' advance written notice.

## 6. 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.

## **7. TERMINATION OF AGREEMENT BY LICENSEE**

If LICENSEE shall permanently cease to operate the Licensed Premises, whether by reason of sale or lease thereof or otherwise, this Agreement and LICENSEE's obligation to BMI shall thereupon terminate, provided that: (i) LICENSEE shall, within ten (10) days of cessation of operation, give written notice of such termination to BMI, setting forth the effective date thereof and the name of the new owner or operator of the premises, and (ii) LICENSEE shall pay to BMI all license fees due hereunder until the effective date of cessation of operation. The license fee due BMI by LICENSEE through the effective date of termination shall be a pro-ration of the license fee for the Contract Year of termination, but in no event shall the license fee be prorated to an amount less than the minimum annual fee, outlined in Paragraph 16(d) herein.

## **8. CHANGES TO YOUR MUSIC USE POLICY**

- (a) **Changes to Ambient Music** - Pursuant to Paragraph 16 herein, LICENSEE pays license fees to BMI for the use of Ambient Music at Licensed Premises. LICENSEE may change its Ambient Music Use Policy, either by introducing the public performance of Ambient Music at Licensed Premises or by temporarily or permanently discontinuing the public performance of Ambient Music at Licensed Premises, prospectively at any time during the Term on thirty (30) days' advance written notice to BMI. LICENSEE may change its Ambient Music Use Policy no more than three (3) times in any Contract Year. LICENSEE shall call its Customer Relations Executive at 1-877-264-2137 to notify BMI of a change in its Ambient Music Use Policy, however all such changes by LICENSEE, to be effective, must be made to BMI in writing within thirty (30) days of such change. Upon receipt of written notification, BMI will adjust LICENSEE's fees pro rata from the date of the change in Ambient Music Use Policy. If such notice is received more than thirty (30) days after the change, such change will be effective commencing on the first of the month following the date of BMI's receipt of the notice and BMI will adjust LICENSEE's fees, or issue a pro rata credit for any unearned license fees paid in advance, prospectively for the remainder of the Contract Year in which BMI received the notice. Provided, however, that LICENSEE's license fee adjustment hereunder shall not reduce LICENSEE's annual fee due BMI below the annual minimum fee applicable under the Agreement.
- (b) **Changes to Live Music** - Pursuant to Paragraph 16 herein, LICENSEE pays license fees to BMI for the public performances of Live Music at Licensed Premises. The license fee for such performance of Live Music is based upon LICENSEE's Live Music Entertainment Costs in the preceding year. As such, changes to LICENSEE's current Live Music policy will be reflected in the Live Music Entertainment Costs reported to BMI pursuant to Paragraph 16 herein. As such, there is no pro-ration of LICENSEE's license fee for changes to LICENSEE's Live Music Use Policy.
- (c) BMI may from time to time review LICENSEE's Music Use Policy (including any changes made to its policy) and make inquiries in person or by phone as to its accuracy. If BMI thereafter believes that LICENSEE has not accurately represented its Music Use Policy to BMI, BMI will notify LICENSEE by mail. If LICENSEE agrees to BMI's assessment of its Music Use Policy, the change will be reflected on LICENSEE's next billing. If LICENSEE disputes BMI's assessment of its Music Use Policy, LICENSEE must notify BMI within thirty (30) days of the notification by BMI. If within ninety (90) days of such notification by BMI, LICENSEE does not respond or LICENSEE and BMI cannot agree upon an appropriate fee, either party may commence an arbitration proceeding pursuant to Paragraph 9 herein to resolve the dispute over the amount of LICENSEE's license fees. Such right shall be in addition to any and all other remedies BMI may have under the Agreement, including the right to cancel this Agreement. LICENSEE may not change its Music Use Policy under sub-paragraph (a) above, if LICENSEE's fee is subject to dispute hereunder.
- (d) In the event of a discontinuance of both Ambient and Live Music at Licensed Premises, this Agreement shall continue in effect, except that no minimum or other fee shall be payable during the period of discontinuance. In such event, LICENSEE agrees to notify BMI of such discontinuance in accordance with the notice provisions outlined in sub-paragraph 8(a) herein. Thereafter, LICENSEE shall notify BMI promptly when LICENSEE resumes the use of music at the Licensed Premises and LICENSEE's Ambient Music Use Policy, which is in effect at the time of discontinuance, will continue to be applicable until LICENSEE notifies BMI of a change.

## **9. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to the American Arbitration Association in the City, County and State of New York for arbitration under its then prevailing arbitration rules. The arbitrator(s) to be selected as follows: Each of the parties 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 in 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.

## **10. REVIEW OF STATEMENTS AND/OR ACCOUNTINGS**

BMI shall have the right, by its authorized representatives, upon reasonable notice to LICENSEE, at any time during customary business hours, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify any and all statements and reports rendered and accountings made hereunder or under any prior agreement with BMI. BMI shall consider all data and information coming to its attention as the result of any such examination of books and records as confidential.

## **11. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one-half percent (1½%) per month from the date any payment is due hereunder on any payment that is received by BMI more than one (1) month after the due date.

## **12. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full

amount of such tax together with license fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

**13. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

**14. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

**15. NOTICES**

Except as otherwise provided for in Paragraph 8(c) herein, 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 herein 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.

**16. FEES AND REPORTING**

(a) In consideration of the license granted herein, LICENSEE agrees to pay to BMI an annual license fee for each Contract Year of this Agreement. The annual license fee for Ambient Music shall be computed based on LICENSEE's annual Attendance (total number of Attendees) for the previous Contract Year (Category 1). The annual license fee for Live Music shall be computed as a percentage of LICENSEE's Live Music Entertainment Costs for the previous Contract Year (Category 2). The annual license fee for the 2017-2018 Contract Year is as follows:

**2017-2018 LICENSE FEE SCHEDULE**

<b>Category 1</b>		<b>Category 2</b>	
<b>Ambient Music Fee</b> (see Paragraph 1(d) for definition)		<b>Live Music Entertainment Costs Fee</b> (see Paragraph 1(f) for definition)	
<b>\$.0069</b>		<b>1.41%</b>	
(1)	_____ X	<b>.0069</b>	= \$ _____
	LICENSEE's 2017-2018 Attendance	License Fee Rate (Category 1)	Ambient Music License Fee
(2)	_____ X	<b>.0141</b>	= \$ _____
	LICENSEE's 2017-2018 Live Music Entertainment Costs	License Fee Rate (Category 2)	Live Music Entertainment License Fee
<b>Total License Fee:</b>			\$ _____
<b>(add lines 1 and 2)*</b>			

\*In no event shall the per Licensed Premises annual license fee for any Contract Year be less than the minimum fee as outlined in Paragraph 16(d).

- (b) The annual license fee for the first Contract Year shall be payable in full no later than thirty (30) days after the execution of this Agreement. The annual license fee for each subsequent Contract Year shall be based on LICENSEE's actual Attendance and Live Music Entertainment Costs for the previous Contract Year. LICENSEE shall report actual Attendance and Live Music Entertainment Costs for the previous Contract Year and shall submit the license fee payment for the forthcoming Contract Year no later than twenty (20) days after the commencement of the current Contract Year.
- (c) For each subsequent Contract Year, the annual license fee rates shall be an adjustment of the previous Contract Year rates based upon the percentage increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding February and the next preceding February. The Category 1 fee shall be rounded to the nearest hundredth of a cent and the Category 2 fee shall be rounded to the nearest hundredth of a percent.
- (d) In no event shall the per Licensed Premises annual license fee for any Contract Year be less than the minimum fee for the applicable year. The minimum annual license fee for the 2017-2018 Contract Year is \$367 and shall be adjusted in subsequent Contract Years by the CPI-U, as explained in Paragraph 16(c), and shall be rounded to the nearest dollar.

**17. MUSIC USE REPORTING**

For each Contract Year, with thirty (30) days' advanced written notice from BMI, LICENSEE shall provide to BMI a music use report. Such music use report shall identify each musical composition performed at Licensed Premises, whether by live or recorded means, by title and artist. BMI may request music use reports from LICENSEE for no more than three (3) days in any Contract Year.

**18. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, will not be binding until signed by both parties, and 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. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**19. TERM OF AGREEMENT**

The initial Term of this Agreement shall begin on the first day of (month/year) \_\_\_\_\_ and end on the last day of (month/year) \_\_\_\_\_ and shall continue thereafter for additional Terms of one (1) year each unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "Contract Year") upon thirty (30) days' advance notice to the other party.

**AGREEMENT**

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

<b>LEGAL NAME</b>	<b>LICENSED PREMISES</b>	
<small>(Name of Corporation, Partnership, or Individual Owner)</small>	<small>(Street Address)</small>	
<b>TRADE NAME</b>	<small>(City)</small>	<small>(State) (Zip)</small>
<small>(Doing business under the name of)</small>	<small>(Telephone Number)</small>	<small>(Fax Number)</small>
<b>PLEASE CHECK APPROPRIATE BOX</b>	<small>(Contact Name)</small>	<small>(Title)</small>
<input type="checkbox"/> Individual Ownership	<small>(Email Address)</small>	<small>(Web Address)</small>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b>MAILING ADDRESS</b>	
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	<small>(if different from Licensed Premises)</small>	
<small>(State of Incorporation, if different from Licensed Premises)</small>	<small>(Street Address)</small>	
<small>(Enter names of partners)</small>	<small>(City)</small>	<small>(State) (Zip)</small>
<input type="checkbox"/> Other _____	<small>(Telephone Number)</small>	<small>(Fax Number)</small>
Federal Tax ID No. _____	<small>(Contact Name)</small>	<small>(Title)</small>
<b>GOVERNMENT ENTITIES</b>	<small>(Email Address- if different from above)</small>	
<small>(if applicable, please check one)</small>		
<input type="checkbox"/> Federal <input type="checkbox"/> State _____		
<small>(State)</small>		
<input type="checkbox"/> Local _____		
<small>(Municipality/City and State)</small>		

<b>TO BE COMPLETED BY LICENSEE</b>	<b>FOR ADMINISTRATIVE USE ONLY</b>		
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. <b>(SIGN HERE - PLEASE INCLUDE PAYMENT)</b>	<b>TO BE COMPLETED BY BMI</b>		
Signature	<b>BROADCAST MUSIC INC.</b>		
Print Name / Title			
Signatory Email Address* <small>(if different from above)</small>	<b>FOR BMI USE ONLY</b>	<b>MSM1</b>	<b>LI-2017/JULY</b>
<small>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory</small>	<b>EFFECTIVE:</b>	<b>April 2017</b>	
<b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b>	<b>ACCOUNT NO.</b>	<b>COID</b>	
<b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b>			

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

\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.







# Music License for Music On Hold

## 1. BMI GRANT

- (a) BMI hereby grants to LICENSEE a non-exclusive license to cause and permit at the licensed premises the public performance of all musical works of which BMI shall have the right to grant public performance licenses during the Term hereof. Said license shall be restricted to performances of music in the manner described herein and is granted in consideration of the payment of the license fees as set forth herein and is subject to all of the terms and conditions hereof. The license granted to LICENSEE pursuant to this Paragraph hereof shall extend to performances of recorded music by means of "music-on-hold" (as that term is commonly understood) through LICENSEE's telephone system at the licensed premises and shall authorize LICENSEE to transmit such performances to persons connected to the licensed premises by telephone. In no event shall this license extend to any performances of music audible other than on a telephone or to a service that provides music-on hold to subscribers. This license also shall not be applicable to more than one premises.
- (b) This license does not include: (a) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein; or (b) the right to broadcast, telecast, cablecast or otherwise transmit the performances licensed hereunder to persons outside of the licensed premises; or (c) the authorization of performances of music by means of a coin-operated phonorecord player (jukebox) as defined in the Copyright Law.
- (c) BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

## 2. INDEMNITY BY BMI

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 the works which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon reasonable request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. 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.

## 3. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues thirty (30) days after the date of BMI's written notice to LICENSEE thereof. 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 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.

## 4. OFFER OF COMPARABLE AGREEMENT

In the event that BMI, at any time during the Term hereof, 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.

## 5. REVIEW OF STATEMENTS/ACCOUNTINGS

BMI shall have the right upon reasonable notice to LICENSEE, by its authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify the statements made hereunder or under any previous Agreement with BMI. BMI shall consider all data and information coming to its attention as the result of any such examination as confidential.

**6. FEES**

LICENSEE warrants and represents that, as of the date of this Agreement, LICENSEE provides music-on-hold on the licensed premises through a telephone system using \_\_\_\_\_ telephone trunk lines, and accordingly on the License Fee Schedule below falls within Class \_\_\_\_\_. LICENSEE agrees to pay to BMI for the license granted herein the sum of \$\_\_\_\_\_, constitutes the fee for the first contract year of this Agreement (the "first year's fee") for such Class and shall be payable at the time of the signing of this Agreement. The fee for each subsequent contract year shall be in the respective amounts determined in accordance with this Paragraph, subject to any adjustment pursuant to Paragraph 7, and shall be paid no later than ten (10) days following the beginning of each such contract year. The amount of the license fee for the second and subsequent contract years of this Agreement shall be an adjustment of the first year's fee based upon the percentage increase or decrease in the United States Consumer Price Index (National, All Items) between September 2016 and September of the year preceding the anniversary date of this Agreement, rounded to the nearest dollar. BMI will advise LICENSEE in writing of the amount of each new fee.

**2017 LICENSE FEE SCHEDULE PER LOCATION**

(FILL IN APPLICABLE CLASS AND FEE IN PARAGRAPH 6 ABOVE)

<b>NUMBER OF TRUNK LINES USED TO PROVIDE MUSIC-ON-HOLD</b>	<b>CLASS</b>	<b>FIRST YEAR'S FEE</b>	<b>NUMBER OF TRUNK LINES USED TO PROVIDE MUSIC-ON-HOLD</b>	<b>CLASS</b>	<b>FIRST YEAR'S FEE</b>
Under 10	1	\$253	75 - 124	5	\$1,104
10 - 29	2	\$441	125 - 199	6	\$1,319
30 - 49	3	\$659	200 - 349	7	\$1,629
50 - 74	4	\$884	350 and Over	8	\$1,999

**7. REPORTING**

- (a) At the same time that LICENSEE pays its license fee hereunder for the second and subsequent contract years, LICENSEE shall submit a report, on a form available from BMI, certified by LICENSEE or by the auditor of LICENSEE, indicating the number of telephone trunk lines used to provide music-on-hold during the previous contract year on the licensed premises. If any such report causes the licensed premises to fall into a Class other than that for which LICENSEE is then currently paying BMI license fees, BMI shall adjust LICENSEE's fee pursuant to Paragraph 6 and 7 to reflect the new Class in which LICENSEE belongs, effective with the contract year following such change of Class.
- (b) If the adjusted fee is greater than the license fee already paid by LICENSEE for the contract year, LICENSEE agrees to pay BMI the difference within thirty (30) days of the mailing by BMI to the LICENSEE of the adjusted statement of license fees.
- (c) If the adjusted fee is less than the license fee already paid by LICENSEE to BMI for the contract year, BMI agrees to credit the difference to the account of LICENSEE, and if such adjustment occurs in the last contract year of this Agreement, BMI shall refund said sum promptly.
- (d) In the event that LICENSEE fails to submit a report pursuant to Paragraph 7 (a) and BMI subsequently is made aware of a current change of class, BMI shall have the option, in lieu of its right of cancellation pursuant to Paragraph 3, to notify LICENSEE in writing by certified mail of its knowledge of such change and adjust LICENSEE's fee for the then current contract year in accordance with this Paragraph 7 as if LICENSEE had reported such change for the previous year. LICENSEE shall have thirty (30) days from the date of BMI's notice to submit the missing reports. If such reports are not received by BMI by the end of said 30-day period, LICENSEE agrees to waive its right to submit such past due reports thereafter and authorizes BMI to deem the adjusted fee as being accurate. If Paragraph 9 of this Agreement shall become applicable, the fee due BMI by LICENSEE through the effective date of termination shall be a proration of the fee for the contract year of termination, but in no event less than the Class 1 fee indicated on the License Fee Schedule.

**8. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one-half percent (1 ½%) per month from the date any payment is due hereunder on any payment that is received by BMI more than one month after the due date.

**9. TERMINATION OF AGREEMENT BY LICENSEE**

If, during the Term hereof, LICENSEE shall permanently cease to operate the premises, whether by reason of sale or lease thereof, or otherwise, this Agreement and LICENSEE's obligation to BMI shall thereupon terminate; provided, however, that LICENSEE shall, within ten (10) days thereafter, give written notice of such termination to BMI, setting forth the effective date thereof and name of the new owner or operator of the premises, as the case may be, and that LICENSEE shall pay to BMI all fees due hereunder until said effective date.

**10. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days' advance written notice.

**11. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to the American Arbitration Association in the City, County and State of New York 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 in any court having jurisdiction. Such award shall include the fixing of the costs, expenses and attorney's fees of arbitration, which shall be borne by the unsuccessful party.

**12. NOTICES**

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed duly given when sent by ordinary first-class U.S. mail (unless it is stated elsewhere in this Agreement that a notice is to be sent certified mail) to the party for whom it is intended at its mailing address herein stated, or any other address which either party hereto may from time to time designate for such a purpose. Any such notice sent to BMI shall be to the attention of the Licensing Department. Any such 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.

**13. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, shall not be binding until signed by both parties, and 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. The rights of LICENSEE shall not be assignable. 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement

**14. TERM OF AGREEMENT**

The Term of this Agreement shall begin on the first day of (*month/year*) \_\_\_\_\_ and end on the last day of (*month/year*) \_\_\_\_\_ and shall continue thereafter unless canceled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "contract year") upon thirty (30) days' advance written notice to the other party.

## AGREEMENT

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED ADDRESS</u></b>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b><u>TRADE NAME</u></b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address) (Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Address)</i>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<i>(State of Incorporation, if different from Licensed Address)</i>	
<i>(Enter names of partners)</i>	
<input type="checkbox"/> Other _____	<i>(Street Address)</i>
Federal Tax ID No. _____	<i>(City) (State) (Zip)</i>
<b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i>	<i>(Telephone Number) (Fax Number)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<i>(Contact Name) (Title)</i>
<i>(State)</i>	<i>(Email Address- if different from above)</i>
<input type="checkbox"/> Local _____	
<i>(Municipality/City and State)</i>	

<b>TO BE COMPLETED BY LICENSEE</b> 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. <b><i>(SIGN HERE – PLEASE INCLUDE PAYMENT)</i></b>	<b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b>		
Signature			
Print Name / Title			
Signatory Email Address* <i>(if different from above)</i>			
<b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory</b>			
	<b>FOR BMI USE ONLY</b>	<b>42</b>	<b>LI-2016/NOV</b>
	<b>ACCOUNT NO.</b>	<b>COID</b>	<b>EFFECTIVE DATE</b> January 2017

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

® BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.





**BMI/Muzak Affiliate**  
**Interim Blanket License Agreement**

The following are the terms and conditions of the BMI/Muzak Affiliate Interim Blanket License Agreement (hereinafter "2010 Interim Blanket License Agreement") between Broadcast Music, Inc. ("BMI") and \_\_\_\_\_ (hereinafter "LICENSEE"), pending the outcome of negotiations for a final agreement between BMI and LICENSEE with respect to its Subscription Music Service or, a final non-appealable decision has been made by the BMI Rate Court setting appropriate final license fees and terms for that commercial music service.

WHEREAS, LICENSEE is in the business of operating a subscription music service ("Subscription Music Service") that delivers subscription music service programming to commercial establishments ("Commercial Subscribers Locations"); and

WHEREAS, LICENSEE's Subscription Music Service employs proprietary equipment not available to the general public for residential or other consumer uses; and

WHEREAS, BMI and LICENSEE had previously entered into the BMI/Muzak Affiliate Music Performance Agreement for the period from July 1, 2004, through June 30, 2009 (hereinafter the "2004-09 Agreement"), or in the event that LICENSEE was not licensed by BMI as of June 30, 2009 under the 2004-09 Agreement, a copy of that Agreement is attached hereto and the terms are incorporated herein; and

WHEREAS, BMI and LICENSEE had previously entered into the BMI/Muzak Affiliate Interim Blanket License Agreement with an effective date July 1, 2009 (hereinafter the "2009 Interim Agreement"); and

WHEREAS, this 2010 Interim Blanket License Agreement will supersede the 2009 Interim Agreement and shall commence retroactive to July 1, 2009. In the event LICENSEE was not licensed by BMI on the 2009 Interim Agreement, but had entered into the 2004-09 Agreement, this 2010 Interim Blanket License Agreement will be effective retroactively to July 1, 2009.

It is hereby agreed by the parties that this 2010 Interim Blanket License Agreement shall embody each and every term and condition set forth in the 2004-09 Agreement, dated \_\_\_\_\_, except for the revisions enumerated below:

1. The Term of LICENSEE's 2010 Interim Blanket License Agreement shall commence on July 1, 2009 or \_\_\_\_\_ (in the event LICENSEE was not licensed by BMI as of June 30, 2009 under the 2004-09 Agreement) (the "Commencement Date") and shall continue on a calendar month-to-month basis, unless either party terminates this 2010 Interim Blanket License Agreement as of the last day of any calendar month upon thirty (30) days' prior written notice, and if not terminated pursuant to this paragraph 1, until a final BMI license agreement is reached through negotiations between BMI and LICENSEE or until a final non-appealable decision has been made by the BMI Rate Court setting appropriate final license fees and terms.
2. Paragraphs 4 and 5 shall be deleted in their entirety and replaced with the following: "For the license granted herein, LICENSEE agrees to pay BMI interim blanket license fees for each calendar quarter calculated by multiplying the number of Total Locations, which, for each month within a calendar quarter, is defined as the total number of Commercial Subscriber Locations existing as of the last day of such month, by the Monthly Per Location Rate, which is one-twelfth of the Annual Interim Per Location Fee of \$18.91 (\$1.576 per month). Each quarterly interim license fee payment shall be made to BMI on or before the forty-fifth (45<sup>th</sup>) day after the end of the calendar quarter for which the payment is due, together with a report of the number of Commercial Subscriber Locations existing as of the last day of each month within such calendar quarter. The minimum number of Commercial Subscriber Locations for which LICENSEE may report with respect to any month shall be forty five (45).

3. Paragraph 8 shall be amended to read as follows: "On or before the fifteenth (15<sup>th</sup>) day following the one (1) year anniversary date of this Agreement, LICENSEE shall provide a report to BMI, certified by its CEO or CFO, confirming the accuracy of the monthly subscriber location reports and fees submitted to BMI in the contract year."
4. Paragraph 9(a), shall be amended to remove the words "December 31, 2003, June 30, 2004, June 30, 2005, June 30, 2006, June 30, 2007, June 30, 2008, and June 30, 2009 and" replace them with "the end of each month during the Term hereunder".
5. Paragraph 9(c) shall be deleted in its entirety.
6. Paragraph 17 shall be deleted in its entirety.
7. Schedule A shall be deleted in its entirety.
8. LICENSEE agrees that the interim blanket license fees set forth herein are non-precedential and may not be relied upon by either party hereto in negotiations as reasonable fees for the license granted herein. LICENSEE further agrees to be bound by the final license fee rate(s) and/or rate formula(s) reached as a result of either negotiations between BMI and LICENSEE or a determination in the BMI Rate Court setting appropriate final license fees and terms with respect to LICENSEE's Commercial Music Service. LICENSEE further agrees that the final blanket license fee rate shall be applied retroactively to the Commencement Date of this Interim Blanket License Agreement. As such, LICENSEE shall be obligated to pay BMI any additional monies that may be owed BMI as a result of such retroactive adjustment, with six percent (6%) per annum simple interest, and BMI shall be obligated to refund to LICENSEE any monies that may be owed to LICENSEE as a result of such retroactive adjustment, with six percent (6%) per annum simple interest.

This Agreement shall bind and benefit the heirs, executors, administrators, successors, assigns, parents, members and subsidiaries of BMI and LICENSEE.

IN WITNESS WHEREOF, the parties, by their undersigned duly authorized representatives, have executed this Interim Blanket License Agreement.

Broadcast Music, Inc.

LICENSEE:

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



**1. DEFINITIONS**

- (a) **“Host Team”** shall mean the National Football League (“NFL”) team affiliated with the Licensed Premises, or, in the event that the game is played at a stadium or venue not associated with either team, the team considered to be the home team.
- (b) **“Football Games”** shall mean all regularly-scheduled NFL games presented by LICENSEE at the Licensed Premises, including Pre-Season/Exhibition and Playoff Games, but excluding the Super Bowl and Pro Bowl games.
- (c) **“Football Season”** shall mean the period, which includes all Football Games, beginning with the Pre-Season/Exhibition Games and concluding with the final Playoff Game.
- (d) **“Playoff Games”** shall mean games played to determine a championship.
- (e) **“Pre-Season/Exhibition Games”** shall mean games in which the outcome is not recorded in the season’s standing.
- (f) **“LICENSEE”** shall mean the entity identified on Page 4 herein.
- (g) **“Licensed Premises”** shall mean the premises known as \_\_\_\_\_ as well as any other premises in the United States, its territories and possessions at which LICENSEE is the Host Team.
- (h) **“Contract Year”** shall mean each consecutive twelve-month period of this Agreement, which contains one complete Football Season. If the initial Term of this Agreement begins during a month in which a Football Season has already commenced, then the first “Contract Year” of this Agreement shall be deemed to be the twelve-month period beginning with the first month of said Football Season.

**2. BMI GRANT**

- (a) BMI hereby grants to LICENSEE for the Term of this Agreement a non-exclusive license to perform, present or cause the performance, at Football Games, but solely as incident to such Football Games and for the entertainment of the spectators immediately before, after and at intervals during Football Games, of all of the musical works for which BMI controls the right to grant public performance licenses during the Term (the “Works”).
- (b) This license shall not include: (1) the right to broadcast, telecast, cablecast, webcast or otherwise transmit the performances to persons outside of the Licensed Premises; (2) the right to record or otherwise mechanically reproduce the performances by any means and (3) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the “grand rights” therein.
- (c) This license shall not extend to any hotel, motel, restaurant or other facility situated within the area of the Licensed Premises, whether or not such facility is owned or operated by LICENSEE. This license also shall not at any time extend to performances of music at concerts or other musical attractions presented on any game day before or after the first or last Football Game, or on any non-game days.

**3. INDEMNITY BY BMI**

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 brought against them or any of them with respect to the performance of any works licensed hereunder. Such indemnity shall be limited to musical compositions, which are licensed by BMI at the time of LICENSEE’s performances. BMI shall, upon reasonable written request, advise LICENSEE whether particular musical compositions are available for performance as part of BMI’s repertoire. 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.

**4. BREACH OR DEFAULT/WAIVER**

Upon any breach or default of the terms and conditions contained herein, BMI may, at its sole option, cancel this Agreement if such breach or default continues thirty (30) days after LICENSEE's receipt of written notice thereof. The right to cancel granted to BMI pursuant to this Paragraph shall be in addition to any and all other remedies, including the right to sue for copyright infringement, which BMI may have in law or in equity. 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.

**5. FEES**

(a) In consideration of the license granted herein, LICENSEE agrees to pay to BMI license fees for each Contract Year of this Agreement as follows:

<b>LICENSE FEE SCHEDULE</b>		
<b>CONTRACT YEAR / FOOTBALL SEASON BEGINNING IN</b>	<b>ANNUAL LICENSE FEE</b>	<b>PLAYOFF PER GAME LICENSE FEE</b>
2014	\$7,586	\$758
2015	\$7,715	\$771
2016	\$7,730	\$773
2017	\$7,812	\$781

(b) The Annual License Fee and the Playoff Per Game License Fee for each Contract Year after 2017 shall be the License Fee for the preceding Contract Year adjusted in accordance with the increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding August and the next preceding August, rounded to the nearest dollar.

(c) For each Contract Year commencing with 2018, BMI shall notify LICENSEE in writing of the Annual License Fee and the Playoff Per Game License Fee.

(d) The Annual License Fee for the first Contract Year shall be due simultaneously with the execution of this Agreement. The Annual License Fee for each subsequent Contract Year shall be due within ten (10) days following the beginning of each such Contract Year. The Playoff Per Game License Fee for each Playoff Game presented by LICENSEE at the Licensed Premises shall be due within thirty (30) days following LICENSEE's last Playoff Game at the Licensed Premises.

**6. REPORTING**

For each calendar quarter, on or before the thirtieth (30<sup>th</sup>) day following the end of the quarter, LICENSEE shall provide BMI with a report of all musical works performed at the Licensed Premises during the calendar quarter reported, setting forth (a) the title and artist and (b) the number of times each musical work was performed.

**7. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one-half percent (1½%) per month from the date any payment is due hereunder on any payment that is received by BMI more than thirty (30) days after the due date.

**8. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax (not including income tax) which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable



efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

**9. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to arbitration in the City, County and State of New York under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators 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 in any court having jurisdiction. Such award shall include the fixing of the costs, expenses and attorney's fees of arbitration, which shall be borne by the unsuccessful party.

**10. OFFER OF COMPARABLE AGREEMENT**

In the event that BMI, at any time during the Term, shall issue licenses to enterprises of the same class and category as those licensed hereunder granting rights similar to those granted by this Agreement at a more favorable rate of payment to the LICENSEE than is set forth herein, BMI shall notify LICENSEE and shall, for the balance of the Term hereof, on the written request of LICENSEE, tender to LICENSEE the form of agreement containing such more favorable rate of payment.

**11. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

**12. NOTICES**

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed duly given when sent by regular first-class U.S. mail to the party for whom it is intended, at its address herein stated, or any other address which either party hereto may from time to time designate for such purpose, and when such notice is so mailed, it shall be deemed to have been given upon the mailing thereof. Any notice 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.

**13. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, will not be binding until signed by both parties, and 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. The rights of LICENSEE hereunder shall not be assignable. 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.

**14. TERM**

The initial Term of this Agreement shall begin on August 1, 2017 and end on July 31, 2018 and shall be extended for additional Terms of one (1) year each unless cancelled by either party as of the end of the initial Term or any additional Term upon notice by regular first-class U.S. mail not less than thirty (30) days prior to the end of any such Term.

## AGREEMENT

AGREEMENT made at New York, N.Y. on *(Date will be entered by BMI upon execution)* \_\_\_\_\_ between BROADCAST MUSIC, INC., a corporation organized under the laws of the State of New York (herein called "BMI") with principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030 and:

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

**ENTER LEGAL NAME (herein referenced as "LICENSEE")**

\_\_\_\_\_  
(Name of Corporation, Partnership, or Individual Owner)

**BUSINESS ADDRESS**

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City) (State) (Zip)

**ENTER TRADE NAME:**

\_\_\_\_\_  
(Doing business under the name of)

\_\_\_\_\_  
(Telephone No.) (Fax Number)

\_\_\_\_\_  
(Contact Name) (Title)

\_\_\_\_\_  
(Email Address) (Web Address)

**CHECK APPROPRIATE BOX AND COMPLETE**

- Individual Ownership
- LLC  Corporation \_\_\_\_\_  
(State of Incorporation, if different from Business Address)
- LLP  Partnership \_\_\_\_\_  
(Enter names of partners)
- Other \_\_\_\_\_
- Fed. Tax ID # \_\_\_\_\_

**MAILING ADDRESS**

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City) (State) (Zip)

\_\_\_\_\_  
(Telephone No.) (Fax Number)

\_\_\_\_\_  
(Contact Name) (Title)

\_\_\_\_\_  
(Email Address)

**TO BE COMPLETED BY LICENSEE**

**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.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name / Title

**FOR ADMINISTRATIVE USE ONLY  
TO BE COMPLETED BY BMI  
BROADCAST MUSIC, INC.**

**FOR BMI USE ONLY**

\_\_\_\_\_

Account No.

\_\_\_\_\_

COID





# Music License for National Hockey League

## 1. DEFINITIONS

- (a) **“Host Team”** shall mean the National Hockey League (“NHL”) team affiliated with the Licensed Premises, or, in the event that the game is played at a stadium or venue not associated with either team, the team considered to be the home team.
- (b) **“Hockey Games”** shall mean all regularly-scheduled NHL games presented by LICENSEE at the Licensed Premises, including Pre-Season/Exhibition and Playoff Games.
- (c) **“Hockey Season”** shall mean the period, which includes all Hockey Games, beginning with the Pre-Season/Exhibition Games and concluding with the final Playoff Game.
- (d) **“Playoff Games”** shall mean games played to determine a championship.
- (e) **“Pre-Season/Exhibition Games”** shall mean games in which the outcome is not recorded in the season’s standing.
- (f) **“LICENSEE”** shall mean the entity identified on Page 4 herein.
- (g) **“Licensed Premises”** shall mean the premises known as \_\_\_\_\_ as well as any other premises in the United States, its territories and possessions at which LICENSEE is the Host Team.
- (h) **“Contract Year”** shall mean each consecutive twelve-month period of this Agreement, which contains one complete Hockey Season. If the initial Term of this Agreement begins during a month in which a Hockey Season has already commenced, then the first “Contract Year” of this Agreement shall be deemed to be the twelve-month period beginning with the first month of said Hockey Season.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE for the Term of this Agreement a non-exclusive license to perform, present or cause the performance, at Hockey Games, but solely as incident to such Hockey Games and for the entertainment of the spectators immediately before, after and at intervals during Hockey Games, of all of the musical works for which BMI controls the right to grant public performance licenses during the Term (the “Works”).
- (b) This license shall not include: (1) the right to broadcast, telecast, cablecast, webcast or otherwise transmit the performances to persons outside of the Licensed Premises; (2) the right to record or otherwise mechanically reproduce the performances by any means and (3) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the “grand rights” therein.
- (c) This license shall not extend to any hotel, motel, restaurant or other facility situated within the area of the Licensed Premises, whether or not such facility is owned or operated by LICENSEE. This license also shall not at any time extend to performances of music at concerts or other musical attractions presented on any game day before or after the first or last Hockey Game, or on any non-game days.

## 3. INDEMNITY BY BMI

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 brought against them or any of them with respect to the performance of any works licensed hereunder. Such indemnity shall be limited to musical compositions, which are licensed by BMI at the time of LICENSEE’s performances. BMI shall, upon reasonable written request, advise LICENSEE whether particular musical compositions are available for performance as part of BMI’s repertoire. 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.

**4. BREACH OR DEFAULT/WAIVER**

Upon any breach or default of the terms and conditions contained herein, BMI may, at its sole option, cancel this Agreement if such breach or default continues thirty (30) days after LICENSEE's receipt of written notice thereof. The right to cancel granted to BMI pursuant to this Paragraph shall be in addition to any and all other remedies, including the right to sue for copyright infringement, which BMI may have in law or in equity. 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.

**5. FEES**

(a) In consideration of the license granted herein, LICENSEE agrees to pay to BMI license fees for each Contract Year of this Agreement as follows:

<b>LICENSE FEE SCHEDULE</b>	
<b>Contract Year / Hockey Season <u>Beginning In</u></b>	<b><u>Annual License Fee</u></b>
2017	\$4,978

(b) The Annual License Fee for each Contract Year after 2017 shall be the License Fee for the preceding Contract Year adjusted in accordance with the increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding August and the next preceding August, rounded to the nearest dollar.

(c) For each Contract Year commencing with 2018, BMI shall notify LICENSEE in writing of the Annual License Fee.

(d) The Annual License Fee for the first Contract Year shall be due simultaneously with the execution of this Agreement. The Annual License Fee for each subsequent Contract Year shall be due within ten (10) days following the beginning of each such Contract Year.

**6. REPORTING**

For each calendar quarter, on or before the thirtieth (30<sup>th</sup>) day following the end of the quarter, LICENSEE shall provide BMI with a report of all musical works performed at the Licensed Premises during the calendar quarter reported, setting forth (a) the title and artist and (b) the number of times each musical work was performed.

**7. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one-half percent (1½%) per month from the date any payment is due hereunder on any payment that is received by BMI more than thirty (30) days after the due date.

**8. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax (not including income tax) which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

**9. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to arbitration in the City, County and State of New York under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators 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 in any court having jurisdiction. Such award shall include the fixing of the costs, expenses and attorney's fees of arbitration, which shall be borne by the unsuccessful party.

**10. OFFER OF COMPARABLE AGREEMENT**

In the event that BMI, at any time during the Term, shall issue licenses to enterprises of the same class and category as those licensed hereunder granting rights similar to those granted by this Agreement at a more favorable rate of payment to the LICENSEE than is set forth herein, BMI shall notify LICENSEE and shall, for the balance of the Term hereof, on the written request of LICENSEE, tender to LICENSEE the form of agreement containing such more favorable rate of payment.

**11. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

**12. NOTICES**

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed duly given when sent by regular first-class U.S. mail to the party for whom it is intended, at its address herein stated, or any other address which either party hereto may from time to time designate for such purpose, and when such notice is so mailed, it shall be deemed to have been given upon the mailing thereof. Any notice 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.

**13. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, will not be binding until signed by both parties, and 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. The rights of LICENSEE hereunder shall not be assignable. 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.

**14. TERM**

The initial Term of this Agreement shall begin on August 1, \_\_\_\_\_ and end on July 31, \_\_\_\_\_ and shall be extended for additional Terms of one (1) year each unless cancelled by either party as of the end of the initial Term or any additional Term upon notice by regular first-class U.S. mail not less than thirty (30) days prior to the end of any such Term.

## AGREEMENT

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b><u>TRADE NAME</u></b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address) (Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<i>(State of Incorporation, if different from Licensed Premises)</i> <i>(Enter names of partners)</i>	
<input type="checkbox"/> Other _____	<i>(Street Address)</i>
Federal Tax ID No. _____	<i>(City) (State) (Zip)</i>
<b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i>	<i>(Telephone Number) (Fax Number)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<i>(Contact Name) (Title)</i>
<i>(State)</i>	<i>(Email Address – if different from above)</i>
<input type="checkbox"/> Local _____	
<i>(Municipality/City and State)</i>	

<p style="text-align: center;"><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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. <b><i>(SIGN HERE – PLEASE INCLUDE PAYMENT)</i></b></p>	<p style="text-align: center;"><b>FOR ADMINISTRATIVE USE ONLY</b> <b>TO BE COMPLETED BY BMI</b> <b>BROADCAST MUSIC INC.</b></p>						
Signature	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; text-align: center;"><b>FOR BMI USE ONLY</b></td> <td style="width: 10%; text-align: center;"><b>76-NHL</b></td> <td style="width: 30%; text-align: center;"><b>LI-2015/OCT</b></td> </tr> <tr> <td style="text-align: center;"><b>EFFECTIVE:</b> January 2017</td> <td></td> <td></td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>76-NHL</b>	<b>LI-2015/OCT</b>	<b>EFFECTIVE:</b> January 2017		
<b>FOR BMI USE ONLY</b>		<b>76-NHL</b>	<b>LI-2015/OCT</b>				
<b>EFFECTIVE:</b> January 2017							
Print Name / Title							
Signatory Email Address* <i>(if different from above)</i>							
<p><b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b></p> <p style="text-align: center;"><b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b> <b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b></p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">ACCOUNT NO.</td> <td style="width: 50%; text-align: center;">COID</td> </tr> </table>	ACCOUNT NO.	COID				
ACCOUNT NO.	COID						



® BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.



# NATIONAL RELIGIOUS BROADCASTERS MUSIC LICENSE COMMITTEE (NRBMLC) 2005 RADIO STATION LICENSE AGREEMENT

**AGREEMENT**, referred to hereinafter as "License Agreement", made at New York, N.Y., on (date) between **BROADCAST MUSIC, INC.**® (a corporation organized under the laws of the State of New York (referred to hereinafter as **BMI**®) with principal offices at 7 World Trade Center, 250 Greenwich St., New York, N.Y. 10007-0030) and

\_\_\_\_\_  
(Legal Name of Licensee)

**PLEASE CHECK  
APPROPRIATE  
BOX AND  
COMPLETE**

- A corporation organized under the laws of the State \_\_\_\_\_
- A partnership consisting of \_\_\_\_\_  
\_\_\_\_\_
- An individual residing at \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(hereinafter called Licensee) with offices located at \_\_\_\_\_

\_\_\_\_\_  
(Street Address)

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Telephone No. \_\_\_\_\_

and operating the radio broadcasting station (hereinafter called Station (subject to the eligibility requirements detailed at Paragraph 1.B. below)) presently located at \_\_\_\_\_

\_\_\_\_\_  
(Street Address)

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Telephone No. \_\_\_\_\_

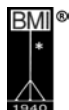
Fax No. \_\_\_\_\_

and presently designated by the call letters \_\_\_\_\_

and assigned frequency \_\_\_\_\_

E-mail Address \_\_\_\_\_

Radio Station Web Site (as defined below) located at http:// \_\_\_\_\_



**PLEASE CHECK ONE OF THE FOLLOWING OPTIONS:**

- I hereby elect the blanket license
- I hereby elect the per program license

**LICENSE TO TAKE EFFECT FROM:** \_\_\_\_\_ (“Effective Date”)

If Licensee has engaged in or currently engages in one or both of the following activities, please check the appropriate box(es) and complete the table below (if applicable):

**Digital Multicasting:**

- Simultaneous digital transmission of the analog signal
- Digital multicasting of content (other than the analog signal)

	Call Letters	Digital Multicasting Format/Slogan	Launch Date
Digital Multicasting Station 1			
Digital Multicasting Station 2			
Digital Multicasting Station 3			
Digital Multicasting Station 4			

**Internet Streaming:**

Earliest Streaming Activity Date: \_\_\_\_\_

- Streaming the main analog (or analog/digital) signal over the Internet only

Analog URL: \_\_\_\_\_

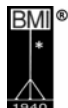
- Streaming one or more digital multicasting signal(s)

Multicasting URL Station 1: \_\_\_\_\_

Multicasting URL Station 2: \_\_\_\_\_

Multicasting URL Station 3: \_\_\_\_\_

Multicasting URL Station 4: \_\_\_\_\_





## 1. Term and Scope

A. The "Term" of this License Agreement shall mean the period commencing on the Effective Date and ending on December 31, 2010. The Term shall automatically extend to include the years 2011 through 2013 ("Extended Term"), unless BMI receives a written notice of termination from Licensee by no later than September 1, 2010. Upon the expiration of this License Agreement, the terms of this License Agreement in its final year shall continue without change on an interim basis thereafter for one (1) year, subject to retroactive adjustment upon the determination or agreement of a final fee.

B. In order for Station to be eligible for this License Agreement, Station must satisfy one of the following eligibility requirements:

(1) A commercial radio station both represented by the NRBMLC and licensed under the interim NRBMLC 1998 Blanket or Per Program License as of January 1, 2005; or

(2) A commercial radio station purchased after January 1, 2005 by an owner or an affiliate of an owner (under common ownership or control) of another station licensed under this License Agreement at the time of such purchase; or

(3) In the event that an owner of one or more stations presently licensed under this License Agreement enters into a Local Manager Agreement to operate a commercial radio station that is presently licensed under the Radio Music License Committee (RMLC) Agreement, the terms and conditions of the managed station's existing BMI license agreement shall apply. This License Agreement shall only be applicable if the owner of one or more stations presently licensed under this License Agreement purchases the managed station and elects to have the station licensed under this License Agreement.

## 2. Definitions

A. "**Local Manager**" shall mean any entity not under common ownership or control of Licensee which is authorized to resell 10% or more of Station's air time and (1) simulcasts or sells announcements on Station in combination with a radio station owned or operated by the entity, which station has entered into an NRBMLC 2005 Radio Station License Agreement; or (2) has assumed, contractually or otherwise, responsibility for the management of Station. An entity which would otherwise qualify as a Local Manager but which is authorized to resell less than 10% of Station's air time shall be deemed to be a Time Broker.

B. "**Local Management Agreement**" shall mean any agreement under which any other entity becomes a Local Manager in regard to the Station licensed under this License Agreement.

C. "**Time Broker**" shall mean any entity that has no direct or indirect managerial ownership or connection with Licensee that purchases and resells any portion of the Station's air time or the Station's radio broadcasting facilities.

D. "**U.S. Territory**" shall mean the United States, its Commonwealth, territories and possessions.

E. "**Radio Broadcasting**" shall mean over-the-air aural analog broadcasting in all of its forms, except that it shall not include delivery over the Internet or computer online service. Radio Broadcasting shall include, on an experimental basis, simultaneous transmission of an FCC-licensed digital broadcast signal identical in content to the Radio Station Signal licensed hereunder.

F. "**Radio Station Signal**" shall mean Station's FCC-licensed over-the-air analog radio broadcast transmission.

G. "**Broadcast Signal Streaming**" shall mean the simultaneous streaming of the Radio Station Signal or the digital multicast signal of any Digital Multicasting Station over the Internet in the U.S. Territory from the Radio Station Web Site without alteration (except for advertising or inserts during commercial breaks, or in the event that program providers will not grant permission for the transmission of certain program content over the Internet, Station may substitute programming which has aired on Station within the previous 30 days) and without repackaging by a third party. For the avoidance of doubt, Broadcast Signal Streaming does not include side channels and/or interactive transmissions which will be subject to appropriate separate licensing.

H. "**Radio Station Web Site**" shall mean Licensee's Internet domain comprising a series of interrelated web pages currently registered with a domain name registration service located at the URL address identified at the beginning of this License Agreement and which Licensee makes available to the general public over the Internet.

I. "**Network Program**" shall mean any radio program simultaneously broadcast by any means by any network licensed as a network by BMI. Network Program shall include "rebroadcasts," "delayed broadcasts" and "repeat broadcasts" of a Network Program as those terms are understood in the broadcasting industry, even though non-simultaneous. Payments made to the originating network by an affiliated station in connection with such program may not be deducted. Licensee shall report all billings



to and/or cash received from the furnishing network. "Billing(s)" as used in this License Agreement shall exclude the non-cash portion of transactions such as trade and barter sales. Any program furnished by a network which is not licensed as a network by BMI shall be deemed to be a Local Radio Program.

J. **"Occasional Network Program"** shall mean any program broadcast simultaneously or by so-called "delayed" or "repeat" broadcasts on any group of two or more stations that are affiliated with Station for the purpose of broadcasting those programs. For example, when Station acts as a flagship station for purposes of creating an ad hoc sports network on two or more stations affiliated with Station for this purpose, Licensee is deemed to be operating on an occasional network and Licensee shall report all revenue it receives from sponsors for that occasional network programming.

K. **"Cooperative Program"** shall mean any program furnished by a network to Station under an agreement permitting Station to broadcast such program on a sustaining basis or on a commercial basis under the sponsorship of a local, regional or national advertiser contracting directly with Station or its representative for the incorporation of the commercial credits of such advertiser into such program, as broadcast by Station.

L. **"Local Radio Program"** shall mean any radio program and announcements, including a Cooperative Program, a Simulcast Program and any Occasional Network Program, broadcast by Station, other than a Network Program. For the purposes of this License Agreement, sports, special events and other programs furnished by networks not licensed by BMI, as well as any program originating from a station which holds an NRBMLC 2005 Radio Station License Agreement, shall be deemed to be Local Radio Programs.

M. **"Simulcast Program"** shall mean any program broadcast by two or more stations which are owned by Licensee, and are broadcast either simultaneously or on a "delayed broadcast" or "repeat broadcast" basis. Simulcast Programs shall also include such programs for which Licensee acts as a Time Broker or Local Manager.

N. **"Digital Multicasting"** shall mean, on an experimental basis, the over-the-air, aural, non-subscription-based broadcasting of one or more digital radio signals adjacent in frequency, but not identical in content, to the Radio Station Signal.

O. **"Background for an Announcement"** shall mean mood, atmosphere, or thematic music performed as background to an otherwise non-musical commercial, public service, or station promotional announcement not exceeding sixty (60) seconds in length.

P. **"Jingle"** shall mean an advertising, promotional or public service announcement containing musical material (with or without lyrics) where the musical material was originally written for advertising, promotional or public service announcement purposes, or a musical work, originally written for other purposes, with the lyrics changed for advertising, promotional or public service announcement purposes, not exceeding sixty (60) seconds in length and used with the permission of the interested writer or publisher affiliated with BMI.

Q. **"Incidental Performance"** shall mean music used as themes or signatures; bridges, cue or background music aggregating less than two and one-half minutes in duration in any Programming Period (as defined below); public domain music in arrangements controlled by BMI; and music which is used only incidentally to the broadcast of an actual public event or sports event.

R. **"Feature Performance"** shall mean a performance of music other than music used as an Incidental Performance, Background for an Announcement or a Jingle as defined herein.

S. **"Gross Revenue"** shall mean:

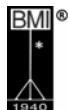
(1) (a) All billings (standard accrual method) charged to or on behalf of sponsors, donors and subscribers, but excluding non-cash billings applicable to transactions such as trade and barter sales, for the use of the broadcasting facilities of Station, including, without limitation:

(i) Local Radio Programs as defined above (including programs furnished by a network not licensed as a network by BMI and programs originating from another station which holds an NRBMLC 2005 Radio Station License Agreement, and Occasional Network Programs);

(ii) Network Programs;

(iii) contributions and donations; and

(iv) the cash portion of billings attributed to Time Brokers or providers of the "program services" in "barter" arrangements by such parties that have no direct or indirect managerial ownership or connection with Licensee; and



## (v) Net Promotional Revenue.

(b) All billings on behalf of and payments made directly to, or as authorized by, Licensee, its employees, representatives, agents or any other person acting on Licensee's behalf, and all billings on behalf of and payments made to any company, firm or corporation under the same or substantially the same ownership, management or control as Licensee, for the use of the broadcasting facilities of the Station. Such billings and payments shall not include billings on behalf of and payments made to third parties, such as networks or program suppliers, that are not under the same or substantially the same ownership, management or control as the Licensee, or non-cash payments such as payments in goods or services commonly referred to as trade or barter. Subject to Paragraph 2.I. above, if Licensee is owned or controlled by a network, Gross Revenue shall not include billings by or cash payment to the network.

(c) In the event Licensee acts as a Local Manager for another station's facilities, all billings charged to, or cash payments made by, sponsors or donors for the use of the managed station's facilities in the areas indicated in Paragraph 2.S. (1)(a)(i) through (v) above, subject to the terms of any LMA-05-A Agreement entered into by Licensee pursuant to Paragraph 14 below.

(d) In the event that Licensee owns or controls one or more stations which are licensed by BMI under separate blanket, per program or digital multicasting licenses, and Licensee's Gross Revenues are derived from any source, either in whole or in part, as the result of offerings of the stations' broadcast facilities in combination, Licensee shall make an allocation on a reasonable basis (taking into account factors such as, but not limited to, separate sales by the stations for comparable facilities during the report period or the immediately preceding period, and/or the relative ratings of the stations during the report period) of the *combined* Gross Revenues and all applicable deductions when filing all Annual Financial Reports required under the terms of this Agreement.

(e) All billings and/or cash received by Station for any program furnished by a network which is not licensed as a network by BMI.

(f) All billings to and/or cash received from, or on behalf of, (1) the sponsors of any program which originates from a station which holds an NRBMLC 2005 Radio Station License Agreement, and (2) affiliated stations.

(g) For the avoidance of doubt, the term "Gross Revenue" shall not include any revenue treated under this License Agreement as Radio Station Web Site Revenue or Digital Multicasting Station Revenue.

T. "**Net Promotional Revenue**" shall mean all cash payments that Licensee receives from third parties for the promotion of their businesses via the broadcast facilities of Station other than paid programs or commercial announcements (such as, but not limited to, Bridal or Craft Shows, Direct Mailings, Special Sponsored Events or Publications, produced and promoted by Station), less those out-of-the-ordinary costs, such as booth rentals, printing and mailing expenses, and cost of goods sold, that would not have otherwise been incurred without the promotional activity. Deductible costs may not exceed the cash payments received.

U. "**Net Revenue**" shall mean for stations reporting using the standard accrual/billing basis, Gross Revenue reduced by:

- (1) bad debts actually written off (increased by any bad debt recoveries) or rebates paid;
- (2) rate card discounts (cash quantity and/or frequency actually allowed); and
- (3) advertising agency commissions payable to an outside agency not owned or controlled by Licensee and actually incurred (not to exceed 15% of commissionable sales).

V. "**Adjusted Net Revenue**" shall mean Net Revenue less any sums received from networks licensed by BMI with respect to Network Programs (but only with respect to that portion of the sums received from the network attributable to such Network Program announcements which are related to Network Programs and are carried by the Station and provided that Station carries 90% or more of the BMI licensed network along with the accompanying commercials), and sums received for the broadcasting of local political programs (net of advertising agency commissions).

W. "**Digital Multicasting Station Revenue**" shall mean revenue attributable to each individual Digital Multicasting Station operated by Station and identified above on page 2 of this License Agreement. If Station operates more than one (1) Digital Multicasting Station, each Digital Multicasting Station shall be treated separately for the purpose of calculating Digital Multicasting Station Revenue.

For example, if Station operates two (2) Digital Multicasting Stations: Digital Multicasting Station 1 and Digital Multicasting Station 2, revenue attributable to Digital Multicasting Station 1 shall be referred to as Digital Multicasting Station 1 Revenue and revenue attributable to Digital Multicasting Station 2 shall be referred to as Digital Multicasting Station 2 Revenue.



X. **“Programming Period”** shall mean a fifteen (15) minute period of Radio Broadcasting and/or Digital Multicasting commencing on the hour and at fifteen (15), thirty (30), and forty-five (45) minutes past the hour without regard to whether such period contains one or more programs or announcements.

Y **“Programming Period Subject to Feature Fee”** shall mean a Programming Period containing any non-Network Programs (i.e., Local Radio Programs) which includes any performance of music in the BMI repertory other than (1) Incidental Performances or Jingles or as Background for an Announcement, as those terms are defined herein, or (2) public performances that are direct or source licensed or that otherwise do not violate the exclusive right of public performance under the Copyright Act.

Z. **“Weighted Programming Periods”** shall mean the total number of fifteen (15) minute periods within any non-Network Program (i.e. Local Radio Programs) within a Quarterly Music Report Period during each of the following time periods, multiplied by the applicable weight set forth below for the corresponding time period:

	<u>Time Period</u>	<u>Applicable Weight</u>
<b>Weekdays:</b>	Midnight to 6:00 A.M.	.25
	6:00 A.M. to 10:00 A.M.	1.00
	10:00 A.M. to 3:00 P.M.	.50
	3:00 P.M. to 7:00 P.M.	.75
	7:00 P.M. to Midnight	.50
<b>Weekends:</b>	Saturdays and Sundays	.25

AA. **“Weighted Programming Periods Subject to Feature Fee”** shall mean the total number of Programming Periods Subject to Feature Fee within a given Quarterly Music Report Period during each of the time periods identified in the definition of “Weighted Programming Periods,” multiplied by the applicable weight set forth in that definition.

BB. **“Revenue Per Weighted Programming Period”** shall mean Adjusted Net Revenue for the full calendar year divided by the aggregated total of Weighted Programming Periods for all time periods derived from the Quarterly Music Reports submitted for the full calendar year.

CC. **“Revenue Subject to Feature Fee”** shall mean Revenue Per Weighted Programming Period multiplied by the aggregated total of Weighted Programming Periods Subject to Feature Fee derived from the Quarterly Music Reports submitted for the full calendar year.

DD. **“Revenue Subject to BMI Blanket Fee”** shall mean Adjusted Net Revenue (Short Method Option) or, at the option of Licensee, Adjusted Net Revenue less the total of the following itemized deductions to the extent the total exceeds 25% of Adjusted Net Revenue (Long Method Option):

(1) Net Talent Fees Allowed. All compensation actually paid by the station directly to “on-air” personnel acting as: (a) master of ceremonies or disk jockey on musical programs; (b) vocalist or instrumentalist engaged for a special program; (c) featured newscaster or news commentator; (d) featured sportscaster; (e) master of ceremonies on an entertainment program; or (f) announcer. If such person(s) has a 40% or more ownership interest in the station, this deduction shall not be allowed. If such person(s) holds a managerial capacity at the station and spends less than 100% of his or her time performing any of the duties enumerated in this Paragraph 2(DD), the total compensation amount shall be reduced in proportion to the amount of time spent on said duties.

The names, description of on-air duties and compensation must be indicated separately on the Annual Financial Report supplied by BMI. Talent deductions are not permitted for personalities/personnel related to programs not produced by Station.

(2) News Service and Audio News Service. Licensee may deduct the actual cash payment (excluding barter) made by it to an independent supplier of news service (e.g., AP, agricultural reports), whether for hard or electronic copy or audio service. These costs must be for general news services and must be paid to an independent supplier of such news service.

(3) The actual cost incurred by Station (excluding barter) for a specific local commercial program for: (a) payments to the telephone company or similar transmission facility for remote pickup necessary to broadcast such program from outside the Station’s studios; and (b) rights for broadcasting a sports or other special event but not to exceed the amount actually paid to or for the original holder of the broadcast rights for the program.

EE. **“Radio Station Web Site Revenue”** shall mean all revenue generated in connection with the Radio Station Web Site by Station and/or Licensee, or by anyone acting on Station’s and/or Licensee’s behalf, for or from: (1) access to or use of all or any part(s) of the Radio Station Web Site (e.g., subscription fees, online time, and other transactional charges); and (2) advertising



(e.g., banners, in-streams ads, hotlinks) on, or sponsorship of, all or any part(s) of the Radio Station Web Site, including revenue from third parties paid to Station and/or Licensee for including their programming on the Radio Station Web Site, commissions from third

parties on transactions, and the fair market value of any thing or service in lieu of cash considerations (i.e., trade and barter) to the extent that Station and/or Licensee recognizes the value of such thing or service received in lieu of cash consideration as revenue for accounting purposes. Radio Station Web Site Revenue includes revenue from the sale of proprietary software used to access all or any part(s) of the Radio Station Web Site, but only to the extent that Station and/or Licensee, or someone acting on Station's and/or Licensee's behalf, package(s) or include(s) access to or use of the Radio Station Web Site with the license for the software. Radio Station Web Site Revenue also includes any donations that Station and /or Licensee, or someone acting on Station's and/or Licensee's behalf, receive(s) in connection with the Radio Station Web Site. Radio Station Web Site Revenue does not include revenue from the direct sale of physical goods, or revenue generated solely in connection with any web site hosting or stream hosting services Station and/or Licensee provides for third party web sites that are not licensed under this License Agreement. Station and/or Licensee can deduct advertising agency commissions from Station and/or Licensee's advertising revenue, but only up to 15% actually incurred to a third party advertising agency that Station and/or Licensee does not own or control. Station and/or Licensee can also deduct any bad debts that Station and/or Licensee writes off during a reporting period which are related to any billings that Station and/or Licensee previously reported, but Station and/or Licensee must include any recoveries of bad debts that were previously written off. For the avoidance of doubt, the term "Radio Station Web Site Revenue" shall not include any revenue treated under this License Agreement as Gross Revenue.

FF. "Quarterly Music Report Period" shall mean the one (1) week period each calendar quarter for which Licensee is required to submit a Quarterly Music Report pursuant to Paragraph 9.B.(1) of this License Agreement.

### 3. BMI Grant

A. BMI hereby grants to Licensee, for the Term hereof, a non-exclusive license to publicly perform in the US Territory, by Radio Broadcasting on Licensee's Local Radio Programs by Station, non-dramatic performances of all musical works, the right to grant public performance rights of which BMI may, during the Term hereof, own or control.

B. BMI hereby grants to Licensee for the Term a non-exclusive license to publicly perform all musical works in the BMI Repertoire during the Term in the U.S. Territory by (1) Digital Multicasting; and (2) Broadcast Signal Streaming, where applicable, subject to the payment and reporting obligations detailed below. This License Agreement does not cover the transmission of the Radio Station Signal or Digital Multicasting signal by streaming over the Internet where the Radio Station Signal or Digital Multicasting signal is accessed directly or indirectly from a third party web site (e.g. Live365), or any uses of music on the Radio Station Web Site other than Broadcast Signal Streaming; such other uses shall be subject to appropriate separate licensing. In the event that all or a portion of the Radio Station Web Site is included on a tier of services by a third party (including, but not limited to, content bundling by a third party) for additional revenue, either independently or with other web sites, LICENSEE shall immediately notify BMI in writing. BMI and LICENSEE expressly agree that any such uses are not licensed under this Agreement and shall be subject to appropriate separate licensing.

C. The rights granted hereby shall not include the right to perform more than thirty (30) minutes of a full-length dramatic or dramatico-musical work (or a substantial part of a short dramatic or dramatico-musical work) such as an opera, operetta, musical show or ballet, but this exclusion shall not apply to such performances from (1) a score originally written for and performed as part of a radio program, or (2) the original cast, soundtrack or similar album of a dramatic or dramatico-musical work other than an opera.

D. The performances licensed hereunder may originate at any place, whether or not such place is licensed to publicly perform the musical works licensed hereunder, and regardless of the manner, means or methods of such origination. Nothing in this License Agreement shall be deemed to grant a license to anyone authorizing any public performance in such other place of any such composition.

E. Nothing herein shall be construed as authorizing Licensee to grant to any cable system (including MMDS or similar wireless services) the right to retransmit to the public or publicly perform by any means, method or process whatsoever, any of the musical compositions licensed hereunder.

F. BMI will, upon specific reasonable written request made by Licensee, indicate whether a number of specific musical compositions listed by Licensee are licensed by BMI. Licensee shall provide: (1) title; (2) writer/composer; (3) publisher; and (4) recording artist of each musical composition requested to be identified. In the event Licensee does not provide BMI with all of the information requested herein, BMI will attempt to identify whether such musical compositions are licensed by BMI, but will be under no obligation to make such identifications.



#### 4. License Fees

##### A. Per Program License Fees

(1) Licensee agrees to pay to BMI with respect to Radio Broadcasting for each year of the Term of this License Agreement as a per program license fee hereunder:

##### 2005

The per program license fee for 2005 shall be calculated using the "weighted hour subject to fee" methodology set forth in the NRBMLC-1998 BMI Per Program License applied to the monthly music reports submitted for the period January through June 2005, using the Base Fee and Feature Fee rates set forth herein for 2006 and then dividing the resulting Feature Fee by 1.35.

##### 2006

**Base Fee** = .10% of Adjusted Net Revenue

**Feature Fee** = 2.25% of Revenue Subject to Feature Fee

##### 2007 through 2010 (and as may be extended for the years 2011-2013)

**Base Fee** = .09% of Adjusted Net Revenue

**Feature Fee** = 2.25% of Revenue Subject to Feature Fee

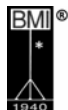
(2) In no event shall the license fee payable to BMI by Licensee for Radio Broadcasting (in addition to the separate requirement for an annual minimum fee for Digital Multicasting and/or Broadcast Signal Streaming, if applicable) be less than an amount equal to \$382 for 2005, and for each subsequent year, an amount equal to the minimum fee for the prior year adjusted to reflect any percentage increase in the Consumer Price Index (National, All Items) between October of the preceding year and October of the next preceding year.

(3) (a) Beginning January 1, 2006, and for all succeeding years of the Term of this License Agreement, each month during the Term hereof, on or before the first day of the following month Licensee shall pay to BMI an estimated fee equal to one-twelfth of the actual per program license annual fee for the immediately preceding year (if less than an entire calendar year, said sum shall be annualized), adjusted to reflect the percentage increase in the Consumer Price Index (National, All Items) between October of the preceding year and October of the next preceding year. For purposes of this estimated fee for the year 2006, the fee for a station operating under the per program license in 2005 shall be recalculated as set forth above for 2005. Notwithstanding any of the foregoing, in any calendar year of the Term hereof (including the Extended Term), as of the month when BMI receives the Annual Financial Report required to be supplied by Paragraph 5, below, applicable to the immediately prior year, any adjustment to increase the estimated fee required by a discrepancy between prior billings and monthly payments actually due in accordance with this subparagraph shall, at BMI's option, be prorated over the remaining monthly payments due during that calendar year.

(b) If Station was not licensed by BMI under a per program license during the preceding year, Licensee shall supply BMI with a good faith estimate of its Base Fee and Feature Fee. In the event Licensee was not licensed by BMI under a per program license during the preceding year and underestimates its fee under the preceding sentence by more than 15% of the final fee, Licensee will owe BMI an interest charge equal to .5% of the underpayment multiplied by the number of months between the date Licensee first operated under the per program license and the date Licensee filed its Annual Financial Report for that first year of operation under the license.

(4) (a) If the annual license fee exceeds the amount previously billed that year, Licensee shall pay any such additional amount to BMI within thirty (30) days of receipt of BMI's invoice. If said amount remains unpaid forty-five (45) days following the Station's receipt of said invoice, interest will begin to accrue at the rate of 1% per month thereafter.

(b) If the estimated fees paid by Licensee for any calendar year exceed the annual license fee due for said year and Station is current in all reports due under this License Agreement, Licensee will be entitled to a credit of the overage paid; provided, however, that if the overage paid is greater than three times the monthly payments required by Paragraph 4.A.(3)(a) for said calendar year (or if the Station is no longer licensed by BMI), BMI shall, within thirty (30) days of receipt of written request sent from Licensee for the attention of Licensing-Accounting, BMI, 10 Music Square East, Nashville TN 37203-4399, refund the excess payment;



and provided further that Licensee shall be entitled to a refund only if the overage (which exceeds three times Licensee's monthly payments) by Licensee, results in a net balance due Licensee. In this event, the amount of the refund shall not exceed the amount of the net balance due Licensee. Any fees subject to a good faith dispute as a result of a BMI audit shall not be considered in determining whether there is a net balance due Licensee for purposes of this subparagraph. If BMI fails to refund said amount within forty-five (45) days following BMI's receipt of Station's request for a refund, interest will begin to accrue at the rate of 1% per month thereafter.

**B. Blanket License Fees**

(1) Licensee agrees to pay to BMI with respect to Radio Broadcasting for each year of the Term of this License Agreement as a blanket license fee hereunder:

<b><u>2005</u></b>	<b>1.725%</b> of Revenue Subject to BMI Blanket Fee (or 1.553% if Net Revenue is less than \$150,000)
<b><u>2006</u></b>	<b>1.735%</b> of Revenue Subject to BMI Blanket Fee (or 1.562% if Net Revenue is less than \$150,000)
<b><u>2007</u></b>	<b>1.740%</b> of Revenue Subject to BMI Blanket Fee (or 1.566% if Net Revenue is less than \$150,000)
<b><u>2008</u></b>	<b>1.745%</b> of Revenue Subject to BMI Blanket Fee (or 1.571% if Net Revenue is less than \$150,000)
<b><u>2009</u></b>	<b>1.750%</b> of Revenue Subject to BMI Blanket Fee (or 1.575% if Net Revenue is less than \$150,000)
<b><u>2010</u></b>	<b>1.750%</b> of Revenue Subject to BMI Blanket Fee (or 1.575% if Net Revenue is less than \$150,000)

(2) In the event the Term is extended for the years 2011 - 2013, the following blanket license fees for Radio Broadcasting shall apply:

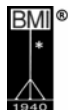
<b><u>2011</u></b>	<b>1.760%</b> of Revenue Subject to BMI Blanket Fee (or 1.584% if Net Revenue is less than \$150,000)
<b><u>2012</u></b>	<b>1.765%</b> of Revenue Subject to BMI Blanket Fee (or 1.589% if Net Revenue is less than \$150,000)
<b><u>2013</u></b>	<b>1.770%</b> of Revenue Subject to BMI Blanket Fee (or 1.593% if Net Revenue is less than \$150,000)

(3) Beginning January 1, 2006, and for all succeeding years of the Term of this License Agreement, the \$150,000 Revenue Subject to BMI Blanket Fee threshold referred to at Paragraphs 4.B. (1) and (2) above shall be adjusted to reflect the percentage increase in the Consumer Price Index (National, All Items) between October of the preceding year and October of the next preceding year.

(4) In either case Licensee shall pay a minimum fee per calendar year for Radio Broadcasting (in addition to the separate requirement for an annual minimum fee for Digital Multicasting and/or Broadcast Signal Streaming, if applicable) each year this License Agreement is in effect in the amount of \$500 for 2005, and for each subsequent year an amount equal to the minimum fee for the prior year adjusted to reflect any percentage increase in the Consumer Price Index (National, All Items) between October of the preceding year and October of the next preceding year.

(5) For each month during the Term hereof Licensee shall, on or before the first day of the following month, pay to BMI a sum equal to one twelfth of the annual fee payable hereunder for the preceding calendar year (if less than a calendar year, said sum shall be annualized), adjusted to reflect the percentage increase in the Consumer Price Index (National, All Items) between October of the preceding year and October of the next preceding year. Notwithstanding any of the foregoing, in any calendar year of the Term hereof, as of the month when BMI receives the Annual Financial Report required to be supplied by Paragraph 5 hereof applicable to any immediately prior year, any adjustment to increase the estimated fee required by a discrepancy between prior billings and monthly payments actually due in accordance with this Paragraph shall, at BMI's option, be prorated over the remaining monthly payments due during that calendar year.

(6) (a) For calendar year 2005, if the annual license fee exceeds the amount previously billed for that year, Licensee shall pay any such additional amount to BMI within thirty (30) days of invoicing by BMI.



(b) If the annual license fee for any calendar year of the Term subsequent to 2005 exceeds the monthly installments applicable to such year's fee, Licensee shall pay any such additional amount to BMI at the time the Annual Financial Report is due.

(c) If the amount paid by Licensee for any calendar year exceeds the annual license fee due for said year and Station is current in all reports due under this Agreement, Licensee will be entitled to a credit of the overage paid; provided, however, that if the overage paid is greater than three times the monthly payments required by Paragraph 4.B.(4) for said calendar year, BMI shall, within thirty (30) days of receipt of written request from Licensee sent for the attention of Licensing-Accounting, BMI, 10 Music Square East, Nashville TN 37203-4399, refund the excess payment; and provided further that Licensee shall be entitled to a refund only if the overage (which exceeds three times Licensee's monthly payments) by Licensee, results in a net balance due Licensee. In this event, the amount of the refund shall not exceed the amount of the net balance due the Licensee. Any fees subject to a good faith dispute as a result of a BMI audit shall not be considered in determining whether there is a net balance due Licensee for purposes of this subparagraph.

#### C. Digital Multicasting License Fees

In the event that Licensee also engages in Digital Multicasting, Licensee agrees to pay BMI for Digital Multicasting for each year of the Term of this License Agreement as follows:

(1) Licensee shall promptly notify BMI in writing of its intention to operate (a) Digital Multicasting Station(s) and provide BMI with details of the Digital Multicasting Station(s), in particular the extent to which music shall be used;

(2) So long as Digital Multicasting Station Revenue for each individual Digital Multicasting Station is less than \$50,000.00 per annum, Licensee shall pay to BMI an annual fee of \$250 for 2005, and for each subsequent year, an amount equal to the fee for the prior year adjusted to reflect any percentage increase in the Consumer Price Index (National, All Items) between October of the preceding year and October of the next preceding year. For the avoidance of doubt, this annual fee is payable for each Digital Multicasting Station operated by Station and is in addition to the annual fee due from Licensee for Radio Broadcasting and/or Broadcast Signal Streaming;

(3) In the event that Digital Multicasting Station Revenue is \$50,000.00 or more for any Digital Multicasting Station, such Digital Multicasting Station and Licensee must enter into a separate form NRBMLC Digital Multicasting Station License for that Digital Multicasting Station.

In the event that Licensee operates more than one Digital Multicasting Station, any Digital Multicasting Station(s) that do(es) not generate \$50,000 or more Digital Multicasting Station Revenue shall continue to be licensed under this License Agreement.

#### D. Broadcast Signal Streaming License Fees

In the event that Licensee also engages in Broadcast Signal Streaming, Licensee agrees to pay BMI in respect of Broadcast Signal Streaming for each year of the Term of this License Agreement as follows:

(1) Licensee shall promptly notify BMI in writing of its intention to engage in Broadcast Signal Streaming and provide BMI with details of this service, in particular the extent to which music shall be used; and

(2) Licensee shall pay to BMI the greater of the following:

(a) an annual minimum fee of \$283 for 2005, and for each subsequent year, an amount equal to the minimum fee for the prior year adjusted to reflect any percentage increase in the Consumer Price Index (National, All Items) between October of the preceding year and October of the next preceding year. This annual minimum fee is for Broadcast Signal Streaming only and is in addition to the annual minimum fee(s) due from Licensee for Radio Broadcasting and/or Digital Multicasting; or

(b) (i) in the event that Licensee elects to pay for Radio Broadcasting at the blanket license fee rates detailed at Paragraph 4.B. (1) and (2), the license fee payable for Broadcast Signal Streaming shall be calculated by applying the same rates detailed at Paragraph 4.B. (1) and (2) and actually utilized by Licensee in its Annual Financial Report for each year of the Term to the Radio Station Web Site Revenue;

(ii) in the event that Licensee elects to pay for Radio Broadcasting at the per program license fee rates detailed at Paragraph 4.A., Licensee shall pay BMI an effective rate percentage of the Radio Station Web Site Revenue. The effective rate percentage is calculated by dividing the total license fee paid or payable for Radio Broadcasting for the relevant year, by the Net Revenue generated by Radio Broadcasting for the relevant year. The effective rate percentage is then applied to the Radio Station Web Site Revenue to determine the license fee payable for Broadcast Signal Streaming.





## 5. Annual Financial Reports

A. Commencing on or before April 1, 2006, and on or before the later of (1) April 1<sup>st</sup> of each contract year thereafter; (2) forty-five (45) days following Licensee's receipt of a written request from BMI (if Station has elected the Blanket option); and (3) forty-five (45) days following Licensee's receipt of music use information from BMI (if Station has elected the Per Program option), Licensee shall render Annual Financial Reports to BMI, on forms supplied by BMI (examples of the blanket and per program Annual Financial Reports are annexed hereto), covering the period of the preceding calendar year. With respect to the blanket license, if Licensee reports via the Long Method Option, it must show all deductions in order to arrive at Amount Subject to BMI Fee as herein provided. If any Annual Financial Report is not received by BMI within sixty (60) days after the due date, Licensee will be required to use the Short Method Option for such report.

B. Should BMI make available to Licensee the option of reporting electronically, Licensee will make reasonable efforts to report to BMI electronically.

## 6. Blanket License Reporting Basis

A. Licensee must report for the Term of this License Agreement on a Billing Basis (standard accrual method); provided, however, that if Licensee keeps its books and records of account on a cash receipts basis and has been reporting to BMI on a cash receipts basis for two years prior to the commencement of the Term of this License Agreement, Licensee may continue to report on a cash receipts basis for such period as long as it continues to keep its books and records of account on that basis.

B. All billings made prior to the termination of this License Agreement with respect to local radio broadcasts during the Term hereof shall be accounted for by Licensee as and when such billings are made by Licensee.

## 7. Per Program License Reporting Basis

All per program station reports shall be made on a billing basis. All billings made subsequent to the termination of this License Agreement with respect to local radio broadcasts made during the Term of the License Agreement shall be accounted for by Licensee as if made prior to termination or expiration.

## 8. Taxes

In the event that the payment of any license fee to BMI by Licensee pursuant to this License Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from licensees, Licensee agrees to pay to BMI the full amount of such tax together with Licensee's fee payment(s) as invoiced by BMI; provided, however, that (1) BMI shall make reasonable efforts to be exempted or excused from paying such tax, and (2) BMI is permitted by law to pass through such tax to Licensee.

## 9. Music Use Reports

A. **All Stations.** Licensee, upon written request from BMI made on not less than one (1) week's notice specifying the period to be covered not to exceed seven (7) days within one (1) year, agrees to furnish to BMI (at BMI's request electronically via a secure web site, if feasible for Station) a report of Licensee's performances, by Station, by Radio Broadcasting and Digital Multicasting, of all musical works, indicating the compositions performed by title, and at least one of writer/composer and recording artist, or by such other convenient method as may be designated by BMI. If Station engages in Digital Multicasting, Station shall report separately to BMI in the aforesaid reports those hours Station was Digitally Multicasting.

### B. Per Program License Stations

(1) For each calendar year of this License Agreement, commencing with 2006, Licensee agrees to furnish to BMI on thirty (30) days written notice a full, true, complete and accurate report, either electronically via BMI's Internet-based reporting application or on forms furnished by BMI, for one (1) week per calendar quarter (referred to as a "Quarterly Music Report"), which shall indicate, with respect to all Programming Periods during the week, regardless of origin, which have any musical content, the following: (a) the full title of each Feature Performance (as defined in Paragraph 2.R.) of a musical work; (b) the date and time of performance; and (c) at least one of the name(s) of the writer(s)/composer(s) or recording artist(s).

A representative of BMI shall advise Licensee which week per quarter this will be done. Licensee may concede one or more Programming Period(s) to contain BMI licensed Feature Performances of music in lieu of providing the Feature Performance information set forth in this subparagraph, rendering these Programming Periods subject to Feature Fee.



(2) A Quarterly Music Report shall be requested of Licensee and submitted to BMI for each calendar quarter, regardless of Licensee's format or amount of feature music use during the report week (including no feature music use).

(3) Licensee shall not be required to include the Feature Performance information set forth in Paragraph 9.B.(1) for music in programming from a radio network licensed as a network by BMI, music in political programming and music in Programming Periods which Licensee concedes to contain BMI licensed music. Every Programming Period which contains at least one Feature Performance of music (other than a Programming Period in which the only music falls into one of the aforementioned exempt categories) shall be accounted for on the report.

(4) Said report shall be due to BMI on or before thirty (30) days after the week to which the report pertains. In the event that Licensee shall fail to submit any Quarterly Music Report or fail to report performances of musical compositions as required by Paragraph 9, the following shall apply:

- (a) **First Instance:** BMI shall advise Licensee in writing of same and will issue Licensee a warning.
- (b) **Second Instance:** BMI shall advise Licensee in writing of same and will issue Licensee a warning.
- (c) **Third and all Subsequent Instances:** BMI shall advise Licensee in writing of same and Licensee shall pay BMI the Blanket fee equivalent for each of the prospective three (3) months following the month in which the Quarterly Music Report was due.

(5) Licensee's failure to report timely or correctly may not be cured by Licensee's submission of a late report for said period.

(6) BMI shall have the option to substitute Licensee's Per Program License with the Blanket License effective on a going forward basis for the duration of the Term should Licensee consistently incur Instances for failing to submit complete and accurate Quarterly Music Reports when due. In such case, Licensee may request conversion back to the Per Program License starting January 1, 2010, provided Licensee meets the license change requirements outlined in Paragraph 11. If Licensee is converted by BMI to the Blanket License after January 1, 2010, Licensee shall not be permitted a change back to the Per Program license for the remainder of the Term through December 31, 2013.

(7) Licensee's count of Instances incurred during the period 2006 through 2009, if any, shall be reset to zero commencing on January 1, 2010. Instances incurred by Licensee starting in 2010 shall be treated in the order described in Paragraph 9. B. (4), commencing with the assessment of a First Instance.

## 10. Audits

A. BMI shall have the right by its duly authorized representative(s), during customary business hours, on notice in writing of not less than ten (10) business days, to examine the books and records of account of Licensee only to such extent as may be necessary to verify any reports required by this License Agreement. All information coming to BMI's attention as a result of any such examination of Licensee's books and records shall be held completely and entirely confidential and shall not be used by BMI other than in connection with its administration of this License Agreement.

B. The period for which BMI may audit pursuant to Paragraph 10.A. shall be limited to four (4) calendar years preceding the year in which the audit is made, provided that if an audit is postponed at the request of Licensee, and BMI grants such postponement, BMI shall have the right to audit for the period commencing with the fourth calendar year preceding the year in which notification of intention to audit was first given by BMI to Licensee. The four (4) year limitation on BMI's right to audit shall not apply if Licensee fails or refuses after written notice from BMI to produce the books and records necessary to verify any report required hereunder.

C. In the event that any BMI audit reveals that additional license fees are owed to BMI, Licensee shall pay interest on such additional license fees of 1% per month from the date(s) such fees should have been paid pursuant to this License Agreement if the underpayment is 7% or more of the annual license fee previously reported, and at least \$1,000. Licensee shall pay interest on such additional license fees of 1% per month beginning thirty (30) days after the date BMI invoices such additional license fees to Licensee if the underpayment is less than 7% or less than \$1,000.

D. If Licensee disputes all or part of BMI's claim for such additional license fees arising from an audit, Licensee shall, within thirty (30) days from the date BMI invoices additional fees, (1) notify BMI in writing of the basis for such dispute and (2) pay to BMI any license fees not in dispute together with the applicable interest on additional license fees not in dispute in accordance with subparagraph C. above. If there is a good faith dispute between Licensee and BMI with respect to all or part of the additional license fees which BMI has invoiced pursuant to this subparagraph, upon resolution of the disputed amount, subparagraph C shall govern payment of the interest due; provided, however, that no interest will be charged Licensee for the disputed license fees in the period



beginning on the date of Licensee's written notice to BMI of the dispute and ending sixty (60) days after BMI responds to Licensee's notice of the dispute.

E. Interest calculated in accordance with this Paragraph and concerning additional license fees which Licensee disputes in accordance with subparagraph D. above shall be adjusted pro-rata to the amount arrived at by Licensee and BMI in resolution of the dispute with respect to additional license fees due.

F. The period for which Licensee may amend any Annual Financial Report submitted pursuant to this License Agreement shall be limited to four (4) calendar years following the year for which such report was required to be filed pursuant to Paragraph 5.A.; provided, however, that if BMI audits for prior years, Licensee may amend its Annual Financial Report for such year(s). Licensee shall have the right to amend any portion of a previously submitted Annual Financial Report and the right to correct computational or reporting errors. Once Licensee submits an Annual Financial Report to BMI pursuant to this License Agreement, Licensee may amend said Annual Financial Report only one time. If Licensee amends an Annual Financial Report pursuant to this provision, the time for BMI to audit said Annual Financial Report will be four (4) years after the filing of said amended Annual Financial Report by Licensee.

## **11. Blanket/Per Program License Changes**

Provided that Licensee is current in all license fee payments and reports required hereunder and upon thirty (30) days' prior written notice, Licensee may switch license types between blanket and per program to become effective from the first day of the following month using the election form at Exhibit A to this License Agreement. Licensee may switch license types up to two times in any contract year. Retroactive changes to the per program license are not permitted.

## **12. Licensee's Failure To Report**

In the event that Licensee shall fail to render any report required hereunder, when and as due, BMI, may, in addition to any other remedies available to it in this License Agreement, calculate the estimated amounts payable as hereinabove provided.

## **13. Indemnification**

BMI agrees to indemnify, save and hold harmless and to defend Licensee, its advertisers and their advertising agencies and its and their officers, employees and artists, from and against all claims, demands and suits that may be made or brought against them or any of them with respect to the performance under this License Agreement of any material licensed hereunder, provided that this indemnity shall not apply to broadcasts of any musical work performed by Licensee after written request from BMI to Licensee that Licensee refrain from performance thereof. Licensee agrees to give BMI immediate notice of any such claim, demand or suit, and agrees immediately to deliver to BMI all papers pertaining thereto. BMI shall have full charge of the defense of any such claim, demand or suit, and Licensee shall cooperate fully with BMI therein.

## **14. Local Management Agreement**

A. In the event Licensee enters into a Local Management Agreement as defined in Paragraph 2.B. hereof, within thirty (30) days of such agreement: (1) Licensee shall provide BMI with a copy of such agreement and (2) Licensee and Local Manager shall provide BMI with two (2) fully executed copies of BMI's LMA-05-A Agreement, a sample copy of which is annexed hereto and made part hereof. The fully executed LMA-05-A Agreement makes Local Manager a party to this License Agreement, and this License Agreement shall be deemed amended by said LMA-05-A Agreement.

B. In the event Licensee becomes a Local Manager by entering into a Local Management Agreement with another station, Licensee shall notify BMI within thirty (30) days of entering into the agreement.

C. In the event that Licensee and/or Local Manager do not provide to BMI, on a timely basis, the documentation required by Paragraph 14.A. this License Agreement may be terminated by BMI on ten (10) days' notice, provided the failure to provide the required documentation remains uncured.

D. In the event that the Local Management Agreement provided to BMI terminates prior to its stated termination date, Licensee and Local Manager shall immediately notify BMI of such termination.

## **15. Assignment**

This License Agreement shall be non-assignable except to the person, firm or corporation acquiring the Federal Communications Commission license of the Station, and upon assignment to such station and upon acceptance in form approved by BMI of the



application of Licensee hereunder, the Licensee shall be relieved of future liability under this License Agreement as long as all reports have been filed by Licensee and all fees due BMI under this License Agreement have been paid to BMI, and further provided such assignee executes a new License Agreement. Notwithstanding anything herein to the contrary, this License Agreement shall not be assigned to a new owner of Station who is not represented by the NRBMLC.

#### **16. Licensee's Breach**

In the event that Licensee shall fail to make any payment or render any report (other than a Quarterly Music Report) under this License Agreement, when and as due, BMI shall notify Licensee in writing of the delinquency and provide at least an additional thirty (30) days within which Licensee may submit the payment or report. If the payment is not submitted within the extension period and BMI has provided the notice described above by certified mail, return receipt requested, BMI may, at its option terminate this License Agreement. The right to cancel shall be in addition to any and all other remedies which BMI may have, including the remedies set forth in Paragraph 9.B. (4), above. No waiver by BMI of full performance of this License 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 License Agreement thereafter or of the right to cancel this License Agreement in accordance with the terms of this paragraph.

#### **17. Late Payment Charge**

BMI may impose a late payment charge of 1% per month from the date the payment was due on any monthly or annual payment that is received by BMI more than one (1) month after the date payment was due.

#### **18. Arbitration**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this License Agreement, except for those within the jurisdiction of the BMI Rate Court under Article XIV of the BMI Consent Decree, shall be submitted to the American Arbitration Association in the City and State of New York for arbitration under its then prevailing rules, the arbitrator(s) to be selected as follows: Each of the parties 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 in any court having jurisdiction. Such award shall include the fixing of the costs, expenses and reasonable attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

#### **MISCELLANEOUS**

**19.** In the event that the Federal Communications Commission revokes or fails to renew the broadcasting license of Licensee, or in the event that the governmental rules and regulations applicable to Station are suspended or amended so as to forbid the broadcasting of commercial programs by Licensee, Licensee may notify BMI thereof, and BMI, within ten (10) days of the receipt of such notice shall, by written notice to Licensee, at BMI's option, either terminate or suspend this License Agreement and all payments and services hereunder for the period that such condition continues. In the event that BMI elects to suspend this License Agreement, such suspension shall not continue for longer than six (6) months, and this License Agreement shall automatically terminate at the end of six (6) months. In the event that the condition giving rise to the suspension shall continue for less than six (6) months, BMI at its option, and on written notice to Licensee, may reinstate this License Agreement at any time within thirty (30) days after the cessation of such condition.

**20.** In the event that any law now or hereafter enacted of the state, or political subdivision thereof, in which Station and/or Licensee is located shall result in major interference with BMI's operations or in the refusal of a substantial number of radio stations therein to enter into license agreements with BMI or to make payments to BMI, BMI shall have the right at any time to terminate this License Agreement on no less than sixty (60) days' written notice to Licensee.

**21.** Wholly-owned stations shall report and pay separately, and be treated for all purposes as separate stations, provided, however, that any stations in the same market that are simulcast during 100% of their broadcast day and that are licensed under this form of License Agreement may report and pay together. Two wholly-owned stations in separate markets may report and pay together provided that they are 100% simulcast and that they pay two minimum fees, if applicable.

**22.** A. BMI may, if it so elects, at any time during the Term of this License Agreement, but not prior to January 1, 2006, require that the Quarterly Music Reports required under Paragraph 9.B. of this License Agreement be submitted to BMI electronically via its free, Internet-based reporting application. In such case:

- (1) BMI will provide Licensee sixty (60) days' written notice of its election; and



- (2) BMI will provide appropriate specifications for computer use that does not require the acquisition of additional software by Licensee.

B. If BMI exercises its election hereunder and Licensee does not report in accordance with such requirements Licensee shall pay to BMI a data entry charge of \$1.00 per page for each month that Licensee's reports are not made in computer readable form as provided in Paragraph 22.A. Licensee will not be required to pay this data entry charge for forms or cue sheets furnished to Licensee by third-party program producers or syndicators that Licensee forwards to BMI as permitted by Paragraph 9.B., or for computer readable reports that Licensee generates from computer systems used by Licensee.

**23.** On written notice to Licensee, BMI may, effective with such notice, withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

**24.** Except as set forth below, any notice required or permitted to be given under this License Agreement shall be in writing and shall be deemed duly given when sent by ordinary first class mail to the party for whom it is intended at its address hereinabove stated, or any other address which either party hereto may from time to time designate for such purpose, and when such notice is so mailed, it shall be deemed given upon the mailing thereof, provided, however, that any notice of conversion required to be given under Paragraph 9.B.(6) and notice of termination under Paragraph 14.C., and any notice given under Paragraph 16 upon which BMI intends to base termination of this License Agreement, shall not be effective unless provided by certified mail, return receipt requested; and provided further that any written notice of Instance sent by BMI pursuant to Paragraph 9.B.(4) advising Licensee of its failure to submit a Quarterly Music Use Report shall be sent by first class mail. Any such notice sent to BMI shall be to the attention of BMI Media Licensing, 10 Music Square East, Nashville, TN 37203. Any such notice sent to Licensee shall be to the attention of the person signing this License Agreement on behalf of Licensee or such other person as Licensee may advise BMI in writing.

**25.** This License Agreement constitutes the entire understanding between the parties, shall not be binding until signed by both parties and 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 License 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 to be void or unenforceable by a court of competent jurisdiction shall in no way affect the validity or enforceability of any other provisions. All headings in this License Agreement are for the purpose of convenience and shall not be considered to be part of this License Agreement.

**26.** With respect to Broadcast Signal Streaming and Digital Multicasting, this License Agreement is experimental in nature and without prejudice to the parties' respective positions related thereto, and nothing contained herein shall be construed to be binding with respect to future periods or precedential. Furthermore, nothing contained in this License Agreement with respect to Broadcast Signal Streaming and Digital Multicasting is intended to reflect BMI's, the NRBMLC's, or Licensee's position with respect to the reasonable value of the license granted herein, and BMI, the NRBMLC, and Licensee hereby expressly reserve their rights to re-evaluate the appropriateness of the fees and terms herein and take other positions regarding appropriate rates and terms for Broadcast Signal Streaming and Digital Multicasting.

**27.** This License Agreement may be executed in any number of counterparts and by facsimile signature, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

## **28. Repertoire Database**

BMI will make available, free of charge, a database of feature compositions (other than Jingles, themes, signatures, bridges and cues) licensed by BMI, that may be accessed via the Internet. Licensee shall bear its own expense of accessing the Internet. The database will identify the title of each composition and the name of the author and copyright owner.



**BROADCAST MUSIC, INC.**

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name of Signer)

\_\_\_\_\_  
(Title of Signer)

\_\_\_\_\_  
**LICENSEE (Legal Name)**

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name of Signer)

\_\_\_\_\_  
(Title of Signer)

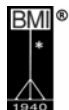
**LOCAL MANAGER**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name of Signer)

\_\_\_\_\_  
(Title of Signer)

Date: \_\_\_\_\_





# NRBMLC-2005 Station Election to Change License Type

Call Letters:     -

BMI Account #:

FCC Community of Licensee: (City) \_\_\_\_\_ (ST) \_\_\_\_\_

Legal Name of Licensee: \_\_\_\_\_

Group Owner (if applicable): \_\_\_\_\_

Station Frequency: \_\_\_\_\_ Previous Format: \_\_\_\_\_

Date of Change: \_\_\_\_\_ New Format: \_\_\_\_\_

Check (✓) the appropriate box:

Convert to Blanket License (currently licensed as Per Program)

Convert to Per Program License (currently licensed as Blanket)

Prospective License Type Change Date\*:

\* Your station may change its license type on a GOING FORWARD BASIS only. Retroactive changes are NOT allowed, regardless of when your station's format or level of music use changed. A completed version of this form must be submitted to BMI at least thirty (30) days prior to the prospective license type change date (i.e., submitting this form to BMI by 5/31 will make your station eligible to convert effective as of 7/1 at the earliest). Your station must be current in all reports and payments due BMI under your current license type in order to convert as of the prospective change date. Otherwise, your request will become effective the 1st of the month following the date your station resolves its outstanding balance and/or reports.

### COMPLETE THIS SECTION ONLY IF YOU'VE INDICATED CONVERSION TO PER PROGRAM ABOVE

Please provide a contact for Per Program quarterly music reporting below. In addition, indicate the average number of hours your station is normally on air and the estimated number of hours containing feature music use during each time period listed (rounded to the nearest 0.25 hour).

Contact Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Fax number: \_\_\_\_\_  
Email address: \_\_\_\_\_

Time Period	Hours On Air	Hours With Feature Music
Weekdays: 12am – 6am (max 6 hrs)	<input type="text"/>	<input type="text"/>
Weekdays: 6am – 10am (max 4 hrs)	<input type="text"/>	<input type="text"/>
Weekdays: 10am – 3pm (max 5 hrs)	<input type="text"/>	<input type="text"/>
Weekdays: 3pm – 7pm (max 4 hrs)	<input type="text"/>	<input type="text"/>
Weekdays: 7pm – 12am (max 5 hrs)	<input type="text"/>	<input type="text"/>
Saturdays: All Day (max 24 hrs)	<input type="text"/>	<input type="text"/>
Sundays: All Day (max 24 hrs)	<input type="text"/>	<input type="text"/>

**PLEASE SIGN THE COMPLETED FORM IN THE BOX AT RIGHT AND EITHER:**

- FAX it to attention of BMI Licensing Dept. at (615) 401-5764, or
- MAIL it to the following address:  
**Broadcast Music, Inc.  
Attn: Licensing Dept.  
10 Music Square East  
Nashville, TN 37203**

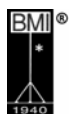
\_\_\_\_\_  
(Signature of Legal Signatory or LMA Broker)

\_\_\_\_\_  
(Print Name of Legal Signatory or LMA Broker)

\_\_\_\_\_  
(Title of Legal Signatory or LMA Broker)

\_\_\_\_\_  
(Date Signed)

**BMI Received Date**





**BROADCAST MUSIC, INC.**  
**PART 15-AM/FM RADIO LICENSE**

---

AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, between  
BROADCAST MUSIC, INC., a corporation organized under the laws of the State  
of New York (hereinafter called BMI) with principal offices at 7 World Trade Center,  
250 Greenwich St, New York, NY 10007-0030 and

---

Legal Name

- A corporation organized under the laws of the State of \_\_\_\_\_
- An LLC organized under the laws of the State of \_\_\_\_\_
- A partnership organized under the laws of the  
State of \_\_\_\_\_ and consisting of \_\_\_\_\_
- An individual residing at \_\_\_\_\_

and operating Part 15 Radio Station licensed hereunder (hereinafter called  
“Part 15 Radio Broadcaster”) with offices located at:

---

City of \_\_\_\_\_ State of \_\_\_\_\_ Zip Code \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-Mail: \_\_\_\_\_

(the “Agreement”).

WHEREAS, Part 15 Radio Broadcaster operates an extremely low power  
radio station with a small audience limited by its geographic reach that is exempt  
from licensing under the Communications Act of 1934; and

WHEREAS, the station performs works of music in the BMI repertoire and  
desires to be licensed by BMI on a blanket basis in order to comply with the U.S.  
Copyright law, and BMI desires to license the station on a basis which takes into  
account its limited power/audience;

NOW, THEREFORE, the parties hereto agree as follows:



1. Definitions:

a) The "Term" of the license shall mean the period beginning on \_\_\_\_\_ and ending on December 31, 2011. It shall continue for additional 1-year Terms thereafter, provided, however, that either party may cancel this Agreement at the end of any annual term by providing to the other party written notice no less than thirty (30) days prior to the end of an annual term.

b) "Part 15 Radio Station" shall mean and be restricted to the Part 15 radio broadcasting station presently located at \_\_\_\_\_, having the call letters \_\_\_\_\_ and the frequency of \_\_\_\_\_.

c) "Part 15 radio broadcasting" shall mean audio "over-the-air" broadcasting in all of its forms that is exempt from licensing by the Federal Communications Commission under Section 301 of the Communications Act because, if operating in the AM spectrum, it complies with Section 15.219 of the Commission's regulations, 47 C.F.R. 15.219, by operating in the band 510-1705 kHz with a total input power to the final radio frequency that does not exceed 100 milliwatts, or because, if operating in the FM spectrum, it does not exceed the radiation emissions requirements set forth in Sections 15.209 and 15.239 of the Commission's regulations, 47 C.F.R. 15.209, 239. Part 15 radio broadcasting does not include Internet, cable or other online transmissions.

2. A. BMI hereby grants to Part 15 Radio Broadcaster, for the Term hereof, a non-exclusive license to publicly perform by Part 15 radio broadcasting on the Part 15 Radio Station, all non-dramatic musical works, the rights to grant public performing rights licenses of which BMI may, during the term hereof, own or control. The performances licensed hereunder may originate at any place, whether or not such place is licensed to publicly perform musical works licensed hereunder, and regardless of the manner, means or methods of such origination. Nothing in this agreement shall be deemed to grant a license to anyone authorizing any public performance in such other place of any such composition.

B. Nothing herein shall be construed as authorizing Part 15 Radio Broadcaster to grant to others, including but not limited to any cable system, satellite carrier (including MMDS or similar wireless services), online services or ISP the right to retransmit to the public or publicly perform by any means, method or process whatsoever, any of the musical compositions licensed hereunder, or as authorizing any receiver of any radio broadcast to publicly perform or reproduce the same by any means, method or process whatsoever.

3. A. The annual license fee for the Term is \$ 249 and is payable upon execution of this License Agreement. The fee for the initial calendar year of the

Term will be pro-rated on a monthly basis if the initial year of the Term is less than a full year. The annual license fee for each subsequent year of the Term will be billed annually and will be due and payable to BMI on or before January 15 of each calendar year. The fee will be adjusted annually to reflect the percentage increase in the Consumer Price Index (CPI). BMI will notify Part 15 Radio Broadcaster of the CPI-adjusted annual fee by no later than January 1<sup>st</sup> of each year. BMI may impose a late charge of 1.5% per month on any payment received by BMI more than 30 days late.

B. If the Part 15 Radio Station licensed hereunder during any calendar year of the Term (or portion thereof) has more than \$10,000 in annual advertising revenue, that station is no longer eligible to be licensed under this Agreement, and this Agreement shall automatically terminate. Part 15 Radio Broadcaster shall notify BMI within 30 days of its date that its revenues for a given year exceed the \$10,000 eligibility threshold. BMI has the right to examine any books and records of Part 15 Radio Broadcaster to verify compliance with this requirement.

4. As long as Part 15 Radio Broadcaster is not in default or arrears in payment under this Agreement, BMI agrees to indemnify, save and hold harmless and to defend Part 15 Radio Broadcaster, its advertisers and their advertising agencies, its officers, employees, and artists, from and against all claims, demands and suits that may be made or brought against them or any of them with respect to the public performance under this Agreement of any material licensed hereunder; provided, however, that this indemnity shall not apply to broadcasts of any musical work performed by Part 15 Radio Broadcaster after written request from BMI to Part 15 Radio Broadcaster that Part 15 Radio Broadcaster refrain from performance thereof. Part 15 Radio Broadcaster agrees to give BMI immediate notice of any such claim, demand or suit and agrees immediately to deliver to BMI all papers pertaining thereto. BMI shall have full charge of the defense of any such claim, demand or suit and Part 15 Radio Broadcaster shall cooperate fully with BMI therein.

5. Part 15 Radio Broadcaster shall not assign this Agreement except to an entity acquiring the station, provided that such entity signs a BMI Part 15 Radio license.

6. All disputes of any kind, nature or description arising in connection with the terms and conditions of this License Agreement, except for those within jurisdiction of the BMI Rate Court under Article XIV of the BMI Consent Decree, shall be submitted to the American Arbitration Association of the City and State of New York for arbitration under its prevailing rules, the arbitrator(s) to be selected as follows: Each of the parties here-to 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 a third arbitrator, then either party may, in writing request the American Arbitration Association to appoint a third arbitrator. The award made in the arbitration shall be binding and conclusive on the parties and judgement may be, but need not be, entered in any court having jurisdiction. Such award shall include the fixing of the costs, expenses and reasonable attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

7. BMI may terminate this license upon thirty (30) days' notice if Part 15 Radio Broadcaster fails to timely make any payment or submit any reports required hereunder; or upon sixty (60) days' notice, if BMI also simultaneously cancels all other licenses of the same class and category as Part 15 Radio Broadcaster.

8. Upon reasonable notice, Part 15 Radio Broadcaster agrees to furnish BMI lists and certain required information concerning its performances of all musical works on forms provided by BMI. Such lists need not be furnished for more than one (1) week of each year of the term.

9. On notice, BMI may withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

10. All notices shall be in writing and mailed to the party of whom such notice is required or permitted to be given, by United States mail, postage prepaid addressed to said party at its mail office for the transaction of business or by such other method as the parties agree to in writing. Any notice sent to BMI shall be to the attention of the Senior Vice President of Licensing. This Agreement constitutes the entire understanding between the parties and shall be construed under New York law, except for its choice of law provisions.

**PART 15 RADIO BROADCASTER**

**BROADCAST MUSIC, INC.**

By \_\_\_\_\_  
(Signature)

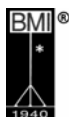
By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name of Signatory)

\_\_\_\_\_  
(Title of Signatory)

\_\_\_\_\_  
(Title of Signatory)

\_\_\_\_\_  
(Date)





# Media Licensing Part 15 Radio Station Profile

Call Letters/Station Name

Station Frequency: \_\_\_\_\_

Program Format: \_\_\_\_\_

Owner's Name

Station Address:

Station Phone Number:

Station Fax Number:

Billing Address:

General Manager:

Contact Person:

Contact Title:

Contact Phone Number:

Contact Fax Number:

Contact E-Mail:

Station Website:

Are you using music on your station's website?

Yes

No

Tax ID Number:

The information below is REQUIRED to open your new account

On Air Date:

Business Type:

- Corporation - incorporated in the state of \_\_\_\_\_
- Limited Liability Corporation
- Partnership
- Individual

Authorized Signature:

Print Signatory Name:

Print Signatory Title:

Date:



10 Music Square East, Nashville, Tennessee 37203-4399

BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.



# Music License for Passenger Train(s) Music Service

## 1. DEFINITIONS

- (a) **“Music Service”** shall mean the Music Programming and/or Audio-Visual Programming that LICENSEE provides to passenger train companies for public performance in Serviced Passenger Train(s).
- (b) **“Music Programming”** shall mean the audio-only music content supplied or leased to passenger train companies by LICENSEE as part of its Music Service to one or more passenger train companies (and in no other manner whatsoever) which is delivered by satellite, pre-recorded tapes or other forms of recordation capable of audio performance for use only while Serviced Passenger Train(s) are en route, while passengers are boarding and disembarking from Serviced Passenger Train(s) or while passengers are seated when Serviced Passenger Train(s) are stationary.
- (c) **“Audio-Visual Programming”** shall mean the audio-visual content supplied or leased to passenger train companies by LICENSEE as part of its Music Service to one or more passenger train companies (and in no other manner whatsoever) which is delivered by satellite, pre-recorded tapes or other forms of recordation capable of audio-visual performance for use only while Serviced Passenger Train(s) are en route, while passengers are boarding and disembarking from Serviced Passenger Train(s) or while passengers are seated when Serviced Passenger Train(s) are stationary.
- (d) **“Serviced Passenger Train(s)”** shall mean all passenger trains utilizing LICENSEE’s Music Programming and/or Audio-Visual Programming.
- (e) **“Seating Capacity”** of a Serviced Passenger Train(s) shall mean the total number of passenger seats available for sale.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE for the Term of this Agreement a non-exclusive license to perform publicly in Serviced Passenger Train(s) as part of its Music Programming and/or Audio-Visual Programming offered in connection with the Music Service (and in no other manner whatsoever) all of the musical works for which BMI controls the right to grant public performance licenses during the Term (the “Works”). This license extends to Music Programming and/or Audio-Visual Programming offered by LICENSEE as part of its Music Service to one or more passenger train companies while Serviced Passenger Train(s) are en route and while passengers are boarding and disembarking from Serviced Passenger Train(s) or are seated when Serviced Passenger Train(s) are stationary. This license shall only apply to domestic routes in the United States, its territories and possessions, and to international routes originating or terminating in the United States, its territories and possessions, to the extent that BMI may have the right to license such performances outside of the United States.
- (b) Notwithstanding anything to the contrary contained herein, this license shall not include or extend to: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the “grand rights” therein; (ii) performances associated with advertising or commercial announcements of any kind or nature, except only LICENSEE’s recordings which are utilized in the Music Service programming; (iii) performances of the Works within any terminal buildings. This license shall extend only to the right of public performance (in the manner provided herein) of the Works and shall not be construed as authorizing LICENSEE to mechanically reproduce such Works by any method or means now or hereafter known.
- (c) BMI reserves the right to withdraw from the license granted hereunder any Work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such Work or that such Work infringes another composition.

## 3. INDEMNITY BY BMI

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 musical works licensed under this Agreement. Such indemnity shall be limited to musical works which are licensed by BMI at the time of LICENSEE’s performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI’s repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

## 4. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues for thirty (30) days after the date of BMI’s written notice to LICENSEE thereof. 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 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.

**5. FEES**

(a) LICENSEE agrees to pay BMI for all of each passenger train companies' Serviced Passenger Train(s) utilizing LICENSEE's Music Programming and/or Audio-Visual Programming for each month of the Term hereof the applicable license fee(s) computed as follows:

**MONTHLY LICENSE FEE SCHEDULE PER SERVICED PASSENGER TRAIN(S)**

<u>CATEGORY A</u>		<u>CATEGORY B</u>		<u>CATEGORY C</u>	
Music Programming		Audio-Visual Programming (paid in addition to Category A)		Music Programming Boarding or Disembarking <u>Only</u>	
<u>Seats</u>	<u>Fee</u>	<u>Seats</u>	<u>Fee</u>	<u>Seats</u>	<u>Fee</u>
100 or less	\$32.57	100 or less	\$ 5.06	100 or less	\$ 8.15
101-200	\$46.10	101-200	\$ 7.84	101-200	\$10.68
201-300	\$64.06	201-300	\$ 9.38	201-300	\$16.02
300+	\$87.80	300+	\$11.85	300+	\$24.16

- (i) For each Serviced Passenger Train(s) that utilizes LICENSEE's Music Programming, LICENSEE shall pay a monthly license fee as set forth in Category A on the License Fee Schedule above.
  - (ii) For each Serviced Passenger Train(s) that utilizes LICENSEE's Audio-Visual Programming in addition to Music Programming, LICENSEE shall pay a monthly license fee as set forth in Category B, in addition to the fees set forth in Category A in the License Fee Schedule above.
  - (iii) For each Serviced Passenger Train(s) that utilizes LICENSEE's Music Programming during boarding or disembarking only, LICENSEE shall pay a monthly license fee as set forth in Category C on the License Fee Schedule above.
- (b) Subject to Subparagraph 5(a) and (d) and Paragraph 6, LICENSEE agrees to pay to BMI for each month of the Term an estimated license fee as an advance of the actual fee. Such monthly estimated license fee shall be based upon LICENSEE's prior month's number of Serviced Passenger Train(s). The first license fee payment shall be made upon the signing of this Agreement. Each payment thereafter shall be made no later than twenty (20) days after the last day of the month for which the fee is due.
- (c) BMI and LICENSEE acknowledge and agree that no fees will be due for any Serviced Passenger Train(s) during any period exceeding one (1) month during which such Serviced Passenger Train(s) are not in revenue service (e.g. while such Serviced Passenger Train(s) are being repaired or serviced).
- (d) For each subsequent Contract Year of this Agreement, the license fees outlined in the License Fee Schedule in Paragraph 5(a) shall be adjusted in accordance with the increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding July and the next preceding July.

**6. REPORTING**

- (a) At the same time as the license fee payments required by Paragraph 5 hereof are due, LICENSEE shall submit to BMI a monthly report, on report forms to be provided by BMI, certified either by an officer or by the auditor of LICENSEE, calculating the license fees due. The report form may also contain any other information regarding the subject matter of this Agreement which BMI reasonably requires.
- (b) If, after processing the monthly report, the actual license fee due BMI is less than the estimated license fee already paid for such month, BMI will credit the difference to the account of LICENSEE.
- (c) If, after processing the monthly report, the actual license fee due BMI is greater than the estimated license fee already paid for such month, LICENSEE will pay the difference between the actual and estimated license fee within thirty (30) days of receipt of BMI's adjusted statement.

**7. MUSIC REPORTS**

At the same time that each report required by Paragraph 6 hereof is due, LICENSEE agrees to provide BMI with (a) a report (electronically, if possible) of all Works utilized in the Music Programming and Audio-Visual Programming during the month reported, setting forth the title and, to the extent known or reasonably available to LICENSEE, the writer(s) and publisher(s) of each such composition, and (b) a copy of the music program(s) utilized by LICENSEE for the month covered by such report.

## **8. REVIEW OF STATEMENTS AND/OR ACCOUNTINGS**

BMI shall have the right, upon reasonable notice to LICENSEE, by its authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify any and all statements and reports rendered and accountings made hereunder or under any prior agreement with BMI. BMI shall consider all data and information coming to its attention as the result of any such examination of books and records as confidential.

## **9. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

## **10. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one-half percent (1½%) per month from the date any payment is due hereunder on any payment that is received by BMI more than one month after the due date.

## **11. OFFER OF COMPARABLE AGREEMENT**

In the event that BMI, at any time during the Term hereof, 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.

## **12. ARBITRATION**

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

## **13. 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 herein 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.

## **14. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

## **15. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

## **16. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, will not be binding until signed by both parties, and 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. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**17. TERM OF AGREEMENT**

The Term of this Agreement is for a period of three (3) years beginning on the first day of (month/year)\_\_\_\_\_ and ending on the last day of (month/year)\_\_\_\_\_ and shall be extended for additional periods of one (1) year each, unless canceled by either party as of the initial Contract Year or any additional Contract Year upon not less than sixty (60) days notice prior to the end of any such Contract Year. A "Contract Year" shall mean each consecutive twelve-month period beginning with the first month of the Agreement.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<small>(Name of Corporation, Partnership, or Individual Owner)</small>	<small>(Street Address)</small>
<b><u>TRADE NAME</u></b>	<small>(City) (State) (Zip)</small>
<small>(Doing business under the name of)</small>	<small>(Telephone Number) (Fax Number)</small>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<small>(Contact Name) (Title)</small>
<input type="checkbox"/> Individual Ownership	<small>(Email Address) (Web Address)</small>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<small>(State of Incorporation, if different from Licensed Premises)</small>	
<small>(Enter names of partners)</small>	
<input type="checkbox"/> Other _____	<small>(Street Address)</small>
Federal Tax ID No. _____	<small>(City) (State) (Zip)</small>
<b><u>GOVERNMENT ENTITIES</u></b> <small>(if applicable, please check one)</small>	<small>(Telephone Number) (Fax Number)</small>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<small>(Contact Name) (Title)</small>
<small>(State)</small>	<small>(Email Address – if different from above)</small>
<input type="checkbox"/> Local _____	
<small>(Municipality/City and State)</small>	

<p style="text-align:center;"><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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. <b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b></p>	<p style="text-align:center;"><b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b></p>						
Signature	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:60%; text-align:center;"><b>FOR BMI USE ONLY</b></td> <td style="width:10%; text-align:center;"><b>PTRM1</b></td> <td style="width:30%; text-align:center;"><b>LI-2017/JULY</b></td> </tr> <tr> <td style="text-align:center;"><b>EFFECTIVE:</b> January 2017</td> <td></td> <td></td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>PTRM1</b>	<b>LI-2017/JULY</b>	<b>EFFECTIVE:</b> January 2017		
<b>FOR BMI USE ONLY</b>		<b>PTRM1</b>	<b>LI-2017/JULY</b>				
<b>EFFECTIVE:</b> January 2017							
Print Name / Title							
Signatory Email Address* <small>(if different from above)</small>							
<p><b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b></p>							

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

<b>ACCOUNT NO.</b>	<b>COID</b>	
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\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.







# Music License for Passenger Train(s)

## 1. DEFINITIONS

- (a) **“Music Programming”** shall mean the audio-only music content offered by LICENSEE which is delivered by satellite, pre-recorded tapes or other forms of recordation capable of audio performance for use only while Serviced Passenger Train(s) are en route, while passengers are boarding and disembarking from Serviced Passenger Train(s) or while passengers are seated when Serviced Passenger Train(s) are stationary.
- (b) **“Audio-Visual Programming”** shall mean the audio-visual content offered by LICENSEE which is delivered by satellite, pre-recorded tapes or other forms of recordation capable of audio-visual performance for use only while Serviced Passenger Train(s) are en route, while passengers are boarding and disembarking from Serviced Passenger Train(s) or while passengers are seated when Serviced Passenger Train(s) are stationary.
- (c) **“Serviced Passenger Train(s)”** shall mean each of passenger train company’s passenger train(s) or other type of train utilizing Music Programming and/or Audio Visual Programming.
- (d) **“Seating Capacity”** of a Passenger Train(s) shall mean the total number of passenger seats available for sale.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE for the Term of this Agreement a non-exclusive license to perform publicly in Serviced Passenger Train(s) as part of its Music Programming and/or Audio-Visual Programming all of the musical works for which BMI controls the right to grant public performance licenses during the Term (the “Works”). This license extends to Music Programming and/or Audio-Visual Programming utilized by LICENSEE while Serviced Passenger Train(s) are en route and while passengers are boarding and disembarking from Serviced Passenger Train(s) or are seated when Serviced Passenger Train(s) are stationary. This license shall only apply to domestic routes in the United States, its territories and possessions, and to international routes originating or terminating in the United States, its territories and possessions, to the extent that BMI may have the right to license such performances outside of the United States.
- (b) Notwithstanding anything to the contrary contained herein, this license shall not include or extend to: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the “grand rights” therein; (ii) performances associated with advertising or commercial announcements of any kind or nature, except only announcements relating to the passenger train transportation and related services of LICENSEE and to the companies whose recordings are utilized in the music service; (iii) performances of the Works within any terminal buildings. This license shall extend only to the right of public performance (in the manner provided herein) of the Works and shall not be construed as authorizing LICENSEE to mechanically reproduce such Works by any method or means now or hereafter known.
- (c) BMI reserves the right to withdraw from the license granted hereunder any Work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such Work or that such Work infringes another composition.

## 3. INDEMNITY BY BMI

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 musical works licensed under this Agreement. Such indemnity shall be limited to musical works which are licensed by BMI at the time of LICENSEE’s performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI’s repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

## 4. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues for thirty (30) days after the date of BMI’s written notice to LICENSEE thereof. 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 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.

**5. FEES**

(a) LICENSEE agrees to pay BMI for each Serviced Passenger Train(s) for each month of the Term hereof the applicable license fee(s) computed as follows:

**MONTHLY LICENSE FEE SCHEDULE PER SERVICED PASSENGER TRAIN(S)**

<u>CATEGORY A</u>		<u>CATEGORY B</u>		<u>CATEGORY C</u>	
Music Programming		Audio-Visual Programming (paid in addition to Category A)		Music Programming Boarding or Disembarking <u>Only</u>	
<u>Seats</u>	<u>Fee</u>	<u>Seats</u>	<u>Fee</u>	<u>Seats</u>	<u>Fee</u>
100 or less	\$35.02	100 or less	\$5.42	100 or less	\$ 8.77
101-200	\$49.56	101-200	\$8.42	101-200	\$11.46
201-300	\$68.84	201-300	\$10.08	201-300	\$17.22
300+	\$94.40	300+	\$12.75	300+	\$25.96

- (i) For each Serviced Passenger Train(s) that utilizes Music Programming, LICENSEE shall pay a monthly license fee as set forth in Category A on the License Fee Schedule above.
  - (ii) For each Serviced Passenger Train(s) that utilizes Audio-Visual Programming in addition to Music Programming, LICENSEE shall pay a monthly license fee as set forth in Category B, in addition to the fees set forth in Category A in the License Fee Schedule above.
  - (iii) For each Serviced Passenger Train(s) that utilizes Music Programming during boarding or disembarking only, LICENSEE shall pay a monthly license fee as set forth in Category C on the License Fee Schedule above.
- (b) Subject to Subparagraph 5 (a) and (d) and Paragraph 6, LICENSEE agrees to pay to BMI for each month of the Term an estimated license fee as an advance of the actual fee. Such monthly estimated license fee shall be based upon LICENSEE’s prior month’s number of Serviced Passenger Train(s). The first license fee payment shall be made upon the signing of this Agreement. Each payment thereafter shall be made no later than twenty (20) days after the first day of the month for which the fee is due.
- (c) BMI and LICENSEE acknowledge and agree that no fees will be due for any Serviced Passenger Train(s) during any period exceeding one (1) month during which such Serviced Passenger Train(s) are not in revenue service (e.g. while such Serviced Passenger Train(s) are being repaired or serviced).
- (d) For each subsequent Contract Year of this Agreement, the license fees outlined in the License Fee Schedule in Paragraph 5(a) shall be adjusted in accordance with the increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding July and the next preceding July.

**6. REPORTING**

- (a) At the same time as the license fee payments required by Paragraph 5 hereof are due, LICENSEE shall submit to BMI a monthly report, on report forms to be provided by BMI, certified either by an officer or by the auditor of LICENSEE, calculating the license fees due. The report form may also contain any other information regarding the subject matter of this Agreement which BMI reasonably requires.
- (b) If, after processing the monthly report, the actual license fee due BMI is less than the estimated license fee already paid for such month, BMI will credit the difference to the account of LICENSEE.
- (c) If, after processing the monthly report, the actual license fee due BMI is greater than the estimated license fee already paid for such month, LICENSEE will pay the difference between the actual and estimated license fee within thirty (30) days of receipt of BMI’s adjusted statement.

**7. MUSIC REPORTS**

At the same time that each report required by Paragraph 6 hereof is due, LICENSEE agrees to provide BMI with (a) a report (electronically, if possible) of all Works utilized in the Music Programming and Audio-Visual Programming during the month reported, setting forth the title and, to the extent known or reasonably available to LICENSEE, the writer(s) and publisher(s) of each such composition, and (b) a copy of the music program(s) utilized by LICENSEE for the month covered by such report.

## **8. REVIEW OF STATEMENTS AND/OR ACCOUNTINGS**

BMI shall have the right, upon reasonable notice to LICENSEE, by its authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify any and all statements and reports rendered and accountings made hereunder or under any prior agreement with BMI. BMI shall consider all data and information coming to its attention as the result of any such examination of books and records as confidential.

## **9. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

## **10. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one-half percent (1½%) per month from the date any payment is due hereunder on any payment that is received by BMI more than one month after the due date.

## **11. 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.

## **12. ARBITRATION**

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

## **13. 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 herein 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.

## **14. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days' advance written notice.

## **15. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

## **16. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

## **17. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, will not be binding until signed by both parties, and 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. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**18. TERM OF AGREEMENT**

The Term of this Agreement is for a period of three (3) years beginning on the first day of (month/year) \_\_\_\_\_ and ending on the last day of (month/year) \_\_\_\_\_, and shall be extended for additional periods of one (1) year each, unless canceled by either party as of the initial Contract Year or any additional Contract Year upon not less than sixty (60) days notice prior to the end of any such Contract Year. A "Contract Year" shall mean each consecutive twelve-month period beginning with the first month of the Agreement.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b><u>TRADE NAME</u></b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address) (Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<i>(State of Incorporation, if different from Licensed Premises)</i>	
<input type="checkbox"/> Other _____	<i>(Street Address)</i>
Federal Tax ID No. _____	<i>(City) (State) (Zip)</i>
<b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i>	<i>(Telephone Number) (Fax Number)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<i>(Contact Name) (Title)</i>
<i>(State)</i>	<i>(Email Address – if different from above)</i>
<input type="checkbox"/> Local _____	
<i>(Municipality/City and State)</i>	

<p><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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.</p> <p><b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b></p> <p><b>TO BE COMPLETED BY BMI</b></p> <p><b>BROADCAST MUSIC INC.</b></p>
Signature	
Print Name / Title	
Signatory Email Address* <i>(if different from above)</i>	
*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.	
<b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b>	
<b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b>	

<b>FOR BMI USE ONLY</b>	<b>PTR1</b>	<b>LI-2017/JULY</b>
ACCOUNT NO.	COID	<b>EFFECTIVE: January 2017</b>



\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.



# Music License for Political Entities or Organizations

## 1. DEFINITIONS

- (a) "LICENSEE" shall mean the entity or organization described on Page 4 herein which sponsors political events.
- (b) "Event" shall mean a convention that includes an assemblage of delegates, representatives and/or members of an organization(s) convened for a common purpose, a meeting which includes individuals assembled together for purposes of communicating information to each other (i.e. panels, seminars, symposiums, convocations, conferences, caucuses, forums, assemblies, congresses, and institutes) or otherwise transacting the business of LICENSEE. An Event shall not last for more than fourteen (14) consecutive days. An Event may include a concert which is sponsored, conducted, endorsed or approved by LICENSEE, unless the concert is open to members of the general public who are not affiliated with the LICENSEE.
- (c) "Function" shall include any activity conducted, sponsored, endorsed or approved by LICENSEE occurring in connection with an Event, including, but not limited to, meals, plenary sessions, breakouts, meetings, receptions, concerts, cocktail parties, dinners, dances, dinner-dances, seminars, or any other similar spectator or participatory activity.
- (d) "Attendees" shall mean the number of persons present where any live, recorded or audio-visual music is performed or played at each of LICENSEE's Events or Functions whether or not any admission charge, registration fee or other payment is required to be made in connection with the attendance. Attendee shall not include those required to produce the Event or Function, such as LICENSEE's employees working at the Event or Function, exhibitor personnel, administrative, service contractor and temporary personnel, or credentialed members of the press. In the case of a political campaign or convention where live or recorded music is performed on the exhibit floor, the number of Attendees shall be the total number of persons registered at the political campaign / convention. If no music is performed on the exhibit floor, the number of Attendees shall mean the total attendance at each Event or Function held during the political campaign or convention at which music is performed. In the case of a meeting which does not have an exhibit floor and consists only of a series of Events or Functions, the number of Attendees shall be the total attendance at each Event or Function at which music is performed, with the number not to exceed the total registered attendance of the entire meeting.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE a non-exclusive license to perform, present or cause the live and/or recorded performance during Events or Functions, or by means of internet or intranet transmissions from LICENSEE's website, of all musical works of which BMI shall have the right to grant public performance licenses during the Term hereof, provided, however, that a specific work may be excluded from this license if notice is received from a BMI songwriter or publisher objecting to the use of their copyrighted work for the intended uses by LICENSEE. This license does not include: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein; or (ii) the right to broadcast, telecast or otherwise transmit, other than via the internet or intranet, the performances licensed hereunder to persons outside of any premises at which an Event or Function occurs.
- (b) This license grants permission for the public performance of musical works in the BMI repertoire. LICENSEE may be responsible for securing other rights including, but not limited to, synchronization, master use and mechanical rights, particularly if a specific musical work is used frequently or in a manner by which it becomes associated with the campaign (i.e. theme song).
- (c) BMI may withdraw from the license the right to perform any musical work as to which a legal action has been brought or a claim made that BMI does not have the right to license the work or that the work infringes another work.

## 3. CUSTOMER OUTREACH

LICENSEE agrees to accept from time to time pre-recorded telephone messages from BMI that may contain information regarding LICENSEE's account.

## 4. FEES

LICENSEE agrees to pay BMI for each Contract Year of the Agreement a license fee based upon LICENSEE's actual total number of Attendees for that calendar year as set forth on the report required pursuant to Paragraph 5 as follows:

<u>Calendar Year</u>	<u>Per Attendee Rate</u>
2017	\$.06

- (a) For each year after 2017, the per Attendee rate shall be an adjustment of the rate for the previous calendar year based upon the percentage increase in the United States Consumer Price Index (National, All Items) ("CPI") between September of the year which is two years before such year and September of the preceding year, rounded to the

nearest penny (for example, the rate for the year 2018 shall be an adjustment of the rate for the year 2017, based upon the percentage increase in the CPI between September 2016 and September 2017). BMI shall inform LICENSEE of the annual per Attendee rate for the upcoming Contract Year by the end of the prior Contract Year.

- (b) The Minimum Annual Fee billed and payable for 2017 shall be \$149. The Minimum Annual Fee for each year after 2017 shall be an adjustment of the Minimum Annual Fee for the previous calendar year based upon the percentage increase in the CPI between September of the year which is two years before such year and September of the preceding year, rounded to the nearest dollar.

## **5. REPORTING OF EVENTS**

- (a) Upon signing this Agreement, LICENSEE shall pay the Minimum Annual Fee. For each subsequent Contract Year, LICENSEE shall pay the Minimum Annual Fee for that Contract Year by January 20th. LICENSEE shall also submit quarterly reports and payments for Events or Functions which were presented during the current calendar quarter. For each quarterly period, reports and payments shall be due on the twentieth (20<sup>th</sup>) day of January, April, July and October of each year of this Agreement for all Events or Functions presented by LICENSEE during the prior calendar quarter. Should LICENSEE fail to report and submit payments to BMI within thirty (30) days after the specified date, then BMI will apply estimated billings to the account based on either LICENSEE's prior year's corresponding quarter figures, or reports from a reliable, published, third-party industry source, whichever is higher. BMI shall give written notice to LICENSEE of the estimated fee calculated. LICENSEE shall have thirty (30) days after such written notice by BMI to submit the report. If BMI does not receive the report from LICENSEE within those thirty (30) days, BMI and LICENSEE agree that BMI's Estimated License Fee shall then be established as the Actual License Fee for the period unreported by LICENSEE. BMI and LICENSEE further agree that such established Actual License Fee (subject to adjustment by audit) shall also become the Estimated License Fee for the following contract period. LICENSEE agrees to waive its right to file its report for any period in which BMI's Estimated License Fee becomes the Actual License Fee. Any differences between the estimated and the actual reported fee shall be payable by LICENSEE when the report is submitted. If BMI's estimated fee is greater than the actual reported fee, then LICENSEE's account shall be credited with the difference, provided however that LICENSEE's Annual License Fee shall not fall below the Minimum Annual Fee.
- (b) Upon payment of license fees to BMI, LICENSEE shall furnish to BMI a statement, on forms available from BMI, signed by an officer or auditor of LICENSEE, setting forth all performances of **all** Events or Functions occurring during the applicable calendar quarter. Such statement shall include the location of each Event or Function, the number of Attendees for each Event or Function, and the dates of each Event or Function. A statement shall be furnished to BMI by LICENSEE for each calendar quarter during the Term of the Agreement, regardless of whether or not any performances occurred during that calendar quarter.

## **6. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with license fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

## **7. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one half percent (1½%) per month from the date any payment or report was due on any payment that is received by BMI more than thirty (30) days after the due date.

## **8. VERIFICATION OF / FAILURE TO REPORT**

- (a) BMI is entitled to verify the information submitted by LICENSEE in its report under Paragraph 5, by any source, including the examination of LICENSEE's books and records. As such, LICENSEE is required to retain such books and records for a period of not less than three (3) years after the calendar year contained in LICENSEE's report, copies of which books and records shall be turned over to BMI upon its request. If after such examination, BMI is still unable to verify said information, BMI shall be entitled to unilaterally assess LICENSEE a reasonable annual fee using any source.
- (b) In the event LICENSEE fails to submit a report as required under Paragraph 5 within thirty (30) days after BMI has given LICENSEE written notice of its failure to do so, BMI shall be entitled to unilaterally assess LICENSEE a reasonable annual fee using any source, including an examination of LICENSEE's books and records as set forth above.

## **9. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

## **10. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

#### **11. 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 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.

#### **12. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

#### **13. WITHDRAWAL OF WORKS**

BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

#### **14. INDEMNITY BY BMI**

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 musical works licensed under this Agreement. Such indemnity shall be limited to musical works which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

#### **15. BREACH OR DEFAULT/WAIVER**

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues for thirty (30) days after the date of BMI's written notice to LICENSEE thereof. 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 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.

#### **16. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to the American Arbitration Association in the City, County and State of New York for arbitration under its then prevailing arbitration rules. The arbitrator(s) to be selected as follows: Each of the parties 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 in 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.

#### **17. NOTICES**

Unless otherwise stated herein, all notices, if any, under this Agreement shall 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 herein 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 designate to BMI in writing.

#### **18. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, shall not be binding until signed by both parties, and 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. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**19. TERM OF AGREEMENT**

The initial Term of this annual Agreement shall begin on the first day of (month/year) \_\_\_\_\_ and end on the last day of December \_\_\_\_\_, and shall continue thereafter unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "Contract Year") upon thirty (30) days advance notice to the other party.

**AGREEMENT**

AGREEMENT, made at New York, N.Y. on (Date Will Be Entered by BMI Upon Execution) \_\_\_\_\_ between BROADCAST MUSIC, INC. (hereinafter called BMI), a state of New York corporation with its principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030 and the entity described below and referred to thereafter as "LICENSEE" or "You:"

<b><u>LEGAL NAME</u></b>	<b><u>BUSINESS ADDRESS</u></b>
<small>(Name of Corporation, Partnership, or Individual Owner)</small>	<small>(Street Address)</small>
<b><u>TRADE NAME</u></b>	<small>(City) (State) (Zip)</small>
<small>(Doing business under the name of)</small>	<small>(Telephone Number) (Fax Number)</small>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<small>(Contact Name) (Title)</small>
<input type="checkbox"/> Individual Ownership	<small>(Email Address) (Web Address)</small>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <small>(if different from Business Address)</small>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<small>(State of Incorporation, if different from Business Address)</small> <small>(Enter names of partners)</small>	
<input type="checkbox"/> Other _____	<small>(Street Address)</small>
Federal Tax ID No. _____	<small>(City) (State) (Zip)</small>
<b><u>GOVERNMENT ENTITIES</u></b> <small>(if applicable, please check one)</small>	<small>(Telephone Number) (Fax Number)</small>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<small>(Contact Name) (Title)</small>
<input type="checkbox"/> Local _____	<small>(Email Address - if different from above)</small>
<small>(Municipality/City and State)</small>	

<b>TO BE COMPLETED BY LICENSEE</b>
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. <b>(SIGN HERE - PLEASE INCLUDE PAYMENT)</b>
Signature
Print Name / Title
Signatory Email Address* <small>(if different from above)</small>
*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory

<b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b>		
<b>FOR BMI USE ONLY</b>	<b>POL1</b>	<b>LI-2017/JULY</b>
		<b>Effective Date: January 2017</b>
<b>ACCOUNT NO.</b>	<b>COID</b>	

**PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:**

**BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203**

\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.







# Music License for Private Satellite Broadcast /Video Conference Event

## 1. DEFINITIONS

- (a) **LICENSEE** shall mean the entity identified on Page 4 herein.
- (b) **Private Satellite Broadcast** shall be limited to a non-dramatic performance within the schedule of programs presented by LICENSEE and directly broadcast via satellite through LICENSEE's Distribution System to a Recipient Venue.
- (c) **Video Conference Event** shall be limited to a non-dramatic performance within the schedule of programs presented by LICENSEE via a video conference system through LICENSEE's Distribution System to a Recipient Venue.
- (d) **Programming Service** shall mean the schedule of programs, or any part thereof, which is distributed by LICENSEE or its Distribution System to Recipient Venues for transmission or reception by or to one or more Distribution System. This license expressly excludes video-on-demand and pay-per-view programs offered as part of the Programming Service.
- (e) **Distribution System(s)** shall be limited to satellite direct to venue or direct broadcast satellite which is used to transmit or receive the Programming Service, except that Distribution System shall not include free over-the-air broadcast, pay-per-view television, any transmission or reception by video-on-demand, or any transmission via the Internet or online service.
- (f) **Recipient Venue** shall mean any facility which receives LICENSEE's Programming Service, including but not limited to restaurants, meeting rooms, conference rooms, arenas, auditoriums, or training facilities.
- (g) **Seating Capacity** shall mean the total number of seats permanently affixed in the Recipient Venue where the Private Satellite Broadcast/Video Conference Event is presented plus any temporary seats added within the Recipient Venue for a particular event. If the total number of tickets available for the musical event shall be less than that of the permanent Seating Capacity of the Recipient Venue, "Seating Capacity" shall mean the total number of seats available for the particular musical event. If a Recipient Venue does not have permanent seating, "Seating Capacity" shall mean the total number of persons attending a particular musical event.
- (h) **Entertainment Costs** shall mean the total monies expended for a Private Satellite Broadcast/Video Conference Event by LICENSEE or LICENSEE's authorized representatives for main and supporting artists and/or acts, and all monies paid (including the cost of room, board and transportation) to performers, supporting musicians, booking agents, and agents of the performers. The term "Entertainment Costs" shall not include "Direct Expenses".
- (i) **Gross Ticket Revenue** shall mean the total monies received, directly or indirectly, by LICENSEE or their authorized representatives from all ticket sales per Private Satellite Broadcast/Video Conference Event. The term "Gross Ticket Revenues" shall not include: 1) federal, state and/or local taxes; 2) building/facility charge per ticket sold; 3) ticketing agent/service charge placed on each ticket sold; 4) facility parking fees; or 5) the cost of food or beverages purchased in conjunction with the event. Should the artist/performing act(s) choose to donate a portion of their fees for a specific Private Satellite Broadcast/Video Conference Event from each ticket sale to a particular charity, then the appropriate deduction may be taken from the "Gross Ticket Revenues"; provided, however, that BMI be given copies of said artist/performing act(s) agreement(s) stipulating the exact amount of the charitable donation per ticket sold.
- (j) **Direct Expenses** shall include, but is not limited to, normal stage props and equipment unless the entity or person rendering or presenting entertainment services specifically requires specialized stage props and equipment.
- (k) **Benefit Event(s)** shall mean a public entertainment, performance or social event held to raise funds for a specific person or cause in which all proceeds, less Direct Expenses, are donated to charity.
- (l) **Territory** shall mean the United States, its commonwealths, territories, trust territories, and possessions.
- (m) **Through-to-the-Viewer License** shall mean, in reference to the scope of the rights granted herein, a license which authorizes the Programming Service's satellite, microwave or other transmissions to the Recipient Venues, and the retransmission of the Programming Service's programming by the Recipient Venues to viewers within the Recipient Venues only.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE, for the Term of this Agreement, a non-exclusive license to perform, present or cause the performance of, only as part of a Private Satellite Broadcast/Video Conference Event, all the musical works as to which BMI shall have the right to grant public performance licenses during the Term. The license hereunder shall be a Through-to-the-Viewer License. This license does not include: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any context which may constitute an exercise of the "grand rights" therein; or (ii) performances of music by means of a coin-operated phonorecord player (jukebox).
- (b) Nothing herein shall be construed as a grant by BMI of any license in connection with any transmission which is not part of the Programming Service distributed by LICENSEE and made by a Distribution System which is, at the time of such transmission, a part of LICENSEE's Distribution System. Except as otherwise expressly provided herein, nothing herein shall be construed as authorizing LICENSEE to grant to others any right to reproduce or publicly perform by any means, method or process whatsoever, any of the musical works licensed hereunder, or as authorizing any receiver, other than a Distribution System which is part of LICENSEE's Distribution System, to publicly perform or reproduce such musical works by any means, method or process whatsoever.
- (c) BMI reserves the right to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

## 3. INDEMNITY BY BMI

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 musical works licensed under this Agreement. Such indemnity shall be limited to musical works which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

## 4. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues for thirty (30) days after the date of BMI's written notice to LICENSEE thereof. 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 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.

**5. CANCELLATION OF ENTIRE CATEGORY**

If LICENSEE permanently ceases to present Private Satellite Broadcast/Video Conference Event(s), this Agreement and LICENSEE's obligation to BMI shall thereupon terminate, provided however, that LICENSEE shall, within ten (10) days thereafter, give written notice of such termination to BMI, setting forth the effective date thereof, and LICENSEE shall submit all reports and pay all license fees due hereunder until said effective date.

**6. 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.

**7. REVIEW OF STATEMENTS AND/OR ACCOUNTINGS**

BMI shall have the right, by its authorized representatives, upon reasonable notice to LICENSEE, at any time during customary business hours, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify any and all statements and reports rendered and accountings made hereunder or under any prior agreement with BMI. BMI shall consider all data and information coming to its attention as the result of any such examination of books and records as confidential.

**8. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to the American Arbitration Association in the City, County and State of New York for arbitration under its then prevailing arbitration rules. The arbitrator(s) to be selected as follows: Each of the parties 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 in 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.

**9. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one-half percent (1½%) per month from the date any payment is due hereunder on any payment that is received by BMI more than one (1) month after the due date.

**10. FEES**

- (a) LICENSEE agrees to pay BMI a fee for each performance of a Private Satellite Broadcast/Video Conference Event for which there is paid admission computed on the basis set forth in **Schedule A** of this Agreement; and LICENSEE agrees to pay BMI a fee for each performance of a Private Satellite Broadcast/Video Conference Event which is free to attendees computed on the basis set forth in **Schedule B**; and LICENSEE agrees to pay BMI a fee for each performance of a Private Satellite Broadcast/Video Conference Event which is a Benefit Event computed on the basis set forth in **Schedule C** of this Agreement.

**SCHEDULE A**

LICENSE FEE SCHEDULE FOR EACH PRIVATE SATELLITE BROADCAST/ VIDEO CONFERENCE EVENT <i>WITH PAID ADMISSION</i>	
Attendance	License Fee
0 – 9,999	0.4% of gross ticket revenue (or \$239.16*, whichever is higher)
10,000 or More	0.3% of gross ticket revenue (or \$239.16*, whichever is higher)

**SCHEDULE B**

LICENSE FEE SCHEDULE FOR EACH PRIVATE SATELLITE BROADCAST/ VIDEO CONFERENCE EVENT WHICH IS <i>FREE TO ATTENDEES</i>
The License Fee Rate for Private Satellite Broadcast/Video Conference Events which are free to attendees (no ticket cost) shall be one and one half percent (1½%) of LICENSEE's Total Entertainment Costs for each Private Satellite Broadcast/Video Conference Event or \$239.16* for each Private Satellite Broadcast/Video Conference Event, whichever is higher.

**SCHEDULE C**

LICENSE FEE SCHEDULE FOR BENEFIT EVENT					
Seating Capacity		Fee Per Benefit Event	Seating Capacity		Fee Per Benefit Event
0	to 250	\$19.94	7,501	to 10,000	\$166.09
251	to 750	\$23.94	10,001	to 15,000	\$252.44
751	to 1,500	\$37.20	15,001	to 20,000	\$345.45
1,501	to 2,500	\$59.80	20,001	to 25,000	\$418.53
2,501	to 5,000	\$89.02	25,001	to 40,000	\$458.41
5,001	to 7,500	\$119.59	40,001	or over	\$637.76

\$239.16 minimum fee for Contract Year 2017 shall be adjusted for each subsequent Contract Year pursuant to the CPI as outlined in Paragraph 10(c).

- (b) The minimum fee(s) billed and payable for:
  - (i) Schedule A Private Satellite Broadcast/Video Conference Event for which there is *Paid Admission*: minimum fee(s) shall be \$239.16 per Private Satellite Broadcast/Video Conference Event for Contract Year 2017 and shall be CPI adjusted annually pursuant to Paragraph 10(c) for each subsequent Contract Year.

- (ii) Schedule B Private Satellite Broadcast/Video Conference Event which is *Free To Attendees*: minimum fee(s) shall be \$239.16 per Private Satellite Broadcast/Video Conference Event for Contract Year 2017 and shall be CPI adjusted annually pursuant to Paragraph 10(c) for each subsequent Contract Year.
- (iii) Schedule C Benefit Event: minimum fee(s) shall be \$239.16 for Contract Year 2017 and shall be CPI adjusted annually pursuant to Paragraph 10(c) for each subsequent Contract Year, or total Schedule C fees, whichever is higher.
- (c) For each subsequent Contract Year, the annual license fee rates outlined in Schedule C and the minimum annual license fee(s) outlined in Paragraph 10(b) shall be an adjustment of the previous Contract Year rates based upon the percentage increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding July and the next preceding July.
- (d) When a musical event is believed to be comprised entirely of musical compositions for which BMI does not have the right to grant public performance licenses, LICENSEE may, at its option, submit a schedule, including writer and publisher information, for all those musical compositions performed at said musical event, *including opening acts and recorded music, if any*. If it is determined by BMI that all of the musical compositions performed at said musical event are ones to which BMI does not have the right to grant public performance licenses, no fee shall be due and payable to BMI. In the event no such schedule is submitted to BMI, LICENSEE must pay the applicable fee for said musical event pursuant to Schedule A, Schedule B, or Schedule C of this Agreement.

#### **11. REPORTING OF PRIVATE SATELLITE BROADCAST/VIDEO CONFERENCE EVENTS**

- (a) At the time that LICENSEE makes payment to BMI pursuant to this Agreement, LICENSEE shall furnish BMI with a report on forms available from BMI, signed by an officer, auditor, or an authorized signatory of LICENSEE, detailing performances of Private Satellite Broadcast/Video Conference Events occurring during the applicable reporting period. Such report shall include the name and date(s) of the event, Facility name (including address, city and state) where the event took place, and:
  - (i) In the case of a Private Satellite Broadcast/Video Conference Event with paid admission (Schedule A), such statement shall include the attendance and Gross Ticket Revenue for each event.
  - (ii) In the case of a Private Satellite Broadcast/Video Conference Event which is free to attendees (no ticket cost) (Schedule B), such statement shall include the total Entertainment Costs for each such event.
  - (iii) In the case of a Benefit Event (Schedule C), such statement shall include the Seating Capacity of the venue and the designated benefactor of such Benefit Event.
- (b) A statement shall be furnished to BMI by LICENSEE for each reporting period during the Term of the Agreement, regardless of whether or not any Private Satellite Broadcast/Video Conference Events occurred during that period. LICENSEE's report shall also include performances of musical events where another person, entity or venue is responsible for paying the license fee on behalf of LICENSEE.
- (c) During each Contract Year of this Agreement, LICENSEE estimates that it will present:

\_\_\_\_\_ **Number of Private Satellite Broadcast/Video Conference Events Per Year**

- (d) LICENSEE shall report and pay license fees to BMI on a quarterly basis. The first report shall be estimated for the period beginning on the first day of this Agreement and ending March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup> or December 31<sup>st</sup>, whichever comes first in same year. The license fee payable pursuant to the first estimated report shall be payable upon execution of this Agreement by LICENSEE. Within twenty (20) days after the end of the first estimated report period, LICENSEE shall submit its report setting forth the Private Satellite Broadcast/Video Conference Event(s) which actually were presented during that period. Any difference between the actual and estimated fee shall be payable at that time. If LICENSEE overestimated its first period's fee, LICENSEE's account shall be credited with the difference. For all subsequent quarterly periods, reports and payments shall be due on the twentieth (20<sup>th</sup>) day of January, April, July and October of each year of this Agreement for all Private Satellite Broadcast/Video Conference Event(s) presented during the prior calendar quarter. Should LICENSEE fail to report and submit payments to BMI within thirty (30) days after the specified date, then BMI will apply estimated billings to the account based on the prior quarter's figures for such LICENSEE.

#### **12. EXAMINATION OF BOOKS AND RECORDS**

- (a) BMI shall have the right to verify such data or information that is required to be furnished by LICENSEE pursuant to Paragraph 11, by BMI's authorized representatives, at any time during customary business hours, and upon thirty (30) days advance written notice, examining those portions of LICENSEE's books and records of account to such extent as may be necessary to verify any and all statements and/or accountings made hereunder. BMI shall consider all data and information coming to its attention as the result of any such examination of LICENSEE's books and records confidential.
- (b) In the event BMI discovers an inaccuracy in any information reported by LICENSEE pursuant to Paragraph 11, either through an examination of LICENSEE, or otherwise, and as a result it is revealed that LICENSEE underpaid license fees to BMI, and the correct license fee is not paid to BMI within thirty (30) days of BMI's notice to LICENSEE of the inaccuracy or underpayment, then LICENSEE shall pay a late payment charge on the additional license fees due as a result of the examination(s) of one and one-half percent (1½%) per month, or the maximum rate permitted by law, whichever is less, from the date(s) the license fees should have been paid pursuant to this Agreement. If such payment is still not received within ninety (90) days of BMI's notice to LICENSEE of the inaccuracy or underpayment, then the license granted by this Agreement shall be terminated by BMI immediately.

#### **13. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with license fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

#### **14. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

#### **15. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

#### **16. 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 herein 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.

#### **17. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, will not be binding until signed by both parties, and 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. The rights of LICENSEE are not

assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**18. TERM OF AGREEMENT**

The initial Term of this Agreement shall begin on the first day of \_\_\_\_\_ and end on the last day of \_\_\_\_\_ and shall continue thereafter for additional Terms of one (1) year each unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "Contract Year") upon thirty (30) days advance notice to the other party.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>	
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>	
<b><u>TRADE NAME</u></b>	<i>(City)</i>	<i>(State)</i> <i>(Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number)</i>	<i>(Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>  <input type="checkbox"/> Individual Ownership <input type="checkbox"/> LLC <input type="checkbox"/> Corporation <input type="checkbox"/> LLP <input type="checkbox"/> Partnership  <input type="checkbox"/> Other  Federal Tax ID No. _____  <b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i>  <input type="checkbox"/> Federal <input type="checkbox"/> State <input type="checkbox"/> Local  <i>(State)</i>  <i>(Municipality/City and State)</i>	<i>(Contact Name)</i>	<i>(Title)</i>
	<i>(Email Address)</i>	<i>(Web Address)</i>
	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>	
	<i>(Street Address)</i>	
	<i>(City)</i>	<i>(State)</i> <i>(Zip)</i>
	<i>(Telephone Number)</i>	<i>(Fax Number)</i>
	<i>(Contact Name)</i>	<i>(Title)</i>
	<i>(Email Address – if different from above)</i>	

<b>TO BE COMPLETED BY LICENSEE</b> 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. <b><i>(SIGN HERE – PLEASE INCLUDE PAYMENT)</i></b>	<b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b>		
Signature			
Print Name / Title			
Signatory Email Address* <i>(if different from above)</i>			
<b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b>	<b>FOR BMI USE ONLY</b>	<b>PSVC1</b>	<b>LI-2017/JULY</b>
<b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b>			<b>EFFECTIVE: January 2017</b>
<b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b>	<b>ACCOUNT NO.</b>	<b>COID</b>	

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

\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.





# Music License for Professional Sports League

## 1. DEFINITIONS

- (a) The phrases “host team,” “exhibition games,” “playoff games,” “major leagues” and “season” shall have the meanings that are commonly understood in the sports industry.
- (b) **Licensed Premises** shall mean and be restricted to the premises known as:

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*(See Schedule “A” Attached)*

as well as such other premises in the United States, its territories and possessions at which LICENSEE’s member Teams play Games.

- (c) **Games** shall mean and be restricted to all scheduled games presented by LICENSEE or its member Teams at the Licensed Premises, including exhibition, all-star, playoff and championship games.
- (d) **Professional Leagues, Teams, and Professional Leagues and Teams** shall mean and be restricted to those leagues and teams set forth in the reference book “Sports Market Place,” published by Franklin Covey Sports Division or (Grey House Publishing), under the category “Professional Leagues and Teams,” and excluding major leagues.
- (e) **Contract Year** shall mean each consecutive twelve (12) month period during the initial Term or any additional Term of this Agreement which contains one complete season.
- (f) **Attendance** shall mean the number of spectators at LICENSEE’s member teams’ Games as published. If there is any discrepancy between published numbers, the highest published number shall be used.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE and its member Teams as set forth on Schedule A (as may be amended from time to time) for the term of this Agreement a non-exclusive license to perform, present or cause the performance of, at Games but solely as incident to such Games and for the entertainment of the spectators immediately before, during, after and at intervals between such Games, all of the musical works as to which BMI shall have the right to grant public performance licenses during the Term hereof. Said license shall not include the right to broadcast, telecast, cablecast or otherwise transmit, including via the Internet or on-line service, the performances to persons outside of the Licensed Premises or the right to record or otherwise mechanically reproduce the performances by any means. Said license shall also not include dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the “grand rights” therein.
- (b) This license shall extend to performances of music at concerts or other musical attractions presented on any game day before or after the first or last game if no additional charge is assessed. This license shall not extend at any time to performances of music at concerts or other attractions presented where an additional charge is made or presented on other than game days. Additionally, this license shall not extend to any hotel, restaurant or similar facility situated within the area of the Licensed Premises, whether or not such facility is owned or operated by LICENSEE or any one of its member Teams.

## 3. FEES

- (a) In consideration of the license granted herein, LICENSEE agrees to pay to BMI for the initial Term a license fee in an amount equal to its total Attendance (rounded down to the last full thousand) in the season(s) which were played in the prior 12 month period multiplied by the appropriate 2017 Attendance Fee Rate (as may be adjusted pursuant to Paragraph 4[c]) as set forth in the License Fee Schedule.

Notwithstanding LICENSEE's total Attendance in such prior twelve month period, the minimum annual license fee for calendar year 2017 shall be \$390 per team. LICENSEE's Attendance for the initial Term is \_\_\_\_\_ and its license fee is \_\_\_\_\_.

<b>LICENSE FEE SCHEDULE</b>	
<u>Attendance</u>	<u>Attendance Fee Rate Per Thousand</u>
0 - 999,999	\$7.50
1,000,000 - 1,999,999	\$7.00
2,000,000 - 2,999,999	\$6.10
3,000,000 and above	\$5.20

- (b) In the event LICENSEE and its member Teams were not operating for a full year prior to the initial Term of this Agreement, LICENSEE will estimate its Attendance for the season in the initial Term based upon the size of its premises and the Attendance rate of similar leagues and Teams. If the actual Attendance at the end of the season is different, LICENSEE's fee will be adjusted as follows: (i) if the actual fee due BMI is less than that paid, BMI will credit the difference to the account of LICENSEE and, if such difference occurs during the last Contract Year of the Term, BMI will return same promptly; (ii) if the actual fee due BMI is greater than that paid, LICENSEE will pay the difference within thirty (30) days of knowledge of the actual Attendance.
- (c) The amount of the Attendance Fee Rate for each Term year after 2017 shall be an adjustment of the 2017 Attendance Fee Rate based upon the percentage increase or decrease in the United States Consumer Price Index (Urban, All Items) between September 1997 and the September immediately preceding the anniversary date (or the initial Term as the case may be) of this Agreement, rounded to the nearest ten cents. BMI will advise LICENSEE in writing of the amount of each Attendance Fee Rate.
- (d) The amount of the minimum annual license fee for each Term after 2017 shall be an adjustment of the 2017 minimum annual license fee of \$390 based upon the percentage increase or decrease in the United States Consumer Price Index (Urban, All Items) between September 1997 and the September of the year preceding the anniversary date (or the initial Term as the case may be) of this Agreement, rounded to the nearest five dollars.
- (e) The license fee for the first Term shall be due simultaneously with the execution of this Agreement. The license fee for subsequent terms shall be due within ten (10) days following the beginning of each such Term.
- (f) At the same time that LICENSEE pays its license fee hereunder for the second and subsequent Terms, LICENSEE shall submit a report, on a form supplied by BMI, certified by LICENSEE or by the auditor of LICENSEE, setting forth (i) a list of LICENSEE's member Teams as an amendment to Schedule A, to be included in this Agreement for said Term; (ii) LICENSEE's published Attendance in the prior twelve month period and (iii) LICENSEE's license fee for that subsequent Term, after multiplying its published Attendance by the Attendance Fee Rate.
- (g) In the event that the payment of any license fee to BMI pursuant to this Agreement causes BMI to become liable to pay any tax (whether sales, use, gross receipts, business or otherwise) which is based upon the amount received by BMI from LICENSEE, then LICENSEE agrees to pay to BMI the full amount of such tax together with the league's fee payments.

**4. OFFER OF COMPARABLE AGREEMENT**

In the event that BMI, at any time during the Term, shall issue licenses to enterprises of the same class and category as those licensed hereunder granting rights similar to those granted by this Agreement at a more favorable rate of payment to the LICENSEE than is set forth herein, BMI shall notify LICENSEE and shall, for the balance of the Term hereof, on the written request of LICENSEE, tender to LICENSEE the form of agreement containing such more favorable rate of payment.

## **5. INDEMNITY**

BMI agrees to indemnify, save harmless and defend LICENSEE and its member Teams, their officers and employees, from and against any and all claims, demands or suits that may be 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 and its member Teams' performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE and its member Teams agree 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.

## **6. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement, except for matters within the jurisdiction of the BMI Rate Court, shall be submitted to the American Arbitration Association in the City, County and State of New York, for arbitration under its then prevailing arbitration rules. The arbitrator(s) shall be selected as follows: Each of the parties 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 a 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 in 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.

## **7. BREACH OR DEFAULT / WAIVER**

Upon any breach or default of the terms and conditions contained herein, BMI may, at its sole option, cancel this Agreement if such breach or default is continuing thirty (30) days after LICENSEE's receipt of written notice thereof. The right to cancel granted to BMI pursuant to this Paragraph shall be in addition to any and all other remedies which BMI may have in law or in equity. 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.

## **8. LATE PAYMENT**

BMI may impose a late payment charge of 1 ½% per month from the date any payment is due hereunder on any payment that is received by BMI more than thirty days after the due date.

## **9. AUTHORIZATION**

LICENSEE hereby warrants and represents that it is authorized to act on behalf of the Teams within the league which are set forth on Schedule A and has been authorized by its Board of Directors to enter into this Agreement with BMI.

## **10. NOTICES**

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed duly given when sent by regular first-class U.S. mail to the party for whom it is intended, at its address hereinabove stated, or any other address which either party hereto may from time to time designate for such purpose, and when any such notice is so mailed, it shall be deemed to have been given upon the mailing thereof.

## **11. MISCELLANEOUS**

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. The rights of LICENSEE and its member Teams hereunder shall not be assignable. 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.

**12. TERM**

The initial Term of this annual Agreement shall begin on (month/year)\_\_\_\_\_ and end on (month/year)\_\_\_\_\_ and shall be extended for additional Terms of one (1) year each unless cancelled by either party as of the end of the initial Term or any additional Term upon notice by regular first-class U.S. mail not less than thirty (30) days prior to the end of any such Term.

**AGREEMENT**

AGREEMENT, made at New York, N.Y. on (Date will be entered by BMI upon execution) \_\_\_\_\_ between BROADCAST MUSIC, INC., (herein BMI), a New York 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.

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<small>(Name of Corporation, Partnership, or Individual Owner)</small>	<small>(Street Address)</small>
<b><u>TRADE NAME (Team Name)</u></b>	<small>(City) (State) (Zip)</small>
<small>(Doing business under the name of)</small>	<small>(Telephone Number) (Fax Number)</small>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<small>(Contact Name) (Title)</small>
<input type="checkbox"/> Individual Ownership	<small>(Email Address) (Web Address)</small>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<small>(State of Incorporation, if different from Licensed Premises)</small>	
<small>(Enter names of partners)</small>	
<input type="checkbox"/> Other _____	<small>(Street Address)</small>
Federal Tax ID No. _____	<small>(City) (State) (Zip)</small>
<b><u>GOVERNMENT ENTITIES</u></b> <small>(if applicable, please check one)</small>	<small>(Telephone Number) (Fax Number)</small>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<small>(Contact Name) (Title)</small>
<small>(State)</small>	<small>(Email Address – if different from above)</small>
<input type="checkbox"/> Local _____	
<small>(Municipality/City and State)</small>	

<b>TO BE COMPLETED BY LICENSEE</b> 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.  <b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b>	<b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b>		
Signature			
Print Name / Title			
Signatory Email Address* <small>(if different from above)</small>	<b>FOR BMI USE ONLY</b>	<b>36SL</b>	<b>LI-2016/NOV</b>
<b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory</b>			<b>EFFECTIVE: January 2017</b>
<b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO: BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b>	<b>ACCOUNT NO.</b>	<b>COID</b>	

\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.







# Music License for Professional Sports Team

## 1. DEFINITIONS

- (a) The phrases “host team,” “exhibition games,” “playoff games,” “major leagues” and “season” shall have the meanings that are commonly understood in the sports industry.
- (b) **Licensed Premises** shall mean team name \_\_\_\_\_ and be restricted to the home game venue known as \_\_\_\_\_ as well as such other premises in the United States, its territories and possessions at which LICENSEE is the host team.
- (c) **Games** shall mean and be restricted to all scheduled Games presented by LICENSEE at the Licensed Premises, including exhibition, all-star, playoff and championship games.
- (d) **Professional Leagues, Teams, and Professional Leagues and Teams** shall mean and be restricted to those leagues and teams set forth in the reference book “Sports Market Place,” published by Franklin Covey Sports Division, under the category “Professional Leagues and Teams,” and excluding major leagues.
- (e) **Contract Year** shall mean each consecutive twelve (12) month period during the initial Term or any additional Term of this Agreement which contains one complete season.
- (f) **Attendance** shall mean the number of spectators at LICENSEE’s Games as published. If there is any discrepancy between published numbers, the highest published number shall be used.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE for the Term of this Agreement a non-exclusive license to perform, present or cause the performance of, at Games but solely as incident to such Games and for the entertainment of the spectators immediately before, during, after and at intervals between such Games, all of the musical works as to which BMI shall have the right to grant public performance licenses during the Term hereof. Said license shall not include the right to broadcast, telecast, cablecast or otherwise transmit the performances to persons outside of the Licensed Premises or the right to record or otherwise mechanically reproduce the performances by any means. Said license shall also not include dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the “grand rights” therein.
- (b) This license shall extend to performances of music at concerts or other musical attractions presented on any game day before or after the first or last game if no additional charge is assessed. This license shall not extend at any time to performances of music at concerts or other attractions presented where an additional charge is made or is presented on other than game days. Additionally, this license shall not extend to any hotel, restaurant or similar facility situated within the area of the Licensed Premises, whether or not such facility is owned or operated by LICENSEE.

## 3. FEES

- (a) In consideration of the license granted herein, LICENSEE agrees to pay to BMI for each Contract Year a license fee in amount equal to its total Attendance (rounded down to the last full thousand) in the season(s) which were played in the prior 12 month period multiplied by the appropriate 2017 Attendance Fee Rate of \$7.80 per thousand (as may be adjusted pursuant to Paragraph 4[c]). Notwithstanding LICENSEE’s total Attendance in such prior twelve month period, the minimum annual license fee for the Contract Year shall be \$390 per team (as may be adjusted pursuant to Paragraph 4[d]). LICENSEE’S Attendance for the first Contract Year is \_\_\_\_\_ and its licensee fee is \_\_\_\_\_.
- (b) In the event LICENSEE was not operating for a full year prior to execution of this Agreement, LICENSEE will estimate its Attendance based upon its park size and Attendance rate of similar Teams. If the actual

Attendance at the end of a season is different: (i) if the actual fee due BMI is less than that paid, BMI will credit the difference to the account of LICENSEE and, if such difference occurs during the last Contract Year of the Term, BMI will return same promptly; (ii) if the actual fee due BMI is greater than that paid, LICENSEE will pay the difference within thirty (30) days of knowledge of the actual Attendance.

- (c) The amount of the Attendance Fee Rate for each Contract Year after 2017 shall be an adjustment of the 2017 Attendance Fee Rate based upon the percentage increase or decrease in the United States Consumer Price Index (Urban, All Items) between September 1997 and September of the year preceding the anniversary date of this Agreement, rounded to the nearest ten cents. BMI will advise LICENSEE in writing of the amount of each Attendance Fee Rate.
- (d) The amount of the minimum annual license fee for each Contract Year after 2017 shall be an adjustment of the 2017 minimum annual license fee of \$390 based upon the percentage increase or decrease in the United States Consumer Price Index (Urban, All Items) between September 1997 and September of the year preceding the anniversary date of this Agreement, rounded to the nearest five dollars.
- (e) The license fee for the first Contract Year shall be due simultaneously with the execution of this Agreement. The license fee for subsequent Contract Years shall be due within ten (10) days following the beginning of each such Contract Year.
- (f) At the same time that LICENSEE pays its license fee hereunder for the second and subsequent Contract Years, LICENSEE shall submit a report, on a form supplied by BMI, certified by LICENSEE or by the auditor of LICENSEE, setting forth (i) LICENSEE's published Attendance in the prior Contract Year and (ii) LICENSEE's license fee for that subsequent Contract Year, after multiplying its published Attendance by the Attendance Fee Rate.

#### **4. OFFER OF COMPARABLE AGREEMENT**

In the event that BMI, at any time during the Term, shall issue licenses to enterprises of the same class and category as those licensed hereunder granting rights similar to those granted by this Agreement at a more favorable rate of payment to the LICENSEE than is set forth herein, BMI shall notify LICENSEE and shall, for the balance of the Term hereof, on the written request of LICENSEE, tender to LICENSEE the form of agreement containing such more favorable rate of payment.

#### **5. 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 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 particular musical works are available for performance as part of BMI's repertoire. 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.

#### **6. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement, except for matters within the jurisdiction of the BMI Rate Court, shall be submitted to the American Arbitration Association in the City, County and State of New York, for arbitration under its then prevailing arbitration rules. The arbitrator(s) shall be selected as follows: Each of the parties 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 a 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 in 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.

**7. BREACH OR DEFAULT / WAIVER**

Upon any breach or default of the terms and conditions contained herein, BMI may, at its sole option, cancel this Agreement if such breach or default is continuing thirty (30) days after LICENSEE's receipt of written notice thereof. The right to cancel granted to BMI pursuant to this Paragraph shall be in addition to any and all other remedies which BMI may have in law or in equity. 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.

**8. LATE PAYMENT**

BMI may impose a late payment charge of 1½% per month from the date any payment is due hereunder on any payment that is received by BMI more than thirty days after the due date.

**9. NOTICES**

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed duly given when sent by regular first-class U.S. mail to the party for whom it is intended, at its address herein stated, or any other address which either party hereto may from time to time designate for such purpose, and when any such notice is so mailed, it shall be deemed to have been given upon the mailing thereof.

**10. MISCELLANEOUS**

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. The rights of LICENSEE hereunder shall not be assignable. 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. TERMS**

The initial Term of this annual Agreement shall begin on the first day of (*month/year*)\_\_\_\_\_ and end on the last day of (*month/year*)\_\_\_\_\_, and shall be extended for additional Terms of one (1) year each unless cancelled by either party as of the end of the initial Term or any additional Term upon notice by regular first-class U.S. mail not less than thirty (30) days prior to the end of any such Term.

## AGREEMENT

AGREEMENT, made at New York, N.Y. on *(Date will be entered by BMI upon execution)* \_\_\_\_\_ between BROADCAST MUSIC, INC., (herein BMI), a New York 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.

<u>LEGAL NAME</u>	<u>LICENSED PREMISES</u>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b><u>TRADE NAME (Team Name)</u></b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership <input type="checkbox"/> LLC <input type="checkbox"/> Corporation <input type="checkbox"/> LLP <input type="checkbox"/> Partnership	<i>(Email Address) (Web Address)</i>
<i>(State of Incorporation, if different from Licensed Premises)</i>	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
<i>(Enter names of partners)</i>	<i>(Street Address)</i>
<input type="checkbox"/> Other _____	<i>(City) (State) (Zip)</i>
Federal Tax ID No. _____	<i>(Telephone Number) (Fax Number)</i>
<b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<i>(Email Address- if different from above)</i>
<i>(State)</i>	
<input type="checkbox"/> Local _____	
<i>(Municipality/City and State)</i>	

<p style="text-align: center;"><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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.</p> <p style="text-align: center;"><b><i>(SIGN HERE – PLEASE INCLUDE PAYMENT)</i></b></p>	<p style="text-align: center;"><b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b></p>
Signature	
Print Name / Title	
Signatory Email Address* <i>(if different from above)</i>	
*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**

<b>FOR BMI USE ONLY</b>	<b>36S</b>	LI-2016/NOV
ACCOUNT NO.	COID	EFFECTIVE: January 2017

\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.





# Music License for Promoter/Presenter

## 1. DEFINITIONS

- (a) **LICENSEE** shall mean the entity identified on Page 4 herein that presents an Attraction at a Venue.
- (b) **Venue** shall include, but not be limited to, a concert hall, stadium, auditorium, civic center, coliseum, theatre, amphitheater, museum, library, stage, restaurant/nightclubs or similar facility, whether enclosed or not, where an Attraction may be presented, located within the United States of America, its territories and possessions.
- (c) **Attractions** shall mean concerts, variety shows (excluding circuses), pageants and other similar spectator events (including events sponsored by charitable organizations or for charitable purposes) that include music, whether or not music is the principal type of entertainment.
- (d) **Seating Capacity** shall mean the total number of seats permanently affixed in the Venue where the Attraction is presented plus any temporary seats added within the Venue for a particular Attraction. If the total number of seats available for the Attraction shall be less than that of the permanent Seating Capacity of the Venue, "Seating Capacity" shall mean the total number of seats available for the particular Attraction. If a Venue does not have permanent seating, "Seating Capacity" shall mean the total number of persons attending a particular Attraction. If a Venue has lawn seating, then "Seating Capacity" shall mean the total number of seats permanently affixed in the Venue, in addition to total lawn Seating Capacity as determined by the local Fire Marshall.
- (e) **Gross Ticket Revenues** shall mean the total monies received, directly or indirectly, by LICENSEE or their authorized representatives from all ticket sales per Attraction. The term "Gross Ticket Revenues" shall not include: 1) federal, state and/or local taxes; 2) building/facility charge per ticket sold; 3) ticketing agent/service charge placed on each ticket sold; or 4) facility parking fees. Should the artist/performing act(s) choose to donate a portion of their fees from each ticket sale to a particular charity, then the appropriate deduction may be taken from the "Gross Ticket Revenues"; provided however, that BMI be given copies of said artist/performing act(s) agreement(s) stipulating such with the exact amount of the charitable donation per ticket sold.
- (f) **Benefit Event** shall mean a public entertainment performance or social event held to raise funds for a specific person or cause in which all proceeds less direct expenses are donated to charity.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE, for the Term of this Agreement, a non-exclusive license solely to perform, present or cause the performance of, as part of Attractions in Venues, **including recorded music** performed in conjunction with Attractions before, after or during the intermissions thereof, all the musical works as to which BMI shall have the right to grant public performance licenses during the Term. Such license shall be restricted to performance of music in the manner described herein, and is granted in consideration of payment of the license fees as set forth herein and is subject to all of the terms and conditions hereof. This license does not include: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any context which may constitute an exercise of the "grand rights" therein; or (ii) the right to simultaneously broadcast, telecast, cablecast, or otherwise transmit (including by the Internet or on-line service) the performances licensed hereunder to persons outside of the Venue in which they originate; (iii) performances of music by means of a coin-operated phonorecord player (jukebox).
- (b) BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

## 3. REVIEW OF STATEMENTS/ACCOUNTINGS

- (a) BMI shall have the right to verify such data or information that is required to be furnished by LICENSEE pursuant to Paragraph 9, by reference to a reliable, published, third-party industry source (e.g., Pollstar) and by BMI's authorized representatives, at any time during customary business hours, and upon thirty (30) days advance written notice, examining those portions of LICENSEE's books and records of account to such extent as may be necessary to verify any and all statements and/or accountings made hereunder. BMI shall consider all data and information coming to its attention as the result of any such examination of LICENSEE's books and records confidential.
- (b) In the event that BMI discovers an inaccuracy in any information reported by LICENSEE pursuant to Paragraph 9, either through an examination of LICENSEE's books and records, or otherwise, and as a result it is revealed that LICENSEE underpaid license fees to BMI, and the correct license fee is not paid to BMI within thirty (30) days of BMI's notice to LICENSEE of the inaccuracy or underpayment, then LICENSEE shall pay a late payment charge on the additional license fees due as a result of the examination(s) of one and one-half percent (1½%) per month, or the maximum rate permitted by law, whichever is less, from the date(s) the license fees should have been paid pursuant to this Agreement.

## 4. LATE PAYMENT CHARGE

BMI may impose a late payment charge of one and one-half percent (1½%) per month from the date any payment is due hereunder on any payment that is received by BMI more than one (1) month after the due date.

## 5. INDEMNITY BY BMI

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 musical works licensed under this Agreement. Such indemnity shall be limited to musical works which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

**6. BREACH OR DEFAULT/WAIVER**

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues for thirty (30) days after the date of BMI's written notice to LICENSEE thereof. 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 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.

**7. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to the American Arbitration Association in the City, County and State of New York for arbitration under its then prevailing arbitration rules. The arbitrator(s) to be selected as follows: Each of the parties 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 in 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. FEES**

- (a) LICENSEE agrees to pay BMI a license fee for each performance of an Attraction that LICENSEE promotes, except where another person, entity or Venue is responsible for paying the license fee for that performance. Such license fee shall be computed on the basis set forth in the License Fee Schedule of this Agreement.
- (b) License fees for Attractions **with** paid admission shall be calculated pursuant to Schedule A of the License Fee Schedule. License fees for Attractions **with no** paid admission (i.e., free to guests) or Benefit Events shall be calculated pursuant to Schedule B of the License Fee Schedule. License fees outlined in Schedule B for subsequent Contract Years will be adjusted by the Consumer Price Index, as described in subparagraph 8(c) hereunder.
- (c) In no event shall an Attraction's annual license fee for any Contract Year be less than the Minimum Annual Fee for the applicable year. The Minimum Annual Fee for the 2017 Contract Year is \$236. The Minimum Annual Fee for subsequent Contract Years shall be an adjustment of the previous Contract Year rates based upon any percentage increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding July and the next preceding July, and shall be rounded to the nearest dollar.
- (d) When an Attraction is believed to be comprised entirely of musical compositions for which BMI shall not have the right to grant public performance licenses, LICENSEE may, at its option, submit a schedule, including writer and publisher information, for all those musical compositions performed at said Attraction, *including opening acts and recorded music, if any*, and in those instances in the opinion of BMI, where all of the musical compositions performed at said Attraction are ones to which BMI does not have the right to grant public performance licenses, no fee shall be due and payable to BMI. In the event no schedule is submitted to BMI, LICENSEE must pay the applicable fee for said Attraction pursuant to Schedule A (or in the case of a Benefit Event or no charge Attraction, Schedule B) of this Agreement.

**LICENSE FEE SCHEDULE**

<b>SCHEDULE A</b>	
<b>EVENTS WITH PAID ADMISSION</b>	
<u>Seating Capacity</u>	<u>% of Gross Ticket Revenue</u>
0 to 2,500	0.80%
2,501 to 3,500	0.60%
3,501 to 5,000	0.40%
5,001 to 9,999	0.30%
10,000 and Over	0.15%

<b>SCHEDULE B</b>	
<b>FREE OR BENEFIT EVENTS</b>	
<u>Seating Capacity</u>	<u>Fee Per Benefit Event With No Charge</u>
0 to 250	\$16.00
251 to 750	\$19.00
751 to 1,500	\$31.00
1,501 to 2,500	\$51.00
2,501 to 5,000	\$74.00
5,001 to 7,500	\$100.00
7,501 to 9,999	\$141.00
10,000 to 15,000	\$212.00
15,001 to 20,000	\$290.00
20,001 to 25,000	\$354.00
25,001 to 40,000	\$385.00
40,001 and Over	\$536.00

**Minimum Annual Fee is \$236**

## **9. REPORTING OF ATTRACTIONS/PAYMENT**

- (a) Upon signing this Agreement, LICENSEE shall pay at least the Minimum Annual Fee, plus any additional amounts immediately due as initially reported. LICENSEE shall submit reports and payments for those Attractions which actually were presented during each period on a quarterly basis and shall pay all fees due. For all quarterly periods, reports and payments shall be due on the twentieth (20<sup>th</sup>) day of January, April, July and October of each year of this Agreement for all Attractions presented by LICENSEE during the prior calendar quarter. Should LICENSEE fail to report and submit payments to BMI within thirty (30) days after the specified date, then BMI will apply estimated billings to the account based on either LICENSEE's prior year's corresponding quarter figures or reports from a reliable, published, third-party industry source (e.g., Pollstar), whichever is higher. BMI shall give written notice to LICENSEE of the estimated fee calculated. LICENSEE shall have thirty (30) days after such written notice by BMI to submit the report. If BMI does not receive the report from LICENSEE within those thirty (30) days, BMI and LICENSEE agree that BMI's Estimated License Fee shall then be established as the Actual License Fee for the period unreported by LICENSEE. BMI and LICENSEE further agree that such established Actual License Fee (subject to adjustment by audit) shall also become the Estimated License Fee for the following contract period. LICENSEE agrees to waive its right to file its report for any period in which BMI's Estimated License Fee becomes the Actual License Fee. Any differences between the estimated and the actual reported fee shall be payable by LICENSEE when the report is submitted. If BMI's Estimated License Fee is greater than the actual reported fee, then LICENSEE's account shall be credited with the difference, provided however that LICENSEE's Annual License Fee shall not fall below the Minimum Annual Fee.
- (b) Upon payment of license fees to BMI, LICENSEE shall furnish to BMI a statement, on forms available from BMI, signed by an officer or auditor of LICENSEE, setting forth all performances of **all** Attractions occurring during the applicable calendar quarter in LICENSEE's Venue. Such statement shall include the name of each Attraction, the Seating Capacity for each Attraction, the dates of each Attraction, the number of performances each day and the Gross Ticket Revenues (as defined in Paragraph 1(e)) for a regularly scheduled performance of each Attraction. LICENSEE's statement shall also include performances of Attractions where another person, entity or Venue is responsible for paying the license fee. A statement shall be furnished to BMI by LICENSEE for each calendar quarter during the Term of the Agreement, regardless of whether or not any performances occurred during that calendar quarter.
- (c) In the event that LICENSEE engages in the presentation of an Attraction in conjunction with, or sells or otherwise transfers the promotional responsibility of an Attraction to other persons or entities licensed separately by BMI under another BMI Music Performance Agreement, LICENSEE shall indicate on the statement required by subparagraph 9(b) hereof the names of all other persons, entities or Venues promoting or co-promoting, or otherwise responsible for, each Attraction and shall identify which party is responsible for payment of the BMI license fee for such Attraction. Transferring liability for promoted Attractions to anyone **but** a licensed promoter or co-promoter of the Attractions is not permitted. If the responsible promoter, co-promoter or person, entity, or Venue is not licensed by BMI under a BMI Music Performance Agreement, LICENSEE shall be deemed liable for payment of the fees due for such Attraction. In the event BMI receives a fee for an Attraction from both LICENSEE and one or more of its co-promoters or other promoter, or person, entity or Venue, the total of which exceeds the amount due, BMI shall refund or credit the excess proportionally among all promoters, co-promoters, persons, entities, or Venues who made payment.
- (d) LICENSEE shall deliver to BMI for each calendar quarter, by the twentieth (20<sup>th</sup>) day following the end of the calendar quarter, copies of any programs or lists of the musical works presented by LICENSEE in its Attractions during such quarter. Programs prepared for audiences or for 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.

## **10. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

## **11. 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.

## **12. TERMINATIONS OF AGREEMENT BY LICENSEE**

If LICENSEE permanently ceases to present Attractions, this Agreement and LICENSEE's obligation to BMI shall thereupon terminate, provided that LICENSEE shall, within ten (10) days thereafter, give written notice of such termination to BMI, setting forth the effective date thereof and that LICENSEE shall submit all reports and pay to BMI all fees due hereunder until said effective date.

## **13. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with license fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

## **14. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

## **15. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

## **16. 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 herein 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 designate to BMI in writing.

## **17. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, will not be binding until signed by both parties, and 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. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**18. CUSTOMER OUTREACH**

LICENSEE agrees to accept from time to time pre-recorded messages from BMI that may contain important information regarding your account.

**19. TERM OF AGREEMENT**

The initial Term of this Agreement shall begin on the first day of (month/year) \_\_\_\_\_ and end on the last day of December \_\_\_\_\_ and shall continue thereafter for additional Terms of one (1) year each unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "Contract Year") upon thirty (30) days advance written notice to the other party.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>	
(Name of Corporation, Partnership, or Individual Owner)	(Street Address)	
<b><u>TRADE NAME</u></b>	(City)	(State) (Zip)
(Doing business under the name of)	(Telephone Number)	(Fax Number)
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	(Contact Name)	(Title)
<input type="checkbox"/> Individual Ownership	(Email Address)	(Web Address)
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b>	
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	(if different from Licensed Premises)	
(State of Incorporation, if different from Licensed Premises)	(Street Address)	
(Enter names of partners)	(City)	(State) (City) (Zip)
<input type="checkbox"/> Other _____	(Telephone Number)	(Fax Number)
Federal Tax ID No. _____	(Contact Name)	(Title)
<b><u>GOVERNMENT ENTITIES</u></b>	(Email Address – if different from above)	
(if applicable, please check one)		
<input type="checkbox"/> Federal <input type="checkbox"/> State _____		
(State)		
<input type="checkbox"/> Local _____		
(Municipality/City and State)		

<b>TO BE COMPLETED BY LICENSEE</b>	<b>FOR ADMINISTRATIVE USE ONLY</b>		
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.	<b>TO BE COMPLETED BY BMI</b>		
(SIGN HERE – PLEASE INCLUDE PAYMENT)	<b>BROADCAST MUSIC INC.</b>		
Signature			
Print Name / Title			
Signatory Email Address* (if different from above)			
	<b>FOR BMI USE ONLY</b>	<b>PRM1</b>	<b>LI-2017/JULY</b>
<b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b>			<b>EFFECTIVE: January 2017</b>
<b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b>	<b>ACCOUNT NO.</b>	<b>COID</b>	

**BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203**

\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.







# Music License for Racing Events

## 1. DEFINITIONS

- (a) "LICENSEE" shall mean the entity identified on Page 4 herein that owns and/or operates the Licensed Premises.
- (b) "Licensed Premises" shall mean the location identified on Page 4 herein, or in the event of multiple locations, each location identified in Schedule A attached hereto which is owned and operated by LICENSEE and which hosts Racing Events, inclusive of parking lots, and surrounding owned property, not specifically excluded in Paragraph 2(f) herein.
- (c) "Attendee(s)" shall mean any person who enters the Licensed Premises, whether or not any admission charge, registration fee, membership fee, or other payment is required to be made in connection with the entrance, but shall not include employees working at the Licensed Premises, including, but not limited to, personnel, administrative staff, service contractors, medical professionals, temporary personnel, credentialed members of the press, performers or musicians.
- (d) "Racing Event" shall mean vehicle racing, including automobile, stock car, hot rod, truck, tractor or any other conveyance, horse racing, including thoroughbred, harness and quarter horse, or dog racing.
- (e) "Racing Day" shall mean each program or card for which either separate admission is charged or separate entry is required of any attendee, (e.g., an afternoon program and evening program on the same calendar day are considered two racing days). A Racing Event may consist of multiple Racing Days.

## 2. BMI GRANT

BMI hereby grants to LICENSEE for the Term of this Agreement a non-exclusive license to perform or cause the public performance of all musical works of which BMI shall have the right to grant public performance licenses during the Term. This license does not include:

- (a) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein;
- (b) the right to broadcast, telecast, cablecast or other electronic transmission, including via satellite, the Internet or on-line service, the performances licensed hereunder to persons outside of the Licensed Premises;
- (c) performances by means of a coin-operated phonorecord player Jukebox as formerly defined in the Copyright Law (17 U.S.C. §116);
- (d) performances in or as part of a concert, musical attraction or other activity or event for which a separate admission fee or similar charge is made to attend; or
- (e) performances by any coin-operated digital music service that does not qualify as a Jukebox.
- (f) This license shall not extend to any hotel, motel, restaurant, casino or similar facility situated within the area of the Licensed Premises, whether or not such facility is owned or operated by LICENSEE.

## 3. FEES

LICENSEE agrees to pay BMI an annual license fee for each Contract Year based on the total number of Attendees at Racing Events as follows:

### 2017 LICENSE FEE SCHEDULE

Annual Attendance			Attendance Fee Rate (Fee Per Thousand Attendees)
500	to	15,000	\$226.30 minimum fee
15,001	to	50,000	\$ 15.20 per thousand
50,001	to	150,000	\$ 13.30 per thousand
150,001	to	500,000	\$ 11.30 per thousand
500,001	to	1,000,000	\$ 9.40 per thousand
1,000,001		and more	\$ 8.30 per thousand

**Minimum Annual Fee is \$226.30**

$$\frac{\text{_____}}{\text{(Attendees)}} \times \text{Applicable Rate} = \$ \frac{\text{_____}}{\text{(Annual Fee)}}$$

(from Schedule above)

- (a) In no event shall the Annual License Fee for the Licensed Premises, for any Contract Year, be less than the Minimum Annual License Fee for the applicable year. The Minimum Annual License Fee for the 2017 Contract Year is \$226.30 and shall be adjusted in subsequent Contract Years by the CPI-U, as explained in subsection (b), and shall be rounded to the nearest ten cents.

- (b) The Attendance Fee Rate for each Contract Year after 2017 shall be calculated by an adjustment of the previous Contract Year Attendance Fee Rate based upon the percentage increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding September and the next preceding September, rounded to the nearest ten cents. BMI will advise LICENSEE in writing of the adjusted Attendance Fee Rate as part of its annual billing process.
- (c) LICENSEE shall pay an estimated license fee for each Contract Year based on the actual number of Attendees for the twelve (12) month period immediately preceding the Contract Year. In the event that LICENSEE did not present any Racing Events in the preceding twelve (12) month period, then LICENSEE shall pay the Minimum Annual Fee as an estimated license fee.
- (d) LICENSEE shall pay estimated license fees for each Contract Year as calculated pursuant to Paragraph 3(c) above, on or before the 15<sup>th</sup> day following the anniversary date of each Contract Year.

#### **4. REPORTING AND LICENSE FEE PAYMENTS OF RACING DAYS**

For each Contract Year, on or before the 15<sup>th</sup> day following the anniversary date, LICENSEE shall furnish BMI (on forms provided by BMI) with a report setting forth;

- (i) each Racing Event held during the preceding Contract Year;
- (ii) the total number of Attendees for each Racing Event and;
- (iii) the total number of Attendees for all Racing Events held during the previous Contract Year.

Upon cancellation of this Agreement, LICENSEE shall provide, within thirty (30) days of cancellation of this Agreement, a report setting forth the requirements of (i) to (iii) of this Paragraph for that cancellation year.

#### **5. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with license fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

#### **6. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one half percent (1½%) per month from the date any payment or report was due on any payment that is received by BMI more than thirty (30) days after the due date.

#### **7. CUSTOMER OUTREACH**

LICENSEE agrees to accept from time to time pre-recorded telephone messages from BMI that may contain information regarding LICENSEE's account.

#### **8. REVIEW OF STATEMENTS / ACCOUNTINGS**

BMI shall have the right upon reasonable notice to LICENSEE, by its authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE to such an extent as may be necessary to verify the statements made hereunder. BMI shall consider all data and information coming to its attention as the result of any such examination as confidential.

#### **9. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

#### **10. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

#### **11. 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 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.

#### **12. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

#### **13. TERMINATION OF AGREEMENT**

If LICENSEE shall permanently cease to operate Licensed Premises due to a sale of the premises or otherwise, or in the event that LICENSEE discontinues the use of music at the Licensed Premises, LICENSEE shall notify BMI and may terminate the Agreement effective at the end of the current Contract Year, in accordance with Paragraph 20 herein. If LICENSEE, at any time during the Term, fails to qualify as a Licensed Premises, pursuant to the requirements set forth in Paragraph 1(b), this Agreement shall terminate and LICENSEE will be responsible for licensing any music use under the appropriate BMI music license.

#### **14. WITHDRAWAL OF MUSICAL WORKS**

BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

#### **15. INDEMNITY BY BMI**

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 musical works licensed under this Agreement. Such indemnity shall be limited to musical works which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

#### **16. BREACH OR DEFAULT / WAIVER**

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues for thirty (30) days after the date of BMI's written notice to LICENSEE thereof. 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 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.

#### **17. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to the American Arbitration Association in the City, County and State of New York for arbitration under its then prevailing arbitration rules. The arbitrator(s) to be selected as follows: Each of the parties 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 in 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.

#### **18. NOTICES**

Unless otherwise stated herein, all notices, if any, under this Agreement shall 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 herein 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 designate to BMI in writing.

#### **19. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, shall not be binding until signed by both parties, and 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. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**20. TERM OF AGREEMENT**

The initial Term of this annual Agreement shall begin on the first day of (month/year) \_\_\_\_\_ and end on the last day of (month/year) \_\_\_\_\_ and shall continue thereafter unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "Contract Year") upon thirty (30) days advance notice to the other party.

**AGREEMENT**

AGREEMENT, made at New York, N.Y. on (Date Will Be Entered by BMI Upon Execution) \_\_\_\_\_ between BROADCAST MUSIC, INC. ("BMI"), a New York corporation with its principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030 and the entity described below ("LICENSEE" or "you"):

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>	
<small>(Name of Corporation, Partnership, or Individual Owner)</small>	<small>(Street Address)</small>	
<b><u>TRADE NAME</u></b>	<small>(City)</small>	<small>(State)</small>
<small>(Doing business under the name of)</small>	<small>(Telephone Number)</small>	<small>(Fax Number)</small>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<small>(Contact Name)</small>	<small>(Title)</small>
<input type="checkbox"/> Individual Ownership	<small>(Email Address)</small>	<small>(Web Address)</small>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b>	
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	<small>(if different from Licensed Premises)</small>	
<small>(State of Incorporation, if different from Licensed Premises)</small>	<small>(Street Address)</small>	
<small>(Enter names of partners)</small>	<small>(City)</small>	<small>(State)</small>
<input type="checkbox"/> Other _____	<small>(Telephone Number)</small>	<small>(Fax Number)</small>
Federal Tax ID No. _____	<small>(Contact Name)</small>	<small>(Title)</small>
<b><u>GOVERNMENT ENTITIES</u></b>	<small>(Email Address- if different from above)</small>	
<small>(if applicable, please check one)</small>		
<input type="checkbox"/> Federal <input type="checkbox"/> State _____		
<small>(State)</small>		
<input type="checkbox"/> Local _____		
<small>(Municipality/City and State)</small>		

<p><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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. <b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b></p>		
Signature			
Print Name / Title			
Signatory Email Address*			
<small>(if different from above)</small>			
<b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory</b>	<b>FOR BMI USE ONLY</b>		<b>RACE1</b>
<b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO: BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b>	<b>ACCOUNT NO.</b>	<b>COID</b>	<b>LI-2017/JULY</b>
			<b>Effective Date: JANUARY 2017</b>



# Music License for Residential Communities

## 1. DEFINITIONS

- (a) **"Admission Charge/Cover Charge"** shall mean any payment to enter the Licensed Premises, or Venue therein, including, but not limited to, minimum required purchases to enter or remain in certain parts of the Licensed Premises, excluding advance or hard ticket purchases sold through an outside independent ticket service and which are paid for pursuant to a valid separate BMI Music License.
- (b) **"Chain Operation"** shall mean seven (7) or more licensable locations that are commonly owned and operated by LICENSEE, and for which books, records and accounts are centrally maintained by LICENSEE.
- (c) **"Clubhouse or Other Common Recreational Area"** shall mean a meeting or gathering place used by members of the Residential Community for social, cultural, recreational, or entertainment purposes.
- (d) **"Dancing"** shall mean allowing patrons, residents or guests, performers or employees to dance, at any time, to live or recorded music anywhere on the Licensed Premises, whether or not a dance floor, dance stage or an area purposely used for dancing is provided.
- (e) **"Enhanced Recorded Music"** shall mean the use of video tapes, DVDs and other projected visual images as an accompaniment/enhancement to recorded music performances (i.e.; Karaoke). Enhanced Recorded Music does not include performances delivered by commercial broadcast, cablecast or satellite delivered television programming.
- (f) **"Jukebox"** shall mean a coin-operated phonorecord playing device which is licensable by the JLO (Jukebox License Office) pursuant to a Jukebox Licensing Agreement.
- (g) **"Licensed Premises"** shall mean each Residential Community listed on Page 4 or on an attached rider.
- (h) **"Live Music-Multiple Singers/Instrumentalists"** shall mean music performed by more than one musician, singer or other entertainer actually present and performing at the Licensed Premises.
- (i) **"Live Music-Single Singer/Instrumentalist"** shall mean music performed by one musician, singer or other entertainer actually present and performing at the Licensed Premises.
- (j) **"Music Policy"** shall mean the manner and frequency that Licensed Premises uses any single or combined form of the items defined in this Paragraph and included on the Music Policy/Fee Calculation page during a Contract Year.
- (k) **"Occupancy"** shall mean the total of maximum allowable occupancy loads/capacities for the entire premises of the Clubhouse or Other Common Recreational Area(s) calculated under adopted building/fire codes, which shall not be limited to the number of available seats. If no such regulations are in effect in the applicable jurisdiction, then maximum occupancy shall mean one (1) person for every twenty (20) square feet of such total premises. Occupancy is a component of LICENSEE's Music Policy, which is subject to adjustment per Paragraph 8(a) of this Agreement.
- (l) **"Recorded Music"** shall mean the performance of background music, foreground music, or as part of audio-visual presentations, by mechanical or electronic means, including, but not limited to, digital music players (e.g., iPods, MP3 players, etc.), CDs, DVDs, records, and tapes.
- (m) **"Residential Community"** shall mean a group of owner occupied, leased or rented residences, wherein the residents are a group of interacting people living in a common location and who may have access to a Clubhouse or Other Common Recreational Area(s) within the community.
- (n) **"Seasonal/Occasional Use"** shall mean the total aggregate use of music described herein at the Licensed Premises which is open less than twelve (12) months in any one year, or the total aggregate music use as described herein, which occurs four (4) times or less in any one year and will require that LICENSEE contacts BMI for their Seasonal/Occasional Use Fee Calculation license.
- (o) **"Television and/or Radio Only"** shall mean televisions and/or radios that are utilized solely for the reception of commercial broadcast, cablecast or satellite programming and only when no Recorded Music or Enhanced Recorded Music as defined in 1(e) and 1(l) is performed and paid for under this Agreement.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE a non-exclusive license to perform, present, or cause the public performance at the Licensed Premises of all musical works of which BMI shall have the right to grant public performance licenses during the Term. This license does not include: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein; or (ii) the right to broadcast, cablecast, telecast or otherwise transmit (including by the Internet or on-line service) the performances licensed hereunder to persons outside of Licensed Premises, other than by means of a music-on-hold telephone system operated by LICENSEE at the Licensed Premises; or (iii) performances of music by means of a coin-operated phonorecord player (jukebox).
- (b) This license does not authorize live concert performances at the Licensed Premises when tickets for such live concert performances can be purchased from or through outside ticket services.
- (c) BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

## 3. INDEMNITY BY BMI

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 the works which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

## 4. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues thirty (30) days after the date of BMI's written notice to LICENSEE thereof. 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 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.

## 5. OFFER OF COMPARABLE AGREEMENT

In the event that BMI, at any time during the Term hereof, 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.

## 6. CANCELLATION OF ENTIRE CATEGORY

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

## 7. LATE PAYMENT CHARGE

BMI may impose a late payment charge of one percent (1%) per month from the date any payment is due hereunder on any payment that is received by BMI more than one month after the due date.

## **8. CHANGES TO LICENSEE'S MUSIC POLICY**

- (a) Except as provided for herein, LICENSEE may change its Music Policy upon which fees are assessed under this Agreement prospectively at any time during the Term on thirty (30) days prior notice to BMI, provided that its current policy has been in effect for at least thirty (30) consecutive calendar days. LICENSEE may change its fee no more than three (3) times in any Contract Year. LICENSEE may call a Customer Relations Executive at 1-800-925-8451 to notify BMI of a change in its Music Policy, and the change will be reflected in the next billing by BMI; however, doing so will not preserve LICENSEE's right to dispute BMI billings unless LICENSEE sends BMI timely notice of a policy change in writing. Billings adjusted by BMI hereunder will include a pro rata credit for any unearned license fees paid in advance under the changed policy. LICENSEE also agrees that it will notify BMI of any changes in the music use at the Licensed Premises that would make LICENSEE's representation of its Music Policy no longer accurate, and that any changes made to the Music Policy hereunder shall constitute a true and accurate representation of LICENSEE's music usage from the date of the change. Any changes in Music Policy or Occupancy are subject to verification by any and all reasonable means which may include, but shall not be limited to, independent contacts by BMI representatives with LICENSEE's business establishment, use of public records, advertisements and third party observations.
- (b) BMI may from time to time review LICENSEE's Music Policy (including any changes made to the policy) and make inquiries in person or by phone as to its accuracy. If BMI thereafter believes that LICENSEE is not paying proper license fees because the use of music at the Licensed Premises should result in higher license fees under the criteria of this Agreement, BMI will notify LICENSEE by mail. If LICENSEE agrees to BMI's assessment of LICENSEE's Music Policy, the change will be reflected on the next billing. If LICENSEE disputes BMI's assessment of its Music Policy, LICENSEE must notify BMI within thirty (30) days of the notification by BMI. If within ninety (90) days of such notification by BMI LICENSEE does not respond or LICENSEE and BMI cannot agree upon an appropriate fee, either party may commence an arbitration proceeding pursuant to Paragraph 11 to resolve the dispute over the amount of license fees. Such right shall be in addition to any and all other remedies BMI may have under the Agreement, including the right to cancel this Agreement. LICENSEE may not change its Music Policy under subparagraph (a) above if its fee is subject to dispute hereunder.
- (c) In the event that LICENSEE temporarily discontinues the use of all music and LICENSEE sends written notice of the discontinuance to BMI by certified mail within thirty (30) days of the discontinuance, BMI will adjust the fees pro rata from the date of discontinuance. If such notice is received more than thirty (30) days after the discontinuance, such discontinuance will be effective commencing on the first of the month following the date of BMI's receipt of the notice and BMI will adjust the fees prospectively for the remainder of the Contract Year in which BMI received the notice. In either event, LICENSEE's credit adjustment hereunder shall not reduce the Annual Fee due BMI below the Annual Minimum Fee applicable under the Agreement. In the event of such temporary discontinuance, this license Agreement shall continue in effect, except that no minimum or other fee shall be payable during the period of discontinuance. LICENSEE agrees to notify BMI promptly when it resumes the use of music at the Licensed Premises and LICENSEE's Music Policy in effect at the time of discontinuance will continue to be applicable until LICENSEE notifies BMI of a change. BMI reserves its right under subparagraph (b) hereof to review LICENSEE's Music Policy and take appropriate steps in the event that BMI believes that LICENSEE has resumed the use of music under this Agreement.

## **9. FEES**

- (a) LICENSEE agrees to pay to BMI an Annual Fee as follows:
- (i) The Annual Fee payment for the initial Contract Year shall be calculated pursuant to the Music Policy/Fee Calculation grid (on page 3) herein and shall be due in full upon signing this Agreement. The Annual Fee payment for subsequent Contract Years shall be due no later than thirty (30) days after the commencement date of any subsequent Contract Year.
  - (ii) BMI shall discount the Annual Fee by 10% in any Contract Year if (A) LICENSEE pays the Annual Fee in full and in a timely manner for such Contract Year in accordance with subparagraph (i) above; and (B) LICENSEE does not otherwise owe BMI any fees under this or any prior BMI agreement.
  - (iii) Upon request, BMI will allow LICENSEE to pay the Annual Fee on a semi-annual or quarterly basis, provided that LICENSEE's account is current. Semi-annual and quarterly payments are due no later than thirty (30) days following the commencement of each semi-annual or quarterly period. The discount provided for in subparagraph (ii) shall not be available if the Annual Fee is paid on a semi-annual or quarterly basis.
  - (iv) Notwithstanding subparagraph (iii), if any semi-annual or quarterly payment is not received by the ninetieth (90<sup>th</sup>) day after such payment is due, LICENSEE's ability to make semi-annual or quarterly payment shall immediately terminate for the remainder of this Agreement, and any unpaid portion of the Annual Fee will be immediately due and payable.
- (b) Each license fee variable shall be adjusted for each Contract Year after 2017 based upon any percentage increase in the United States Consumer Price Index (Urban, All Items) between October 2016 and October of the year prior to that Contract Year, rounded to the nearest five cents. The Annual Minimum Fee and the Jukebox Fee shall also be adjusted pursuant to the CPI increase outlined in this Paragraph and all increases shall be rounded to the nearest dollar. BMI will advise LICENSEE in writing of this adjustment as part of its annual billing process.
- (c) In no event, shall the Annual Fee due for any Contract Year be less than the Annual Minimum Fee (not including a Jukebox Fee, if any).
- (d) **LICENSEE agrees that the Music Policy set forth herein is, and will continue to be, a true and accurate representation of LICENSEE's music use at the Licensed Premises, unless such Music Policy is changed pursuant to Paragraph 8 of this Agreement.**

## **10. TERMINATION OF AGREEMENT BY LICENSEE**

If LICENSEE shall discontinue the use of all music or permanently cease to operate the Licensed Premises, whether by reason of sale or lease thereof or otherwise, this Agreement and LICENSEE's obligation to BMI shall thereupon terminate, provided that LICENSEE shall, within ten (10) days thereafter, give written notice of such termination to BMI, setting forth the effective date thereof and the name of the new owner or operator of the premises, and that LICENSEE shall pay to BMI all fees due hereunder until said effective date. The fee due BMI by LICENSEE through the effective date of termination shall be a proration of the fee for the Contract Year of termination, but in no event less than the lowest appropriate fee indicated in the applicable category on the Music Policy/Fee Calculation page.

## **11. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to the American Arbitration Association in the City, County and State of New York for arbitration under its then prevailing arbitration rules. The arbitrator(s) to be selected as follows: Each of the parties 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 in 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.

## **12. REVIEW OF STATEMENTS AND/OR ACCOUNTINGS**

BMI shall have the right, by its authorized representatives, at any time during customary business hours, and upon reasonable notice, to examine those portions of LICENSEE's books and records of account to such extent as may be necessary to verify any and all statements and/or accountings made hereunder or under prior agreement with BMI. BMI shall consider all data and information coming to its attention as the result of any such examination of LICENSEE's books and records as confidential.

## **13. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with license fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

## **14. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

## **15. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

**MUSIC POLICY / FEE CALCULATION**

*Check off the corresponding Rate Per Year Per Occupant for the ways music is used in the Licensed Premises.  
Enter the amount(s) on the appropriate line(s) to the right.*

Music Type	Frequency Per Week	Rate Per Year Per Occupant	<input type="checkbox"/>	Enter Fee Calculation
<b>1. <u>Live Music*</u></b> <span style="float:right;"><i>(Check only one rate box, if applicable)</i></span>				
• Multiple Singers/Instrumentalists  <i>( 1 night = no more than 5 times in any one month)</i>	5-7 nights	\$5.95	<input type="checkbox"/>	
	2-4 nights	\$4.95	<input type="checkbox"/>	
	1 night or less	\$4.50	<input type="checkbox"/>	
• Single Singer/Instrumentalist  <i>( 1 night = no more than 5 times in any one month)</i>	5-7 nights	\$4.35	<input type="checkbox"/>	
	2-4 nights	\$3.60	<input type="checkbox"/>	
	1 night or less	\$3.30	<input type="checkbox"/>	
<b>Enter ONLY the highest amount checked above here.....→</b>				<b>\$</b>
<b>2. <u>Enhanced Recorded Music*</u></b>				
<input type="checkbox"/> Karaoke <input type="checkbox"/> DVDs <input type="checkbox"/> Video Tapes <input type="checkbox"/> VJs	5-7 nights	\$3.45	<input type="checkbox"/>	
	2-4 nights	\$3.30	<input type="checkbox"/>	
<i>(1 night = no more than 5 times in any one month)</i>	1 night or less	\$3.20	<input type="checkbox"/>	
<b><u>Recorded Music*</u></b>				
<input type="checkbox"/> iPod / MP3 / Other Digital Music <input type="checkbox"/> Free-Play Jukebox		\$2.95	<input type="checkbox"/>	
<input type="checkbox"/> CDs / Tapes / Records <input type="checkbox"/> DJ				
<b>Enter ONLY the highest amount checked above here.....→</b>				<b>\$</b>
<b>3. <u>Admission or Cover Charge*</u> (at any time)</b>				
		\$1.85	<input type="checkbox"/>	<b>\$</b>
<b>4. <u>Dancing To Live or Recorded Music*</u> (at any time)</b>				
		\$1.85	<input type="checkbox"/>	<b>\$</b>
<b>5. <u>Television and/or Radio*</u> (skip this Section if you have checked any box in Section 2)</b>				
		\$1.30	<input type="checkbox"/>	<b>\$</b>
<b>6. TOTAL RATE PER YEAR PER OCCUPANT (Sum of Lines 1-5).....→</b>				<b>\$</b>
<b>7. <u>Occupancy*</u></b>				
• <b>Clubhouse or Other Common Recreational Area(s) Occupancy</b> _____ <i>(If greater than 1,000 occupants, enter 1,000)</i>				<i>(Enter Occupancy)</i>
<b>OR</b>				
• <b>If Occupancy cannot be established by local building/fire codes, use formula below:</b> Total Square Footage of Clubhouse or Other Common Recreational Area(s) _____ ÷ 20 = _____ Occupancy				
<b>8. ANNUAL FEE (Multiply Line 6 by Line 7)</b> <b>If \$364.00 or Less, Enter Annual Minimum Fee of \$364.00.....→</b> <b>\$</b>				
<b>9. <u>Jukebox Fee*</u></b>				
If your jukebox is licensable by the JLO (Jukebox License Office) but is not already licensed under a JLO license, check here and enter the amount on the line to the right.			Jukebox Fee = \$364.00	<input type="checkbox"/>
If the jukebox is already licensed under the JLO license, please enter Vendor name, address and phone number below.				
Name/Company _____ JLO Cert. # _____				
Address _____ Phone _____				
City _____ State _____ Zip _____				
<i>*Refer to Paragraph 1 on Page 1</i>				
<b>ANNUAL FEE ALL USES (Add Lines 8 and 9)</b> <b>If More Than \$10,882, Enter Maximum Fee of \$10,882.....→</b>				<b>\$</b>
<b>IF PAYING IN FULL, PLEASE TAKE 10% DISCOUNT.....→</b> <i>(If You Wish To Pay By Credit Card, Call Your BMI Representative at 1-888-689-5264)</i>				<b>\$(                    )</b>
<b>ANNUAL FEE (Less 10% Full Pay Discount, if applicable).....→</b>				<b>\$</b>

**16. NOTICES**

Unless otherwise stated herein, 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 herein 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 designate to BMI in writing.

**17. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, shall not be binding until signed by both parties, and 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. The rights of LICENSEE shall not be assignable. 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**18. CUSTOMER OUTREACH**

LICENSEE agrees to accept from time to time pre-recorded telephone messages from BMI that may contain information regarding your account.

**19. TERM OF AGREEMENT**

The initial Term of this annual Agreement shall begin on the first day of (month/year) \_\_\_\_\_ and end on the last day of (month/year) \_\_\_\_\_ and shall continue thereafter unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "Contract Year") upon thirty (30) days advance notice to the other party.

**AGREEMENT**

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

<p><b><u>LEGAL NAME</u></b></p> <p><i>(Name of Corporation, Partnership, or Individual Owner)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><i>(Street Address)</i></p>
<p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p>	<p><i>(City) (State) (Zip)</i></p>
<p><b><u>PLEASE CHECK APPROPRIATE BOX</u></b></p> <p><input type="checkbox"/> Individual Ownership</p> <p><input type="checkbox"/> LLC <input type="checkbox"/> Corporation <i>(State of Incorporation, if different from Licensed Premises)</i></p> <p><input type="checkbox"/> LLP <input type="checkbox"/> Partnership <i>(Enter names of partners)</i></p> <p><input type="checkbox"/> Other _____</p>	<p><i>(Telephone Number) (Fax Number)</i></p> <p><i>(Contact Name) (Title)</i></p> <p><i>(Email Address) (Web Address)</i></p>
<p>Federal Tax ID No. _____</p> <p><b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i></p> <p><input type="checkbox"/> Federal <input type="checkbox"/> State <i>(State)</i></p> <p><input type="checkbox"/> Local <i>(Municipality/City and State)</i></p>	<p><b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Telephone Number) (Fax Number)</i></p> <p><i>(Contact Name) (Title)</i></p> <p><i>(Email Address - if different from above)</i></p>

<p><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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.</p> <p><b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b></p> <p><b>TO BE COMPLETED BY BMI</b></p> <p><b>BROADCAST MUSIC INC.</b></p>						
<p>Signature _____</p>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%; text-align:center;"><b>FOR BMI USE ONLY</b></td> <td style="width:17%; text-align:center;"><b>RESC1</b></td> <td style="width:50%; text-align:center;"><b>LI-2017/JULY</b></td> </tr> <tr> <td style="text-align:center;"><b>EFFECTIVE:</b></td> <td colspan="2" style="text-align:center;"><b>October 2016</b></td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>RESC1</b>	<b>LI-2017/JULY</b>	<b>EFFECTIVE:</b>	<b>October 2016</b>	
<b>FOR BMI USE ONLY</b>		<b>RESC1</b>	<b>LI-2017/JULY</b>				
<b>EFFECTIVE:</b>		<b>October 2016</b>					
<p>Print Name / Title _____</p>							
<p>Signatory Email Address* <i>(if different from above)</i></p>	<p><b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory</b></p>						

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

<b>ACCOUNT NO.</b>	<b>COID</b>	
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\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.







BMI/Residential Music Service  
Interim License Agreement

LI-2011/SEPT-RMS1-INT

The following are the terms and conditions of your BMI Residential Music Service Interim License Agreement (hereinafter "Interim License Agreement"), pending the outcome of negotiations for a final agreement between Broadcast Music, Inc. ("BMI") and \_\_\_\_\_ (hereinafter "LICENSEE") or, if necessary, a determination by the BMI Rate Court of appropriate license terms pursuant to a rate proceeding involving the parties (a "BMI Rate Court Proceeding").

WHEREAS, LICENSEE is in the business of operating a residential music service ("Residential Music Service") that delivers residential music service programming to residential establishments ("Residential Subscriber Locations"); and

WHEREAS, BMI and LICENSEE had previously entered into the standard form of BMI Residential Music Service Blanket License Agreement for the period from \_\_\_\_\_ through September 30, 2010 (hereinafter "the Agreement"), or, in the event that LICENSEE was not licensed by BMI as of September 30, 2010 under the Agreement, a copy of the Agreement is attached hereto and the terms are incorporated herein, and LICENSEE has simultaneously executed the Agreement herewith.

It is hereby agreed as follows:

1. On \_\_\_\_\_, LICENSEE made an application to BMI for a license pursuant to Article XIV of the BMI Consent Decree for the period commencing October 1, 2010, or, in the event that LICENSEE was not licensed by BMI as of September 30, 2010 under the Agreement, for the period beginning on \_\_\_\_\_ (the "Commencement Date").
2. BMI and LICENSEE wish to enter into this Interim License Agreement to allow time for the parties to negotiate license fee rates and terms for the period commencing October 1, 2010, or, in the event that LICENSEE was not licensed by BMI as of September 30, 2010 under the Agreement, for the period beginning Commencement Date.
3. LICENSEE's Interim License Agreement shall commence on October 1, 2010 or Commencement Date and shall continue until a final agreement is reached as a result of negotiations between BMI and LICENSEE or as a result of a BMI Rate Court Proceeding. This Interim License Agreement shall embody each and every term and condition set forth in LICENSEE's Agreement, except for the Term. Either party may cancel this Interim License Agreement at the end of any month upon thirty (30) days' advance written notice.
4. The final license fee rates and terms agreed to by BMI and LICENSEE, or as determined by the BMI Rate Court, shall be applied retroactively to October 1, 2010 or Commencement Date. As such, LICENSEE shall be obligated to pay BMI any monies owed BMI as a result of such retroactive adjustment of fees, and BMI shall be obligated to pay LICENSEE any monies owed LICENSEE as a result of such retroactive adjustment of fees.

LICENSEE's agreement to the above terms and conditions shall be evidenced by the signature below of an individual duly authorized to bind LICENSEE to this Interim License Agreement.

**Broadcast Music, Inc.**

**LICENSEE:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_





BMI/Residential Music Service  
Interim License Agreement

LI-2011/SEPT-RMS2-INT

The following are the terms and conditions of your BMI Residential Music Service Interim License Agreement (hereinafter "Interim License Agreement"), pending the outcome of negotiations for a final agreement between Broadcast Music, Inc. ("BMI") and \_\_\_\_\_ (hereinafter "LICENSEE") or, if necessary, a determination by the BMI Rate Court of appropriate license terms pursuant to a rate proceeding involving the parties (a "BMI Rate Court Proceeding").

WHEREAS, LICENSEE is in the business of operating a residential music service ("Residential Music Service") that delivers residential music service programming to residential establishments ("Residential Subscriber Locations"); and

WHEREAS, BMI and LICENSEE had previously entered into the standard form of BMI Residential Music Service Blanket License Agreement for the period from \_\_\_\_\_ through September 30, 2010 (hereinafter "the Agreement"), or, in the event that LICENSEE was not licensed by BMI as of September 30, 2010 under the Agreement, a copy of the Agreement is attached hereto and the terms are incorporated herein, and LICENSEE has simultaneously executed the Agreement herewith.

It is hereby agreed as follows:

1. BMI and LICENSEE wish to enter into this Interim License Agreement to allow time for the parties to negotiate license fee rates and terms for the period commencing October 1, 2010, or, in the event that LICENSEE was not licensed by BMI as of September 30, 2010 under the Agreement, for the period beginning on \_\_\_\_\_ (the "Commencement Date").
2. LICENSEE's Interim License Agreement shall commence on October 1, 2010, or Commencement Date and shall continue until a final agreement is reached as a result of negotiations between BMI and LICENSEE or as a result of a BMI Rate Court Proceeding. This Interim License Agreement shall embody each and every term and condition set forth in LICENSEE's Agreement, except for the Term. Either party may cancel this Interim License Agreement at the end of any month upon thirty (30) days' advance written notice.
3. The final license fee rates and terms agreed to by BMI and LICENSEE, or as determined by the BMI Rate Court, shall be applied retroactively to October 1, 2010, or Commencement Date. As such, LICENSEE shall be obligated to pay BMI any monies owed BMI as a result of such retroactive adjustment of fees, and BMI shall be obligated to pay LICENSEE any monies owed LICENSEE as a result of such retroactive adjustment of fees.

LICENSEE's agreement to the above terms and conditions shall be evidenced by the signature below of an individual duly authorized to bind LICENSEE to this Interim License Agreement.

**Broadcast Music, Inc.**

**LICENSEE:**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

By: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

® BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.





# Music License for Residential Music Service

## 1. DEFINITIONS

- (a) **BMI Repertory** shall mean all musical compositions which BMI has the right to license for public performance now or hereafter during the Term of this License Agreement.
- (b) **Contract Year** as used in this License Agreement shall mean the period commencing (*month/day*) \_\_\_\_\_ through (*month/day*) \_\_\_\_\_, and each succeeding 12 month period thereafter until the end of the Term.
- (c) **Distributor** shall mean any distributor of a subscription multi-channel video programming service via cable, satellite, telco, wireline or other private network distribution system (including, without limitation, MMDS, SMATV, and IPTV) that offers the Programming Service in connection with such multi-channel video programming service, either on a "basic", "premium pay" or "digital tier" package or other basis, pursuant to written authorization from LICENSEE. Distributors shall not include distribution by the Internet or "cable modem" service or by cellular networks.
- (d) **Gross Revenues** received by LICENSEE shall mean all monies derived from the operation of the Programming Service and shall be comprised of the following: (1) monies received by LICENSEE from Distributors and directly from Subscribers for the Programming Service; (2) LICENSEE' s advertising revenues (as billed), or other monies received from sponsors, if any, in connection with the Programming Service (less advertising agency commissions not to exceed 15% actually incurred to a recognized advertising agency not owned or controlled by LICENSEE) ; (3) monies received for the provision of time on the Programming Service to any third party; (4) monies received from the sale of time to providers of paid programming such as infomercials on the Programming Service; (5) where merchandise or anything or service of value is received by LICENSEE in lieu of cash consideration for the use of the Programming Service (i.e. "trade and barter" or "tradeouts"), the fair market value thereof or LICENSEE' s prevailing published rate, whichever is less; (6) monies or other consideration received by LICENSEE from Distributors (but not including monies received by Distributors from others and not accounted for and paid by Distributors to LICENSEE) for the provision of hardware by anyone and used in connection with the receipt of the Programming Service; (7) monies or other consideration received for any references to or inclusion of any product or service on the Programming Service; and (8) bad debts recovered regarding (1)-(7) above. Gross Revenues shall include such payments as set forth above to which LICENSEE is entitled but which are paid to a parent, subsidiary, division, or affiliate of LICENSEE, in lieu of payment to LICENSEE, but not including payments made by Subscribers to Distributors for the Programming Service. LICENSEE shall be allowed a deduction from Gross Revenues for (i) bad debts actually written off and rate card discounts allowed or rebates paid during the reporting period and which are related to billings previously reported to BMI; (ii) affiliate revenue returned during the reporting period; and (iii) any sums received from political programs and announcements, net of agency commissions.
- (e) **Mobile Entertainment Service** shall mean the audio, visual, and/or audio-visual content (e.g., samples and full length digital audio files, Ring-Tones, Ring-Backs, games, screen savers, icons) made available for transmission to Mobile Entertainment Devices over cellular networks, including: (1) Ring-Backs for Mobile Entertainment Service customers, even though such transmissions may be transmitted over wired networks to callers of such customers; and (2) a Customer Interface, even though such transmissions may be received by a device other than a Mobile Entertainment Device (e.g. personal computer). A "Mobile Entertainment Device" shall mean a cellular or other mobile telephone, personal data assistant or similar hardware device which is capable of accessing and receiving transmissions over cellular networks.
- (f) **Programming Service** shall mean any residential digital audio music Subscription Service produced, packaged, distributed or supplied by LICENSEE and transmitted by Distributors to their Subscribers, including any service enhancement which allows Subscribers to customize channels based upon format, genre and similar criteria, but not by specific song or artist. Programming Service shall not include any interactive service (e.g., digital jukebox service).
- (g) **Subscription Service** is a transmission that is controlled and limited to particular recipients, and for which consideration is required to be paid or otherwise given by or on behalf of the recipient to receive the transmission or package of transmissions including the transmission.
- (h) **Subscribers** shall mean all persons, firms and corporations that subscribe to the Programming Service from Distributors other than those persons, firms and corporations that subscribe to the service in the manner of a "background/foreground commercial music service." "Subscribers" shall not include the use of the Programming Service by commercial establishments (e.g., bars, restaurants, retail establishments, and offices) where the commercial establishment is using the Programming Service in a manner such that performances of music are intended to be heard by customers, employees, clients, patients and patrons, including, but not limited to, as background or foreground music or music-on-hold.
- (i) **Territory** shall mean the United States and its territories, commonwealths and possessions.

## 2. GRANT OF RIGHTS

- (a) BMI hereby grants to LICENSEE, for the Term of this License Agreement, a non-exclusive, through to the listener license to use and publicly perform in and as part of the Programming Service to Subscribers within the Territory by and through Distributors, all musical works, the rights to grant public performance licenses of which BMI may during the Term hereof control. This license shall not include dramatic rights or the right to perform dramatico-musical works in whole or in substantial part. In no event shall this license include transmission by LICENSEE or by Distributors to any commercial premises where the Programming Service is used as a "background/foreground commercial music service" (as that term is currently understood in the industry) or transmission of a Mobile Entertainment Service. Such performances of BMI music shall be subject to separate BMI licenses.

- (b) This grant of rights does not authorize the public performance or transmission of musical compositions in the BMI Repertory from a Distributor to Subscribers by Internet, mobile, on-line service or other similar means of transmission such as webcasting or on websites operated or maintained by LICENSEE or any other party. Such performances of BMI music shall be subject to separate BMI licenses.
- (c) Except as set forth in Paragraph 3(a), this grant of rights does not authorize LICENSEE to grant to others any performance or other rights in any of the musical compositions licensed under this License Agreement, or authorize any recipient of the Programming Service, including without limitation, commercial establishments, to publicly perform, transmit or further transmit any of the musical compositions licensed hereunder.

### **3. LICENSE FEES**

In consideration of the license granted herein, LICENSEE agrees to pay to BMI blanket license fees for the Term at the rate of 2.5% of Gross Revenues for the Programming Service.

### **4. REPORTS AND PAYMENTS**

- (a) For each month commencing \_\_\_\_\_ (“Commencement Date”), LICENSEE shall pay license fees on or before the thirtieth (30<sup>th</sup>) day after the end of such month.
- (b) LICENSEE shall submit to BMI monthly statements as to LICENSEE’s Gross Revenues as follows:
  - (i) For the period from Commencement Date and thereafter during the Term, monthly statements in the form attached hereto as Exhibit A certified by an authorized representative of LICENSEE as accurate to the best of LICENSEE’s knowledge and belief, shall be due at the same time as monthly license fees are due hereunder (i.e., on or before the thirtieth (30<sup>th</sup>) day after the end of the month to which the fees and report apply).
  - (ii) For each Contract Year in which this License Agreement is in effect, on or before January 15<sup>th</sup> following such Contract Year, an authorized representative of LICENSEE shall submit a statement in the form attached hereto as Exhibit B, certified as accurate to the best of LICENSEE’s knowledge and belief, outlining LICENSEE’s Gross Revenues and Subscribers information for the Contract Year.; and
  - (iii) Should the certification by LICENSEE’s authorized representative pursuant to subparagraph (b) (ii) reveal underpayment of license fees by LICENSEE during such Contract Year, the deficit amount will be paid to BMI together with said certification. Should the statement indicate overpayment of license fees, BMI will credit or repay LICENSEE the excess within thirty (30) days of the delivery of said certification, or shall (at LICENSEE’s option) credit LICENSEE’s account with the balance due for the ensuing Contract Year.
- (c) BMI shall have the right by its authorized representatives, at any time during customary business hours and upon thirty (30) days advance written notice, to examine the books and records of account of LICENSEE as necessary to verify LICENSEE’s annual and monthly statements and payment of license fees hereunder. BMI may only conduct such an examination once in each calendar year, and such an examination shall be limited to the prior three year period’s statements and accountings. In no event will any Contract Year be subject to audit more than once unless LICENSEE submits a revised or changed report for a year that previously had been audited, and in that case, any subsequent audit shall be limited to verifying the revision or change. BMI shall consider all data and information contained in LICENSEE’s monthly statements or coming to its attention as the result of any such examination of books and records as confidential.
- (d) In the event BMI conducts an audit and such audit reveals that LICENSEE underpaid license fees to BMI to the extent of ten percent (10%) or more for any Contract Year, then LICENSEE shall pay a late payment charge on the additional license fees due as a result of the audit(s) of one percent (1 %) per month, from the date(s) the license fees should have been paid pursuant to this License Agreement.
- (e) LICENSEE may dispute all or part of BMI’s audit claim. If LICENSEE does so, LICENSEE must, within thirty (30) days from the date that BMI bills the additional fees, (i) advise BMI, in writing, of the basis for LICENSEE’s dispute, and (ii) pay BMI any fees indisputably owed together with any applicable late fees owed under Par. 5(d). No late fees will be billed with respect to the disputed fees pending the resolution of such dispute. In the event the dispute is valid (i.e., the disputed amount was not actually due BMI), no late fees will be owed with respect to the period under dispute. However, if it is determined that the dispute was not valid (i.e., the disputed amount was actually due BMI), LICENSEE shall pay any late fees due under Par. 5(d) back to the date such disputed fees were first due.

### **5. LATE FEES AND TAXES**

- (a) BMI may impose a late payment charge of one percent (1%) per month from the date payment was due on any payment that is received by BMI more than thirty (30) days after the due date.
- (b) In the event that LICENSEE’s payment of license fees under this License Agreement causes BMI to incur a liability to pay a gross receipts, sales, use, business use, or other tax which is based on the amount of BMI’s receipts from LICENSEE, and BMI is permitted by law to pass through the tax to BMI’s licensees, LICENSEE will pay BMI the full amount of the tax directly related to LICENSEE’s payments hereunder; provided, that under no circumstance shall LICENSEE be responsible for any tax on BMI’s net income.

### **6. MUSIC REPORTS**

Within forty-five (45) days after the end of each month of the Term, LICENSEE shall use commercially reasonable efforts to furnish to BMI, in machine-readable form, reports of all musical compositions performed by means of the Programming Service on channels programmed by LICENSEE during the month. Such reports shall state (i) the title; (ii) the record label, if reasonably available in LICENSEE’s automatic reporting system; (iii) a chronological list by channel of the compositions performed; (iv) either (a) the recording artist or (b) composer and author of each composition; and (v) for musical compositions contained in commercial, public service or other announcements, the name of the product or service promoted and the name of the advertising agency. BMI reserves the right to

require LICENSEE to submit such reports within thirty (30) days after the end of each month if BMI's payment distribution system to its affiliated songwriters, composers and music publishers requires such earlier reporting.

## **7. INDEMNITY**

BMI will indemnify, save and hold harmless and defend LICENSEE, LICENSEE's parents, subsidiaries, successors, assigns, Distributors, advertisers and their advertising agencies, sponsors, and LICENSEE and its respective officers, directors, employees and artists, from and against all claims, demands and suits that may be made or brought against LICENSEE or them with respect to the public performance licensed under this License Agreement of any compositions in the BMI Repertory. LICENSEE must give BMI prompt notice of any such claim, demand or suit and will simultaneously deliver to BMI all papers it has received pertaining thereto and will promptly deliver any papers it receives thereafter. BMI at its expense will have full charge of the defense of any such claim, demand or suit and LICENSEE agrees to cooperate fully with BMI in such defense. LICENSEE may however engage LICENSEE's own counsel at LICENSEE's own expense who may participate in the defense of any such action. BMI will, upon reasonable request, advise LICENSEE whether particular musical works are available for performance as part of BMI's Repertory.

## **8. BREACH OR DEFAULT**

- (a) If LICENSEE fails to perform any of the terms or conditions of this License Agreement relating to the reports, accountings or payments required to be made by LICENSEE, BMI shall give LICENSEE thirty (30) days notice in writing to cure such breach or default. If LICENSEE does not cure its breach or default within thirty (30) days after such written notice, BMI shall have the right to terminate this License Agreement. This right of termination is in addition to all other legal or equitable remedies BMI may have pursuant to this License Agreement. Failure by BMI to give such written notice of breach does not relieve LICENSEE of the obligation to make full performance hereunder, but BMI shall not be entitled to terminate this License Agreement absent such notice and failure to cure.
- (b) BMI shall have the right to terminate this License Agreement on thirty (30) days' notice if there is any major adverse interference with BMI's operation as a result of any law of the state, territory, dependency, possession or political subdivision in which LICENSEE is located or otherwise conducts business which is applicable to the licensing of performing rights; provided, however, that BMI shall only terminate the provisions of this License Agreement to the extent affected by such law.

## **9. NOTICES**

All notices required or permitted to be given under this License Agreement shall be in writing and will be duly and properly given upon receipt if addressed to the party at its place of business set forth above and:

- (a) mailed to the other party by certified United States mail; or
- (b) sent by facsimile, electronic transmission (provided that a copy of such electronically transmitted notice is also sent by mail); or
- (c) sent by generally recognized same-day or overnight delivery service.

Notices to LICENSEE shall be sent to the attention of the General Counsel, facsimile: \_\_\_\_\_ and to BMI to the attention of the Senior Vice President of Licensing, facsimile: (212) 220-4476 and to the General Counsel, facsimile: (212) 220-4474. Each party agrees to notify the other of any change of address.

## **10. SUCCESSORS AND ASSIGNEES**

This License Agreement will inure to the benefit of and be binding upon LICENSEE and BMI and upon LICENSEE's and BMI's respective successors and assignees, but no assignment will relieve either party of its respective obligations under this License Agreement arising prior to assignment.

## **11. APPLICABLE LAW**

This License Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of laws principles.

## **12. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this License Agreement, other than those matters that may be subject to the jurisdiction of the BMI Rate Court, shall be submitted to arbitration in the City, County and State of New York under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators to be selected as follows: Each of the parties 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 in any court having jurisdiction. Such award shall include the fixing of costs, expenses, and attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

## **13. MISCELLANEOUS**

- (a) No waiver by either party of full performance of this License Agreement by the other in any one or more instances shall be deemed a waiver of the right to require full and complete performance of this License Agreement thereafter and all waivers must be in writing to be effective. If any provisions herein are found by a court to be void or unenforceable it shall not affect the validity or enforceability of the remainder of this License Agreement. This License Agreement may be executed in counterparts, each of which shall be an original, but which together shall constitute one agreement.
- (b) This License Agreement contains the full and complete understanding between the parties with respect to the subject matter hereof, supersedes all prior agreements and understandings, whether written or oral, pertaining hereto, and cannot be modified except by a written instrument signed by each party hereto. The descriptive headings of the sections of this License Agreement are for convenience only and do not constitute a part of this License Agreement.

**14. TERM**

The "Term" of this License Agreement shall mean the period commencing on (month/year) \_\_\_\_\_ through and including September 30, 2010.

Agreement made on \_\_\_\_\_, 2011 ("Effective Date"), between BROADCAST MUSIC, INC. ("BMI"), a New York corporation with principal offices at 7 World Trade Center, 250 Greenwich St., New York, New York 10007-0030 and \_\_\_\_\_ a \_\_\_\_\_ corporation with offices at \_\_\_\_\_ ("LICENSEE") (hereinafter "License Agreement").

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<small>(Name of Corporation, Partnership, or Individual Owner)</small>	<small>(Street Address)</small>
<b><u>TRADE NAME</u></b>	<small>(City) (State) (Zip)</small>
<small>(Doing business under the name of)</small>	<small>(Telephone Number) (Fax Number)</small>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<small>(Contact Name) (Title)</small>
<input type="checkbox"/> Individual Ownership	<small>(Email Address) (Web Address)</small>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<small>(State of Incorporation, if different from Licensed Premises)</small>	
<input type="checkbox"/> Other _____	<small>(Street Address)</small>
Federal Tax ID No. _____	<small>(City) (State) (Zip)</small>
<b><u>GOVERNMENT ENTITIES</u></b> <small>(if applicable, please check one)</small>	<small>(Telephone Number) (Fax Number)</small>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<small>(Contact Name) (Title)</small>
<small>(State)</small>	<small>(Email Address- if different from above)</small>
<input type="checkbox"/> Local _____	
<small>(Municipality/City and State)</small>	

<b>TO BE COMPLETED BY LICENSEE</b>
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. <b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b>
Signature
Print Name / Title
Signatory Email Address* <small>(if different from above)</small>
<b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory</b>

<b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b>		
<b>FOR BMI USE ONLY</b>	<b>RMS1</b>	<b>LI-2011/SEPT</b>
<b>ACCOUNT NO.</b>	<b>COID</b>	<b>Effective: September 2011</b>

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

® BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.





# Music License for Retail Establishments

## 1. DEFINITIONS

- (a) **Licensed Retail Premises** shall mean a retail store or establishment open to the general public which is used exclusively for the sale of goods and/or services to the public. Licensed Retail Premises shall not include the common area of a shopping center or mall. Licensed Retail Premises shall also not include eating and drinking establishments such as restaurants, bars, grills, nightclubs or similar premises. However, a bar, café or restaurant owned and operated by LICENSEE that is located within a Licensed Retail Premises listed on Licensed Retail Premises List and that is operated by LICENSEE as an additional service for store patrons may be included in this license upon reporting and payment of fees for all applicable music uses under the License Fee Schedule.
- (b) **Recorded Music** shall mean music performed by: (1) the reception of radio broadcasts, including internet webcasts, and further transmission of those broadcasts over a loudspeaker or system of loudspeakers; (2) the use of LICENSEE's (as distinguished from a commercial/background music service's) audio tapes, records, CD's, DAT's by means of LICENSEE's audio-only tape, record, CD, DAT players; or (3) non-live audio-visual uses of music (such as the use of a large-screen projection television or like medium, video tapes and/or multiple televisions).
- (c) **Live Music, for the purposes of this Agreement only**, shall mean music performed by musicians, singers or other entertainers actually present and performing in the space to which this Agreement applies or recorded music which is used as an accompaniment to any other activity such as (but not limited to) fashion shows, puppet shows, comedy acts, disc jockeys, etc.
- (d) **Chain Operation** shall mean ten (10) or more licensable locations, that are owned and operated by LICENSEE whether directly or through a wholly owned or majority controlled subsidiary.
- (e) **Square Footage** shall mean the entire interior space of that establishment, and any adjoining outdoor space used to serve patrons, whether on a seasonal basis or otherwise.

## 2. BMI GRANT

- (a) BMI grants LICENSEE a non-exclusive license to perform publicly at each of the Licensed Retail Premises listed on Licensed Retail Premises List annexed hereto (as may from time to time be amended) by means of Live Music or Recorded Music, (as these terms are defined herein) and not otherwise, non-dramatic performances of all musical works of which BMI controls the right to grant public performance licenses during the Term of this Agreement.
- (b) This Agreement does not include: (1) the right to present the music in any way which may be a use of the "grand rights"; or (2) the right to transmit performances outside of the Licensed Retail Premises; or (3) the right to perform music by means of any coin-operated phonorecord player as defined in the Copyright Act ("Jukebox") where a Jukebox License Office ("JLO") agreement may be obtained for such Jukebox, or by any coin-operated digital music service that does not qualify as a Jukebox; or (4) any Licensed Retail Premises to which an admission fee is charged.
- (c) BMI may withdraw from the license LICENSEE's right to perform any musical work as to which a legal action has been brought or a claim made that BMI does not have the right to license the work or that the work infringes another work.

## 3. BMI COMMITMENT TO CUSTOMER / INDEMNITY

So long as LICENSEE is not in default or arrears in payment under this Agreement, BMI agrees to indemnify, save harmless and defend LICENSEE, its officers and employees, from and against any and all claims, demands or suits of Copyright Infringement that may be made or brought against them or any of them with respect to the public performance of any musical work licensed under this Agreement. Such indemnity shall be limited to the works which are licensed by BMI at the time of LICENSEE's public performances. 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. BMI will, upon reasonable written request, advise you whether specific musical works are available for performance, under this Agreement, if LICENSEE provides the title and the writer/composer of each musical work.

## 4. TERMINATION OF AGREEMENT BY LICENSEE

In the event that you sell the Licensed Retail Premises or close the business during the Term of this Agreement and you send BMI written notice by certified mail within 30 days of the sale or closing, BMI will adjust your fees pro rata from the date of sale or closing, and will refund to you any unearned licensed fees paid hereunder. If such notice is received more than 30 days after the sale or closing, BMI will adjust your fees prospectively for the remainder of the contract year in which BMI received the notice. In either event, your credit adjustment hereunder shall not reduce your annual fee due BMI below the annual minimum fee applicable under the Agreement. If you do not timely notify BMI in accordance with this Paragraph prior to the end of the contract year in which the sale or closing occurred, this Agreement will remain in effect for the entire year, and you will be responsible for the entire annual fee due to BMI hereunder.

## 5. BREACH OR DEFAULT / WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues thirty (30) days after LICENSEE's receipt of written notice thereof. 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 a waiver of the right to require full and complete performance of this Agreement thereafter or the right to cancel this Agreement in accordance with the terms of the Paragraph.

## 6. ARBITRATION

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement, not subject to the jurisdiction of the BMI Rate Court, shall be submitted to arbitration in the City, County and State of New York under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators to be selected as follows: Each of the parties 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 a 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 in any court having jurisdiction. Such award shall include the fixing of costs, expenses, and attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

## 7. NOTICES

Unless otherwise stated herein, any notice 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 as stated, or any other address which either party may designate. Any such notice sent to BMI shall be to the attention of the Vice President, Licensing, BMI, 10 Music Square East, Nashville, Tennessee, 37203.

## 8. FEES

- (a) LICENSEE warrants that the Licensed Retail Premises listed on Licensed Retail Premises List are within the Class(es) shown on the License Fee Schedule.
- (b) LICENSEE agrees to pay BMI the total annual license fees as set forth on the LICENSE FEE SCHEDULE payable for each Licensed Retail Premises listed on Licensed Retail Premises List. License fees are payable quarterly in January, April, July and October of each contract year with payment due by the twentieth (20<sup>th</sup>) day of each quarter.
- (c) Notwithstanding subparagraph 8(b), if any quarterly payment is not received by the 90<sup>th</sup> day after such payment is due, LICENSEE'S right to make quarterly payments shall immediately terminate for the remainder of this Agreement and the unpaid portion of the Annual Fee will be immediately due and payable.
- (d) The schedules of the Annual Fee shall be adjusted for calendar year 2018 of the Agreement and for each subsequent calendar year based on the percentage increase in the United States Consumer Price Index (National, All Items) between the preceding October and the October prior thereto. BMI will notify LICENSEE of the amount of each new fee.
- (e) BMI may impose a late payment charge of one and one-half percent (1½%) per month from the date any payment or report was due on any payment that is received by BMI more than thirty (30) days after the due date.
- (f) In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from licensees, LICENSEE agrees to pay to BMI the full amount of such tax together with LICENSEE'S fee payment(s); provided however, that (a) BMI shall make reasonable efforts to be exempted or excused from paying such tax, and (b) BMI is permitted by law to pass through such tax to LICENSEE.

## 9. REPORTING

- (a) On or before the 20<sup>th</sup> day of the first month following each contract year of the Term, LICENSEE shall furnish BMI with a statement which shall include the following information for each Licensed Retail Premises for such contract year: (1) trade name, address, phone number and contact name; (2) total Square Footage; (3) whether the Licensed Retail Premises was added or deleted during the contract year and the date of and reason for any additions or deletions; and (4) type of music usage for each Licensed Retail Premises listed.
- (b) If the actual license fee due BMI is greater than the estimated license fee already paid by LICENSEE to BMI during the previous contract year (or part thereof), LICENSEE agrees to pay to BMI an amount equal to the difference between the actual and the estimated license fees within thirty (30) days of BMI's billing therefor.

- (c) If the actual license fee due BMI is less than the estimated license fee already paid by LICENSEE to BMI during the previous calendar year (or part thereof), BMI agrees to credit the difference to the account of LICENSEE, and if such difference shall occur during the last calendar year of the Term, BMI agrees to refund the same promptly.
- (d) This Agreement will extend to each Licensed Retail Premises added to Licensed Retail Premises List as of the day on which Recorded Audio, Audio-Visual, Live, Recorded with Acts is first performed at such added Licensed Retail Premises, as long as payment for and reporting of that Licensed Retail Premises is made as required herein. LICENSEE shall give BMI written notice within twenty (20) days of the time music is being performed at any Licensed Retail Premises not listed on Licensed Retail Premises List. The notice will include the address and square footage of additional Licensed Retail Premises, type of music used as stipulated in Paragraph 9(a), and the month music use began. At the same time, LICENSEE will pay the correct license fee on the License Fee Schedule, prorated to the first day of the month in which the music use began; provided however, the license fee for that Licensed Retail Premises will not be less than the applicable minimum fee. If LICENSEE notifies BMI that any Licensed Retail Premises discontinues music use, LICENSEE will receive a credit of fees paid for said Licensed Retail Premises, prorated to the beginning of the month of discontinuance. However, the license fee for that Licensed Retail Premises will not be less than the minimum fee.
- (e) In the event that LICENSEE, with multiple Licensed Retail Premises, operates less than ten (10) Licensed Retail Premises during any reporting period, the license fee for each such Licensed Retail Premises for the period and the next advance payment period shall be the appropriate fee (prorated, if applicable) as then being charged by BMI for single Licensed Retail Premises, less any payments previously made for such period for each such Licensed Retail Premises. However, the license fee for each Licensed Retail Premises will not be less than the applicable minimum fee.
- (f) BMI shall have the right, by its authorized representatives, at any time during customary business hours, and upon thirty (30) days advance written notice, to examine those portions of LICENSEE'S books and records of account to such extent as may be necessary to verify any and all statements and/or accountings made hereunder or under any prior agreement with BMI. BMI shall consider all data and information coming to its attention as the result of any such examination of LICENSEE'S books and records as confidential.
- (g) BMI may from time to time review music use at your Licensed Retail Premises. BMI may make inquiries in person or by phone as to the accuracy of music use reported. If BMI thereafter believes that you are not paying license fees consistent with the use of music at the Licensed Retail Premises, BMI will notify you by mail. If you agree to BMI'S assessment of fees due pursuant to this Agreement, the adjusted billing will be reflected on your next invoice. If you dispute BMI'S assessment of fees due pursuant to this Agreement, you must notify BMI within 30 days of the notification by BMI. If within 90 days of such notification by BMI you do not respond or you and BMI cannot agree upon an appropriate fee, either party may commence an arbitration proceeding pursuant to Paragraph 6 to resolve the dispute over the amount of your license fees. Such right shall be in addition to any and all other remedies BMI may have under the Agreement, including the right to cancel this Agreement.

## 10. CANCELLATION OF ENTIRE CATEGORY

BMI shall have the right to cancel the Agreement along with the simultaneous cancellation of the Agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

## 11. OFFER OF COMPARABLE AGREEMENT

In the event that BMI, at any time during the Term hereof, 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.

## 12. MISCELLANEOUS

This Agreement constitutes the entire understanding between the parties and supersedes all prior and/or current Music Performance Agreements used for the class and category of music use defined herein between the parties which are heretofore null and void. This Agreement shall not be



# 2017 License Fee Schedule

**Schedule 1A: RECORDED MUSIC  
One (1) to Nine (9) Licensed Retail Premises**  
(A **MINIMUM FEE** of not less than the lowest **CLASS** fee applies to each Licensed Retail Premises.)

Class	Total Square Footage Of Each Licensed Retail Premises	a) Annual License Fee for Audio-Only Performances*	b) Annual License Fee for Audio-Visual Performances*
1.	2,000 or less	\$231.73	\$312.82
2.	2,001 to 2,500	\$313.50	\$423.21
3.	2,501 to 5,000	\$449.80	\$607.21
4.	5,001 to 7,500	\$722.41	\$975.23
5.	7,501 to 10,000	\$994.98	\$1,343.25
6.	10,001 to 12,500	\$1,267.62	\$1,711.29
7.	12,501 to 15,000	\$1,540.21	\$2,079.27
8.	15,001 to 17,500	\$1,812.79	\$2,447.31
9.	over 17,500	\$1,976.38	\$2,668.11

\*If both Audio and Audio-Visual performances are utilized at the Licensed Retail Premises, the higher fee shall apply.

**Schedule 1B: RECORDED MUSIC  
Chains with Ten (10) or More Licensed Retail Premises**  
(A **MINIMUM FEE** of not less than the lowest **CLASS** fee applies to each Licensed Retail Premises. These fees are successive. "Successive" means that the first 300 premises using Audio-Only will pay Class (1) fees; the 301<sup>st</sup> through the 500<sup>th</sup> will pay Class (2) fees, etc. The same form of computation of fees applies to premises using Audio-Visual.)

Class	Number of Licensed Retail Premises	a) Annual License Fee for Audio-Only Performances*	b) Annual License Fee for Audio-Visual Performances*
1.	1 to 300	\$231.73	\$312.82
2.	301 to 500	\$204.46	\$276.01
3.	501 to 800	\$184.01	\$248.40
4.	801 to 2,000	\$163.57	\$220.80
5.	over 2,000	\$143.13	\$193.20

**Schedule 2: LIVE MUSIC  
Single Singer / Instrumentalist**  
(Schedule 2 fees are paid in addition to fees due to any other applicable schedules. A **MINIMUM FEE** of not less than the lowest **CLASS** fee applies to each Licensed Retail Premises.)

Class	Total Square Footage Of Each Licensed Retail Premises	Annual Fee Per Premises
1.	2,000 or less	\$204.46
2.	2,001 to 2,500	\$272.61
3.	2,501 to 5,000	\$456.61
4.	5,001 to 6,500	\$592.92
5.	6,501 to 7,500	\$681.52
6.	7,501 to 8,500	\$783.74
7.	8,501 to 9,500	\$885.99
8.	9,501 to 10,000	\$954.09
9.	over 10,000	\$1,022.26

**Schedule 3: LIVE MUSIC  
Multiple Singers / Instrumentalists**  
(Multiple Singers or Instrumentalists and/or Performance of Recorded Music as Accompaniment to Acts / Events (i.e. Fashion Shows with Live Models, Seasonal Events with Live Performers))

- Schedule 3 fees are paid in addition to fees due to any other applicable schedules.
- \$43.62 per day for each Licensed Retail Premises, with a **MAXIMUM FEE** for each Licensed Retail Premises for Schedule 3 of \$3,516.58.
- If the only music employed by a Licensed Retail Premises is that for which fees are assessed pursuant to Schedule 3, then a **MINIMUM FEE** of \$204.46 for each Licensed Retail Premises shall apply or \$43.62 per day, whichever is greater.

**LICENSED RETAIL PREMISES REPORTING**  
(Complete the following if there is only one (1) Licensed Retail Premises under this Agreement. If there is more than one (1) Licensed Retail Premises, please attach a list of all Licensed Retail Premises with appropriate information provided. In the address field simply enter "see attached list of Licensed Retail Premises" when appropriate.)

**SCHEDULE 1A or 1B - Recorded Music**

Square Footage: \_\_\_\_\_ Audio-Only  Audio-Visual  .....Fee for Schedule 1A or 1B \$ \_\_\_\_\_

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**SCHEDULE 2 - Live Music-Single Singer / Instrumentalist**

Square Footage: \_\_\_\_\_ .....Fee for Schedule 2 \$ \_\_\_\_\_

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**SCHEDULE 3 - Live Music-Multiple Singers / Instrumentalists and/or Performance of Recorded Music as an Accompaniment to Acts**

# of Days with Live Music \_\_\_\_\_ X \$43.62 per day = **Fee for Schedule 3** \$ \_\_\_\_\_ (Attach a list of all events)

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**COMBINE FEES from SCHEDULES 1A or 1B and/or 2 & 3 as applicable.....TOTAL ANNUAL FEE** \$ \_\_\_\_\_

binding until signed by both parties, and cannot be waived or added to or modified orally. No waiver, addition or modification shall be valid unless in writing and signed by the parties. The rights of LICENSEE hereunder shall be assignable provided that such assignment be subject to BMI's approval, which approval shall not be unreasonably withheld. This Agreement, its validity, construction and effect, shall in all instances be governed by the substantive laws of the State of New York, regardless of that state's choice-of-law rules. 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 provision of this Agreement. The headings are for convenience only and are not a part of the Agreement.

**13. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of the Agreement.

**14. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

**15. TERM**

The Term of this Agreement shall begin on the first day of (month/year) \_\_\_\_\_ and end on the last day of December \_\_\_\_\_ (a "Contract Year"). It will continue annually unless cancelled by either LICENSEE or BMI at the end of the first Term or any following one (1) year Term by giving thirty (30) days advance written notice to the other party.

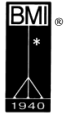
**AGREEMENT**

THIS AGREEMENT made and entered into on (Date will be entered by BMI upon execution) \_\_\_\_\_ between BROADCAST MUSIC, INC., a corporation with principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-00030, herein referred to as BMI, **and the entity described below and herein referred to as LICENSEE.**

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b><u>TRADE NAME</u></b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address) (Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<i>(State of Incorporation, if different from Licensed Premises)</i> _____ <i>(Enter names of partners)</i>	
<input type="checkbox"/> Other _____	<i>(Street Address)</i>
Federal Tax ID No. _____	<i>(City) (State) (Zip)</i>
<b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i>	<i>(Telephone Number) (Fax Number)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Local _____	<i>(Email Address – if different from above)</i>
<i>(Municipality/City and State)</i>	

<p><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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.</p> <p><b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b></p> <p><b>TO BE COMPLETED BY BMI</b></p> <p><b>BROADCAST MUSIC INC.</b></p>
Signature	
Print Name / Title	
Signatory Email Address* <i>(if different from above)</i>	

<p><b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b></p> <p><b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b></p> <p><b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b></p>	<p><b>FOR BMI USE ONLY</b></p>	<p><b>RTL1</b></p>	<p><b>LI-2017/JULY</b></p>
	ACCOUNT NO.	COID	EFFECTIVE: January 2017



® BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.



<b>BMI-10</b>	
Account #	_____
License Type	_____

## Radio Station Blanket/Per Program License Agreement

AGREEMENT, made between BROADCAST MUSIC, INC., a corporation organized under the laws of the State of New York with principal offices at 7 World Trade Center, 250 Greenwich St., New York, N.Y. 10019 (“BMI”) and

Call Letters \_\_\_\_\_ Freq. \_\_\_\_\_ FCC Community \_\_\_\_\_  
and Band \_\_\_\_\_ of License \_\_\_\_\_  
(city) (state)

(Legal Name of LICENSEE)

License to take effect from : \_\_\_\_\_ (“effective date”)

**Please Check Appropriate Box and Complete**

- A corporation organized under the laws of the State of \_\_\_\_\_
- A limited liability company organized under the laws of the State of \_\_\_\_\_
- A partnership consisting of \_\_\_\_\_
- An individual residing at \_\_\_\_\_

(hereinafter “You” or “LICENSEE”) licensing the radio broadcasting station (“Station”) presently receiving mail at:

(Street Address or P.O. Box)

(City) (State) (Zip Code) (Telephone Number)

Location of Station:  Check box if same as above.

(Street Address)

(City) (State) (Zip Code)

email address: \_\_\_\_\_

with the Radio Station Web Site URL: http:// \_\_\_\_\_

(herein the “BMI-10 License”).

**1. Term.**

The term of the BMI-10 License commences as of January 1, 2010, and ends on December 31, 2016, unless earlier terminated as hereinafter provided (the “**Term**”)

**2. Definitions.**

A. “**Background for an Announcement**” shall mean mood, atmosphere or thematic music performed as background to an otherwise non-musical commercial, public service, or station promotional announcement not exceeding sixty (60) seconds in length.

B. “**BMI Repertoire**” shall mean musical works for which BMI may own or control the right to grant public performing right licenses at the time of Station’s performance.

C. “**Feature Performance**” shall mean any performance that is either a principal focus of audience attention, such as a song or other musical composition, whether performed “live” or by means of a recording, or other feature musical subject matter on a radio program that is not a performance as a Theme or signature, bridge, cue or background music, Jingle, or in conjunction with an advertising promotion, or public service announcement or logo.

D. “**Gross Revenue from Radio Broadcasting**” shall mean all:

(1) billings for Station’s Radio Broadcasting (as defined below) operations payable by or on behalf of:

- (a) Advertisers, sponsors, donors, Local Managers (as defined below), or any other party for the use of the facilities of the Station,
- (b) sponsors of, or donors to, Your Simulcast Programs (as defined below), and
- (c) sponsors of, or donors to, Your Occasional Network Programs (as defined below), and
- (d) any of the above that is receivable by any Local Manager (as defined below), and

(2) Net Promotional Revenue (as defined below).

Such billings include all amounts payable to You, Your employees, representatives, agents or any other person acting on Your behalf, including time brokers. Such amounts shall not include billings payable to independent third parties, such as networks or program suppliers, or non-cash billings payable in goods or services commonly referred to as “trades” or “barter.”

E. “**Gross Revenue from New Media Transmissions**” shall mean all billings payable by or on behalf of advertisers, sponsors, donors, subscribers, or any other party in connection with “New Media Transmissions” (as defined below). Such billings include all amounts payable to You, Your employees, representatives, agents, or any other person acting on Your behalf. Such amounts shall not include billings payable to independent third parties, such as networks or program suppliers, or non-cash billings payable in goods or services commonly referred to as “trades” or “barter.”

F. “**Incidental Use**” shall mean music other than a Feature Performance, including Themes or signatures; bridges, cue, or background music; Background for an Announcement; a Jingle; public domain music in arrangements controlled by BMI on which BMI pays no royalties; and music that is used only incidentally to the broadcast of a news event or sports event.

G. “**Jingle**” shall mean an advertising, promotional, or public service announcement containing musical material (with or without lyrics) where the musical material was originally written for advertising, promotional, or public service announcement purposes or a musical work originally written for other purposes, with the lyrics changed for advertising, promotional or public service announcement purposes, not exceeding sixty (60) seconds in length and used with the permission of the interested writer or publisher affiliated with BMI.

H. “**Local Management Agreement**” shall mean any agreement under which any other entity becomes a Local Manager in regard to Station.

I. **“Local Manager”** shall mean any entity not under common ownership or control of LICENSEE that is authorized to resell 10 percent or more of Station’s air time and: (1) simulcasts or sells announcements on Station in combination with a radio station owned or operated by the entity, which station has entered into the BMI-10 License, or (2) has assumed, contractually or otherwise, responsibility for the management of Station and the payment of license fees. Nothing in this definition shall limit the obligations of the Station owner to BMI.

J. **“Music-Format Station”** shall mean any station that has Feature Performances of music in the BMI Repertoire in more than 90 of its “Weighted Program Periods” (as defined below) in any given week on its terrestrial analog signal.

K. **“Net Promotional Revenue”** shall mean all amounts payable to You by third parties for the direct or indirect promotion of their businesses via the broadcast facilities of the Station other than paid programs or commercial announcements (such as, but not limited to, bridal or craft shows, direct mailings, special sponsored events, or publications produced and promoted by the station), less those out-of-the-ordinary costs, such as booth rentals, printing and mailing expenses, and cost of goods sold, that would not have otherwise been incurred without the promotional activity. Deductible costs may not exceed the amounts due.

L. **“New Media Transmissions”** shall include any performance transmitted via the Internet, wireless data networks, or any other similar transmission facilities, where a commercial relationship exists between such performance and LICENSEE’s Radio Broadcasting. By way of example, a commercial relationship exists when: (1) there is in-common branding and marketing between LICENSEE’s New Media Transmissions and LICENSEE’s Radio Broadcasting; and/or (2) there are bundled sales of advertising availabilities and/or sponsorship across LICENSEE’s Radio Broadcasting and LICENSEE’s New Media Transmissions.

M. **“Non-Music Format Station”** shall mean any station that has Feature Performances of music in the BMI Repertoire in 90 or fewer of its “Weighted Program Periods” (as defined below) in any given week on its terrestrial analog signal.

N. **“Occasional Network Programs”** shall mean all programs that You cause to be broadcast simultaneously or by so-called “delayed” or “repeat” broadcasts on any group of two or more radio stations that are affiliated with You for the purpose of broadcasting those programs. For the purposes of the BMI-10 License, any sports network that You operate is deemed to be an occasional network.

O. **“Program Period”** shall mean a fifteen (15) minute period of broadcasting commencing on the hour and at fifteen (15), thirty (30), and forty-five (45) minutes past the hour without regard to whether such period contains one or more programs or announcements.

P. **“Radio Broadcasting”** shall mean audio “over-the-air” broadcasts by means of Station’s FCC-licensed terrestrial analog signals and HD/multicasting via its FCC-assigned digital facilities (sometimes referred to as “multicasting” or “HD Radio”) as identified with the FCC’s unique station identifier or FCC Facility ID. Radio Broadcasting excludes FCC-licensed low power audio broadcasting with similar technical characteristics and requirements as currently defined in 47 C.F.R. § 73.801, et seq., but it includes FM Translators as defined in 47 C.F.R. § 74.1231.

Q. **“Radio Station Signal”** shall mean Station’s FCC-licensed over-the-air radio broadcast transmission.

R. **“Revenue Subject to Fee from Radio Broadcasting”** shall mean “Gross Revenues from Radio Broadcasting” less a 12% deduction.

S. **“Revenue Subject to Fee from New Media Transmissions”** shall mean Gross Revenue from New Media Transmissions less a 25% deduction, unless such deduction is modified pursuant to Paragraph 6 of the agreement between BMI and the Radio Music License Committee (“RMLC”) that is attached as Exhibit A to the BMI-10 License (“**BMI/RMLC Agreement**”), the terms of which are incorporated herein by reference.

T. **“Simulcast Programs”** shall mean all programs broadcast simultaneously or by so-called “delayed” or “repeat” broadcasts by two or more radio stations that You own or for which You act as a time broker.

U. **“Theme”** shall mean a performance of a work that is regularly associated with a radio program and identifies that program to the listener when used as the opening and/or closing music.

V. **“Through-to-the-Audience License”** shall mean, in reference to the scope of the rights granted under the BMI-10 License, a non-exclusive license that authorizes the transmission and retransmission of any Radio Broadcast or New Media Transmission to subscribers, listeners, or viewers so long as each entity involved in the transmission or retransmission other than LICENSEE has an economic relationship with LICENSEE. For the avoidance of doubt, nothing in this license shall be construed as authorizing LICENSEE to grant to bars, restaurants, taverns, hotels, retail establishments, or other similar businesses or establishments any right to perform publicly any of the musical compositions licensed under the BMI-10 License.

W. “U.S. Territory” shall mean the United States, its Commonwealth, territories and possessions.

X. “Weighted Program Period” means a Program Period multiplied by the following weights:

	<u>Time Period</u>	<u>Applicable Weight</u>
<u>Weekday</u>	Midnight to 6:00am	0.25
	6:00am to 10:00am	1.00
	10:00am to 3:00pm	0.50
	3:00pm to 7:00pm	0.75
	7:00pm to Midnight	0.50
<u>Weekend</u>	Saturday & Sunday	0.25

### 3. BMI Grant.

A. BMI grants LICENSEE a non-exclusive Through-to-the-Audience License to perform publicly in the U.S. Territory, by Radio Broadcasting and New Media Transmissions, non-dramatic performances of all musical works in the BMI Repertoire during the Term.

B. The rights granted in the BMI-10 License shall not include the right to perform or license the performance of more than one song or aria from a dramatic or dramatico-musical work that is an opera, operetta or musical show or more than five (5) minutes from a dramatic or dramatico-musical work that is a ballet, if such performance is accompanied by the dramatic action, costumes, or scenery of that dramatic or dramatico-musical work.

C. The performances licensed hereunder may originate at any place, whether or not such place is licensed to publicly perform the musical works licensed hereunder, and regardless of the manner, means or methods of such origination. Except as provided in Paragraph 3.A above, nothing in the BMI-10 License shall be deemed to authorize LICENSEE to grant to others any performance or other rights in any of the musical compositions licensed under the BMI-10 License or to extend to the receiver of LICENSEE’s Radio Station Signal or to any place at which the performances licensed by the BMI-10 License originate if other than at Station and for which a separate license for such performances is required.

D. Except as otherwise granted herein, nothing herein shall be construed as authorizing LICENSEE to grant to others, including but not limited to any cable system, satellite carrier (including MMDS or similar wireless services), online services, or ISP the right to retransmit to the public or publicly perform by any means, method or process whatsoever any of the musical compositions licensed hereunder or as authorizing any receiver of any radio broadcast to publicly perform or reproduce the same by any means, method, or process whatsoever.

### 4. License Fee; Minimum Fee.

A. The terms of the BMI/RMLC Agreement, attached hereto as Exhibit A, are incorporated herein by reference.

B. For all periods through December 31, 2011, if Station was licensed under the terms of the 2007 BMI Radio Station Blanket/Per Program License Extension Agreement (BMI-07) or the 2010 BMI Radio License Extension Agreement (LI-01/10-

RMLC-07-Ext), the license fees due and payable, and all the additional terms and conditions that shall be applicable hereunder for such periods, shall be as provided in the BMI/RMLC Agreement.

C. If Your terrestrial analog signal broadcast has more than 90 Weighted Program Periods per week that contain at least one Feature Performance of music in the BMI Repertoire, or You otherwise elect, You will pay a license fee on the blanket basis for Your Radio Broadcasting, subject to the election provisions of Paragraphs 7.A, 7.B and 7.C below, and You agree to pay BMI a license fee of 1.7% of Your Revenue Subject to Fee from Radio Broadcasting for each year 2012 through 2016 of the BMI-10 License.

D. If Your terrestrial analog signal broadcast has 90 or fewer Weighted Program Periods per week that contain at least one Feature Performance of music in the BMI Repertoire, You may elect to pay a license fee on the program-period basis for Your Radio Broadcasting, subject to the election provisions of Paragraphs 7.A, 7.B and 7.C below, and You agree to pay BMI the following license fee for each year 2012 through 2016 of the BMI-10 License:

- (1) A base fee of 0.2958% of Revenue Subject to Fee from Radio Broadcasting, plus
- (2) A supplemental fee, calculated based upon the number of Weighted Program Periods in Your terrestrial analog signal broadcast per week containing at least one Feature Performance of music in the BMI Repertoire, as follows:

<u>Weighted Program Periods Per Week with Feature Performances of music in the BMI Repertoire</u>	<u>Supplemental Fee</u>
0	None (“ <b>Base Fee Only</b> ”)
1-4	9% of base fee (“ <b>Minimum Supplemental Fee</b> ”)
5-20	45% of base fee (“ <b>Median Supplemental Fee</b> ”)
21-90	200% of base fee (“ <b>Maximum Supplemental Fee</b> ”)
91 or more	Blanket basis only

E. If Your New Media Transmissions are limited to streaming Your Radio Broadcasting via the Internet, wireless data networks, or any other similar transmission facilities, You agree to include Your Revenue Subject to Fee from New Media Transmissions with Your Revenue Subject to Fee from Radio Broadcasting when calculating Your license fee pursuant to either Paragraph 4.C or 4.D above.

F. If Your New Media Transmissions are not limited to streaming Your Radio Broadcasting via the Internet, wireless data networks or any other similar transmission facilities, and if any of Your New Media Transmissions contain Feature Performances of music in the BMI Repertoire, subject to Paragraph 7.D below, You agree to pay BMI a license fee of 1.7% of Your Revenue Subject to Fee from New Media Transmissions for each year 2012 through 2016 of the BMI-10 License in addition to Your license fee for Radio Broadcasting.

G. If Your New Media Transmissions are not limited to streaming Your Radio Broadcasting via the Internet, wireless data networks, or any other similar transmission facilities, and if all of Your New Media Transmissions contain no Feature Performances of music in the BMI Repertoire, subject to Paragraph 7.D below, You agree to pay BMI a license fee of 0.2958% of Your Revenue Subject to Fee from New Media Transmissions for each year 2012 through 2016 of the BMI-10 License in addition to Your license fee for Radio Broadcasting.

H. **Minimum Fee.** In no event shall Your total annual license fee be less than \$588.

I. **Annual Reports.** You will submit a report of the license fee due for each year 2012 through 2016 of the BMI-10 License by April 1 of the following year, by fully completing the Statement of Account that will be made available on BMI’s website. For the avoidance of any doubt, all Annual Reports must be submitted using the electronic format and Internet-based delivery transmission methodology to be developed by BMI and agreed to by the RMLC, and any Annual Report attempted to be submitted to BMI by LICENSEE in any other fashion will be deemed a non-submission of an Annual Report, subject to the provisions of Paragraph 4.J. BMI will promptly confirm electronically to LICENSEE receipt of the Annual Reports required by this Paragraph.

J. **Monthly Payments in 2012-2016.** For each month in 2012, LICENSEE shall, on or before the first day of the following month, pay to BMI an amount equal to one-twelfth (1/12) of the estimated annual fee payable by Station to BMI after taking into consideration: (i) the reduction in the estimated fee based on projected total industry fees for 2012 of \$150 million, and (ii) a pro-rata share of the \$70.5 million refund as provided in the BMI/RMLC Agreement.

For each month in calendar years 2013 through 2016, LICENSEE shall, on or before the first day of the following month, pay to BMI a sum equal to one-twelfth (1/12) of the license fee for the preceding calendar year (annualized for any reported period less than a year), adjusted in accordance with the information provided in the Annual Report and any change in the Consumer Price Index (All Urban Consumers, all items) during the 12 months ending in the preceding October; however, for purposes of calculating Monthly Payment in any given year this change shall not be less than zero. If BMI does not receive the report required by Paragraph 4.I. for any calendar year when due, the on-account monthly payments will be in the amount of the monthly payments due for the preceding year plus 24 percent, and payments at that rate will continue until the required report is received. If the Station commenced broadcasting after January 1, 2012, You will furnish BMI with a good-faith estimate of Your Revenue Subject to Fee from Radio Broadcasting and Your Revenue Subject to Fee from New Media Transmissions for the first year of operation, and the on-account monthly payments during the first calendar year of broadcasting will be one-twelfth (1/12) of the fee provided in Paragraphs 4.C. through 4.G. for a station having such revenue, however in no case shall the fee for such station be less than the pro-rated minimum fee provided for in Paragraph 4.H. above. BMI will promptly confirm to LICENSEE receipt of the Monthly Payments required by this Paragraph. The reflection of a payment on the next invoice shall constitute sufficient confirmation for purposes of this section.

K. **Billing or Accrual Basis.** License fee reports will be made on a billing or accrual basis by all stations, except that any station may report on a cash basis if its books have been kept on a cash basis, in which case LICENSEE shall not be entitled to the deduction provided for in Paragraph 2.R. of the BMI-10 License, and LICENSEE shall be entitled to one-half of the deduction provided for in Paragraph 2.S of the BMI-10 License.

L. **Combination Sales.** If the use of the broadcasting facilities of the Station is sold in combination with any other stations that You own, operate, or control that are licensed by BMI under the BMI-10 License, the combination revenue shall be allocated among the stations on a reasonable basis, taking into account factors such as, but not limited to, separate sales by the stations for comparable facilities during the report period or the immediately preceding period and the relative ratings of the stations during the report period.

M. **Annual Adjustments.** The annual license fee due for any year may be adjusted in accordance with the information provided in the Annual Report. If the annual license fee due for any year of the Term exceeds the monthly installments previously billed for that year, BMI will invoice the additional amount due in the month following receipt of the Annual Report, and LICENSEE shall pay BMI such amount within thirty (30) days of receipt of such invoice. If the monthly installments billed for any year of the Term exceed the annual license fee due for that year, BMI will credit LICENSEE the amount of the excess and apply it to Your future monthly installments or will refund it to You upon Your written request if it is greater than four (4) monthly installments required by Paragraph 4.J above.

N. **Taxes.** In the event that the payment of any license fee to BMI by LICENSEE pursuant to the BMI-10 License causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from licensees (excluding taxes which may be computed based upon income), the LICENSEE agrees to pay BMI the full amount of such tax together with LICENSEE's fee payment(s) as invoiced by BMI, within normal payment terms; provided, however, that BMI is permitted by law to pass through such tax to LICENSEE; and provided further that LICENSEE and BMI will cooperate in making reasonable efforts to seek to be exempt from the tax.

O. **Late or Non-Payments.** BMI may impose a late or non-payment charge of 1.0% per month from the date the payment was due on any monthly payment that is received by BMI after the date payment was due.

## 5. Audits.

A. **Right to Audit.** BMI has the right by its duly authorized representatives, at any time during customary business hours, upon reasonable notice, to examine Your books and records of account only to the extent necessary to verify any report required by the BMI-10 License, for a period no more than three (3) calendar years prior to the year in which the audit is requested. BMI will consider all data and information coming to its attention as a result of any such examination of books and records as confidential pursuant to Paragraph 13 below.



The three (3)-year limitation on BMI's right to audit shall not apply if LICENSEE fails or refuses after written notice from BMI to produce the books and records necessary to verify any report required hereunder.

BMI shall not have the right to audit for any reported calendar years prior to 2012.

**B. Audit Finance Charges.** If BMI's audit discloses that You underpaid license fees due BMI:

1. You will pay a finance charge on the additional license fees of 1.0% per month from the date(s) the fees should have been paid pursuant to the BMI-10 License if the underpayment is 5% or more but not less than \$1000.

2. You will pay a finance charge on the additional license fees of 1.0% per month beginning thirty (30) days after the date BMI bills the additional license fees to You if the underpayment is less than 5% or less than \$1000.

3. You may dispute all or part of BMI's audit claim. If You do, You must, within thirty (30) days from the date that BMI bills the additional fees: (i) advise BMI, in writing, of the basis for Your dispute and (ii) pay BMI any fees indisputably owed together with any applicable finance charges. If there is a good-faith dispute between us with respect to all or part of the additional fees that BMI has billed pursuant to this Paragraph, no finance charges will be billed with respect to the disputed fees for a period beginning on the date BMI billed the fees to You and ending sixty (60) days from the date that BMI responds to Your written notification of the existence of a dispute.

4. Finance charges computed in accordance with this Paragraph and pertaining to additional fees that You dispute in accordance with Subparagraph (3) above will be adjusted pro-rata to the amount arrived at by You and BMI in resolution of the dispute.

**C. Correction of Errors.** You may correct computational errors on the Annual Reports required by Paragraph 4.I for the calendar year preceding the year in which the corrected report is submitted without incurring any penalty, provided that the corrected report is submitted to BMI within ninety (90) days after the Annual Report was originally due under Paragraph 4.I.

**6. License Breach.**

In the event that LICENSEE shall fail to make payment or render any report under the BMI-10 License when and as due, BMI may give LICENSEE thirty (30) days' notice in writing to cure such breach or default. In the event that such breach or default has not been cured within thirty (30) days of said notice, BMI may cancel the BMI-10 License effective upon the failure to cure such breach or default. The right to cancel shall be in addition to any and all other remedies that BMI may have at law or in equity.

**7. Blanket/Per Program License Changes and Ownership Changes.**

A. If LICENSEE has elected to pay license fees for Radio Broadcasting on the blanket basis as set forth in the BMI-10 License, LICENSEE may, as of the first day of January, April, July, or October during any calendar year of the BMI-10 License, upon not less than forty-five (45) days' prior written notice to BMI using a form supplied by BMI (a copy of which is to be forwarded to the RMLC by Station) elect to be licensed on a program period basis as set forth in the BMI-10 License, provided that Station has changed formats from a Music Format Station to a Non-Music Format Station and LICENSEE is current in all blanket license payments and reports required hereunder as of the effective date of LICENSEE's election.

B. If LICENSEE has elected to pay license fees for Radio Broadcasting on a program period basis as set forth in the BMI-10 License, LICENSEE must provide BMI with not less than forty-five (45) days' prior written notice to BMI in the event that Station has changed formats from a Non-Music Format Station to a Music Format Station, and LICENSEE shall be deemed to have elected to be licensed on a blanket basis as of the next ensuing January 1, April 1, July 1, or October 1 (whichever occurs first after the election to change format) following the proper notice.

C. If LICENSEE has elected to pay license fees for Radio Broadcasting on a program period basis as set forth in the BMI-10 License, LICENSEE may, as of the first day of January, April, July, or October during any calendar year of the BMI-10 License, upon not less than forty-five (45) days' prior written notice to BMI using a form to be supplied by BMI (a copy of which is to be forwarded to the RMLC by Station) elect to be licensed on a blanket basis as set forth in the BMI-10 License, provided that LICENSEE is current in all program period license fees and reports due hereunder.

D. LICENSEE may, upon not less than forty-five (45) days' prior written notice to both BMI and the RMLC, elect to change the basis on which it pays its license fees for New Media Transmissions using the form attached as Exhibit B as of the first day of January, April, July, or October (whichever occurs first after the election to change such basis) during any calendar year

commencing January 1, 2012. LICENSEE's election with respect to New Media Transmissions must comply with the requirements set forth in Paragraphs 4.E, 4.F, and 4.G above.

E. Upon any filing to the FCC by LICENSEE for any requested change in ownership of Station, based on current FCC Application Forms 314, 315, and 316, LICENSEE shall notify BMI of such request contemporaneously.

F. Upon any filing to the FCC by LICENSEE for any request to cease Radio Broadcasting, LICENSEE shall notify BMI of such request contemporaneously.

**8. Indemnification.**

So long as You are not in default or arrears in payment under the BMI-10 License, BMI agrees to indemnify, save and hold harmless and defend LICENSEE, its advertisers and their advertising agencies, and its and their officers, employees and artists, from and against all claims, demands, and suits that may be made or brought against them or any of them with respect to the performance under the BMI-10 License of any material licensed hereunder; provided that this indemnity shall not apply to: (a) broadcasts of any musical work performed by LICENSEE after written request from BMI to LICENSEE that LICENSEE refrain from performance thereof or (b) compositions for which BMI's affiliates have exercised their right to restrict pursuant to Paragraph 14 below. LICENSEE agrees to give BMI immediate notice of any such claim, demand, or suit, and agrees immediately to deliver to BMI all papers pertaining thereto. BMI shall have full charge of the defense of any such claim, demand, or suit, and LICENSEE shall cooperate fully with BMI therein. Notwithstanding anything to the contrary herein, BMI's obligation to indemnify LICENSEE for Internet streaming transmissions shall be limited to those claims, demands, or suits that are made or brought within the U.S. Territory.

**9. Local Management Agreement.**

A. In the event LICENSEE enters into a Local Management Agreement as defined in Paragraph 2.H hereof, within thirty (30) days of such agreement: (1) LICENSEE shall provide BMI with a copy of such agreement, and (2) Local Manager shall execute the BMI-10 License in the signature space provided below. By signing the BMI-10 License Local Manager becomes a party to this BMI-10 License and shall assume, with LICENSEE, all of the rights and obligations set forth in the BMI-10 License for the full period the Local Management Agreement is in effect.

B. In the event LICENSEE becomes a Local Manager by entering into a Local Management Agreement with another station, LICENSEE shall notify BMI within thirty (30) days of entering into the agreement.

C. In the event LICENSEE and/or Local Manager do not provide to BMI the documentation required by Paragraph 9.A on a timely basis, the BMI-10 License may be terminated by BMI on ten (10) days' written notice.

D. In the event the Local Management Agreement provided to BMI terminates prior to its stated termination date, LICENSEE and Local Manager shall notify BMI of such termination immediately.

**10. Assignment.**

The BMI-10 License shall be non-assignable except to the person, firm, or corporation acquiring the Federal Communications Commission license of Station, and upon assignment to such person, firm, or corporation and upon acceptance in form approved by BMI of the application of LICENSEE hereunder, LICENSEE shall be relieved of liability for any obligations from the date of assignment going forward under the BMI-10 License as long as all Annual Statements have been filed by LICENSEE and all fees due BMI under the BMI-10 License have been paid to BMI. Any assignment contrary to this Paragraph shall be void. The BMI-10 License shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns, but no assignment shall relieve the parties of their respective obligations under the BMI-10 License Extension.

**11. Arbitration.**

With the specific exception of disputes which may be within the jurisdiction of the United States district court having jurisdiction under the Final Judgment entered on November 18, 1994 in *United States v. Broadcast Music, Inc.*, No. 64-civ-3787 (the "BMI Consent Decree"), all disputes of any kind, nature, or description arising in connection with the terms and conditions of the BMI-10 License shall be submitted to the American Arbitration Association in the city, county and state of New York for arbitration under its then prevailing rules, the arbitrator(s) to be selected as follows: Each of the parties shall, by written notice to the other, have the right to appoint one (1) 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 (2) 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 (2) 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 thereon in any court having jurisdiction. Such award shall include the fixing of the reasonable costs, expenses, and

attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

## 12. Music Use Reports.

A. **All Stations.** LICENSEE, upon written request from BMI made on not less than two (2) weeks' notice specifying the period to be covered, agrees to furnish to BMI (at BMI's request electronically via a secure web site) a report of LICENSEE's performances by Station of all musical works, including music used as a Theme, indicating the compositions performed by title, writer/composer (if known), and artist, or by such other convenient method as may be designated by BMI, but such report need not be furnished for more than one (1) week of each year of the Term. If reasonably feasible for Station, in lieu of the one (1)-week report required above, BMI may require LICENSEE to transmit to BMI, for each day that Station broadcasts/streams its signal, a complete report of its Feature Performances by electronic means.

### B. Program-Period Stations.

1. LICENSEE agrees to furnish to BMI and to the RMLC, on thirty (30) days' notice from BMI a full, true, complete, and accurate report, on forms furnished by BMI (at BMI's request electronically), for one (1) week per calendar quarter ("Quarterly Music Report"), which shall indicate, with respect to all programming during the week, regardless of origin, which has any Feature Performances, the following: (a) the full title of each Feature Performance; (b) the date and time of performance; and (c) the name(s) of the writer(s)/composer(s), if known, and/or recording artist(s). BMI, or a representative of BMI, shall advise LICENSEE which week per quarter this will be done. The Quarterly Music Report shall be submitted with respect to all programming periods, even if there were no Feature Performances (in which case only the requested identifying information need be completed along with the statement "No Music Used"), but shall not be required to include the information set forth in this Subparagraph for music in programming from a radio network licensed as a network by BMI, music in political programming, or music in programming periods that LICENSEE concedes contain BMI music. Every programming period that contains Feature Performances shall be listed on the report, even if the music falls into one of the exempt categories enumerated herein. In those cases, however, the category of exemption shall be indicated on the report form, listing the name of the network in the case of a network program. BMI will promptly confirm to LICENSEE receipt of the reports required by this Paragraph.
2. Said report shall be due to BMI and to the RMLC on or before thirty (30) days after the week to which the report pertains. In the event LICENSEE fails to submit any Quarterly Music Report or fails to report performances of musical compositions as required by Subparagraph B.(1) above, the following shall apply:
  - (a) *First Instance:* BMI shall advise LICENSEE in writing of same and will issue LICENSEE a warning.
  - (b) *Second and all Subsequent Instances:* BMI shall advise LICENSEE in writing of same and LICENSEE shall pay BMI \$1,000 + 5.75 times the monthly per program fee for each of the prospective three (3) months.
  - (c) *Failure to Report:* LICENSEE's failure to report timely or correctly may not be cured by LICENSEE's submission of a late report for said period.
3. For any quarter in which LICENSEE furnishes to BMI a complete electronic report of its Feature Performances for 24 hours a day, for each day, LICENSEE will not be required to submit Quarterly Music Reports.

## 13. Confidentiality.

A. BMI shall treat as confidential, and shall not disclose to any third party (other than its employees, directors and officers and agents, in their capacity as such, on a need-to-know basis, and other than that as set forth in Subparagraph B below), any proprietary information provided to BMI by LICENSEE in connection with the BMI-10 License; provided, however, that if BMI is served with a subpoena or other legal notice compelling the production of any such proprietary information, BMI shall be obligated to give prompt written notice to LICENSEE of such subpoena or other notice. LICENSEE shall inform BMI in writing within seven (7) days of receiving written notification of a subpoena or other legal notice of its intention to object to such production, in which event LICENSEE shall bear the burden of opposing such production. If the subpoena requires a response or compliance in fewer than fourteen (14) days, BMI will inform LICENSEE in writing within three (3) days of receiving the subpoena, and LICENSEE must inform BMI of its intention to oppose the production no later than five (5) days before compliance is called for.

B. BMI is hereby authorized to provide to the RMLC such of LICENSEE's proprietary information, provided to BMI pursuant to the BMI-10 License as the RMLC may request in connection with its representation of the local radio industry, unless LICENSEE notifies BMI in writing to the contrary. The RMLC has agreed to treat as confidential any proprietary information provided to it by BMI pursuant to this Paragraph during the Term.

#### **14. Right to Restrict.**

A. BMI's affiliates may restrict the Radio Broadcasting of their compositions, up to a maximum of 500 in the aggregate at any given time, only for the purpose of preventing harmful effect upon other interest under the copyrights of such works; provided, however, that: (1) limited licenses will be granted upon application to BMI entirely free of additional charge if the copyright owners are unable to show reasonable hazards to their major interests likely to result from such Radio Broadcasting; (2) the right to restrict any composition will not be exercised for the purpose of permitting the fixing or regulating of fees for the recording or transcribing of the composition; (3) in no case will any charges, "free plugs," or other consideration be required for permission to perform a restricted composition; and (4) in no event will any composition be restricted after its initial radio broadcast for the purpose of confining further radio broadcasts to a particular artist, station, network, or program.

B. BMI also may in good faith restrict the Radio Broadcasting of any composition, over and above the number specified in the preceding Subparagraph, as to which any suit has been brought or threatened on a claim that the composition infringes a composition not contained in the BMI Repertoire or on a claim that BMI does not have the right to license the public performance of the composition by Radio Broadcasting.

#### **15. Miscellaneous.**

A. In the event that the Federal Communications Commission revokes or fails to renew the broadcasting license of LICENSEE, or in the event that the governmental rules and regulations applicable to Station are suspended or amended so as to forbid the broadcasting of commercial programs by LICENSEE, LICENSEE must notify BMI thereof within ten (10) business days of such condition, and BMI shall, within ten (10) days of the receipt of such notice, by written notice to LICENSEE, at BMI's option, either terminate or suspend the BMI-10 License and all payments and services hereunder for the period that such condition continues. In the event BMI elects to suspend the BMI-10 License, such suspension shall not continue for longer than six (6) months, and the BMI-10 License shall terminate automatically at the end of such six (6) months' suspension. In the event the condition giving rise to the suspension shall continue for less than six (6) months, BMI at its option, and on written notice to LICENSEE, may reinstate the BMI-10 License at any time within thirty (30) days after the cessation of such condition.

B. In the event any law now or hereafter enacted of the state or political subdivision thereof in which Station and/or LICENSEE is located shall result in major interference with BMI's operations or in the refusal of a substantial number of radio stations located therein to enter into license agreements with BMI or to make payments to BMI, BMI shall have the right at any time to terminate the BMI-10 License on no less than sixty (60) days' written notice to LICENSEE.

C. Any notice required or permitted to be given under the BMI-10 License shall be in writing and shall be deemed duly given when sent by ordinary first-class U.S. mail to the party for whom it is intended at its mailing address hereinabove stated or at any other address that either party hereto may from time to time designate in writing for such purpose (excluding any correspondence address contained in invoices for the remittance of payments or provided for the submission of reports). Any such notice sent to BMI shall be to the attention of the Senior Vice President, Licensing, BMI, 7 World Trade Center, 250 Greenwich Street, New York, NY 10007. Any such notice sent to LICENSEE shall be sent, at BMI's option, to the attention of the person signing the BMI-10 License on behalf of LICENSEE or to the General Manager, Business Manager or Owner of Station.

D. On written notice to LICENSEE, BMI may, effective with such notice, withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in the work or that the work infringes another composition.

E. The BMI-10 License constitutes the entire understanding between the parties, 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. The BMI-10 License, its validity, construction and effect shall be governed by the laws of the State of New York, without giving effect to its law of conflict of laws. The fact that any provisions herein are found to be void or unenforceable by a court of competent jurisdiction shall in no way affect the validity or enforceability of any other provisions. No waiver by BMI of full performance of the BMI-10 License by LICENSEE in any one or more instances shall be deemed a waiver of the right to require full and complete performance of the BMI-10 License thereafter or of the right to cancel the BMI-10 License in accordance with the terms of the BMI-10 License. This agreement may be executed in counterparts and by facsimile signature, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

F. To the extent that any conflict exists between the BMI-10 License and the BMI/RMLC Agreement, the BMI-10 License shall control.

IN WITNESS WHEREOF, the BMI-10 License, made at New York, New York, has been duly executed by BMI and LICENSEE on \_\_\_\_\_.

<b>BROADCAST MUSIC, INC.</b>	<b>LICENSEE</b>
	_____
	<b>(Legal Name)</b>
<b>By:</b> _____	<b>By:</b> _____
<b>(Signature)</b>	<b>(Signature)</b>
_____	_____
<b>(Print Name of Signatory)</b>	<b>(Print Name of Signatory)</b>
_____	_____
<b>(Title of Signatory)</b>	<b>(Title of Signatory)</b>

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Complete only if in a Local Management Agreement (*Per Paragraph 9.A.*)

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LOCAL MANAGER (Legal Name) \_\_\_\_\_ (Date) \_\_\_\_\_

**By:** \_\_\_\_\_  
**(Signature)**

**Start Date of LMA:** \_\_\_\_\_

\_\_\_\_\_

**(Print Name of Signatory)**

**End Date of LMA:** \_\_\_\_\_

\_\_\_\_\_

**(Title of Signatory)**





**BMI 2017 Radio License Extension Agreement**

WHEREAS, **BMI**<sup>®</sup> and the Radio Music License Committee (the “RMLC”) have been negotiating the terms and conditions of a BMI blanket music license agreement for the period commencing January 1, 2017 (the “2017 Agreement”).

NOW THEREFORE, by signing below you agree as follows:

1. Station agrees to be bound by all of the license terms and conditions negotiated between BMI and the RMLC, or adjudicated by the BMI Rate Court, which shall be memorialized in the 2017 Agreement.
2. In the event that BMI and the RMLC are unable to finalize the terms of the 2017 Agreement by December 31, 2016, Station agrees to be bound by an interim license which shall commence on January 1, 2017, and embody each and every term and condition set forth in Station’s current BMI-10 Agreement except for the Term (“Interim License Agreement”). Station’s interim monthly license fee may be adjusted based upon agreement on a different interim fee by BMI and the RMLC, or as determined by the BMI Rate Court in a proceeding between BMI and the RMLC. The interim and/or final license fees agreed to by BMI and the RMLC, or as determined by the BMI Rate Court, shall be applied retroactively to January 1, 2017. Station shall be obligated to pay BMI any monies owed BMI as a result of such retroactive adjustment of fees, and BMI shall be obligated to credit to Station’s account any monies owed Station as a result of such retroactive adjustment of fees. The Interim License Agreement shall continue until a final 2017 Agreement is reached as a result of the ongoing negotiations between BMI and the RMLC or a decision is rendered by the BMI Rate Court in a proceeding between BMI and the RMLC.
3. Station hereby waives its rights to make a separate Application for reasonable fees to BMI under Section XIV of the BMI Consent Decree, or to make a separate Application to the BMI Rate Court for the period commencing January 1, 2017.

Station’s agreement to the above terms and conditions shall be evidenced by the signature below of an individual duly authorized to bind Station to this Agreement.

This agreement may be executed in counterparts.

Call Letters:	_____	_____
		Legal Name
Frequency:	_____	_____
		Authorized Signature
City:	_____	_____
		Print Name of Signature
State:	_____	_____
		Print Title of Signatory
<b>Accepted:</b>		(a) If corporation, signatory must be an officer. Print corporate office held under signature.
<b>BROADCAST MUSIC, INC.</b>		(b) If partnership, print the word “partner” under signature of signing partner
By:	_____	(c) If individual owner, print “individual owner” under signature.
Signatory:	_____	
Title:	_____	_____
		Local Manager, if applicable
Date:	_____	_____
		Local Manager Authorized Signature, if applicable





# Music License for RV Parks and Campgrounds

## - Multiple Use License -

### 1. DEFINITIONS

- (a) **Licensed Premises** shall mean each RV park or campground owned or operated by LICENSEE, limited to outdoor property divided into individual sites used for Camping and/or RVing and including any recreational and administrative structures located at such facilities. This Agreement specifically excludes properties which have more than fifty percent (50%) Fixed Structures, as defined below, including hotels/motels, mixed-use communities (i.e.; active life style or resort communities consisting primarily of manufactured homes and/or other types of permanent or semi-permanent structures), even if these properties also offer limited RV accommodations on the premises. Such facilities will be licensed pursuant to other BMI Music Licenses.
- (b) **Camping and/or RVing** shall mean temporary living in the outdoors with the aid of shelter consisting of a tent, pop-up trailer, travel trailer, truck camper, motor home, van, recreational trailer, recreational vehicle, teepee, yurt, camping cabin, or similar temporary shelter.
- (c) **Fixed Structures** shall mean units owned or managed by LICENSEE and available for rent to the public on a temporary basis, consisting of cabins, manufactured homes, recreational trailers (commonly known in the industry as park models), teepees, yurts, or other similar type units that are not readily transportable without the aid of a commercial-type hauler. The Fixed Structures threshold outlined in Paragraph 1(a) above shall apply to individually owned units occupying leased or rented spaces on a monthly or greater basis.
- (d) **Campsites** shall mean the maximum number of tents, recreational vehicles or similar transportable lodging places available at Licensed Premises.
- (e) **Live Music and Entertainment Costs** (herein sometimes referred to as "Costs") shall mean all expenditures of every kind and nature (whether in money or any other form of consideration) made by LICENSEE or on LICENSEE's behalf, for all live music and entertainment in connection with LICENSEE's activities on the Licensed Premises. In the event any services are performed by LICENSEE's staff, Costs shall include a percentage of the staff person's consideration for his or her services as relates to time given to entertainment services in proportion to other services. Costs shall include the agreed value of room and board and any other accommodations or services which are made available to any person or entity as part of the consideration for their rendering or presenting entertainment services in connection with LICENSEE's activities. In the event that the value of such accommodations are not customary, the agreed value of accommodations or services shall be deemed to be one-half of the prevailing rate charged to LICENSEE's guests for similar accommodations or services.

### 2. BMI GRANT

BMI hereby grants to LICENSEE a non-exclusive license to publicly perform, present or cause the public performance of all musical works both live and recorded of which BMI shall have the right to grant public performance licenses during the term hereof at the Licensed Premises. This license does not authorize or include:

- (a) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein;
- (b) the right to broadcast, telecast, cablecast or otherwise transmit the performances licensed hereunder to persons outside of the Licensed Premises;
- (c) performances of music by means of a coin-operated phonorecord player (jukebox);
- (d) the performance of BMI affiliated music at any hotel or motel situated on the Licensed Premises, whether or not such facility is owned or operated by LICENSEE; or
- (e) any performances of music at concerts or other musical attractions where a separate admission charge is made or where the general public may be admitted.

BMI may withdraw from the license LICENSEE's right to perform any musical work as to which a legal action has been brought or a claim made that BMI does not have the right to license the work or that the work infringes another work.

### 3. INDEMNITY BY BMI

BMI agrees to indemnify, save harmless, and defend LICENSEE, LICENSEE's officers and employees, from and against any and all claims, demands or suits that may be made or brought against them with respect to the performance of any musical works licensed under this Agreement at the time of LICENSEE's performances. LICENSEE agrees to give BMI immediate notice of any claim, demand, or suit, to deliver to BMI any related papers and to cooperate with BMI in the matter, of which BMI will be in full charge. BMI will, upon reasonable written request, advise LICENSEE whether specific musical works are available for performance, if LICENSEE provides the title and the writer/composer of each musical work.



#### **4. BREACH OR DEFAULT/WAIVER**

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues thirty (30) days after LICENSEE's receipt of written notice thereof. 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 a waiver of the right to require full and complete performance of this Agreement thereafter or the right to cancel this Agreement in accordance with the terms of this Paragraph.

#### **5. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement, not subject to the jurisdiction of the BMI Rate Court, shall be submitted to arbitration in the City, County and State of New York under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators to be selected as follows: Each of the parties 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 a 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 in any court having jurisdiction. Such award shall include the fixing of costs, expenses, and attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

#### **6. NOTICES**

Any notices to be given are to be in writing and will be deemed given on the day they are sent by ordinary first-class U.S. mail to the party intended, at its above mailing address stated, or any different address which either party may designate in writing. Any notices sent to BMI shall be addressed to the attention of the Vice President, Licensing, BMI, 10 Music Square East, Nashville, Tennessee 37203. Any notices sent to LICENSEE shall be to the attention of the person signing this Agreement for LICENSEE unless LICENSEE advises BMI to address notices to someone else.

#### **7. REVIEW OF STATEMENTS/ACCOUNTINGS**

BMI will have the right, by its authorized representatives, at any time during customary business hours, and upon (30) days advance written notice, to examine those portions of LICENSEE's books and records of account to such extent as may be necessary to verify any and all statements and/or accountings made hereunder or under any prior agreement with BMI. BMI shall consider all data and information coming to its attention as the result of any such examination of LICENSEE's books and records as confidential.

#### **8. TAXES**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with LICENSEE's fee payment(s) provided, however, that (a) BMI shall make reasonable efforts to be exempted or excused from paying such tax, and (b) BMI is permitted by law to pass through such tax to LICENSEE.

#### **9. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the term, upon sixty (60) days advance written notice.

#### **10. 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 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.

#### **11. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, will not be binding until signed by both parties, and no waiver or change will be valid unless in writing and signed by both parties. This Agreement is signed by the authorized representatives of each of the parties. LICENSEE's rights are not assignable. This Agreement, its validity, construction and effect, will be governed by the laws of the State of New York. The fact that any parts of the Agreement may be found by a court of competent jurisdiction to be void or unenforceable will not affect the validity or enforceability of any other parts. The headings are for convenience only and are not a part of the Agreement.

**12. FEES**

(a) LICENSEE agrees to pay to BMI license fees for each Campsite for each Contract Year as follows:

**2017 LICENSE FEE SCHEDULE**

<b>SCHEDULE A - RECORDED MUSIC FEE</b>			
<b>Check Number of Campsites (√)</b>	<b>Number of Campsites</b>	<b>Fee Per Premises</b>	<b>Enter Fee Based on Number of Campsites</b>
<input type="checkbox"/>	1 - 50	\$255.00	
<input type="checkbox"/>	51 - 100	\$301.00	
<input type="checkbox"/>	101 - 200	\$427.00	
<input type="checkbox"/>	201 - 350	\$596.00	
<input type="checkbox"/>	351 - 500	\$851.00	
<input type="checkbox"/>	Over 500	\$1,107.00	
<b>Total Schedule A Fee</b>			<b>\$</b>

<b>SCHEDULE B - LIVE MUSIC AND ENTERTAINMENT FEE</b>			
<b>Check Annual Entertainment Cost Range (√)</b>	<b>Annual Entertainment Costs</b>	<b>Live Music and Entertainment Fee</b>	<b>Enter Fee Based on Annual Entertainment Cost Range</b>
<input type="checkbox"/>	(\$0 - \$5,000)	\$260.00	
<input type="checkbox"/>	(\$5,001 - \$7,999)	\$334.00	
<input type="checkbox"/>	(\$8,000 - \$9,999)	\$393.00	
<input type="checkbox"/>	(\$10,000 - \$14,999)	\$508.00	
<input type="checkbox"/>	(\$15,000 - \$24,999)	\$680.00	
<input type="checkbox"/>	(\$25,000 - \$34,999)	\$812.00	
<input type="checkbox"/>	(\$35,000 - \$49,999)	\$931.00	
<input type="checkbox"/>	\$50,000 or more*	\$1,048.00	
*If Entertainment Costs <b>OVER</b> \$50,000, enter amount \$_____		Each dollar of expense over \$50,000 calculate using 8/10 of 1% (.008)	Enter Calculated Overage Fee Here
<b>Total Schedule B Fee</b>			<b>\$</b>
<b>Add Total of Schedule A &amp; B Fee</b>			<b>\$</b>

- (i) For LICENSEE's initial Contract Year, LICENSEE shall estimate the maximum number of Campsites and shall calculate the recorded music fee pursuant to the Recorded Music Fee Schedule above. In addition, for LICENSEE's initial Contract Year, LICENSEE shall estimate its Annual Entertainment Costs and shall calculate the live music and entertainment fee pursuant to the Live Music and Entertainment Fee Schedule above. LICENSEE's total estimated license fee for the initial Contract Year shall be the sum of LICENSEE's estimated recorded music fee and LICENSEE's estimated live music and entertainment fee. The annual license fee for the initial Contract Year shall be due upon LICENSEE signing this Agreement.
- (ii) The estimated annual license fee for each subsequent Contract Year shall be the actual fee for the previous Contract Year. Such annual license fee shall be due and payable no later than 30 days after the beginning of each Contract Year.

(b) BMI shall discount the annual fee by 10% in any Contract Year if (1) LICENSEE pays the annual fee in full and in a timely manner for such Contract Year in accordance with Subparagraphs (i) and (ii) above; and (2) LICENSEE does not otherwise owe BMI any fees under this or any prior BMI agreement.

(c) All annual license fees shall be adjusted for calendar year 2017 of the Agreement, and for each subsequent calendar year, based on the percentage increase in the United States Consumer Price Index (Urban, All Items) between October and the October prior thereto, rounded to the nearest dollar. BMI will notify LICENSEE of the amount of each new fee.

(d) BMI may impose a late payment charge of one and one half percent (1 1/2%) per month from the date payment was due on any payment that is received by BMI more than thirty (30) days after the due date.

**13. REPORTING**

(a) Simultaneous with the payment of annual license fees, as required by Paragraph 12(a)(ii) above, LICENSEE agrees to furnish BMI (on forms available from BMI) with an annual report, certified either by an officer or by LICENSEE's auditor, setting forth any information which BMI may reasonably require which substantiates license fees paid for the previous year, including, without limitation:

- (i) the highest number of Campsites for the year reported;
- (ii) actual Live Music and Entertainment Costs.

- (b) If, after processing the annual report for the previous year, the actual fee, for that year, is greater than the license fee already paid by LICENSEE, LICENSEE agrees to pay BMI the difference, within thirty (30) days of LICENSEE's receipt of an adjusted statement from BMI.
- (c) If, after processing the annual report, the actual fee is less than the license fee already paid by LICENSEE to BMI for the previous Contract Year, BMI agrees to credit to LICENSEE's account the difference between the license fee paid and the actual license fee. If such adjustment occurs in the last Contract Year of the Agreement, BMI shall refund said sum promptly.

**14. TERM OF AGREEMENT**

The Term of this Agreement begins on the first day of (*month/year*) \_\_\_\_\_ and ends on the last day of (*month/year*) \_\_\_\_\_ (a "Contract Year"). Thereafter, this Agreement will automatically renew for additional one (1) year periods, unless cancelled by either LICENSEE or BMI at the end of the Term or any additional one (1) year period on thirty (30) days advance written notice to the other party.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<small>(Name of Corporation, Partnership, or Individual Owner)</small>	<small>(Street Address)</small>
<b><u>TRADE NAME</u></b>	<small>(City) (State) (Zip)</small>
<small>(Doing business under the name of)</small>	<small>(Telephone Number) (Fax Number)</small>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<small>(Contact Name) (Title)</small>
<input type="checkbox"/> Individual Ownership <input type="checkbox"/> LLC <input type="checkbox"/> Corporation <input type="checkbox"/> LLP <input type="checkbox"/> Partnership <small>(State of Incorporation, if different from Licensed Premises)</small> <input type="checkbox"/> Other _____ <small>(Enter names of partners)</small>	<small>(Email Address) (Web Address)</small>
<b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small>	
<small>Federal Tax ID No. _____</small>	<small>(Street Address)</small>
<b><u>GOVERNMENT ENTITIES</u></b> <small>(if applicable, please check one)</small>	<small>(City) (State) (Zip)</small>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____ <small>(State)</small> <input type="checkbox"/> Local _____ <small>(Municipality/City and State)</small>	<small>(Telephone Number) (Fax Number)</small>
	<small>(Contact Name) (Title)</small>
	<small>(Email Address – if different from above)</small>

<p style="text-align: center;"><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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.  <b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b></p> <p style="text-align: center;">Signature _____</p> <p style="text-align: center;">Print Name / Title _____</p> <p style="text-align: center;">Signatory Email Address*  <small>(if different from above)</small> _____</p>	<p style="text-align: center;"><b>FOR ADMINISTRATIVE USE ONLY</b></p> <p style="text-align: center;"><b>TO BE COMPLETED BY BMI</b></p> <p style="text-align: center;"><b>BROADCAST MUSIC INC.</b></p>
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<p><b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b></p> <p style="text-align: center;"><b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b>  <b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b></p>	<p style="text-align: center;"><b>FOR BMI USE ONLY</b></p> <p style="text-align: center;">ACCOUNT NO. _____</p>	<p style="text-align: center;">36RVA</p>	<p style="text-align: center;">LI-2016/DEC</p> <p style="text-align: center;">EFFECTIVE: January 2017</p>
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® BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.



AGREEMENT, made at New York, N.Y. on *(Date Will Be Entered by BMI Upon Execution)* \_\_\_\_\_, between BROADCAST MUSIC, INC., a corporation organized under the laws of the State of New York (hereinafter called BMI) with principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030, and

<b>ENTER LEGAL NAME</b> _____ <i>Name of Corporation, Partnership or Individual Owner</i>	
<b>ENTER TRADE NAME</b> _____ <i>(Doing business under the name of)</i>	
<b>CHECK APPROPRIATE BOX AND COMPLETE</b>	<input type="checkbox"/> <b>Corporation</b> _____ <i>(State of Incorporation)</i>
	<input type="checkbox"/> <b>Partnership</b> (Enter names of partners) _____ _____
	<input type="checkbox"/> <b>Individual Owner</b> <i>(indicate residence address below under Mailing Address)</i>
<b>PREMISES ADDRESS</b>	<b>MAILING ADDRESS</b>
Street Name	Street Name
City State Zip	City State Zip
Telephone No. Contact Name	Telephone No. Contact Name
Title	Title

**GENERAL PROVISIONS**

1. BMI hereby grants to LICENSEE a non-exclusive license to perform, present or cause on the licensed premises, or as otherwise set forth hereinafter, the performance of all musical works of which BMI shall have the right to grant public performance licenses during the term hereof. Said license shall be restricted to performance of music in the manner described herein and is granted in consideration of the payment of the license fees as set forth herein and is subject to all of the terms and conditions hereof. This license does not include:
  - (a) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein; or
  - (b) the right to broadcast, telecast, cablecast or otherwise transmit the performances licensed hereunder to persons outside of the licensed premises.
  - (c) This license does not authorize performances of music by means of a coin-operated phonorecord player (jukebox).
2. 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's Clearance Department will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.
3. If, during the term hereof, LICENSEE shall permanently cease to operate the premises, whether by reason of sale or lease thereof, or otherwise, this Agreement and LICENSEE's obligation to BMI shall thereupon terminate; provided, however, that LICENSEE shall, within ten (10) days thereafter, give written notice of such termination to BMI, setting forth the effective date thereof and the name of the new owner or operator of the premises, as the case may be, and that LICENSEE shall submit all reports and pay to BMI all fees due hereunder until said effective date.
4. BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.
5. (a) BMI shall have the right to require such data or information as may be necessary in order to ascertain the license fee hereunder.

(b) BMI shall have the right by its authorized representatives, at any time during customary business hours and upon thirty (30) days advance written notice, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify any and all statements rendered and accountings made hereunder. BMI shall consider all data and information coming to its attention as the result of any such examination of books and records as confidential. If any audit conducted reveals a deficiency of twenty-five percent (25%) or more between the amount of fees previously reported as being due by LICENSEE and the amount actually found to be due BMI for the audited period, LICENSEE shall pay, in addition to the sum additionally due, a surcharge of fifteen percent (15%) of the total amount remaining due BMI. If LICENSEE does not pay said surcharge and deficiency within thirty (30) days of written notice by BMI, an interest charge of one percent (1%) per month may be imposed by BMI on said surcharge and deficiency from the date of such written notification.

6. Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues thirty (30) days after LICENSEE's receipt of written notice thereof. 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 a waiver of the right to require full and complete performance of this Agreement thereafter of the right to cancel this Agreement in accordance with the terms of this Paragraph.
7. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed duly given when sent by ordinary first-class U.S. mail to the party for whom it is intended, at its address hereinabove stated, or any other address which either party hereto may from time to time designate for such purpose, and when such notice is so mailed, it shall be deemed given upon the mailing thereof. Any such notice sent to BMI shall be to the attention of the Licensing Department. Any such 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.
8. All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to arbitration in the City, County and State of New York, for arbitration under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators 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 in any court having jurisdiction. Such award shall include the fixing of the costs, expenses and attorneys' fees of arbitration.
9. BMI may impose a late payment charge of one percent (1%) per month from the date payment was due on any payment that is received by BMI more than thirty (30) days after the due date.
10. In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any tax (whether sales, use, gross receipts, business or otherwise) which is based upon the amount received by BMI from LICENSEE, then LICENSEE agrees to pay to BMI the full amount of such tax together with LICENSEE's fee payment(s) as billed by BMI.
11. In the event that BMI, at any time during the term hereof, 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.
12. This Agreement constitutes the entire understanding between the parties, shall not be binding until signed by both parties, and 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. The rights of LICENSEE shall not be assignable. 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.

#### **SPECIAL PROVISIONS - SHOPPING CENTER**

13. The license granted to LICENSEE pursuant to Paragraph 1 hereof shall be limited to performances of music during the term of this Agreement in the common areas of LICENSEE's shopping center or mall, as long as there is no direct or indirect admission charge to any portion of such common areas where musical performances occur. Such performances may be by: (a) recorded music, via the playing of records, pre-recorded tapes, or other mechanical devices, or the reception of broadcast audio transmissions on receiving apparatus and amplifications thereof through loudspeakers located in the common areas, including audio-visual use ("Background Use") or; (b) musicians, singers or other entertainers actually present and performing in the common areas using live or recorded music ("Entertainment Use"). In no event shall this license extend to performances of any music within any store or other leased area in LICENSEE's shopping center or mall, other than incidentally.
14. The term of this Agreement shall begin on the first day of \_\_\_\_\_ and end on the last day of \_\_\_\_\_ and shall continue thereafter unless cancelled by either party as of the end of the initial term or any subsequent one (1) year term (herein sometimes referred to as a "contract year" upon thirty (30) days advance written notice to the other party. BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the Agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the term, upon sixty (60) days advance written notice.

15. (a) LICENSEE agrees to pay BMI for each contract year during this Agreement an estimated fee as an advance on account of the actual fee. Such estimated fee shall then be subject to adjustment in accordance with Paragraph 16 hereof, and the resulting actual fee shall be determined in the following manner: (i) for Background Use, LICENSEE shall pay the applicable annual fee on Schedule A for the Gross Leasable Area (as that term is understood in the real estate industry) of LICENSEE's shopping center, and (ii) for Entertainment Use, LICENSEE shall pay the applicable Per Day Rate indicated on Schedule B for LICENSEE's Gross Leasable Area times the number of such events which occurred during said year. "Gross Leasable Area" as used in the Agreement shall also include, but not be limited to, all anchor stores, kiosks and free standing units whether or not owned by LICENSEE at the licensed premises. In no event, however, shall LICENSEE for Entertainment Use (Schedule "B") pay less than \$165 or more than \$3,000 for any contract year during the term of this Agreement.

(b) For the first contract year of this Agreement, LICENSEE's estimated fee shall be the sum of the applicable fee for Background Use in accordance with Schedule A and the applicable fee for Entertainment Use in accordance with Schedule B (which Entertainment Use Fee shall not be less than \$165 if any Entertainment Use occurs).

**Gross Leasable Area**

• LICENSEE warrants and represents that the Gross Leasable Area is.....

1  Sq. Ft.  
[Gross Leasable Area of Shopping Center per Paragraph 15 (a)]

**Background Use** (See Schedule A below)

• LICENSEE's Background Use will include audio-visual (projection TV, televisions, monitors, video cassettes, etc.).....

yes  no  
(Check Appropriate Box)

• Based on Box 1 and audio-visual use checked above, LICENSEE's Class from Schedule A is.....

2   
(Class - Schedule A)

• LICENSEE's Background Use Fee (from Schedule A) is.....

3 \$   
(Background Use Fee)

**Entertainment Use** (See Schedule B below)

• Based on Box 1, LICENSEE's Class from Schedule B is.....

4   
(Class - Schedule B)

• The Per Day Rate for LICENSEE's Class from Schedule B is.....

5   
(Per Day Rate)

• LICENSEE estimates that the number of days containing events using music for Entertainment Use during the first contract year is.....

6   
(Number of Days of Entertainment Use)

• LICENSEE's Entertainment Use Fee (Box 5 multiplied by Box 6, but not less than 165 or more than \$3,000) is.....

7 \$   
(Per Day Rate Multiplied by No. of Days of Entertainment Use)

**Total Fee**

• Accordingly, for the first contract year, LICENSEE's total estimated license fee, payable in full upon the signing of this Agreement is.....(Add Box 3 and Box 7)

\$   
**TOTAL FEE**

**SCHEDULE A - BACKGROUND USE**

Gross Leasable Area (Square Feet)	Class	Annual Fee without Audio-Visual	Class	Annual Fee with Audio-Visual
Less than 100,000	1A	\$180	1B	\$243
100,000 to 299,999	2A	\$360	2B	\$486
300,000 to 749,999	3A	\$720	3B	\$972
750,000 and Over	4A	\$960	4B	\$1,296

**SCHEDULE B - ENTERTAINMENT USE**

Gross Leasable Area (Square Feet)	Class	Per Day Rate
Less than 100,000	1C	\$20
100,000 to 299,999	2C	\$25
300,000 to 749,999	3C	\$30
750,000 and Over	4C	\$35

**Annual Entertainment Use Fee: Minimum \$165 – Maximum \$3,000**

(c) The estimated fee for the second and subsequent contract years shall be the actual fee for the previous contract year and shall be due and payable in full no later than twenty (20) days following the start of each such contract year.

16. (a) At the same time that LICENSEE pays its estimated license fee hereunder for the second and subsequent contract years, LICENSEE shall submit a report, certified by an officer or by the auditor of LICENSEE, setting forth, for the previous contract year, the Gross Leasable Area of LICENSEE's shopping center and the number of days containing events which made Entertainment Use of Music and whether any Background Use of music utilized audio-visual performances.
- (b) If the actual fee is greater than the license fee already paid by LICENSEE for the contract year, LICENSEE agrees to pay BMI the difference within thirty (30) days of the mailing by BMI to LICENSEE of the adjusted statement of license fees.
- (c) If the actual fee is less than the license fee already paid by LICENSEE to BMI for the contract year, BMI agrees to credit the difference between the actual and estimated license fees to the account of LICENSEE, and if such adjustment occurs in the last contract year of this Agreement, BMI shall refund said sum promptly.
- (d) In the event that LICENSEE fails to timely submit to BMI the report required by Paragraph 16 (a) for any contract year, LICENSEE hereby appoints, authorizes and directs BMI, at BMI's option, to assess a reasonable estimated license fee for such contract year. BMI shall give written notice to LICENSEE of the license fee so calculated by BMI. LICENSEE shall have thirty (30) days after the mailing of such written notice by BMI to submit the required report. If BMI does not receive from LICENSEE the required report after such notice period has expired, BMI and LICENSEE agree that BMI's estimated fee shall then be established as the actual fee for the year unreported by LICENSEE. BMI and LICENSEE further agree that such established actual fee shall also become the basis for the estimated fee for the following contract year. LICENSEE agrees to waive its right to file its report for any contract year in which BMI's estimated fee becomes the actual fee.
17. If Paragraph 3 of this Agreement shall become applicable, the Background Use Fee due BMI by LICENSEE through the effective date of termination shall be a proration of the fee for the contract year of termination, but in no event less than \$180. There shall be no proration of the Entertainment Use Fee.

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representatives of BMI and LICENSEE all as of the date above written.

**TO BE COMPLETED BY LICENSEE**

**By signing this Agreement you agree that the foregoing is a true and accurate representation of your Music Policy.**

I have read and have understood all of the terms and conditions herein and my signature below is evidence of this.  
**(SIGN HERE - PLEASE INCLUDE PAYMENT)**

\_\_\_\_\_

Signature

\_\_\_\_\_

Print Name / Title

**FOR ADMINISTRATIVE USE ONLY**  
**TO BE COMPLETED BY BMI**  
**BROADCAST MUSIC, INC.**

**FOR BMI USE ONLY**

<b>Account No.</b>	<b>COID</b>





# Music License for Skating Rinks

## 1. DEFINITIONS

- (a) **“LICENSEE”** shall mean the individual or entity described herein that owns and/or operates the “Licensed Premises”.
- (b) **“Licensed Premises”** shall mean the location identified herein and/or each location identified in Schedule A attached hereto which is owned and operated by LICENSEE.
- (c) **“Highest Admission Price”** shall mean the highest stated ticket price for any Regularly Scheduled Skating Session.
- (d) **“Regularly Scheduled Skating Session”** shall mean a skating session held more than four times per year, whether as a special event or otherwise.
- (e) **“LICENSEE’s Operating Policy”** shall mean the variables which determine the license fee applicable to the Licensed Premises under the LICENSE FEE SCHEDULE which is part of this Agreement.

## 2. BMI GRANT

BMI grants LICENSEE a non-exclusive license to publicly perform at the Licensed Premises all of the musical works of which BMI controls the rights to grant public performance licenses during the Term. This license covers LICENSEE’s performance of content provided to LICENSEE by a programmed subscription music service provider at Licensed Premises as subscription music service providers are expressly prohibited from licensing on behalf of skating rink facilities. This license does not include dramatic rights, the right to perform dramatico-musical works in whole or in substantial part or the right to use the musical works in any context which constitutes the exercise of “grand rights.” This license also does not convey the right to publicly perform BMI musical works (a) by broadcast, telecast, cablecast or other electronic transmission (including by satellite, the Internet or on-line service) of the performances to persons outside the Licensed Premises; (b) performances of music in or as part of a concert, musical attraction or other activity or event for which a separate admission fee or similar charge is made to attend; (c) by means of any coin-operated phonorecord player as defined in the Copyright Act (“Jukebox”) where a Jukebox License Office agreement has been obtained for such Jukebox; and (d) by any coin-operated digital music service that does not qualify as a Jukebox. BMI may withdraw from the musical works licensed hereunder any musical work as to which any legal action has been instituted or claim made that BMI does not have the right to license public performances of that musical work.

## 3. INDEMNITY BY BMI

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 any of them with respect to the performance of any musical works licensed under this Agreement. Such indemnity shall be limited to the musical works which are licensed by BMI at the time of LICENSEE’s performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI’s repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

## 4. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues thirty (30) days after the date of BMI’s written notice to LICENSEE thereof. 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 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.



**5. LICENSE FEE**

(a) In consideration of the license granted herein, LICENSEE agrees to pay BMI an annual license fee calculated pursuant to the LICENSE FEE SCHEDULE below in accordance with the total square footage of the skating floor(s) of the Licensed Premises and the Highest Admission Price charged by LICENSEE for a Regularly Scheduled Skating Session.

**LICENSE FEE SCHEDULE**

Highest Admission Price	Square Feet of Skating Floor(s)		
	<i>Under 10,000 Square Feet of Skating Rink</i>	<i>10,000 to 15,000 Square Feet of Skating Rink</i>	<i>Over 15,000 Square Feet of Skating Rink</i>
0 – 1.50	\$235	\$354	\$444
1.51 - 2.00	\$312	\$466	\$583
2.01 - 2.50	\$391	\$583	\$727
2.51 - 3.00	\$466	\$701	\$870
3.01 - 3.50	\$545	\$818	\$1,012
3.51 - 4.00	\$624	\$934	\$1,156
4.01 - 4.50	\$701	\$1,054	\$1,298
4.51 - 5.00	\$779	\$1,169	\$1,440
5.01 - 5.50	\$857	\$1,284	\$1,585
5.51 - 6.00	\$934	\$1,401	\$1,726
6.01 - 6.50	\$1,012	\$1,518	\$1,871
6.51 - 7.00	\$1,090	\$1,637	\$2,011
7.01 - 7.50	\$1,169	\$1,752	\$2,156
7.51 - 8.00	\$1,244	\$1,871	\$2,297
8.01 - 9.00	\$1,326	\$1,985	\$2,441
9.01 - 10.00	\$1,401	\$2,102	\$2,582
10.01 - 11.00	\$1,480	\$2,218	\$2,726
11.01 - 12.00	\$1,557	\$2,337	\$2,869
12.01 - 13.00	\$1,637	\$2,452	\$3,011
13.01 - 14.00	\$1,713	\$2,571	\$3,155
14.01 - 15.00	\$1,792	\$2,689	\$3,298
over 15.00	\$1,871	\$2,802	\$3,438

i. LICENSEE hereby warrants and represents that, as of the date of this Agreement:

- (1) The total square footage of the skating floor(s) of the Licensed Premises is \_\_\_\_\_ square feet; and
- (2) The Highest Admission Price currently charged by LICENSEE for a Regularly Scheduled Skating Session is \$\_\_\_\_\_.
- (3) The number of months in which the Licensed Premises operate during a calendar year is \_\_\_\_\_. The specific months in operation are \_\_\_\_\_.

ii. Pursuant to subparagraph 5(a)(i), the license fee for the initial Term of this Agreement is \$\_\_\_\_\_ and is due in full upon signing this Agreement.

(b) The annual license fee shall be adjusted for each subsequent calendar year after 2017 based on the percentage increase in the United States Consumer Price Index (Urban, All Items) between July and the July prior thereto, rounded to the nearest dollar.

(c) For each subsequent calendar year, BMI will provide LICENSEE with a License Fee Schedule which has been modified to reflect the CPI adjustment and LICENSEE shall pay license fees pursuant to its then current Highest Admission Price and Square Feet of skating floor(s). License fees for subsequent calendar years shall be due no later than January 30<sup>th</sup>.

- (d) Upon request, BMI will allow LICENSEE to pay the annual license fee on a semi-annual or quarterly basis, provided that LICENSEE's account is current. Semi-annual and quarterly payments are due no later than thirty (30) days following the commencement of each semi-annual or quarterly period.
- (e) Notwithstanding, subparagraph 5(d), if any semi-annual or quarterly payment is not received by the 90<sup>th</sup> day after such payment is due, LICENSEE's ability to make semi-annual or quarterly payments shall immediately terminate for the remainder of this Agreement. In addition, the unpaid portion of the annual fee will be immediately due and payable.
- (f) In the event that the LICENSEE operates the Licensed Premises for a portion of a calendar year (e.g. less than 12 months) due to the seasonal operation of the Licensed Premises, the mid-year purchase or sale of the Licensed Premises, cessation of operation of Licensed Premises, or otherwise, and LICENSEE notifies BMI and provides documentation of such to BMI, annual license fees shall be prorated. In no event shall license fees be prorated to an amount less than one-half of LICENSEE's annual license fee as calculated pursuant to the License Fee Schedule.

## **6. CHANGES TO LICENSEE'S OPERATING POLICY**

LICENSEE's Operating Policy may be revised once each year by LICENSEE or by BMI. Such revision requires written notice to the other party. Changes in the annual license fee due to a revision in LICENSEE's Operating Policy shall become effective in the immediately following calendar year.

## **7. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one-half percent (1.5%) per month from the date any payment is due hereunder on any payment that is received by BMI more than one month after the due date.

## **8. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement, except for matters within the jurisdiction of the BMI Rate Court, shall be submitted to the American Arbitration Association in the City, County and State of New York, for arbitration under its then prevailing arbitration rules. The arbitrator(s) shall be selected as follows: Each of the parties 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 a 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 in 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.

## **9. NOTICES**

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed given when sent by first-class U.S. mail to the party intended, at its mailing address herein stated, or any other address which either party hereto may designate. Any such notice sent to BMI shall be to the attention of the Vice President, Licensing, BMI, 10 Music Square East, Nashville, Tennessee, 37203. Any such 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.

## **10. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE as of the end of any month during the Term upon sixty (60) days advance written notice.

## **11. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, shall not be binding until signed by both parties. Other than notice given pursuant to Paragraphs 5 and 6 herein, 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. The rights of LICENSEE shall not be assignable. 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 contained herein. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**12. TERM OF AGREEMENT**

The initial Term of this Agreement shall begin on the first day of (month/year) \_\_\_\_\_ and end on December 31, \_\_\_\_\_ and shall continue thereafter for additional terms of one (1) year unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein referred to as a "calendar year") upon thirty (30) days advance written notice to the other party.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b><u>TRADE NAME</u></b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address) (Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<i>(State of Incorporation, if different from Licensed Premises)</i> <i>(Enter names of partners)</i>	
<input type="checkbox"/> Other _____	<i>(Street Address)</i>
Federal Tax ID No. _____	<i>(City) (State) (Zip)</i>
<b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i>	<i>(Telephone Number) (Fax Number)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<i>(Contact Name) (Title)</i>
<i>(State)</i>	<i>(Email Address – if different from above)</i>
<input type="checkbox"/> Local _____	
<i>(Municipality/City and State)</i>	

<p><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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. <b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b></p> <p><b>TO BE COMPLETED BY BMI</b></p> <p><b>BROADCAST MUSIC INC.</b></p>		
Signature			
Print Name / Title			
Signatory Email Address* <i>(if different from above)</i>			
<b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b>			
<b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b>			
<b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b>			
	<b>FOR BMI USE ONLY</b>	<b>SKT1</b>	<b>LI-2016/NOV</b>
	ACCOUNT NO.	COID	<b>EFFECTIVE:</b> <b>January 2017</b>



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# Music License for Symphony Orchestra

## 1. DEFINITIONS

- (a) **Orchestra** shall mean the entity identified on Page 4 herein which performs music concerts.
- (b) **Small Budget Orchestra** shall mean any Orchestra that reported operating expenses of up to \$1,000,000, as identified in line 18 of the Orchestra's Federal Income Tax 990 report (line 17 of the 990-EZ report) for the prior fiscal year.
- (c) **Large Budget Orchestra** shall mean any Orchestra that reported operating expenses in excess of \$1,000,000, as identified in line 18 of the Orchestra's Federal Income Tax 990 report (line 17 of the 990-EZ report) for the prior fiscal year.
- (d) **Concert** shall mean and be restricted to a musical performance or similar event given by the Orchestra in the United States, its territories and possessions.
- (e) **Classical Concert** shall mean any Concert which consists of classical musical works.
- (f) **Pop Concert** shall mean any Concert which includes non-classical music including, but not limited to, pop music, jazz, folk music, country music, Broadway or off-Broadway musical theater music, film music, and television music.
- (g) **Seating Capacity** shall mean the total number of seats permanently affixed in the venue where the Concert is presented plus any temporary seats added within the venue for a particular Concert. If the total number of seats available for the Concert shall be less than that of the permanent Seating Capacity of the venue, "Seating Capacity" shall mean the total number of seats available for the particular Concert. If a venue does not have permanent seating, "Seating Capacity" shall mean the total number of persons attending a particular Concert. If a venue has lawn seating, then "Seating Capacity" shall mean the total number of seats permanently affixed in the venue, in addition to total lawn Seating Capacity as determined by the local Fire Marshall.
- (h) **Web Site** shall mean the Internet computer service comprising a series of interrelated web pages owned and/or operated by, or under the auspices of, Orchestra and currently accessible via the Internet at the Uniform Resource Locator (URL) web address listed on Page 4 from which audio and/or audio-visual content containing musical works is made available to individuals. Orchestra warrants and represents that such Web Site is generally educational in nature or otherwise operated for the primary purpose of promoting the Orchestra and its resources to current and prospective patrons, staff and the community.
- (i) **Term** shall mean the period commencing September 1, 2007 and continuing through August 31, 2018.
- (j) **Contract Year** shall mean any year of the Term commencing September 1 or any partial year commencing on the commencement date of the Term (if such date shall be other than September 1) and ending the following August 31.
- (k) **Actual License Fee** shall mean license fees paid at the conclusion of a Contract Year which are based upon LICENSEE's actual Gross Receipts for the Contract Year.
- (l) **Estimated License Fee** shall mean license fees paid at the commencement of the Contract Year which are based upon LICENSEE's Actual License Fees for the prior Contract Year, and which LICENSEE pays with the expectation that the estimated amounts paid will be adjusted once Actual License Fees can be calculated at the end of the Contract Year.
- (m) **Gross Receipts** shall mean all gross box office receipts and fees from Concerts performed by Orchestra, but not including special fund raising concerts given on behalf of the Orchestra, such as pension fund concerts. Gross Receipts shall in no event include income from program advertising, concessions, or recording or broadcasting activities, grants or contributions.

## 2. BMI GRANT

BMI hereby grants to Orchestra for the Term of this Agreement a non-exclusive license to perform or cause the performance of, in Concerts presented before an audience physically present at the time of performance, all musical works of which BMI shall have the right to grant public performance licenses during the Term. BMI further grants to Orchestra for the Term of this Agreement, a non-exclusive license to perform all musical works of which BMI shall have the right to grant public performance licenses during the Term by means of the Web Site; provided, however, that such right shall be limited to performances of concert clips to be no longer than two (2) minutes in duration and shall specifically exclude webcasting of entire concerts or performances of entire individual musical works from any Concert. BMI warrants and represents that all composers and publishers who are affiliated with BMI have authorized BMI to license the non-exclusive right to public performance of their works and that all composers and publishers who hereafter become affiliated will give BMI a similar authorization. It is specifically understood that no rights other than those expressly provided for above in this paragraph are included in this license and, without in any way limiting the generality of this sentence, this license does not extend to or include:

- (a) Dramatic rights or the right to perform dramatico-musical works in whole or in substantial part; or
- (b) The right to broadcast, telecast or otherwise transmit, by any means now or hereafter known, the performances licensed hereunder, provided that nothing herein contained shall be deemed to prevent the amplification of the performances licensed hereunder within the confines of the place where the performance is presented; or
- (c) The right to record or otherwise mechanically reproduce the performances licensed hereunder by any means now or hereafter known; or
- (d) The right to perform a symphonic or other concert work (as such terms are commonly understood) which has not previously been publicly performed in the United States, unless written permission to perform such work is first secured from the publisher, composer or copyright proprietor and written notice thereof is given to BMI.

## 3. INDEMNITY BY BMI

BMI agrees to indemnify, save harmless and defend Orchestra, its officers and employees, its artists and the proprietors of places of which Orchestra performs Concerts, 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 the works which are licensed by BMI at the time of Orchestra's performances. BMI's Clearance Department will, upon reasonable written request, advise Orchestra whether particular musical works are available for performance as part of BMI's repertoire. Orchestra shall provide the title and the writer/composer of each musical composition requested to be identified. Orchestra 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. Orchestra, 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 or proceeding and with whom counsel for BMI shall cooperate.

## 4. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues thirty (30) days after the date of BMI's written notice to Orchestra thereof, consistent with the notice provisions outlined with Paragraph 14 herein. 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 Orchestra in any one or more instances shall be 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.

**5. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel this Agreement at the conclusion of the 2017-2018 Contract Year, or any subsequent Contract Year thereafter, along with the simultaneous cancellation of the agreements of all other orchestras of the same class and category as Orchestra, provided that BMI shall provide notice to Orchestra of any such cancellation by March 1<sup>st</sup> of the Contract Year of the termination.

**6. TERMINATION OF AGREEMENT BY ORCHESTRA**

If Orchestra shall permanently cease to operate, this Agreement and Orchestra's obligation to BMI shall thereupon terminate, provided that Orchestra shall, within thirty (30) days thereafter, give written notice of such termination to BMI, setting forth the effective date thereof, and that Orchestra shall pay to BMI all fees due hereunder until said effective date. The fee due BMI by Orchestra through the effective date of termination shall be a proration of the fee for the Contract Year of termination, but in no event less than the Minimum Annual License Fee.

**7. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to the American Arbitration Association in the City, County and State of New York for arbitration under its then prevailing arbitration rules. The arbitrator(s) to be selected as follows: Each of the parties 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 in 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. LICENSE FEES**

- (a) For the period September 1, 2007 through August 31, 2010, Orchestra shall pay license fees due pursuant to Orchestra's 2007 BMI Symphony Orchestra Interim License Agreement and such license fees shall be considered final license fees due for this period.
- (b) Upon execution of this Agreement, for the period commencing September 1, 2010, Orchestra shall pay license fees for Pop Concerts and Classical Concerts as follows:

SEASON	For Venues Up To 3,500 Seats			For Venues Over 3,500 Seats		
	Classical Concerts		Pop Concerts	Classical or Pop Concerts		
	PERCENTAGE OF GROSS RECEIPTS DURING PRECEDING YEAR UP TO AND INCLUDING \$1M	PERCENTAGE OF GROSS RECEIPTS DURING PRECEDING YEAR OVER \$1M	RATE	RATE for 3,501 to 5,000 Seats	RATE for 5,001 to 9,999 Seats	RATE for 10,000 and over Seats
2010-11	0.60%	0.275%	0.60%	0.40%	0.30%	0.15%
2011-12	0.60%	0.300%	0.60%	0.40%	0.30%	0.15%
2012-13	0.60%	0.300%	0.60%	0.40%	0.30%	0.15%
2013-14	0.60%	0.325%	0.60%	0.40%	0.30%	0.15%
2014-15	0.60%	0.325%	0.60%	0.40%	0.30%	0.15%
2015-16	0.60%	0.350%	0.60%	0.40%	0.30%	0.15%
2016-17	0.60%	0.350%	0.60%	0.40%	0.30%	0.15%
2017-18	0.60%	0.350%	0.60%	0.40%	0.30%	0.15%

- (c) For each subsequent Contract Year of the Term, the license fee shall be payable on or before October 1<sup>st</sup> following the commencement of such year.
- (d) For each Contract Year, there shall be a Minimum Annual License Fee per Orchestra. The Minimum Annual License Fee for the 2016-2017 Contract Year is \$228. The Minimum Annual License Fee shall be modified for each Contract Year commencing with the 2011-2012 Contract Year consistent with any percentage increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding April and the next preceding April, and shall be rounded to the nearest dollar.

**9. ANNUAL FINANCIAL REPORTING**

- (a) For each Contract Year, Orchestra shall pay an Estimated License Fee based upon the prior Contract Year's Gross Receipts, and shall pay any adjustments necessary for that Contract Year once the actual Gross Receipts for the Contract Year become available as follows:
  - (i) Within thirty (30) days of execution of this Agreement, Orchestra shall report to BMI **electronically** its Gross Receipts for the 2011-2012 Contract Year, or in the event that Orchestra executes this Agreement in any Contract Year after the 2011-2012 Contract Year, Orchestra shall report to BMI its Gross Receipts for the Contract Year immediately preceding the first Contract Year of the Term. Simultaneous with Orchestra's submission of its Gross Receipts reporting, Orchestra shall pay Estimated License Fees due, or, in the case of Orchestras executing this Agreement during 2012, any differential in the Estimated License Fees paid for the 2011-2012 Contract Year and the Actual License Fees due, shall be paid to BMI, or in the event of an over-payment by Orchestra, a credit will be applied to Orchestra's account.
  - (ii) For each subsequent Contract Year of the Term, commencing with the 2012-2013 Contract Year, Orchestra shall report to BMI **electronically** its actual Gross Receipts for the immediately preceding Contract Year on or before September 10<sup>th</sup>. Simultaneously therewith Orchestra shall pay Estimated License Fees for the upcoming Contract Year based upon the Gross Receipts of the prior Contract Year and shall pay any adjustment due for the prior Contract Year. In the event that Orchestra's Estimated License Fee payment for the prior Contract Year exceeded the Actual License Fee due, a credit will be applied to Orchestra's account.

- (iii) In the event that any Small Budget Orchestra provides a report, consistent with the reporting obligations outlined in Paragraph 10 herein, indicating that a particular Concert does not include any BMI licensed musical works, such Small Budget Orchestra may eliminate that single Concert and its Gross Receipts from this Agreement, and no license fees shall be due for such Concert upon verification by BMI.
- (iv) Should Orchestra fail to report and submit payments to BMI within thirty (30) days after the specified date, then BMI will apply estimated billings to the account based on either Orchestra's prior year's Gross Receipts or reports from Orchestra's Federal Income Tax 990 report, whichever is higher. BMI shall give written notice to Orchestra of the Estimated Fee calculated. Orchestra shall have thirty (30) days after such written notice by BMI to submit the report. If BMI does not receive the report from Orchestra within those thirty (30) days, BMI and Orchestra agree that BMI's Estimated License Fee shall then be established as the Actual License Fee for the period unreported by Orchestra. BMI and Orchestra further agree that such established Actual License Fee (subject to adjustment by audit) shall also become the Estimated License Fee for the following Contract Year. Orchestra agrees to waive its right to file its report for any period in which BMI's Estimated License Fee becomes the Actual License Fee. Any differences between the Estimated and the Actual License Fee shall be payable by Orchestra when the report is submitted. If BMI's Estimated License Fee is greater than the Actual License Fee, then Orchestra's account shall be credited with the difference, provided however that Orchestra's Annual License Fee shall not fall below the Minimum Annual Fee.
- (v) In the event that during the Term hereof, BMI collects a license fee from Orchestra any part of which is based on income derived from a Concert for which BMI shall also have collected a license fee from anyone other than Orchestra, it is agreed that BMI shall notify Orchestra thereof, and Orchestra shall be entitled to a credit against its next Contract Year's license fee in the amount of the overpayment. However, in no event shall such credit exceed that portion of Orchestra's fee which represents the amount collected by BMI on account of such Concert. If such overpayment shall occur during the final Contract Year of the Term hereof, BMI shall refund the amount thereof promptly after the determination of such overpayment.

## 10. REPORTING OF CONCERTS

Orchestra shall deliver to BMI, via **electronic transmission** in accordance with a format required by BMI, lists of the musical works, including encores to the extent possible, presented by Orchestra in its Concerts during such period. Reports for Large Budget Orchestras shall be due quarterly on the tenth (10<sup>th</sup>) day of December, March, June and September of each year of this Agreement for all Concerts presented by Large Budget Orchestra during the prior quarter. Reports for Small Budget Orchestras shall be due semi-annually on the tenth (10<sup>th</sup>) day of March and September of each year of this Agreement for all Concerts presented by Small Budget Orchestra during the prior six (6) month period. Orchestra shall submit reports to BMI, setting forth all performances of **all** Concerts occurring during the applicable period, including all Concerts for which a Small Budget Orchestra may claim no license fees are due to BMI pursuant to Paragraph 9(iii). Such report shall include the name of each Concert, the dates of each Concert, the number of performances each day and the Gross Receipts [as defined in Paragraph 1(m)] for a regularly scheduled performance of each Concert. A report shall be furnished to BMI by Orchestra for each period during the Term of the Agreement, regardless of whether or not any Concerts occurred during that period or advise BMI that the Orchestra's season is complete.

## 11. REVIEW OF STATEMENTS AND/OR ACCOUNTINGS

- (a) BMI shall have the right, once with respect to each year of the Term, by its authorized representatives, at any time during customary business hours, and upon reasonable notice, in writing to Orchestra of not less than thirty (30) business days, to examine those portions of Orchestra's books and records of account to such extent as may be necessary to verify any and all statements and/or accountings made hereunder or under prior agreement with BMI. BMI shall consider all data and information coming to its attention as the result of any such examination of Orchestra's books and records as confidential.
- (b) BMI may conduct an audit pursuant to this Paragraph for a period not to exceed three (3) calendar years preceding the year in which the audit is made.

## 12. LATE PAYMENT CHARGE

BMI may impose a late payment charge of one percent (1%) per month from the date any payment is due hereunder on any payment that is received by BMI more than thirty (30) days after the due date.

## 13. OFFER OF COMPARABLE AGREEMENT

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

## 14. NOTICES

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed given when sent by certified first-class U.S. mail return receipt requested to the party intended, at its mailing address herein stated, or any other address which either party hereto may designate. Any such notice sent to BMI shall be to the attention of the Licensing Department. Any such notice sent to Orchestra shall be to the attention of the person signing this Agreement on behalf of Orchestra or such other person as Orchestra may advise BMI in writing.

## 15. MISCELLANEOUS

This Agreement constitutes the entire understanding between the parties, shall not be binding until signed by both parties, and 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. The rights of Orchestra shall not be assignable. 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

## 16. TERM OF AGREEMENT

The initial Term of this annual Agreement shall begin on the first day of (*month/year*) \_\_\_\_\_ and end on the last day of August 2018 and shall continue thereafter for one (1) year Terms unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "Contract Year") consistent with the cancellation notice requirements outlined in Paragraphs 4, 5 and 6 herein.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>ORCHESTRA ADDRESS</u></b>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b><u>TRADE NAME</u></b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address) (Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <b>(if different from Orchestra Address)</b>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<i>(State of Incorporation, if different from Orchestra Address)</i> <i>(Enter names of partners)</i>	
<input type="checkbox"/> Other _____	<i>(Street Address)</i>
Federal Tax ID No. _____	<i>(City) (State) (Zip)</i>
<b><u>GOVERNMENT ENTITIES</u></b> <b>(if applicable, please check one)</b>	<i>(Telephone Number) (Fax Number)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<i>(Contact Name) (Title)</i>
<i>(State)</i>	<i>(Email Address- if different from above)</i>
<input type="checkbox"/> Local _____	
<i>(Municipality/City and State)</i>	

<b>TO BE COMPLETED BY ORCHESTRA</b>
By signing this Agreement you represent that you have the authority to bind Orchestra and that you have read, understood and agree to all of the terms and conditions herein. <b><i>(SIGN HERE – PLEASE INCLUDE PAYMENT)</i></b>
Signature _____
Print Name / Title _____
Signatory Email Address* <i>(if different from above)</i> _____
<b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory</b>

<b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b>		
<b>FOR BMI USE ONLY</b>	<b>SYM1</b>	<b>LI-2016/MAY</b>
<b>ACCOUNT NO.</b>	<b>COID</b>	<b>EFFECTIVE: September 2016</b>

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

\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.





## Local Television Station Music Performance Blanket License

AGREEMENT, made at New York, N.Y. on \_\_\_\_\_, 20\_\_\_\_, between BROADCAST MUSIC, INC., a corporation organized under the laws of the State of New York (BMI) with principal offices at 7 World Trade Center, 250 Greenwich St, New York, NY 10007-0030, and

\_\_\_\_\_  
*(Legal Name of Licensee)*

- Please Check Appropriate Box And Complete
- A corporation organized under the laws of \_\_\_\_\_
  - A limited liability company organized under the laws of \_\_\_\_\_
  - A partnership composed of \_\_\_\_\_
  - An individual residing at \_\_\_\_\_

(LICENSEE) with offices located at \_\_\_\_\_

*City* \_\_\_\_\_ *State* \_\_\_\_\_ *Zip* \_\_\_\_\_ *Telephone No.* \_\_\_\_\_

and operating the television broadcasting station located at \_\_\_\_\_

*City* \_\_\_\_\_ *State* \_\_\_\_\_ *Zip* \_\_\_\_\_ *Telephone No.* \_\_\_\_\_

and presently designated by the call letters \_\_\_\_\_ (Station) (the "Agreement").

### IT IS HEREBY AGREED AS FOLLOWS:

1. TERM. The term of this Agreement shall be the period beginning  and ending December 31, 2004, unless earlier terminated as hereinafter provided.

2. DEFINITIONS. As used in this Agreement, the following terms shall have the following respective meanings:

(a) **"Affiliated Station"** shall mean any free, over-the-air television broadcasting station licensed by the FCC which is located in the United States, its commonwealth, possessions and territories, that regularly broadcasts Programs transmitted by a television network licensed by BMI during the term hereof.

(b) **"Announcement"** shall mean any commercial, promotional, or public service announcement (exclusive of program length "infomercials" of greater duration than 120 seconds), or any producer's or distributor's logo.

(c) **"BMI Consent Decree"** shall mean the consent decree entered in United States v. BMI, 64 Civ. 3787 (LLS) (S.D.N.Y.), as amended.

(d) **"COMMITTEE"** shall mean the Television Music License Committee, an unincorporated membership association organized under the laws of the State of New York, which is duly authorized to represent local television stations in music licensing matters.

(e) **"LMA Operator"** shall mean any person, firm or corporation not under the same or substantially the same ownership, management or control as LICENSEE with whom LICENSEE has entered into a Local Marketing Agreement.

- (f) **"Local Marketing Agreement"** shall mean any arrangement between LICENSEE and an LMA Operator that:
- (1) authorizes the resale by an LMA Operator of the use of the television broadcasting facilities of Station;
  - (2) permits an LMA Operator to provide Programs for all or substantially all of the time Station is on the air; and
  - (3) provides for the sale by an LMA Operator of all or substantially all Announcements broadcast on Station.





(g) **“Network Announcement”** shall mean any Announcement transmitted by a television network licensed by BMI as a network at the time such Announcement is broadcast on the network, and broadcast simultaneously or by so-called “delayed” or “repeat” broadcasts (sometimes known as “rebroadcasts”) over two or more Affiliated Stations of a network licensed by BMI.

(h) **“Network Television Program”** shall mean any Program, transmitted by a television network licensed by BMI as a network at the time such Program is broadcast on the network, identified as a Program of the network, and broadcast simultaneously or by so-called “delayed” or “repeat” broadcasts (sometimes known as “rebroadcasts”) over two or more Affiliated Stations of a network licensed by BMI.

(i) **“Non-Network Announcement”** shall mean any Announcement broadcast by Station other than a Network Announcement.

(j) **“Non-Network Television Program”** shall mean any Program broadcast by Station other than a Network Television Program.

(k) **“Program”** shall mean all material (visual or otherwise) broadcast by Station other than Announcements.

(l) **“Station”** shall mean and be restricted to the FCC-licensed commercial television broadcasting station whose ownership and call letters are indicated above.

(m) **“Station Web Site”** shall mean the Web Site operated by or for Station as the Station's Web Site.

(n) **“Syndicated Television Program”** shall mean any Non-Network Television Program supplied to LICENSEE and other television stations by a producer or a distributor, or by a television network which is not licensed by BMI.

(o) **“Television Broadcasting”** shall mean free, unscrambled, point-to-multipoint over-the-air local broadcasting by means of television.

(p) **“Web Site”** shall mean an Internet computer service comprising a series of interrelated web pages registered with a domain name registration service that Station transmits or causes to be transmitted either directly or indirectly to persons who receive the service over the Internet by means of a personal computer or by means of another device capable of receiving Internet transmissions. Station's current Web Site URL is  
http://\_\_\_\_\_.

### 3. GRANT OF RIGHTS.

(a) BMI hereby grants to LICENSEE, for the term hereof, a non-exclusive license to perform publicly all musical works the right to grant public performing right licenses of which BMI may during the term hereof control:

(i) by Television Broadcasting in the United States, and its territories, commonwealth and possessions, as part of LICENSEE's Non-Network Television Programs and Non-Network Announcements from Station; and

(ii) in and as part of a single Station Web Site transmitted or caused to be transmitted either directly or indirectly over the Internet but only in connection with:

(A) the simultaneous retransmission of the Station's locally produced and aired programming;

(B) the retransmission of all or a portion of Station's local newscasts and local news based public affairs programming that aired during the Term of this Agreement; and

(C) other transmissions the primary purpose of which are to promote viewership of Station and its television programming; *provided, however*, that: (1) no single performance licensed under this subsection (C) may exceed thirty (30) seconds in duration; and (2) the total duration of all performances of BMI-repertoire works under this subsection (C) available at any single time for listening on Station's Web Site may not exceed fifteen (15) minutes in duration.

(b) Notwithstanding the foregoing, the license granted herein shall not include transmissions described in subparagraphs 3(a)(ii)(A) and 3(a)(ii)(B) above where such transmissions contain programming which is nationally or regionally aired regularly scheduled series programming (e.g., Regis and Kelly, George Michael's Sports Machine, and Major League Baseball). In the event that Station airs locally-produced programming, and such programming also appears on one or more additional stations (which programming for purposes of this Agreement would not be considered locally produced and aired programming for the additional station(s)), only the Station may retransmit BMI music contained in such programming in the manner described in subparagraphs 3(a)(ii)(A) and 3(a)(ii)(B) above, while the additional station(s) may not.

(c) The license granted herein does not cover transmissions on Station's Web Site of BMI music where members of the public are charged a fee for the right to access such transmissions. Such transmissions shall be subject to appropriate separate licensing. Notwithstanding the foregoing, the fact that a Station may charge members of the public for access to discrete areas of the Station's Web Site other than those areas containing the performances licensed hereunder shall not limit the scope of this license.

(d) With respect to any portion of the Term prior to January 1, 2002, the Web Site license granted under Paragraph 3(a)(ii) shall be limited to those transmissions of BMI music as described in Paragraph 3(a)(ii)(C) above.

(e) For the rights granted in Paragraph 3(a)(ii) only, the territory shall mean the United States, its commonwealth, territories and possessions and the territories represented by non-U.S. performing right licensing organizations posted as Exhibit C in the licensing section of the BMI web site located at <http://www.bmi.com>. Such list may be amended by BMI at any time and without notice. Notwithstanding the foregoing, the territorial scope of the grant of rights in Paragraph 3(a)(ii) with respect to any musical works which are affiliated with BMI through a non-U.S. performing right licensing organization not listed on Exhibit C is limited to public performances in the U.S. Territory.

(f) The performances licensed hereunder may originate at any place whether or not such place is licensed to publicly perform the musical works licensed hereunder, and regardless of the manner, means or method of such origination, but nothing herein shall be deemed to grant a license to such place itself (or to the parties responsible for such performances) for the public performances in such place of any such works.

(g) The license granted herein shall not include dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein. It is nonetheless expressly understood that nothing contained in this Paragraph shall be construed so as to limit the ability of LICENSEE to perform, by Television Broadcasting, any works contained in Syndicated Television Programs, motion pictures initially produced for theatrical exhibition or music videos which LICENSEE would otherwise have the right to perform under this Agreement.

(h) BMI will, upon specific reasonable written request made by LICENSEE, indicate whether one or more specified musical works listed by LICENSEE are licensed by BMI. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified.

(i) Except as expressly herein otherwise provided, nothing herein contained shall be construed as authorizing LICENSEE to grant to others any right to reproduce, retransmit or publicly perform by any means, method or process whatsoever, any of the musical works licensed hereunder or as authorizing any receiver of any television broadcast to publicly perform or reproduce the same by any means, method or process whatsoever.

(j) The license granted herein shall not include the right to adapt the musical works licensed hereunder or to make any other versions thereof.

(k) The license granted herein shall include on a non-precedential, experimental basis the right to engage in such non-dramatic public performances of musical works in BMI's repertoire as may result from Station's free, over-the-air broadcasts of BMI music within its existing geographic market(s) over FCC assigned frequencies, by means of a digital television signal. It is understood that the right to perform works in the BMI repertoire by means of a digital television signal is being included in this Agreement because digital television is a new technology and such grant of rights reflects the experimental character of such broadcasts. Station shall provide BMI, in electronic form, annual reports concerning LICENSEE's digital television signal, using the form attached hereto as Exhibit D. The form shall be filed during the month of October of each of the years 2002, 2003 and 2004.

#### 4. LICENSE FEE/STATEMENTS.

This Agreement expressly incorporates, and LICENSEE agrees to be bound by, the terms of the letter agreement between BMI and COMMITTEE attached hereto as Exhibit A.

(a) BROADCAST TELEVISION PAYMENTS FOR 2002, 2003 AND 2004. LICENSEE shall pay to BMI for each month during the calendar years 2002, 2003 and 2004, a fee equal to one twelfth (1/12) of LICENSEE's allocated share of the annual industry-wide BMI blanket license fee of \$85 million, as allocated according to the methodology prescribed in Schedule I to Exhibit A. Such fee shall be payable no later than the first calendar day of the month succeeding the month to which the fee is attributable. In no case shall LICENSEE's monthly fee be less than \$45.00.

(b) BROADCAST TELEVISION PAYMENTS FOR APRIL 1, 1999 THROUGH DECEMBER 31, 2001. LICENSEE agrees to pay BMI, in addition to the interim license fees that were heretofore payable by LICENSEE to BMI in respect of the period from April 1, 1999, through and including December 31, 2001, under the interim BMI Local Television Station Music Performance Blanket or Per Program License for Station, such amounts and at such times as are provided for in Paragraph 2 of Exhibit A concerning the Settlement Fee.

(c) WEB SITE PAYMENTS FOR 2002, 2003 and 2004. LICENSEE shall pay to BMI for each month during the calendar years 2002, 2003, and 2004, a fee equal to one twelfth (1/12) of LICENSEE's allocated share of the BMI annual Internet fee as set forth in Exhibit A and as determined by the COMMITTEE. Such fee shall be payable to BMI no later than the first calendar day of the month succeeding the month to which the fee is attributable.

(d) If any payment due hereunder is not received by BMI in the twenty (20) days following the date on which such payment is due, BMI may collect a late-payment charge of one percent (1%) per month (simple interest) calculated from the date such payment was due.

#### 5. MUSIC PERFORMANCE REPORTS.

(a) BROADCAST TELEVISION REPORTS. LICENSEE, upon written request from BMI made on notice of not less than four (4) weeks specifying the period to be covered, agrees to furnish (on forms to be supplied by BMI and/or available on BMI's web site) reports of LICENSEE's performances by Station of all musical works, indicating

the works performed by title and composer or by such other convenient method as may be designated by BMI. In no event shall such reports be furnished for more than one (1) week of each year of the term. It is expressly understood that, with respect to any Syndicated Television Programs, LICENSEE's obligation to report music data to BMI under this Paragraph shall be limited to providing BMI with the title and episode name or number of such Syndicated Television Program(s); if no cue sheet is available, LICENSEE shall cooperate with BMI in attempting to obtain such cue sheets and/or in providing BMI with access to a tape or recording of the Syndicated Television Program involved. In addition to these reports, LICENSEE shall provide a list of its Non-Network Announcements for the week (e.g., traffic reports); LICENSEE may redact any revenue or financial information from this list, provided that the list includes the name of the commercial, the dates and number of times it was broadcast and the ISCI code number for the commercial.

(b) WEB SITE REPORTS. LICENSEE shall notify BMI in writing, using the form attached hereto as Exhibit B, reasonably promptly after beginning to stream its over-the-air broadcast television signal or to distribute a Web Site licensed pursuant to this Agreement. Thereafter, upon written request from BMI made on notice of not less than four (4) weeks specifying the period of time to be covered, LICENSEE shall provide to BMI, in electronic form, a music use report for a period specified by BMI not to exceed one month for each calendar year during the Term of the Agreement using the form attached hereto as Exhibit C. BMI reserves the right to request from LICENSEE information sufficient to identify the title(s) of any Program(s) promoted on individually retrievable archived promotional announcements on the Web Site as part of such reports.

6. INDEMNIFICATION. BMI agrees to indemnify, save and hold harmless and to defend LICENSEE, its advertisers and their advertising agencies, and its and their officers, employees and artists, and each of them, from and against all claims, demands and suits that may be made or brought against them or any of them with respect to the performance under this Agreement of any works in the BMI repertoire that are licensed hereunder; provided, however, that such indemnity shall be limited to those claims, demands and suits that are made or brought within the United States, its territories, commonwealth and possessions, and provided further that this indemnity shall not apply to broadcasts of any musical work performed by LICENSEE which is not contained in the BMI repertoire at the time of performance by Station or which is the subject of a written notice of withdrawal in accordance with Paragraph 7 hereof. LICENSEE agrees to give BMI immediate notice of any such claim, demand or suit and agrees to deliver immediately all papers pertaining thereto. BMI shall have full charge of the defense of any such claim, demand or suit, and LICENSEE shall cooperate fully with BMI therein. 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. The provisions of this Paragraph shall survive termination of this Agreement, but solely with respect to performances broadcast by Station during the term of this Agreement.

7. WITHDRAWAL OF WORKS. BMI reserves the right upon written notice to LICENSEE to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing right in such work or that such work infringes another work. BMI shall notify LICENSEE as promptly as reasonably possible of any such withdrawal and shall attempt to determine and advise LICENSEE at the time of such notice of any Syndicated Television Program in which any such withdrawn work may be contained.

8. ASSIGNMENT. This license shall be non-assignable except to the person, firm or corporation acquiring the Federal Communications Commission license of Station, and upon assignment to the acquiring person, firm or corporation and upon the acceptance by BMI in form approved by BMI of the application of LICENSEE hereunder, LICENSEE shall be relieved of future liability under this Agreement as long as all statements have been submitted by LICENSEE and all fees due BMI under this Agreement have been paid to BMI. Nothing herein is intended to limit the new owner's entitlement to a license pursuant to Article XIV of the BMI Consent Decree.

#### 9. ARBITRATION.

(a) With the specific exception of disputes which may be within the jurisdiction of the United States district court having jurisdiction under the BMI Consent Decree, all disputes of any kind, nature or description 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 shall, by written notice to the other, have the right to appoint one arbitrator. If, within ten 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 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 thereon in any court having jurisdiction. Such award shall include the fixing of the reasonable costs, expenses and attorneys' fees of arbitration, which shall be borne by the unsuccessful party, subject to the provisions of subparagraph (b) below.

(b) If, during the term of the Agreement, any dispute arises between BMI and LICENSEE concerning the interpretation of any of the provisions of this Agreement, the resolution of which, in the judgment of BMI or COMMITTEE, either jointly or severally, has or may have industry-wide impact, BMI and COMMITTEE shall first endeavor to resolve such dispute, failing which either party may refer the matter to arbitration (unless the parties agree on some alternative mechanism for dispute resolution); and LICENSEE agrees to be bound by the results of all of such arbitrations involving BMI and COMMITTEE. In the event of such a reference, each party shall bear its own costs, expenses and attorneys'

fees. In the event of such a reference, either party, as a preliminary matter, shall be entitled to assert that the dispute between them is not properly dealt with under the terms of this subparagraph.

10. **TERMINATION BY LICENSEE.** LICENSEE shall have the right to terminate this Agreement, upon ten (10) business days' notice to BMI, in the event of: (a) the termination or suspension of the governmental licenses covering LICENSEE, or any substantial alteration or variation of the terms and conditions thereof; or (b) the suspension of operations by Station for a substantial period of time.

11. **BREACH OR DEFAULT.** Upon LICENSEE's breach or default of any payment, accounting or substantive reporting obligation required under the terms of this Agreement, BMI may give LICENSEE thirty (30) days' notice in writing to cure such breach or default. In the event that such breach or default has not been cured within thirty (30) days of said notice, BMI may then terminate this Agreement.

12. **NOTICE.** Any notice of termination given hereunder shall be given by registered or certified mail or delivery service for which there is proof of delivery to, and receipt by, the addressee. Any other notice required or permitted to be given under this Agreement shall be in writing and shall be deemed duly given when sent by ordinary first-class U.S. mail to the party for whom it is intended, at its office address hereinabove stated, or any other address which either party hereto may from time to time designate for such purpose, and when notice is so mailed, it shall be deemed given upon the mailing thereof. Any notice sent to BMI shall be to the attention of S.V.P. Licensing Department. 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.

13. **PER PROGRAM LICENSE.** LICENSEE acknowledges that the BMI Local Television Station Per Program License for the term commencing January 1, 2002 and ending December 31, 2004 (the "Per Program License") has been offered to LICENSEE simultaneously with this Agreement and LICENSEE is hereby electing this Agreement instead thereof. During the term of this Agreement, provided that LICENSEE is not more than ninety (90) days in arrears in payments due hereunder, LICENSEE may hereafter elect to switch from this Agreement to the Per Program License as of the first day of a calendar month, prospectively on thirty (30) days' prior written notice to BMI (an "Election"). By making an Election, LICENSEE agrees to be bound by all the terms of the agreement elected. Thereafter LICENSEE may switch back to the Blanket License as provided for in the Per Program License. An Election to change between this Agreement and the Local Television Station Per Program License may be made by LICENSEE not more than twice in any calendar year 2002, 2003 or 2004.

14. **INTERFERENCE IN OPERATIONS.** In the event that any law hereafter enacted of the state, or political subdivision thereof, in which LICENSEE is located shall result in major interference with the operations of BMI in that state or political subdivision, or in a substantial increase of the cost to BMI of operating within that state or political subdivision, BMI shall have the right, upon notice to COMMITTEE and upon a showing that the matters referred to affect the licensing of performing rights under this Agreement, to apply to the judge with supervisory authority over the BMI Consent Decree for whatever relief BMI deems appropriate, including termination of this Agreement.

15. **LOCAL MARKETING AGREEMENT.**

(a) If LICENSEE is, or becomes, a party to a Local Marketing Agreement, LICENSEE and the LMA Operator shall execute a letter to BMI, in the form attached as Exhibit E and made a part of this Agreement, requesting amendment of this Agreement to add the LMA Operator as a party. When such a letter has been fully executed by LICENSEE, the LMA Operator and BMI, this Agreement shall be deemed amended accordingly.

(b) BMI shall be entitled to receive, upon request, a copy of the entire Local Marketing Agreement or, if LICENSEE so elects, a copy of the portion of the agreement which sets forth the respective obligations of LICENSEE and the LMA Operator regarding the payment of BMI fees, accountings, record keeping and administrative responsibilities. An officer of LICENSEE shall certify that it is a true and correct copy of the agreement.

16. **CONFIDENTIALITY.**

(a) BMI shall treat as confidential, and shall not disclose to any third party (other than its employees, directors and officers, in their capacity as such, on a need-to-know basis, and other than as set forth in subparagraph (b) below), any financial or other proprietary documents or information provided to BMI by LICENSEE in connection with this Agreement.

(b) BMI is hereby authorized to provide to COMMITTEE such of LICENSEE's financial or other proprietary documents or information, provided to BMI pursuant to this Agreement, as COMMITTEE may request in connection with its representation of the local television industry in future negotiations with BMI, future rate court proceedings, litigation or disputes over the implementation or interpretation of this Agreement, unless LICENSEE notifies BMI in writing to the contrary. As reflected in Exhibit A hereto, COMMITTEE has agreed to treat as confidential any financial or other proprietary documents or information provided to it by BMI pursuant to this Paragraph.

17. **WITHOUT PREJUDICE.** The parties are entering into this Agreement without prejudice to any arguments or positions they may assert in any future rate proceeding concerning what constitutes reasonable blanket and per program license fees and terms for the local television industry, or, in BMI's case, as to any other licensee. The information that LICENSEE has agreed to provide under Paragraph 5 (b) shall not prejudice any position either party may take in any future negotiation, proceeding or litigation as to the relevance or necessity of such information in licensing musical

performances over the Internet.

18. RESERVATION OF RIGHTS. The license granted in Paragraph 3(a)(ii) is experimental in nature. BMI and LICENSEE recognize that the license granted therein covers certain transmissions originating from and/or received in certain territories outside of the United States, its commonwealth, possessions and territories pursuant to experimental agreements with certain non-U.S. performing rights licensing organizations around the world, and is broader in geographical scope than BMI's previous licenses. Notwithstanding, BMI is offering the license in Paragraph 3(a)(ii) on an experimental and non-prejudicial basis for the purpose of evaluating such international licensing initiatives. Accordingly, the removal during the Term of any or all of the territories listed on Exhibit C in the licensing section of the BMI web site located at <http://www.bmi.com> from the scope of coverage provided for in Paragraph 3(a)(ii) shall have no impact on the fees due hereunder. The Parties hereby expressly reserve their right to re-evaluate the appropriateness of the fees and terms herein with respect to all transmissions licensed under Paragraph 3(a)(ii), including, but not limited to, the reasonable value of a license that covers transmissions beyond the United States, its commonwealth, possessions and territories, for periods following the Term.

19. MISCELLANEOUS. This Agreement, and all Exhibits hereto, constitutes the entire understanding between the parties and 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 to be void or unenforceable by a court of competent jurisdiction shall in no way affect the validity or enforceability of any other provisions.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day and date hereinbefore set forth.

BROADCAST MUSIC, INC.

*LICENSEE (Legal Name)*

By:

*(Signature)*

*(Print Name of Signer)*

*(Title of Signer)*

By:

*(Signature)*

*(Print Name of Signer)*

*(Title of Signer)*

## EXHIBIT A

May 17, 2002

Broadcast Music, Inc.  
320 West 57<sup>th</sup> Street  
New York, N.Y. 10019

Attention: Mr. John Shaker

Re: BMI – Local Television Station Blanket and Per Program Licenses

Dear Mr. Shaker:

This letter sets forth the agreement reached between Broadcast Music, Inc. (“BMI”) and the Television Music License Committee (the “COMMITTEE”) concerning certain additional terms of the BMI – Local Television Station Blanket and Per Program License Agreements covering the periods April 1, 1999 through December 31, 2004 (herein “Blanket Licenses” and “Per Program Licenses”, and collectively referred to as “Licenses”). This letter agreement is expressly incorporated in paragraph 4 of the Blanket and Per Program Licenses, respectively, and is binding upon the parties hereto and upon the signatories to the Licenses and their successors and assigns.

The parties agree as follows:

1. For the years 2002, 2003 and 2004, domestic commercial television stations that were licensed by BMI in 2001 pursuant to interim licenses agreed to between BMI and the COMMITTEE (“Existing Television Stations”) shall pay license fees to BMI as follows:

(a) Existing Television Stations entering into the Blanket License with BMI, or switching thereto, shall each pay BMI each year their allocated share of the annual industry-wide BMI blanket license fee of \$85 million, at such times and in such manner as provided therein for such years (or portions thereof) that they have elected to be bound by a Blanket License. The methodology for the allocation of blanket license fees among Existing Television Stations for each of those calendar years is set forth in Schedule I hereto.

(b) Existing Television Stations entering into Per Program Licenses with BMI, or switching thereto, shall each pay BMI such fees, and at such times and in such manner, as are provided therein. Per Program License Fees for Existing Television Stations shall be computed based upon each station’s Monthly Base License Fee. For each calendar year 2002, 2003 and 2004, each Existing Television Station’s Monthly Base License Fee shall be equal to one-twelfth of its share of the annual industry-wide BMI per program license fee of \$98.1 million, subject to subparagraph (c) hereof.

(c) In the event that during the term of the Licenses, the COMMITTEE negotiates with the American Society of Composers, Authors and Publishers (“ASCAP”) an annual industry-wide per program license fee, or the ASCAP rate court establishes an annual industry-wide per program license fee for ASCAP in a proceeding no longer subject to appeal, different from \$98.1 million, then the parties agree that the ASCAP amount will be substituted for the \$98.1 million figure in paragraph (b) prospectively from the effective date of such ASCAP fee change for any period remaining in the term of the Licenses; provided, however, that substitution of the base fee shall only occur if the material non-fee terms and conditions of the ASCAP per program license are similar to the terms and conditions of the BMI Per Program License.

(d) Each Existing Television Station shall pay to BMI its allocated share of the annual industry-wide BMI Internet blanket license fee of \$558,333.33 in each of the years 2002, 2003 and 2004. An Existing Television Station's allocated share of the industry-wide BMI Internet blanket license fee shall be calculated by multiplying \$558,333.33 times a factor representing the percentage of the industry-wide BMI blanket license fee that is allocated to the station in a given year pursuant to Schedule I to this letter agreement. For example, a station with an annual blanket license fee of \$850,000 (or 1% of the industry-wide blanket license fee for the year 2003) shall be allocated 1% of the industry-wide BMI Internet blanket license fee (or \$5,583.33).

2. For the period from April 1, 1999, through December 31, 2001 (the "Settlement Period"), BMI and the COMMITTEE agree that Existing Television Stations shall pay to BMI their allocated share of the industry-wide lump-sum settlement fee of \$12 million (the "Settlement Fee"), which payments will represent, when combined with the interim fees payable to BMI under the interim BMI Blanket and Per Program Licenses agreed to by BMI and the COMMITTEE for that period, the final license fees payable for the Settlement Period. The COMMITTEE shall allocate the Settlement Fee among the Existing Television Stations, and shall provide BMI prior to February 15, 2002 with a schedule that details the amounts to be billed to each station. The stations' shares of the Settlement Fee shall be billed in equal monthly installments over a 36 month period commencing January 1, 2002, separately from the stations' monthly payments as calculated pursuant to Paragraph 1(a) above and Schedule I to this letter agreement.

3. Subject to Paragraph 7 below, if for any part of the term of this letter agreement, BMI enters into a License with a television station that is not an Existing Television Station (a "New Television Station"), the New Television Station shall pay BMI license fees, whether under the Blanket License or the Per Program License, as the case may be, as follows:

(a) if the New Television Station was previously licensed by the FCC and operating as a broadcast television station for more than twelve (12) months prior to entering into a License with BMI, then the fees payable by all stations in the New Television Station's local market as of the effective date of the New Television Station's license agreement shall be reallocated under Schedule I hereto as if such station were an Existing Television Station and without any increase in the total fee amount otherwise allocable to the relevant local television market. The New Television Station and all other licensees in its local market shall thereafter be obligated to pay such re-allocated fees; or

(b) if the New Television Station was not previously licensed by the FCC and operating as a broadcast television station for more than twelve (12) months prior to entering into a License with BMI, such station shall pay the minimum monthly fee of forty-five dollars (\$45.00) for the remainder of the calendar year following the effective date of its license agreement. Thereafter, the fees payable by all stations in the New Television Station's local market shall be reallocated under Schedule I hereto as if such station were an Existing Television Station and without any increase in the total fee amount otherwise allocable to the relevant local television market. The New Television Station and all other licensees in its local market shall thereafter be obligated to pay such re-allocated fees.

(c) BMI shall be obligated to notify licensees in writing as to any adjustment in their fees resulting from the reallocation procedures set forth in Paragraphs 3(a) and (b) within ten (10) days of the determination of such reallocated fees. In the event an Existing Television Station's fees are reduced as a result of any such reallocation, BMI shall credit such licensee's account for the amount of any such excess fees which have already been paid by such licensee as of the effective date of reallocation, or, if such licensee so elects, BMI shall, within thirty (30) days of receiving notification of such election, refund to licensee the amount of any such excess fees.

4. If, during the term of this Agreement, BMI licenses any entity agreed or determined to be a broadcast television "network" previously unlicensed by BMI (such as FOX, UPN, or The WB), whose network programs are carried by local television stations licensed by BMI pursuant to the Licenses, the industry-wide amounts set forth in Paragraph 1 above pertaining to the periods of such third party license agreements shall be adjusted downward in an appropriate amount. BMI shall have the ultimate responsibility for re-allocating industry-wide blanket license fees to reflect any such reduction, following consultation with the COMMITTEE. BMI and the COMMITTEE will confer and attempt to reach agreement concerning the appropriate amount of any such fee adjustments and such agreement shall be binding on all licensees. If BMI and the COMMITTEE shall fail to agree on such fee adjustments, either party may refer the matter to the federal judge with supervisory authority over the BMI Consent Decree for determination.

5. BMI shall provide to the COMMITTEE or its designated representative for verification, by no later than forty-five (45) days before its scheduled dissemination to licensees, a copy of each list of Syndicated Television Programs prepared pursuant to Paragraph 6(c) of the Per Program License. The COMMITTEE shall notify BMI of any suggested revisions or corrections to this list no later than three weeks from the date it was received.

6. If, for any part of the term hereof, a station previously licensed by BMI under a separate agreement changes its format and elects to be licensed pursuant to a License, such station's blanket and per program license fee allocations shall be determined pursuant to the methodology set forth in Schedule I as though it were an Existing Television Station, except that: (a) such station's allocated blanket or per program license fee shall be in addition to the industry-wide blanket or per program license fees set forth in Paragraph 2 above; and (b) blanket or per program license fees allocated

to other stations in the same market shall be determined as if such station were not licensed pursuant to a License, and thus shall remain unchanged.

7. The COMMITTEE shall treat as confidential any financial or other proprietary information or documents provided to it by BMI pursuant to the Local Television Station Per Program License Agreement (“Confidential Information”). The COMMITTEE shall limit access to Confidential Information to the COMMITTEE’s staff, representatives and counsel, and shall not disclose Confidential Information to any third party or to any COMMITTEE member, other than a COMMITTEE member who is employed by the station group which provided Confidential Information to BMI.

8. BMI and the COMMITTEE are entering into this Agreement without prejudice to any arguments or positions they may assert in any future rate proceeding concerning what constitutes reasonable blanket and per program license fees and terms for the local television industry or, in BMI’s case, as to any licensee.

Please indicate your agreement to the above by signing on the line provided below.

Very truly yours,

s/ Chuck Sennet

Co-Chair

Television Music License Committee

s/ Catherine Nierle

Co-Chair

Television Music License Committee

AGREED TO:

s/ John Shaker

Senior Vice President/Licensing

Broadcast Music, Inc.



# **Television Music License Committee**

## **Methodology for Industry-Wide BMI License Fee Allocation for the Period From January 1, 2002 through December 31, 2004**

### **STEP 1: Allocation of Industry-Wide Fee Among DMA Markets**

In a given year, each television market is to be assigned its allocable share of the \$85 million industry-wide blanket license fee based on a weighted, three-year average percentage of the total U.S. television households it represents.<sup>1</sup>

1. For each of the years 2002 through 2004 (“Contract Years”), the number of TV households in each of the roughly 210 DMA markets as measured by Nielsen<sup>2</sup> is to be “weighted” as follows:

Markets 1 - 10	Multiply by 1.19
Markets 11 - 25	Multiply by 1.05
Markets 26 - 50	Multiply by 0.92
Markets 51 - 75	Multiply by 0.85
Markets 76 - 100	Multiply by 0.85
Markets 101 - 125	Multiply by 0.85
Markets 126 plus	Multiply by 0.80

The purpose of the weighting is to reflect, within broad parameters, that a household in the 150th market does not represent the same value as a household in the New York market.

2. For each Contract Year, each market is to be assigned its share of the industry’s overall \$85 Million blanket license fee by the following procedure: Each market’s three-year households average (based on the three prior years) will be computed. The multiples set forth in Paragraph 1 above will next be applied to these market rankings resulting from computation of the three-year averages to produce a weighted average households figure for each market. Thus, for example, the top ten markets in terms of three-year households average will receive a 1.19 multiple. Each market’s weighted average households figure is to be divided by the total U.S. average weighted households to derive a percentage of U.S. weighted TV households for each market. This weighted percentage is then applied to the industry-wide blanket license fee. Thus, if the weighted percentage of total U.S. TV households for market “x” is one percent, market x’s share of the Contract Year 2002 industry-wide blanket license fee would be \$85 Million x 1%, or \$85,000.

### **STEP 2: Allocation of Blanket License Fees to Stations Within Each Market<sup>3</sup>**

A series of computations will be undertaken to apportion a given market’s allocated blanket license fee in relation to each station in that market’s viewing households (with an allowance for a portion of the prime-time audience reached by network-affiliated stations).<sup>4</sup>

1. For Contract Year 2002, the process will begin with Nielsen’s Market Ratings Reports for the “sweeps” months assigned for these purposes to each of 1999, 2000 and 2001. Within each market, each station’s average DMA quarter-hour viewing households, Sunday through Saturday, 9 a.m. through midnight, is to be computed for each of the sweeps months for each of 1999, 2000 and 2001. The same methodology is to be utilized for Contract Year 2003 (employing comparable Nielsen viewership data for the three years 2000, 2001 and 2002) and Contract Year 2004 (employing comparable Nielsen viewership data for the three years 2001, 2002 and 2003).<sup>5</sup>

2. To make allowance for the fact that a portion of a network affiliate’s 9 a.m. to midnight schedule constitutes BMI licensed network programming, the following computations, which lead to each station’s “qualifying” viewing households, are to be made for each sweeps month:

- 
1. In addition, in a given year, each television market is to be assigned its allocable share of the industry-wide base per program license fee (as set forth in paragraphs 1(b) and (c) of Exhibit A to the BMI Local Television Station Music Performance Blanket and Per Program Licenses) pursuant to the methodology described in this Step 1.
  2. The number of television households in television markets located in: Alaska and Hawaii shall be determined based upon data collected by Nielsen; Virgin Islands and Guam shall be determined based upon data collected by the United States Census; and Puerto Rico shall be determined based upon data collected by Media Fax. For purposes of assigning an allocable share of the industry-wide blanket license fee to television markets in Alaska, Hawaii, Virgin Islands, Guam and Puerto Rico, the number of television households in each of these markets is to be given the same weight as the Nielsen DMA that most closely approximates the number of television households in these markets.
  3. The computations described in this Step 2 will also be used to apportion a given market’s allocated base per program license fee among the stations within that market.
  4. Network-affiliated stations are defined as those affiliated with the ABC, CBS, and NBC television networks and those affiliated with, but not owned by, the Univision Television Network
  5. For purposes of these calculations, the sweeps months for a given year comprise the November sweeps period of the prior year, and the February and May Sweeps period of that year. For example, the designated sweeps months for 2000 are November 1999 and February and May 2000.

(a) multiply each station's average DMA quarter-hour viewing households by 420 (the number of quarter-hour units between 9 a.m. and midnight in one week). For independent stations, the result of this computation constitutes those stations' qualifying viewing households.

(b) with respect to the allocation of fees for network-affiliated stations, arrive at "qualifying" viewing households by subtracting from the totals generated by step (a) 100 percent of a prime-time viewing households figure, which figure (prior to application of the 100 percent factor) is calculated by taking a station's average DMA quarter-hour households in prime-time, and multiplying this figure by 88 (the number of quarter-hour units in prime-time in one week.<sup>6</sup>)

3. The nine separate months of DMA viewing households data thus derived for each independent and affiliated station in a market are next aggregated as to each station to arrive at its total qualifying viewing households. This is done for each station in the market. The qualifying viewing households data for all stations in the market are then aggregated to get a base for the entire market. Each station's percentage share of the allocated market blanket license fee (derived through the process described in Step 1, above) is computed by dividing its qualifying viewing households number by the base qualifying viewing households number for that market.

4. A station's blanket license fee is computed by applying the resulting percentage applicable to that station to the market blanket license fee.

5. In those markets having stations which receive no rating in the Nielsen reports and which are not separately licensed by BMI, the following methodology will be employed. Each such station will be assigned a blanket license fee equal to 0.25 percent of the allocable blanket license fee for that market or \$540 annually, whichever is higher. The remaining stations will be allocated blanket license fees based on the methodology set forth in Step 2 hereof, except that the allocable blanket license fee for the market for purposes of those computations shall be reduced by the amount payable by those stations in the market not listed by Nielsen. If, by way of example, the blanket license fee allocated to market "k" is \$300,000, and there are operating in market "k" two stations not listed by Nielsen, each of those stations would be assigned a blanket fee of \$750 ( $\$300,000 \times .0025$ ). The remaining stations in market "k" would pay their appropriate percentages, not of \$300,000, but of \$298,500.

6. The minimum blanket license fee for a given station shall be the greater of 0.25 percent of the allocable blanket license fee for its market or an annual blanket license fee of \$540 (or \$45 per month for partial years) ("Minimum Blanket License Fee").

7. If, during a given Contract Year, BMI enters into a license agreement with a television station that was not previously licensed (a "New Television Station"), the New Television Station shall be assigned blanket license fees as follows:

(a) if the New Television Station was previously licensed by the FCC and operating as a broadcast television station for more than twelve (12) months prior to entering into a license with BMI, then the fees payable by all stations in the New Television Station's market as of the effective date of the New Television Station's license agreement shall be reallocated pursuant to paragraphs 1 - 6 above without any increase in the total fee amount otherwise allocable to the relevant market; or

(b) if the New Television Station was not previously licensed by the FCC and operating as a broadcast television station for more than twelve (12) months prior to entering into a license with BMI, such station shall pay the minimum monthly fee of forty-five dollars (\$45.00) for the remainder of the Contract Year following the effective date of its license agreement. The fees payable by all stations in the New Television Station's market in the following Calendar Year shall be reallocated under paragraphs 1 - 6 above without any increase in the total fee amount otherwise allocable to the relevant market.

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6. E.g., on the East Coast, prime-time occupies Monday-Saturday 8:00-11:00 p.m. and Sunday 7:00-11:00 p.m.



Broadcast Music, Inc.  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10070-0030  
ATTN: BMI Local TV Web Site Licensing

Re: Launch of Local TV Station Web Site

To Whom It May Concern:

Please be advised that, on \_\_\_\_\_ (day/month), \_\_\_\_\_ (year), local television Station \_\_\_\_\_ (*call letters*) began distributing a web site known as \_\_\_\_\_ and located at the Uniform Resource Locator (*URL*) *http://* \_\_\_\_\_ pursuant to the 1999-2004 BMI Local Television Music Performance Agreement.

<p>WEB SITE REPORT CONTACT:</p> <p>NAME: _____</p> <p>TITLE: _____</p> <p>EMAIL: _____</p> <p>TELEPHONE: _____</p>
--

Sincerely,

\_\_\_\_\_  
(Signature)

Print Name: \_\_\_\_\_  
Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_



**LOCAL TV STATION WEB SITE  
MUSIC USE REPORT**

Music use report for the period from \_\_\_\_\_, \_\_\_\_\_ through \_\_\_\_\_, \_\_\_\_\_  
Month/Day, Year Month/Day, Year

**Legal Name:** \_\_\_\_\_

**Call Letters:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

**URL:** \_\_\_\_\_

**WEB SITE TRAFFIC INFORMATION:**

Total number of page impressions on the web site during the period:

Total number of streamed transmissions during the period:

**LIVE STREAMING:** the simultaneous transmission of station's locally produced and aired programming (see Paragraph 3(a)(ii)(A) of the Agreement):

Please check here if the TV Station Web Site engaged in the simultaneous retransmission of locally produced and aired programming during the period. Please identify such programming below (e.g., if all, write 'all'; if local newscasts only, write 'local newscasts'; if other programming, write the title(s) of such other programming).

\_\_\_\_\_  
\_\_\_\_\_

**ARCHIVED STREAMING:** the transmission of station's local newscasts and/or local news based public affairs programming (see Paragraph 3(a)(ii)(B) of the Agreement):

Please check here if the TV Station Web Site engaged in the retransmission of local newscasts and/or local news based public affairs programming during the period. Please identify such programming below.

- Local Newscasts
- Local News Based Public Affairs Programming

**PROMOTIONAL CLIPS TO PROMOTE VIEWERSHIP OF STATION AND ITS TELEVISION PROGRAMMING** (see Paragraph 3(a)(ii)(C) of the Agreement):

Please check here if the TV Station Web Site contained individually retrievable, archived promotional announcements to promote viewership of station and its television programming during the period.

Please check the appropriate box(es) to indicate the type(s) of programming:

- Syndicated Programs
- Network Programs
- Local Programming

I hereby certify on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ that the above is true and correct.

By: \_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_

(PRINT NAME OF SIGNER)

\_\_\_\_\_

(TITLE OF SIGNER)



**DIGITAL SIGNAL QUESTIONNAIRE**

*This questionnaire should be filled out and e-mailed to BMI during the month of October 2002, 2003 and 2004.*

<b>Legal Name of Licensee:</b> _____ <b>Analog Signal Call Letters:</b> _____ <b>Station's Address:</b> _____ <b>City:</b> _____ <b>State:</b> _____
---

**1. Is the station currently broadcasting a digital signal?**

- Yes  
 No (Skip all remaining questions)

**2. What are the call letters of your digital signal? \_\_\_\_\_-DT**

**3. What are the current weekly hours of on-air operation of your digital signal? \_\_\_\_\_**

**4. Does your digital signal programming consist completely of simulcasts of your analog signal programming?**

- Yes (Skip the last question)  
 No

**5. If your digital signal programming differs from your analog signal programming, or if you have multicast programming in your digital signal, please identify all non-simulcast programming broadcast in your digital signal, including broadcast dates and times. (Please add additional sheets as necessary.)**

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**EXHIBIT E**

**Local Marketing Agreement Amendment to Local Television Station Music Performance License Agreement**

WHEREAS, \_\_\_\_\_ ("LICENSEE") has entered into a Local Marketing Agreement ("LMA") with \_\_\_\_\_ ("LMA OPERATOR") for the television station \_\_\_\_\_ (the "STATION") for the period \_\_\_\_\_ through \_\_\_\_\_; it is hereby agreed to as follows:

- 1. LICENSEE and LMA OPERATOR add LMA OPERATOR as a party to the BMI Local Television Blanket [Per Program] License Agreement, including all extensions, schedules and exhibits thereto, in effect between LICENSEE and BMI ("the License"), and LMA OPERATOR shall assume, with LICENSEE, all of the rights and obligations of LICENSEE set forth in the License for the full period of the LMA with respect to the STATION.
- 2. LICENSEE/LMA OPERATOR (circle one) shall be responsible in the first instance for the payment of any fees owing to BMI and for the submission to BMI of any reports or other information pursuant to the License for the full period of the LMA with respect to the STATION.
- 3. LICENSEE remains fully liable for all its obligations under the License. Even if the LMA OPERATOR is responsible in the first instance for the payment of fees and submissions of reports or other information to BMI as set forth in Paragraph 2 above, if LMA OPERATOR defaults in any way on those obligations, LICENSEE remains responsible for fulfilling those obligations.
- 4. LICENSEE and LMA OPERATOR jointly designate the following single address for billing, and other regular correspondence, and the following single address for any notices in accordance with the License.

<b>Billing Address:</b> _____	<b>Notice Address:</b> _____
_____	_____
_____	_____

5. In the event that the LMA between LICENSEE and LMA OPERATOR terminates, both LICENSEE and LMA OPERATOR shall notify BMI of the termination within 30 days, and submit all required statements, reports and payments through the date of said termination. In the event that both LICENSEE and LMA OPERATOR fail to notify BMI of the termination of the LMA, then both LICENSEE and LMA OPERATOR shall remain obligated under this agreement for all statements, reports and payments.

Dated:    
*LICENSEE*

By:   
Title:

Dated:    
*LMA OPERATOR*

By:   
Title:

Broadcast Music, Inc. hereby consents and agrees to the amendment of the above-mentioned License Agreement.  
**BROADCAST MUSIC, INC.**

Dated:  By:   
Title:







## Local Television Station Music Performance Per Program License

AGREEMENT, made at New York, N.Y. on \_\_\_\_\_, 20\_\_\_\_, between BROADCAST MUSIC, INC., a corporation organized under the laws of the State of New York (BMI) with principal offices at 7 World Trade Center, 250 Greenwich St, New York, NY 10007-0030, and

\_\_\_\_\_  
(Legal Name of Licensee)

Please  
Check  
Appropriate  
Box And  
Complete

A corporation organized under the laws of \_\_\_\_\_

A limited liability company organized under the laws of \_\_\_\_\_

A partnership composed of \_\_\_\_\_

An individual residing at \_\_\_\_\_

\_\_\_\_\_  
(LICENSEE) with offices located at \_\_\_\_\_

*City* \_\_\_\_\_ *State* \_\_\_\_\_ *Zip* \_\_\_\_\_ *Telephone No.* \_\_\_\_\_

and operating the television broadcasting station located at \_\_\_\_\_

*City* \_\_\_\_\_ *State* \_\_\_\_\_ *Zip* \_\_\_\_\_ *Telephone No.* \_\_\_\_\_

and presently designated by the call letters \_\_\_\_\_ (Station) (the "Agreement").

### IT IS HEREBY AGREED AS FOLLOWS:

1. TERM. The term of this Agreement shall be the period beginning  and ending December 31, 2004, unless earlier terminated as hereinafter provided.

2. DEFINITIONS. As used in this Agreement, the following terms shall have the following respective meanings:

(a) "Affiliated Station" shall mean any free, over the air television broadcasting station licensed by the FCC which is located in the United States, its commonwealth, possessions and territories, that regularly broadcasts Programs transmitted by a television network licensed by BMI during the term hereof.

(b) "Ambient Uses" shall comprise the following uses of music in BMI's repertoire:

(1) each use of music in a news or public affairs Program that:

A. does not exceed fifteen seconds' duration; and either

B. has not been inserted by Station or the producer of the Program or Program segment and is audible during:

(i) coverage of a news story or event;

(ii) news coverage of a sports or athletic event or competition;

(iii) reviews and/or coverage of a live entertainment event;

(iv) previews or reviews of a play, concert or movie;

(v) interviews (except where the music is performed "live" during the interview by the celebrity/interviewee); or

(vi) teasers or promotions for upcoming news segments used within the news show; or





C. is contained in a file clip or footage utilized by Station, or by the producer of the Program or Program segment, which file clip or footage met the criteria of sub-paragraphs B(i), (ii), (iii) or (iv) above at the time the file clip or footage was created;

(2) each use of music (without regard to duration) in a sports event Program that has not been inserted by Station or the producer of the Program or Program segment, other than:

A. uses of music that are part of an athletic performance choreographed to music (e.g., figure skating, gymnastics, synchronized swimming); or

B. musical performances that are the subject of sustained, focused coverage during a pre-game or halftime show or event, or during a time out or other break in the action.

(c) **“Announcement”** shall mean any commercial, promotional, or public service announcement (exclusive of program length “infomercials” of greater duration than 120 seconds), or any producer’s or distributor’s logo.

(d) **“BMI Consent Decree”** shall mean the consent decree entered in United States v. BMI, 64 Civ. 3787 (S.D.N.Y.), as amended.

(e) **“Blanket License Fee”** shall mean LICENSEE’s blanket license fee for Station as calculated pursuant to the methodology prescribed in Schedule I of Exhibit A hereto.

(f) Music that is **“Cleared At The Source”** shall mean music for which LICENSEE has been granted a license to perform publicly by means of television broadcasting (1) directly by the composer(s), author(s), arranger(s), publisher(s) or owner(s) of such music, or licensees thereof, or (2) through the program producer or other authorized licensor of such rights.

(g) **“COMMITTEE”** shall mean the Television Music License Committee, an unincorporated membership association organized under the laws of the State of New York, which is duly authorized to represent local television stations in music licensing matters.

(h) **“First-Run Syndicated Television Program”** shall mean any Syndicated Television Program, episodes of which: (1) are currently being distributed in the syndication market for their first season of broadcasts, or (2) were created originally for, and are being transmitted for their first season of broadcasts by, a television network not licensed by BMI at the time such program is broadcast on such network, and broadcast simultaneously or by so-called “delayed” or “repeat” broadcasts (sometimes known as “rebroadcasts”) over two or more stations affiliated with such television network not licensed by BMI.

(i) **“Incidental Use”** shall mean the use of music in the broadcast of Non-Network Announcements.

(j) **“LMA Operator”** shall mean any person, firm or corporation not under the same or substantially the same ownership, management or control as LICENSEE with whom LICENSEE has entered into a Local Marketing Agreement.

(k) **“Local Marketing Agreement”** shall mean any arrangement between LICENSEE and an LMA Operator that:

(1) authorizes the resale by an LMA Operator of the use of the television broadcasting facilities of Station;

(2) permits an LMA Operator to provide Programs for all or substantially all of the time Station is on the air; and

(3) provides for the sale by an LMA Operator of all or substantially all Announcements broadcast on Station.

(l) **“Locally-Produced Television Program”** shall mean any Non-Network Television Program produced by, or expressly for, LICENSEE.

(m) **“Monthly Base License Fee”** shall mean the base amount used as the starting point for determining LICENSEE’s fee pursuant to Paragraph 5(a) hereof. For each of the calendar years 2002, 2003 and 2004, LICENSEE’s Monthly Base License Fee shall be equal to one-twelfth (1/12) of its share of the annual industry-wide BMI per program license fee of \$98.1 million (or such other amount determined pursuant to Paragraph 1(C) of Exhibit A hereto), as allocated to Station by the COMMITTEE pursuant to the methodology set forth in Schedule I of Exhibit A hereto for such year.

(n) **“Network Announcement”** shall mean any Announcement transmitted by a television network licensed by BMI as a network at the time such Announcement is broadcast on the network, and broadcast simultaneously or by so-called “delayed” or “repeat” broadcasts (sometimes known as “rebroadcasts”) over two or more Affiliated Stations of a network licensed by BMI.

(o) **“Network Television Program”** shall mean any Program, transmitted by a television network licensed by BMI as a network at the time such Program is broadcast on the network, identified as a Program of the network, and broadcast simultaneously or by so-called “delayed” or “repeat” broadcasts (sometimes known as “rebroadcasts”) over two or more Affiliated Stations of a network licensed by BMI.

(p) **“Non-Network Announcement”** shall mean any Announcement broadcast by Station other than a Network Announcement.

(q) **“Non-Network Television Program”** shall mean any Program broadcast by Station other than a Network Television Program.

(r) **“Otherwise Licensed Split Work”** shall mean a musical work: (1) the copyright in which is owned by two or more individuals or entities, or as to which two or more individuals or entities have the right to collect performing rights royalties, at least one of which is an affiliate of BMI and at least one of which is not an affiliate of BMI, and (2) for which LICENSEE has a valid license to perform publicly the composition by television broadcasting by Station either from another U.S. performing rights organization or from a copyright owner or its licensee who is not an affiliate of BMI.

(s) **“Program”** shall mean all material (visual or otherwise) broadcast by Station other than Announcements.

(t) **“Revenues Attributable to Non-Network Programs”** shall mean, with respect to each Non-Network Television Program broadcast by Station: (1) amounts billed by Station for the sale of commercial or Program time, including for political advertisements; (2) the value of trades and barter (i.e., goods and services, including, without limitation, the Program itself) that Station receives in exchange for commercial or Program time, which value shall be the value Station attributes to such trades and barter in accordance with its established accounting practices; (3) with respect to a telethon, payments to Station by the producer of said telethon; and (4) donations to Station relating to broadcasting activities that are directly attributable to a particular program. For purposes of calculations under subparagraphs (t)(1) and (2) hereof, for any given Program, “Revenues Attributable to Non-Network Television Programs” includes revenue from (i) commercial announcements broadcast within such Program and (ii) commercial announcements preceding such Program which are broadcast after the completion of the prior Program.

(u) **“Station”** shall mean and be restricted to the FCC-licensed commercial television broadcasting station whose ownership and call letters are indicated above.

(v) **“Station Web Site”** shall mean the Web Site operated by or for Station as the Station's Web Site.

(w) **“Syndicated Television Program”** shall mean any Non-Network Television Program supplied to LICENSEE and other television stations by a producer or a distributor, or by a television network which is not licensed by BMI.

(x) **“Television Broadcasting”** shall mean free, unscrambled, point-to-multipoint over-the-air local broadcasting by means of television.

(y) **“Web Site”** shall mean an Internet computer service comprising a series of interrelated web pages registered with a domain name registration service that Station transmits or causes to be transmitted either directly or indirectly to persons who receive the service over the Internet by means of a personal computer or by means of another device capable of receiving Internet transmissions. Station's current Web Site URL is

http://\_\_\_\_\_.

### 3. GRANT OF RIGHTS.

(a) BMI hereby grants to LICENSEE, for the term hereof, a non-exclusive license to perform publicly all musical works the right to grant public performing right licenses of which BMI may during the term hereof control:

(i) by Television Broadcasting in the United States, and its territories, commonwealth and possessions, as part of LICENSEE's Non-Network Television Programs and Non-Network Announcements from Station; and

(ii) in and as part of a single Station Web Site transmitted or caused to be transmitted either directly or indirectly over the Internet but only in connection with:

(A) the simultaneous retransmission of the Station's locally produced and aired programming;

(B) the retransmission of all or a portion of Station's local newscasts and local news based public affairs programming that aired during the Term of this Agreement; and

(C) other transmissions the primary purpose of which are to promote viewership of Station and its television programming; *provided, however*, that: (1) no single performance licensed under this subsection (C) may exceed thirty (30) seconds in duration; and (2) the total duration of all performances of BMI-repertoire works under this subsection (C) available at any single time for listening on Station's Web Site may not exceed fifteen (15) minutes in duration.

(b) Notwithstanding the foregoing, the license granted herein shall not include transmissions described in subparagraphs 3(a)(ii)(A) and 3(a)(ii)(B) above where such transmissions contain programming which is nationally or regionally aired regularly scheduled series programming (e.g., Regis and Kelly, George Michael's Sports Machine, and Major League Baseball). In the event that Station airs locally-produced programming, and such programming also appears on one or more additional stations (which programming for purposes of this Agreement would not be considered locally produced and aired programming for the additional station(s)), only the Station may retransmit BMI music contained in such programming in the manner described in subparagraphs 3(a)(ii)(A) and 3(a)(ii)(B) above, while the additional station(s) may not.

(c) The license granted herein does not cover transmissions on Station's Web Site of BMI music where members of the public are charged a fee for the right to access such transmissions. Such transmissions shall be subject to appropriate separate licensing. Notwithstanding the foregoing, the fact that a Station may charge members of the public for access to discrete areas of the Station's Web Site other than those areas containing the performances licensed hereunder shall not limit the scope of coverage of this license.

(d) With respect to any portion of the Term prior to January 1, 2002, the Web Site license granted under Paragraph 3(a)(ii) shall be limited to those transmissions of BMI music as described in Paragraph 3(a)(ii)(C) above.

(e) For the rights granted in Paragraph 3(a)(ii) only, the territory shall mean the United States, its commonwealth, territories and possessions and the territories represented by non-U.S. performing right licensing organizations posted as Exhibit C in the licensing section of the BMI web site located at <http://www.bmi.com>. Such list may be amended by BMI at any time and without notice. Notwithstanding the foregoing, the territorial scope of the grant of rights in Paragraph 3(a)(ii) with respect to any musical works which are affiliated with BMI through a non-U.S. performing rights licensing organization not listed on Exhibit C is limited to public performances in the U.S. Territory.

(f) The performances licensed hereunder may originate at any place whether or not such place is licensed to publicly perform the musical works licensed hereunder, and regardless of the manner, means or method of such origination, but nothing herein shall be deemed to grant a license to such place itself (or to the parties responsible for such performances) for the public performances in such place of any such works.

(g) The license granted herein shall not include dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein. It is nonetheless expressly understood that nothing contained in this Paragraph shall be construed so as to limit the ability of LICENSEE to perform, by Television Broadcasting, any works contained in Syndicated Television Programs, motion pictures initially produced for theatrical exhibition or music videos which LICENSEE would otherwise have the right to perform under this Agreement.

(h) BMI will, upon specific reasonable written request made by LICENSEE, indicate whether one or more specified musical works listed by LICENSEE are licensed by BMI. LICENSEE shall provide the title and the writer/composer of each musical work requested to be identified.

(i) Except as expressly herein otherwise provided, nothing herein contained shall be construed as authorizing LICENSEE to grant to others any right to reproduce, retransmit or publicly perform by any means, method or process whatsoever, any of the musical works licensed hereunder or as authorizing any receiver of any television broadcast to publicly perform or reproduce the same by any means, method or process whatsoever.

(j) The license granted herein shall not include the right to adapt the musical works licensed hereunder or to make any other versions thereof.

(k) The license granted herein shall include on a non-precedential, experimental basis the right to engage in such non-dramatic public performances of musical works in BMI's repertoire as may result from Station's free, over-the-air broadcasts of BMI music within its existing geographic market(s) over FCC assigned frequencies, by means of a digital television signal. It is understood that the right to perform works in the BMI repertoire by means of a digital television signal is being included in this Agreement because digital television is a new technology and such grant of rights reflects the experimental character of such broadcasts. Station shall provide BMI, in electronic form, annual reports concerning LICENSEE's digital television signal, using the form attached hereto as Exhibit D. The form shall be filed during the month of October of each of the years 2002, 2003 and 2004.

4. PAYMENTS FOR APRIL 1, 1999 THROUGH DECEMBER 31, 2001. This Agreement expressly incorporates, and LICENSEE agrees to be bound by, the terms of the letter agreement between BMI and COMMITTEE attached hereto as Exhibit A. LICENSEE agrees to pay BMI, in addition to the interim license fees that were heretofore payable by LICENSEE to BMI in respect of the period from April 1, 1999, through and including December 31, 2001, under the interim BMI Local Television Station Music Performance Blanket or Per Program License for station, such amounts and at such times as are provided in Paragraph 2 of Exhibit A concerning the Settlement Fee. If any such payment is not received by BMI in the twenty (20) days following the date on which such payment is due, BMI may collect a late-payment charge of one percent (1%) per month (simple interest) calculated from the date such payment was due.

#### 5. PAYMENTS FOR JANUARY 1, 2002 THROUGH DECEMBER 31, 2004.

This Agreement expressly incorporates, and LICENSEE agrees to be bound by, the terms of the letter agreement between BMI and COMMITTEE attached hereto as Exhibit A.

(a) BROADCAST TELEVISION PAYMENTS. In consideration of the license herein granted for the period from January 1, 2002, through December 31, 2004, LICENSEE agrees to pay to BMI for each calendar month of such period the total of the following fees:

(1) A Program Fee. The Program Fee shall be one hundred forty percent (140%) of LICENSEE's Monthly Base License Fee, multiplied by a fraction, the numerator of which shall be "BMI Revenues" computed as prescribed in sub-paragraph 5(a)(1)(A) below, and the denominator of which shall be LICENSEE's total Revenues Attributable to Non-Network Television Programs for the month.

A. For purposes of calculating the Program Fee due BMI hereunder, "BMI Revenues" shall comprise the sum of:

(i) the month's Revenues Attributable to Non-Network Television Programs using music from BMI's repertoire other than those programs whose only uses of music from BMI's repertoire are Cleared At The Source, or consist solely of Incidental Uses, Ambient Uses (subject to Paragraph 5(a)(1)(A)(ii)) or Otherwise Licensed Split Works;

(ii) sixteen percent (16%) of the month's revenues attributable to sports event programs whose

only uses of music from BMI's repertoire are Cleared At The Source or consist solely of Incidental Uses, Otherwise Licensed Split Works or Ambient Uses;

- (iii) fifty percent (50%) of the revenues attributable to each Syndicated Television Program, other than First-Run Syndicated Television Programs, as to which neither LICENSEE nor BMI can determine whether the music in such Program (other than music Cleared At The Source, Incidental Uses, Ambient Uses or Otherwise Licensed Split Works) is in BMI's repertoire at the time LICENSEE submits its per program license report;
- (iv) with respect to each episode of a First-Run Syndicated Television Program for which a cue sheet has not been created or made publicly available at the time LICENSEE submits its per program license report, an amount calculated by multiplying the revenues attributable to such episode by (a) a percentage multiplier (calculated by BMI and verified by COMMITTEE as to the Programs involved and the methodology employed) representing the proportion of the episodes of the specific program containing music in BMI's repertoire (other than music Cleared At The Source, Incidental Uses, Ambient Uses or Otherwise Licensed Split Works); or (b) in the absence of a sufficient number of cue sheets in BMI's or LICENSEE's possession which would enable calculation of such a percentage multiplier for a given First-Run Syndicated Television Program, fifty percent (50%) of the revenues attributable to such Program; and
- (v) one hundred percent (100%) of the revenues attributable to each Locally-Produced Television Program as to which neither LICENSEE nor BMI can determine whether the music in such program (other than any Ambient Uses) is in BMI's repertoire at the time LICENSEE submits its per program license report.

(2) An Incidental/Ambient Use Fee. In addition to any payment for Ambient Uses of music in sports event programs as called for under Paragraph 5(a)(1)(A)(ii) hereof, the Incidental/Ambient Use Fee covering LICENSEE's Incidental and Ambient Uses of music in BMI's repertoire shall be fifteen percent (15%) of LICENSEE's Monthly Base License Fee.

(b) WEB SITE PAYMENTS FOR 2002, 2003 and 2004. This Agreement expressly incorporates, and LICENSEE agrees to be bound by, the terms of the letter agreement between BMI and the COMMITTEE attached hereto as Exhibit A. LICENSEE shall pay to BMI for each month during the calendar years 2002, 2003, and 2004, a fee equal to one twelfth (1/12) of LICENSEE's allocated share of the BMI annual Internet fee as set forth in Exhibit A and as determined by the COMMITTEE. Such fee shall be payable to BMI no later than the first calendar day of the month succeeding the month to which the fee is attributable.

(c) For purposes of fee calculations, the length of a Program shall be the length attributed to the Program in the "Program Index" section of the Nielsen report titled "Viewers in Profile" for Station's relevant Designated Market Area ("DMA") (hereinafter, the "VIP Report"), pursuant to Nielsen's then-current "Program Names Guidelines." For Programs not included in the "Program Index" section of the VIP Report, where a question as to Program length occurs and BMI and (1) LICENSEE or (2) COMMITTEE are not otherwise able to agree, a particular period of television broadcasting shall be considered one Program if, with respect to such period, any two of the following questions may be answered in the affirmative:

- (1) Is the period referred to by substantially the same title throughout?
- (2) Is the dominant personality the same substantially throughout?
- (3) Is the period presented to the public as a single show notwithstanding that it may have different parts?
- (4) Is the format substantially constant throughout?

(d) (1) LICENSEE shall remit its monthly payment and the monthly report called for by Paragraph 6 hereof to BMI on or before the last day of the month following the month to which they are attributable (e.g., the payment for April 2002 is due the last day of May 2002).

(2) If any such payment is not received by BMI within twenty (20) days following the date on which such payment is due, BMI may collect a late-payment charge of one percent (1%) per month (simple interest) calculated from the date such payment was due.

(3) If LICENSEE fails to submit both its monthly payment and report within sixty (60) days following the date they are due, BMI may collect one hundred fifty-five percent (155%) of LICENSEE's Monthly Base License Fee for that month, representing LICENSEE's maximum per program license fee. If LICENSEE fails to pay such an amount within thirty (30) days of its receipt of said notice of adjustment in fee to the maximum per program license fee from BMI, LICENSEE shall pay to BMI a late-payment charge of one percent (1%) per month (simple interest) on that amount calculated from the thirtieth (30th) day following LICENSEE's receipt of said notice of adjustment in fee to the maximum per program license fee. The payment provisions of this Paragraph shall not apply in circumstances in which LICENSEE is unable to submit its monthly report within the time period reflected in this subparagraph due to "force majeure" (e.g., earthquake, hurricane, fire, flood) and where LICENSEE submits within sixty (60) days of the due date an on-account payment equal to its prior month's per program license fee, which will be credited against the actual fees owing for that month once LICENSEE has submitted its report.

- (e) (1) Where any adjusted monthly fee computed by BMI exceeds the fee reported and paid by LICENSEE, LICENSEE shall remit the payment of any such excess fee within thirty (30) days of LICENSEE's

receipt of an explanation of the calculation of the adjusted fee.

- (2) If any such payment due is not received by BMI within thirty (30) days of LICENSEE's receipt of the appropriate billing statement, LICENSEE shall pay to BMI a late payment charge of one percent (1%) per month (simple interest) calculated from the thirtieth (30th) day following LICENSEE's receipt of said billing statement; provided, however, that if LICENSEE disputes in good faith such an adjustment by BMI pursuant to the procedures provided for in Paragraph 5(g) hereof, such a late payment charge shall be calculated as prescribed in Paragraph 5(g).
- (f) (1) Where the monthly fee reported and paid by LICENSEE exceeds any adjusted monthly fee computed by BMI, BMI shall credit LICENSEE's account for the amount of any such excess fee, or, if LICENSEE so elects, and the amount of such adjustment, net of any other amounts owing by LICENSEE to BMI other than any audit claims, exceeds LICENSEE's Monthly Base License Fee, BMI shall, within thirty (30) days of receiving notification from LICENSEE of such election, refund to LICENSEE the amount of any such excess fee.
  - (2) If any such refund or credit is not received by LICENSEE within thirty (30) days of BMI's receipt of notification by LICENSEE of such election, LICENSEE shall be entitled to receive, in addition to such refund, an additional sum computed at a rate of one percent (1%) per month (simple interest) calculated from the 30th day following BMI's receipt of said election.
- (g) (1) If LICENSEE disputes in good faith any adjusted monthly fee computed by BMI under Paragraph 5(e) or 5(f), it shall submit to BMI a post-adjustment review request within thirty (30) days of its receipt of the pertinent billing statement and explanation of the calculation of the adjusted fee. Such post-adjustment review request shall identify the specific Program(s) and episode(s) in dispute, the specific nature of the dispute (including the timely submission of supporting documents which have not already been submitted to BMI). BMI and COMMITTEE shall work together in an attempt to agree upon a format as to allow for a computerized transmission between BMI and its licensees or their representatives.
  - (2) Within sixty (60) days of its receipt from LICENSEE of a post-adjustment review request, BMI shall provide to LICENSEE a further explanation as to the basis of the disputed adjustment and the modification of said adjusted monthly fee where appropriate (herein, "Post-Adjustment Response").
  - (3) Upon receipt of a post-adjustment review request from LICENSEE, no late payment charge shall be billed to the account of LICENSEE with regard to that portion of the adjusted monthly fee which is disputed until thirty (30) days after LICENSEE's receipt of BMI's Post-Adjustment Response.
  - (4) Within thirty (30) days of its receipt of such Post-Adjustment Response, LICENSEE shall pay any remaining portion of the adjusted monthly fee or advise BMI that it still disputes BMI's computation. Absent such notice from LICENSEE, if LICENSEE fails to pay any remaining portion of the adjusted monthly license fee within thirty (30) days of its receipt of BMI's Post-Adjustment Response, LICENSEE shall pay to BMI a late payment charge of one percent (1%) per month (simple interest) calculated from the thirtieth (30th) day following LICENSEE's receipt of such Post-Adjustment Response; provided, however, that if LICENSEE continues to dispute in good faith such fee adjustment, and LICENSEE identifies in writing to BMI the specific nature of the continuing dispute a late payment charge shall accrue on any remaining unpaid portion of the adjusted monthly license fee commencing after the thirtieth (30th) day following the resolution of the dispute.

## 6. PROGRAM AND MUSIC USE REPORTS.

(a) LICENSEE shall, subject to the provisions of subparagraph (b) below, furnish to BMI on or before the last day of each month reports setting forth on a day-by-day basis, separately for each Non-Network Television Program broadcast by LICENSEE during the prior month (e.g., the April 2002 report is due in May 2002): (1) Program title, including the episode name and/or episode number; (2) date of broadcast; (3) from and to time of broadcast; and (4) the revenues attributable to the Program. LICENSEE shall also identify, on a day-by-day basis, the periods of time during which Station: (i) broadcast Network Programs and (ii) did not broadcast any Programs.

(b) BMI shall provide LICENSEE (or, at LICENSEE's request, LICENSEE's agent) with both: (1) a system, compatible with Microsoft Windows 98 or Windows 2000 to enable LICENSEE to create and transmit, via the Internet using File Transfer Protocol (FTP), its monthly per program reports required to be created pursuant to this Agreement; and (2) computer file specifications to enable LICENSEE to transmit the monthly per program report data to BMI via Internet using File Transfer Protocol (FTP). BMI and one or more representatives designated by COMMITTEE shall agree on the specifications and software to be created by BMI in order to enable LICENSEE to engage in such electronic reporting. LICENSEE must submit its per program reports pursuant to this Agreement employing the agreed upon specifications and means of transmission.

(c) BMI shall provide LICENSEE (or, at LICENSEE's request, LICENSEE's agent) with a searchable database, compatible with Windows 98 or Windows 2000 of the music content of Series, Episodes, and Shows (the "Show Music Database") and BMI will use reasonable efforts to update such a database each month of the term hereafter and shall, in any event, update this database at least once in each calendar quarter of the term hereafter. BMI, however, may adjust LICENSEE's reports and compute LICENSEE's fees based upon the most current music use information available to BMI, whether or not that information has been included in the latest "Show Music Database" provided to LICENSEE. LICENSEE shall endeavor to report Program titles, episode names and/or numbers and music use indicators on its monthly per program reports in exactly the same manner in which such information appears in the

“Show Music Database.”

(d) Each month LICENSEE shall furnish to BMI a cue sheet, in the electronic form agreed upon by BMI and COMMITTEE with respect to each Locally-Produced Television Program listed in the report in subparagraph 6(a) above.

- (e) (1) LICENSEE shall maintain videotapes of all of its Locally-Produced Programs for the later of six (6) months from (A) the due date for the report covering the month in which the Program was broadcast, or (B) the date on which the report was submitted to BMI. LICENSEE shall not be obligated to retain such tapes beyond the prescribed six-month period. LICENSEE shall provide a reasonable number of such videotapes to BMI in response to requests by BMI made within the prescribed six-month period, and subject to the limitation that BMI may request videotapes of no more than one week or the equivalent of one week of Locally-Produced Television Programs per month. Such tapes shall be provided to BMI, with suitable identification of the location on them of the Programs to which BMI's request may be directed. If LICENSEE fails to respond in a reasonable time to a timely request from BMI for a videotape of a Locally-Produced Television Program, LICENSEE shall be required to pay a fee for the Program as if it contained music in BMI's repertoire.
- (2) Not more frequently than three (3) times during any consecutive twelve (12) month period, and upon not less than fifteen (15) days' written notice to LICENSEE, BMI may request that LICENSEE provide BMI with either: (A) videotapes of up to one consecutive week of Syndicated Television Programs the music content of which does not appear in the Show Music Database, or (B) videotapes of four consecutive episodes of a Program that airs once a week the music content of which does not appear in the Show Music Database. BMI shall use its best efforts not to request from LICENSEE videotapes of programs for which it has received videotapes from other sources.
- (3) If LICENSEE maintains videotapes of Syndicated Television Programs, the music content of which does not appear on the Show Music Database, BMI may request that LICENSEE provide a reasonable number of videotapes to BMI on an as-needed basis.
- (4) Any videotapes provided to BMI pursuant to this Agreement are for the exclusive use of BMI in performance of its obligations hereunder. BMI shall not copy, distribute or otherwise make such videotapes available to any entity, other than the COMMITTEE. Upon BMI's completion of its review of such videotapes, BMI shall promptly return such videotapes to LICENSEE or destroy them at LICENSEE's request.
- (5) LICENSEE at its option may send BMI a sample videotape strictly for the purpose of allowing BMI to determine if the videotape is of reasonably sufficient quality to enable BMI to determine whether the Programs on it contain music in BMI's repertoire. Within a reasonable period of time following its receipt of such a videotape, BMI shall notify LICENSEE of any perceived problems in the videotape's quality, and thereafter LICENSEE and BMI shall attempt, in good faith, to resolve any such problems.

(f) With respect to any musical work that LICENSEE claims is an Otherwise Licensed Split Work, at the time LICENSEE files its corresponding monthly music report LICENSEE shall identify such claim as well as the performing right organization or copyright holder that has licensed the performing right of said work. If LICENSEE claims that the performing right is licensed under a blanket license from another performing right organization, LICENSEE shall represent that it has such a license in effect and, on BMI's request, shall furnish to BMI a copy of that license (provided that LICENSEE has not previously provided such license to BMI). LICENSEE authorizes BMI to seek to verify from another performing right organization that LICENSEE has a blanket or per program license in effect with that organization. If LICENSEE claims that the performing right is licensed under a per program license from another performing right organization, LICENSEE shall represent that it has such a license in effect and, on BMI's request, shall furnish to BMI a copy of that license (provided that LICENSEE has not previously provided such license to BMI), and shall furnish to BMI a copy of the relevant portion of LICENSEE's monthly report pursuant to that license showing that the performance has been duly reported and the required fee has been paid to the other performing right organization. If LICENSEE claims that the performing right is licensed directly from a copyright holder or its licensee, LICENSEE shall represent that such a license is in effect and on BMI's request, shall furnish to BMI a copy of the license agreement including the name(s) of the work(s) so licensed and the identities of the individual(s) from whom such license was obtained; and the period of time and nature or scope of the rights and performances covered by the license (or if the license was obtained from a music library, the name of the library and such other information contained in the license). Except for the items listed above, LICENSEE, at its option, may remove any financial or other proprietary (material) information from the license agreement.

- (g) (1) For any music that is Cleared At The Source, LICENSEE shall furnish to BMI written notice of such clearance at the time LICENSEE submits its corresponding monthly music report. At the time LICENSEE submits such report, LICENSEE shall also endeavor to provide, to the extent it is in existence at that time, a copy of the license agreement between the person or entity (the “Clearing Entity”) pursuant to which LICENSEE has obtained such clearance (the “Source License”), from which LICENSEE may, at its option, remove any financial or other proprietary (material) information. LICENSEE shall submit a copy of the license agreement by sending it to BMI via certified mail or by some other means by which confirmation of delivery may be proved. In the event that more than seven (7) months have passed since the monthly music report containing the musical work is due or submitted, whichever is later, and LICENSEE has not yet submitted to BMI a copy of its agreement with

the Clearing Entity or LICENSEE failed to provide BMI with notice of the clearance at the time LICENSEE submitted its monthly music report, LICENSEE may no longer claim that such musical work was Cleared At The Source and one hundred percent (100%) of the revenues from the Program containing such music shall be BMI Revenues for purposes of calculating the Program Fee under Paragraph 5.

- (2) With respect to each Source License obtained from a person or entity who is not a writer, composer or publisher affiliate of BMI, LICENSEE shall additionally furnish to BMI such information as may be in the possession of LICENSEE as will enable BMI to determine the names of the works licensed and the authors, composers, arrangers or publishers of the works licensed. In this regard, if the Clearing Entity is a "music library," this obligation shall be satisfied by LICENSEE's identification of the title of the specific track of a compact disc, or other recording containing music from the library, performed by LICENSEE. If the Clearing Entity is a program producer or other authorized licensor of such rights, such obligation shall be fulfilled by LICENSEE's furnishing of a cue sheet for the program in which the licensed works appear when BMI does not already possess the cue sheet and makes a request of LICENSEE to provide same. If LICENSEE is unable to supply, or BMI is otherwise unable to obtain, the music use or other information required by this subparagraph, the parties shall have the same rights and obligations as may otherwise be available to them regarding payment and reporting in circumstances in which a program contains unidentified music, as set forth in Paragraphs 5, 6 and 7 hereof.
- (h) For any music that is Cleared At The Source, the parties agree that the following procedures shall apply:
- (1) If BMI believes that the Source License furnished by LICENSEE pursuant to the provisions of subparagraph 6(g) is or may be legally insufficient to convey music performing rights to LICENSEE, BMI shall so advise LICENSEE within sixty (60) days of BMI's receipt of a Source License in connection with reports covering the period commencing January 1, 2002. In such case, BMI shall communicate with the Clearing Entity by means of a letter or other writing, the content of which shall be agreed upon by BMI and COMMITTEE, and BMI shall furnish LICENSEE and COMMITTEE with copies of all such correspondence. If, following such written communication, the Clearing Entity disputes that it intended to convey music performing rights to LICENSEE, the parties shall have the same rights and obligations as may otherwise be available to them regarding payment and reporting in circumstances in which a Program contains unidentified music, as set forth in Paragraphs 5, 6 and 7 hereof.
  - (2) In circumstances in which the Clearing Entity is not a writer or publisher affiliate of BMI, BMI shall have thirty (30) days after having identified the affiliates of BMI whose works are covered by the Source License, to communicate in writing with such affiliates to determine if the Clearing Entity owns, or has been granted, the right to convey music performing rights to LICENSEE, and BMI shall notify LICENSEE, COMMITTEE and the Clearing Entity of such communication. BMI shall notify LICENSEE and the Clearing Entity within sixty (60) days following such written communication, if an affiliate or affiliates of BMI dispute that the Clearing Entity owns, or has been granted, the right to convey music performing rights to LICENSEE, and the basis for any such dispute. If BMI and LICENSEE or the Clearing Entity are not able to resolve such dispute, the parties shall have the same rights and obligations as may otherwise be available to them regarding payment and reporting in circumstances in which a Program contains unidentified music, as set forth in Paragraphs 5, 6 and 7 hereof.
  - (3) In circumstances in which the Clearing Entity is not a writer or publisher affiliate of BMI and in addition, the Clearing Entity asserts it has been granted the right to convey music performing rights to LICENSEE from a third party other than a writer or publisher affiliate of BMI, BMI shall have thirty (30) days after receipt of the Source License to communicate with such third party, by means of a letter or other writing, the contents of which shall be agreed upon by BMI and COMMITTEE, to determine if such third party has granted the right to convey music performing rights to the Clearing Entity, and BMI shall notify LICENSEE, the COMMITTEE and the Clearing Entity of such communication. BMI shall notify LICENSEE, COMMITTEE and the Clearing Entity within sixty (60) days following such written communication, if such third party disputes that the Clearing Entity owns, or has been granted, the right to convey music performing rights to LICENSEE, and the basis for any such dispute. If BMI, LICENSEE, the Clearing Entity and such third party are not able to resolve such dispute, the parties shall have the same rights and obligations as may otherwise be available to them regarding payment and reporting in circumstances in which a program contains unidentified music, as set forth in Paragraphs 5, 6 and 7 hereof. If such third party shall fail to respond to BMI's written communication within sixty (60) days following such written communication, BMI shall so notify LICENSEE and the Clearing Entity and the parties shall have the same rights and obligations as may otherwise be available to them regarding payment and reporting in circumstances in which a Program contains unidentified music, as set forth in Paragraphs 5, 6 and 7 hereof.
  - (4) The disposition of a given dispute pursuant to subparagraphs (h)(1), (2) and (3) hereof for purposes of determining the license fees payable under this Agreement shall be without prejudice to the respective rights of LICENSEE and the Clearing Entity arising out of the disputed Source License itself.
  - (5) LICENSEE shall have seven (7) months from the time it is notified of a dispute pursuant to subparagraphs (h)(1), (2) and (3) hereof in which to resolve such dispute. Notwithstanding the provisions of Paragraphs 5, 6 and 7 hereof regarding the timing of adjustments to LICENSEE's monthly

per program license report, if within this seven (7) month period, it is determined that LICENSEE was in fact granted the right to perform the music which was the subject of the dispute, BMI shall adjust LICENSEE's report for the month in which such music was performed and shall issue a refund or credit to LICENSEE for the amount of any fees previously paid in error on account of such performances.

(i) Music Performance Reports.

- (1) BROADCAST TELEVISION REPORTS. LICENSEE, upon written request from BMI made on notice of not less than four (4) weeks specifying the period of time to be covered, agrees to furnish (on forms to be supplied by BMI) reports of LICENSEE's performances by Station of all musical works indicating the works performed by title and composer or by such other convenient method as may be designated by BMI. In no event shall such reports be furnished for more than one (1) week of each year of the term. It is expressly understood that, with respect to any Syndicated Television Programs, LICENSEE's obligation to report music data to BMI under this subparagraph shall be limited to providing BMI with the title and episode name or number of such Syndicated Television Program(s); if no cue sheet is available, LICENSEE shall cooperate with BMI in attempting to obtain such cue sheets and/or in providing BMI with access to a tape or recording of the Syndicated Television Program involved. In addition to these reports, LICENSEE shall provide a copy of a list of its Non-Network Announcements for the week (e.g., traffic reports); LICENSEE may redact any revenue or financial information from this list, provided that the list includes the name of the commercial, the dates and number of times it was broadcast and the ISCI code number for the commercial.
- (2) WEB SITE REPORTS. LICENSEE shall notify BMI in writing, using the form attached hereto as Exhibit B, reasonably promptly after beginning to stream its over-the-air broadcast television signal or to distribute a Web Site licensed pursuant to this Agreement. Thereafter, upon written request from BMI made on notice of not less than four (4) weeks specifying the period of time to be covered, LICENSEE shall provide to BMI, in electronic form, a music use report for a period specified by BMI not to exceed one month for each calendar year during the Term of the Agreement using the form attached hereto as Exhibit C. BMI reserves the right to request from LICENSEE information sufficient to identify the title(s) of any Program(s) promoted on individually retrievable archived promotional announcements on the Web Site as part of such reports.

7. ADJUSTMENTS FOR UNIDENTIFIED MUSIC.

(a) If, within seven (7) months from the date on which LICENSEE's per program reports are due or submitted, whichever is later:

- (1) BMI or LICENSEE obtains a cue sheet for a specific episode of a Syndicated Television Program for which such cue sheet previously had not been created or made publicly available, BMI shall adjust LICENSEE's report, and compute, and advise LICENSEE of any additional fees owing or credit due, based upon the music use reported in such cue sheet;
- (2) BMI obtains information that a Syndicated Television Program series has a theme in BMI's repertoire, BMI, subject to verification by COMMITTEE as to the sufficiency and accuracy of the information upon which BMI is relying in this regard, shall adjust LICENSEE's per program report in accordance with such information; or
- (3) Neither BMI nor LICENSEE has obtained a cue sheet or other music content information for a specific episode of a First-Run Syndicated Television Program, the fee for which was originally calculated using a percentage multiplier as set forth in Paragraph 5(a)(1)(A)(iv) above, BMI will adjust LICENSEE's report, and compute, and advise LICENSEE of, any additional fees owing or credit due, by substituting (except in the circumstances described in subparagraph (4) below) in the numerator of the Program Fee fraction set forth in Paragraph 5(a)(1)(A) above, the amount calculated by multiplying the revenue attributable to the relevant First-Run Syndicated Television Program by fifty percent (50%) for the amount which previously had been calculated for the Program under Paragraph 5(a)(1)(A)(iv).
- (4) Neither BMI nor LICENSEE has obtained a cue sheet for a First-Run Syndicated Program produced by LICENSEE, LICENSEE's parent or by an affiliated company in which LICENSEE or its parent is a majority owner, BMI shall adjust LICENSEE's report, and any fees owing to BMI by LICENSEE, by substituting in the numerator of the Program Fee fraction, set forth in Paragraph 5(a)(1)(A) above, one hundred percent (100%) of the revenue attributable to the relevant First Run Syndicated Program for the amount which previously had been calculated for the Program under Paragraph 5(a)(1)(A)(iv).

(b) Subject only to the audit rights described in Paragraph 8 below, BMI shall complete its review of LICENSEE's monthly per program report, and any adjustments thereto, within eight (8) months from the date it is due or submitted, whichever is later. At the request of BMI, LICENSEE shall furnish to BMI a copy of those portions of such program and music use reports or other records as are required for BMI to review the accuracy of information contained in LICENSEE's per program license reports. If BMI has not completed its review and adjustment of LICENSEE's per program report within this eight (8) month time period, all Program and music content identifications contained therein shall be treated as accurate.

8. AUDITS.



(a) Upon at least ten (10) business days' written notice to LICENSEE, BMI shall have the right to examine, at any time during customary business hours, the Program logs, books and records of account, and all other records of LICENSEE only to such extent as may be necessary to verify any of the financial information contained in LICENSEE's per program reports, including ASCAP blanket and per program license fees. The records subject to examination shall include any documents pursuant to which LICENSEE has obtained the performing right to music that is Cleared At The Source, except to the extent that such documents may have previously been provided to BMI by LICENSEE. BMI shall consider all data and information coming to its attention as a result of any such examination of logs, books and records as confidential.

(b) BMI shall complete any audits of the financial information contained in LICENSEE's per program reports by no later than two (2) years after the date upon which this Agreement expires or is otherwise terminated.

(c) Upon BMI's request, LICENSEE shall furnish to BMI a description of the methodology used by LICENSEE to attribute a value to trades and barter in accordance with its established accounting practices. LICENSEE shall thereafter furnish to BMI a description of any changes to such methodology which may occur during the term of this Agreement. Should BMI believe that the methodology utilized by LICENSEE does not comport with generally accepted accounting principles (or otherwise believe that LICENSEE's reporting practices under this Paragraph warrant it), BMI shall have the right, upon notice to COMMITTEE, to refer this matter to the BMI Rate Court for determination pursuant to Article XIV of the BMI Consent Decree.

(d) In the event that BMI's audit of LICENSEE discloses that LICENSEE has underpaid license fees due BMI:

- (1) LICENSEE shall pay a finance charge on such additional license fees of one percent (1%) per month (simple interest) with respect to any additional license fees owing, computed: (a) in circumstances in which under-payments for the audited period exceed seven and one-half percent (7½%) of the total fees owing, from the date(s) such fees should have been paid pursuant to this agreement, or (b) in circumstances in which underpayments for the audited period are less than or equal to seven and one-half (7½%) percent of the total fees owing, beginning thirty (30) days after the date BMI bills such additional license fees to LICENSEE.
- (2) If LICENSEE disputes all or part of BMI's claim for additional fees pursuant to an audit, LICENSEE shall, within thirty (30) days from the date BMI bills such additional fees, (i) advise BMI, in writing, of the basis for such dispute and (ii) pay to BMI any fees indisputably owed together with any applicable finance charges on additional fees indisputably owed in accordance with subparagraphs (1) and (2) above. If LICENSEE, in good faith, disputes all or part of the additional fees BMI has billed pursuant to this Paragraph, no finance charges shall be billed with respect to such disputed fees for the period beginning on the date BMI bills such disputed fees and ending sixty (60) days from the date BMI responds to LICENSEE's written notification of the existence of a dispute.
- (3) Finance charges computed in accordance with this Paragraph and pertaining to additional fees which LICENSEE disputes in accordance with subparagraph (2) above shall be adjusted pro-rata to the amount agreed upon by LICENSEE and BMI in settlement of the dispute with respect to additional fees due.

## 9. LOCAL MARKETING AGREEMENT.

(a) If LICENSEE is, or becomes, a party to a Local Marketing Agreement, LICENSEE and the LMA Operator shall execute a letter to BMI, in the form attached as Exhibit E and made a part of this Agreement, requesting amendment of this Agreement to add LMA Operator as a party. When such a letter has been fully executed by LICENSEE, the LMA Operator and BMI, this Agreement shall be deemed amended accordingly.

(b) BMI shall be entitled to receive, upon request, a copy of the entire Local Marketing Agreement or, if LICENSEE so requests, a copy of the portion of the agreement which sets forth the respective obligations of LICENSEE and the LMA Operator regarding the payment of BMI fees, accountings, record keeping and administrative responsibilities. An officer of LICENSEE shall certify that it is a true and correct copy of the agreement.

10. INDEMNIFICATION. BMI agrees to indemnify, save and hold harmless and to defend LICENSEE, its advertisers and their advertising agencies, and its and their officers, employees and artists, and each of them from and against all claims, demands and suits that may be made or brought against them or any of them with respect to the performance licensed under this Agreement of any works in the BMI repertoire that are licensed hereunder; provided, however, that such indemnity shall be limited to those claims, demands and suits that are made or brought within the United States, its territories, commonwealth and possessions, and provided further that this indemnity shall not apply to broadcasts of any musical work performed by LICENSEE which is not contained in the BMI repertoire at the time of performance by Station or which is the subject of a written notice of withdrawal in accordance with Paragraph 11 hereof. LICENSEE agrees to give BMI immediate notice of any such claim, demand or suit and agrees to deliver immediately all papers pertaining thereto. BMI shall have full charge of the defense of any such claim, demand or suit, and LICENSEE shall cooperate fully with BMI therein. 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. The provisions of this Paragraph shall survive termination of this Agreement, but solely with respect to performances broadcast by Station during the term of this Agreement.

11. WITHDRAWAL OF WORKS. BMI reserves the right upon written notice to LICENSEE to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI

does not have the right to license the performing right in such work or that such work infringes another work. BMI shall notify LICENSEE as promptly as reasonably possible of any such withdrawal and shall attempt to determine and advise LICENSEE at the time of such notice of any Syndicated Television Program in which any such withdrawn work may be contained.

12. ASSIGNMENT. This license shall be non-assignable except to the person, firm or corporation acquiring the Federal Communications Commission license of Station, and upon assignment to the acquiring person, firm or corporation and upon the acceptance by BMI in form approved by BMI of the application of LICENSEE hereunder, LICENSEE shall be relieved of future liability under this Agreement as long as all statements have been submitted by LICENSEE and all fees due BMI under this Agreement have been paid to BMI. Nothing herein is intended to limit the new owner's entitlement to a license pursuant to Article XIV of the BMI Consent Decree.

13. ARBITRATION.

(a) With the specific exception of disputes which may be within the jurisdiction of the United States district court having jurisdiction under the BMI Consent Decree, all disputes of any kind, nature or description 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 shall, by written notice to the other, have the right to appoint one arbitrator. If, within ten 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 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 thereon in any court having jurisdiction. Such award shall include the fixing of the reasonable costs, expenses and attorneys' fees of arbitration, which shall be borne by the unsuccessful party, subject to the provisions of subparagraph (b) below.

(b) If, during the term of this Agreement, any dispute arises between BMI and LICENSEE concerning the interpretation of any of the provisions of this Agreement, the resolution of which, in the judgment of BMI or COMMITTEE, either jointly or severally, has or may have industry-wide impact, BMI and COMMITTEE shall first endeavor to resolve such dispute, failing which either party may refer the matter to arbitration (unless the parties agree on some alternative mechanism for dispute resolution); and LICENSEE agrees to be bound by the results of all of such arbitrations involving BMI and COMMITTEE. In the event of such a reference, each party shall bear its own costs, expenses and attorneys' fees. In the event of such a reference, either party, as a preliminary matter, shall be entitled to assert that the dispute between the parties is not properly dealt with under the terms of this subparagraph.

14. TERMINATION BY LICENSEE. LICENSEE shall have the right to terminate this Agreement, upon ten business days' notice to BMI, in the event of: (a) the termination or suspension of the governmental licenses covering LICENSEE, or any substantial alteration or variation of the terms and conditions thereof; or (b) the suspension of operations by Station for a substantial period of time.

15. BREACH OR DEFAULT. Upon LICENSEE's breach or default of any payment, accounting or substantive reporting obligation required under the terms of this Agreement, BMI may give LICENSEE thirty (30) days' notice in writing to cure such breach or default. In the event that such breach or default has not been cured within thirty (30) days of said notice, BMI may then terminate this Agreement.

16. NOTICE. Any notice of termination given hereunder shall be given by registered or certified mail or delivery service for which there is proof of delivery to, and receipt by, the addressee. Any other notice required or permitted to be given under this Agreement shall be in writing and shall be deemed duly given when sent by ordinary first-class U.S. mail to the party for whom it is intended, at its office address hereinabove stated, or any other address which either party hereto may from time to time designate for such purpose, and when notice is so mailed, it shall be deemed given upon the mailing thereof. Any notice sent to BMI shall be to the attention of S.V.P. Licensing Department. 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.

17. INTERFERENCE IN OPERATIONS. In the event that any law hereafter enacted of the state, or political subdivision thereof, in which LICENSEE is located shall result in major interference with the operations of BMI in that state or political subdivision, or in a substantial increase of the cost to BMI of operating within that state or political subdivision, BMI shall have the right, upon notice to COMMITTEE and upon a showing that the matters referred to affect the licensing of performing right under this Agreement, to apply to the judge with supervisory authority over the BMI Consent Decree for whatever relief BMI deems appropriate, including termination of this Agreement.

18. BLANKET LICENSE. LICENSEE acknowledges that the BMI Local Television Station Blanket License for the term commencing January 1, 2002 and ending December 31, 2004 (the "Blanket License") is being offered to LICENSEE simultaneously with this Agreement and LICENSEE is entering into this Agreement instead thereof. During the term of this Agreement, LICENSEE may hereafter elect to change from a per program to a blanket license as of the first day of a month, prospectively on prior written notice to BMI (an "Election"). By making an Election, LICENSEE agrees to all the terms of the elected agreement. Thereafter LICENSEE may switch back to the Per Program License in accordance with the provisions of the Blanket License. An Election to change between this Agreement and the

Local Television Station Blanket License may be made by LICENSEE not more than twice in any calendar year 2002, 2003 or 2004.

19. CONFIDENTIALITY.

(a) BMI shall treat as confidential, and shall not disclose to any third party (other than its employees, directors and officers, in their capacity as such, on a need-to-know basis, and other than as set forth in subparagraph (b) below), any financial or other proprietary documents or information provided to BMI by LICENSEE in connection with this Agreement.

(b) BMI is hereby authorized to provide to COMMITTEE such of LICENSEE's financial or other proprietary documents or information, provided to BMI pursuant to this Agreement, as COMMITTEE may request in connection with its representation of the local television industry in future negotiations with BMI, future rate court proceedings, litigation or disputes over the implementation or interpretation of this Agreement, unless LICENSEE notifies BMI in writing to the contrary. As reflected in Exhibit A hereto, COMMITTEE has agreed to treat as confidential any financial or other proprietary documents or information provided to it by BMI pursuant to this Paragraph.

20. WITHOUT PREJUDICE. The parties are entering into this Agreement without prejudice to any arguments or positions they may assert in any future rate proceeding concerning what constitutes reasonable blanket and per program license fees and terms for the local television industry, or, in BMI's case, as to any other licensee. The definition of Ambient Uses is for purposes of this Agreement only and is being agreed to without prejudice to any positions either party may take in any future litigation or negotiation, including positions with respect to whether or which specific uses of music constitute "fair uses" under 17 U.S.C. § 101 *et seq.* The inclusion of donations in the definition of Revenues Attributable to Non-Network Programs is for purposes of this Agreement only and is being agreed to without prejudice to any positions either party may take in any future litigation or negotiation. The information that LICENSEE has agreed to provide under Paragraph 6(i)(2) shall not prejudice any position either party may take in future negotiation, proceeding or litigation as to the relevance or necessity of such information in licensing musical performances over the Internet.

21. RESERVATION OF RIGHTS. The license granted in Paragraph 3(a)(ii) is experimental in nature. BMI and LICENSEE recognize that the license granted herein covers certain transmissions originating from and/or received in certain territories outside of the United States, its commonwealth, possessions and territories pursuant to experimental agreements with certain non-U.S. performing rights licensing organizations around the world, and is broader in geographical scope than BMI's previous licenses. Notwithstanding, BMI is offering the license in Paragraph 3(a)(ii) on an experimental and non-prejudicial basis for the purpose of evaluating such international licensing initiatives. Accordingly, the removal during the Term of any or all of the territories listed on Exhibit C in the licensing section of the BMI web site located at <http://www.bmi.com> from the scope of coverage provided for in Paragraph 3(a)(ii) shall have no impact on the fees due hereunder. The Parties hereby expressly reserve their right to re-evaluate the appropriateness of the fees and terms herein with respect to all transmissions licensed under Paragraph 3(a)(ii), including, but not limited to, the reasonable value of a license that covers transmissions beyond the United States, its commonwealth, possessions and territories, for periods following the Term.

22. MISCELLANEOUS. This Agreement, and all Exhibits hereto, constitutes the entire understanding between the parties and 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 to be void or unenforceable by a court of competent jurisdiction shall in no way affect the validity or enforceability of any other provisions.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day and date hereinbefore set forth.

BROADCAST MUSIC, INC.

[Empty box for LICENSEE (Legal Name)]

LICENSEE (Legal Name)

By: [Empty box for Signature]

(Signature)

By: [Empty box for Signature]

(Signature)

[Empty box for Print Name of Signer]

(Print Name of Signer)

[Empty box for Print Name of Signer]

(Print Name of Signer)

[Empty box for Title of Signer]

(Title of Signer)

[Empty box for Title of Signer]

(Title of Signer)

**EXHIBIT A**

May 17, 2002

Broadcast Music, Inc.  
320 West 57<sup>th</sup> Street  
New York, N.Y. 10019

Attention: Mr. John Shaker

Re: BMI – Local Television Station Blanket and Per Program Licenses

Dear Mr. Shaker:

This letter sets forth the agreement reached between Broadcast Music, Inc. (“BMI”) and the Television Music License Committee (the “COMMITTEE”) concerning certain additional terms of the BMI – Local Television Station Blanket and Per Program License Agreements covering the periods April 1, 1999 through December 31, 2004 (herein “Blanket Licenses” and “Per Program Licenses”, and collectively referred to as “Licenses”). This letter agreement is expressly incorporated in paragraph 4 of the Blanket and Per Program Licenses, respectively, and is binding upon the parties hereto and upon the signatories to the Licenses and their successors and assigns.

The parties agree as follows:

1. For the years 2002, 2003 and 2004, domestic commercial television stations that were licensed by BMI in 2001 pursuant to interim licenses agreed to between BMI and the COMMITTEE (“Existing Television Stations”) shall pay license fees to BMI as follows:

(a) Existing Television Stations entering into the Blanket License with BMI, or switching thereto, shall each pay BMI each year their allocated share of the annual industry-wide BMI blanket license fee of \$85 million, at such times and in such manner as provided therein for such years (or portions thereof) that they have elected to be bound by a Blanket License. The methodology for the allocation of blanket license fees among Existing Television Stations for each of those calendar years is set forth in Schedule I hereto.

(b) Existing Television Stations entering into Per Program Licenses with BMI, or switching thereto, shall each pay BMI such fees, and at such times and in such manner, as are provided therein. Per Program License Fees for Existing Television Stations shall be computed based upon each station’s Monthly Base License Fee. For each calendar year 2002, 2003 and 2004, each Existing Television Station’s Monthly Base License Fee shall be equal to one-twelfth of its share of the annual industry-wide BMI per program license fee of \$98.1 million, subject to subparagraph (c) hereof.

(c) In the event that during the term of the Licenses, the COMMITTEE negotiates with the American Society of Composers, Authors and Publishers (“ASCAP”) an annual industry-wide per program license fee, or the ASCAP rate court establishes an annual industry-wide per program license fee for ASCAP in a proceeding no longer subject to appeal, different from \$98.1 million, then the parties agree that the ASCAP amount will be substituted for the \$98.1 million figure in paragraph (b) prospectively from the effective date of such ASCAP fee change for any period remaining in the term of the Licenses; provided, however, that substitution of the base fee shall only occur if the material non-fee terms and conditions of the ASCAP per program license are similar to the terms and conditions of the BMI Per Program License.

(d) Each Existing Television Station shall pay to BMI its allocated share of the annual industry-wide BMI Internet blanket license fee of \$558,333.33 in each of the years 2002, 2003 and 2004. An Existing Television Station's allocated share of the industry-wide BMI Internet blanket license fee shall be calculated by multiplying \$558,333.33 times a factor representing the percentage of the industry-wide BMI blanket license fee that is allocated to the station in a given year pursuant to Schedule I to this letter agreement. For example, a station with an annual blanket license fee of \$850,000 (or 1% of the industry-wide blanket license fee for the year 2003) shall be allocated 1% of the industry-wide BMI Internet blanket license fee (or \$5,583.33).

2. For the period from April 1, 1999, through December 31, 2001 (the "Settlement Period"), BMI and the COMMITTEE agree that Existing Television Stations shall pay to BMI their allocated share of the industry-wide lump-sum settlement fee of \$12 million (the "Settlement Fee"), which payments will represent, when combined with the interim fees payable to BMI under the interim BMI Blanket and Per Program Licenses agreed to by BMI and the COMMITTEE for that period, the final license fees payable for the Settlement Period. The COMMITTEE shall allocate the Settlement Fee among the Existing Television Stations, and shall provide BMI prior to February 15, 2002 with a schedule that details the amounts to be billed to each station. The stations' shares of the Settlement Fee shall be billed in equal monthly installments over a 36 month period commencing January 1, 2002, separately from the stations' monthly payments as calculated pursuant to Paragraph 1(a) above and Schedule I to this letter agreement.

3. Subject to paragraph 7 below, if for any part of the term of this letter agreement, BMI enters into a License with a television station that is not an Existing Television Station (a "New Television Station"), the New Television Station shall pay BMI license fees, whether under the Blanket License or the Per Program License, as the case may be, as follows:

(a) if the New Television Station was previously licensed by the FCC and operating as a broadcast television station for more than twelve (12) months prior to entering into a License with BMI, then the fees payable by all stations in the New Television Station's local market as of the effective date of the New Television Station's license agreement shall be reallocated under Schedule I hereto as if such station were an Existing Television Station and without any increase in the total fee amount otherwise allocable to the relevant local television market. The New Television Station and all other licensees in its local market shall thereafter be obligated to pay such re-allocated fees; or

(b) if the New Television Station was not previously licensed by the FCC and operating as a broadcast television station for more than twelve (12) months prior to entering into a License with BMI, such station shall pay the minimum monthly fee of forty-five dollars (\$45.00) for the remainder of the calendar year following the effective date of its license agreement. Thereafter, the fees payable by all stations in the New Television Station's local market shall be reallocated under Schedule I hereto as if such station were an Existing Television Station and without any increase in the total fee amount otherwise allocable to the relevant local television market. The New Television Station and all other licensees in its local market shall thereafter be obligated to pay such re-allocated fees.

(c) BMI shall be obligated to notify licensees in writing as to any adjustment in their fees resulting from the reallocation procedures set forth in Paragraphs 3(a) and (b) within ten (10) days of the determination of such reallocated fees. In the event an Existing Television Station's fees are reduced as a result of any such reallocation, BMI shall credit such licensee's account for the amount of any such excess fees which have already been paid by such licensee as of the effective date of reallocation, or, if such licensee so elects, BMI shall, within thirty (30) days of receiving notification of such election, refund to licensee the amount of any such excess fees.

4. If, during the term of this Agreement, BMI licenses any entity agreed or determined to be a broadcast television "network" previously unlicensed by BMI (such as FOX, UPN, or The WB), whose network programs are carried by local television stations licensed by BMI pursuant to the Licenses, the industry-wide amounts set forth in Paragraph 1 above pertaining to the periods of such third party license agreements shall be adjusted downward in an appropriate amount. BMI shall have the ultimate responsibility for re-allocating industry-wide blanket license fees to reflect any such reduction, following consultation with the COMMITTEE. BMI and the COMMITTEE will confer and attempt to reach agreement concerning the appropriate amount of any such fee adjustments and such agreement shall be binding on all licensees. If BMI and the COMMITTEE shall fail to agree on such fee adjustments, either party may refer the matter to the federal judge with supervisory authority over the BMI Consent Decree for determination.

5. BMI shall provide to the COMMITTEE or its designated representative for verification, by no later than forty-five (45) days before its scheduled dissemination to licensees, a copy of each list of Syndicated Television Programs prepared pursuant to Paragraph 6(c) of the Per Program License. The COMMITTEE shall notify BMI of any suggested revisions or corrections to this list no later than three weeks from the date it was received.

6. If, for any part of the term hereof, a station previously licensed by BMI under a separate agreement changes its format and elects to be licensed pursuant to a License, such station's blanket and per program license fee allocations shall be determined pursuant to the methodology set forth in Schedule I as though it were an Existing Television Station, except that: (a) such station's allocated blanket or per program license fee shall be in addition to the industry-

wide blanket or per program license fees set forth in Paragraph 2 above; and (b) blanket or per program license fees allocated to other stations in the same market shall be determined as if such station were not licensed pursuant to a License, and thus shall remain unchanged.

7. The COMMITTEE shall treat as confidential any financial or other proprietary information or documents provided to it by BMI pursuant to the Local Television Station Per Program License Agreement (“Confidential Information”). The COMMITTEE shall limit access to Confidential Information to the COMMITTEE’s staff, representatives and counsel, and shall not disclose Confidential Information to any third party or to any COMMITTEE member, other than a COMMITTEE member who is employed by the station group which provided Confidential Information to BMI.

8. BMI and the COMMITTEE are entering into this Agreement without prejudice to any arguments or positions they may assert in any future rate proceeding concerning what constitutes reasonable blanket and per program license fees and terms for the local television industry or, in BMI’s case, as to any licensee.

Please indicate your agreement to the above by signing on the line provided below.

Very truly yours,

s/ Chuck Sennet

Co-Chair

Television Music License Committee

s/ Catherine Nierle

Co-Chair

Television Music License Committee

AGREED TO:

s/ John Shaker

Senior Vice President/Licensing

Broadcast Music, Inc.

# **Television Music License Committee**

## **Methodology for Industry-Wide BMI License Fee Allocation for the Period From January 1, 2002 through December 31, 2004**

### **STEP 1: Allocation of Industry-Wide Fee Among DMA Markets**

In a given year, each television market is to be assigned its allocable share of the \$85 million industry-wide blanket license fee based on a weighted, three-year average percentage of the total U.S. television households it represents.<sup>1</sup>

1. For each of the years 2002 through 2004 ("Contract Years"), the number of TV households in each of the roughly 210 DMA markets as measured by Nielsen<sup>2</sup> is to be "weighted" as follows:

Markets 1 - 10	Multiply by 1.19
Markets 11 - 25	Multiply by 1.05
Markets 26 - 50	Multiply by 0.92
Markets 51 - 75	Multiply by 0.85
Markets 76 - 100	Multiply by 0.85
Markets 101 - 125	Multiply by 0.85
Markets 126 plus	Multiply by 0.80

The purpose of the weighting is to reflect, within broad parameters, that a household in the 150th market does not represent the same value as a household in the New York market.

2. For each Contract Year, each market is to be assigned its share of the industry's overall \$85 Million blanket license fee by the following procedure: Each market's three-year households average (based on the three prior years) will be computed. The multiples set forth in Paragraph 1 above will next be applied to these market rankings resulting from computation of the three-year averages to produce a weighted average households figure for each market. Thus, for example, the top ten markets in terms of three-year households average will receive a 1.19 multiple. Each market's weighted average households figure is to be divided by the total U.S. average weighted households to derive a percentage of U.S. weighted TV households for each market. This weighted percentage is then applied to the industry-wide blanket license fee. Thus, if the weighted percentage of total U.S. TV households for market "x" is one percent, market x's share of the Contract Year 2002 industry-wide blanket license fee would be \$85 Million x 1%, or \$85,000.

### **STEP 2: Allocation of Blanket License Fees to Stations Within Each Market<sup>3</sup>**

A series of computations will be undertaken to apportion a given market's allocated blanket license fee in relation to each station in that market's viewing households (with an allowance for a portion of the prime-time audience reached by network-affiliated stations).<sup>4</sup>

1. For Contract Year 2002, the process will begin with Nielsen's Market Ratings Reports for the "sweeps" months assigned for these purposes to each of 1999, 2000 and 2001. Within each market, each station's average DMA quarter-hour viewing households, Sunday through Saturday, 9 a.m. through midnight, is to be computed for each of the sweeps months for each of 1999, 2000 and 2001. The same methodology is to be utilized for Contract Year 2003 (employing comparable Nielsen viewership data for the three years 2000, 2001 and 2002) and Contract Year 2004 (employing comparable Nielsen viewership data for the three years 2001, 2002 and 2003).<sup>5</sup>

2. To make allowance for the fact that a portion of a network affiliate's 9 a.m. to midnight schedule constitutes BMI licensed network programming, the following computations, which lead to each station's "qualifying" viewing households, are to be made for each sweeps month:

- 
1. In addition, in a given year, each television market is to be assigned its allocable share of the industry-wide base per program license fee (as set forth in paragraphs 1(b) and (c) of Exhibit A to the BMI Local Television Station Music Performance Blanket and Per Program Licenses) pursuant to the methodology described in this Step 1.
  2. The number of television households in television markets located in: Alaska and Hawaii shall be determined based upon data collected by Nielsen; Virgin Islands and Guam shall be determined based upon data collected by the United States Census; and Puerto Rico shall be determined based upon data collected by Media Fax. For purposes of assigning an allocable share of the industry-wide blanket license fee to television markets in Alaska, Hawaii, Virgin Islands, Guam and Puerto Rico, the number of television households in each of these markets is to be given the same weight as the Nielsen DMA that most closely approximates the number of television households in these markets.
  3. The computations described in this Step 2 will also be used to apportion a given market's allocated base per program license fee among the stations within that market.
  4. Network-affiliated stations are defined as those affiliated with the ABC, CBS, and NBC television networks and those affiliated with, but not owned by, the Univision Television Network
  5. For purposes of these calculations, the sweeps months for a given year comprise the November sweeps period of the prior year, and the February and May Sweeps period of that year. For example, the designated sweeps months for 2000 are November 1999 and February and May 2000.

(a) multiply each station's average DMA quarter-hour viewing households by 420 (the number of quarter-hour units between 9 a.m. and midnight in one week). For independent stations, the result of this computation constitutes those stations' qualifying viewing households.

(b) with respect to the allocation of fees for network-affiliated stations, arrive at "qualifying" viewing households by subtracting from the totals generated by step (a) 100 percent of a prime-time viewing households figure, which figure (prior to application of the 100 percent factor) is calculated by taking a station's average DMA quarter-hour households in prime-time, and multiplying this figure by 88 (the number of quarter-hour units in prime-time in one week.<sup>6</sup>)

3. The nine separate months of DMA viewing households data thus derived for each independent and affiliated station in a market are next aggregated as to each station to arrive at its total qualifying viewing households. This is done for each station in the market. The qualifying viewing households data for all stations in the market are then aggregated to get a base for the entire market. Each station's percentage share of the allocated market blanket license fee (derived through the process described in Step 1, above) is computed by dividing its qualifying viewing households number by the base qualifying viewing households number for that market.

4. A station's blanket license fee is computed by applying the resulting percentage applicable to that station to the market blanket license fee.

5. In those markets having stations which receive no rating in the Nielsen reports and which are not separately licensed by BMI, the following methodology will be employed. Each such station will be assigned a blanket license fee equal to 0.25 percent of the allocable blanket license fee for that market or \$540 annually, whichever is higher. The remaining stations will be allocated blanket license fees based on the methodology set forth in Step 2 hereof, except that the allocable blanket license fee for the market for purposes of those computations shall be reduced by the amount payable by those stations in the market not listed by Nielsen. If, by way of example, the blanket license fee allocated to market "k" is \$300,000, and there are operating in market "k" two stations not listed by Nielsen, each of those stations would be assigned a blanket fee of \$750 ( $\$300,000 \times .0025$ ). The remaining stations in market "k" would pay their appropriate percentages, not of \$300,000, but of \$298,500.

6. The minimum blanket license fee for a given station shall be the greater of 0.25 percent of the allocable blanket license fee for its market or an annual blanket license fee of \$540 (or \$45 per month for partial years) ("Minimum Blanket License Fee").

7. If, during a given Contract Year, BMI enters into a license agreement with a television station that was not previously licensed (a "New Television Station"), the New Television Station shall be assigned blanket license fees as follows:

(a) if the New Television Station was previously licensed by the FCC and operating as a broadcast television station for more than twelve (12) months prior to entering into a license with BMI, then the fees payable by all stations in the New Television Station's market as of the effective date of the New Television Station's license agreement shall be reallocated pursuant to paragraphs 1 - 6 above without any increase in the total fee amount otherwise allocable to the relevant market; or

(b) if the New Television Station was not previously licensed by the FCC and operating as a broadcast television station for more than twelve (12) months prior to entering into a license with BMI, such station shall pay the minimum monthly fee of forty-five dollars (\$45.00) for the remainder of the Contract Year following the effective date of its license agreement. The fees payable by all stations in the New Television Station's market in the following Calendar Year shall be reallocated under paragraphs 1 - 6 above without any increase in the total fee amount otherwise allocable to the relevant market.

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6. E.g., on the East Coast, prime-time occupies Monday-Saturday 8:00-11:00 p.m. and Sunday 7:00-11:00 p.m.





Broadcast Music, Inc.  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10070-0030  
ATTN: BMI Local TV Web Site Licensing

Re: Launch of Local TV Station Web Site

To Whom It May Concern:

Please be advised that, on \_\_\_\_\_ (day/month), \_\_\_\_\_ (year), local television Station \_\_\_\_\_ (*call letters*) began distributing a web site known as \_\_\_\_\_ and located at the Uniform Resource Locator (*URL*) *http://* \_\_\_\_\_ pursuant to the 1999-2004 BMI Local Television Music Performance Agreement.

<p>WEB SITE REPORT CONTACT:</p> <p>NAME: _____</p> <p>TITLE: _____</p> <p>EMAIL: _____</p> <p>TELEPHONE: _____</p>
--

Sincerely,

\_\_\_\_\_  
(Signature)

Print Name: \_\_\_\_\_  
Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_



LOCAL TV STATION WEB SITE
MUSIC USE REPORT

Music use report for the period from [Month/Day, Year] through [Month/Day, Year]

Legal Name:
Call Letters:
Address:
URL:

WEB SITE TRAFFIC INFORMATION:

Total number of page impressions on the web site during the period:
Total number of streamed transmissions during the period:

LIVE STREAMING: the simultaneous transmission of station's locally produced and aired programming (see Paragraph 3(a)(ii)(A) of the Agreement):

Please check here if the TV Station Web Site engaged in the simultaneous retransmission of locally produced and aired programming during the period. Please identify such programming below (e.g., if all, write 'all'; if local newscasts only, write 'local newscasts'; if other programming, write the title(s) of such other programming).

ARCHIVED STREAMING: the transmission of station's local newscasts and/or local news based public affairs programming (see Paragraph 3(a)(ii)(B) of the Agreement):

Please check here if the TV Station Web Site engaged in the retransmission of local newscasts and/or local news based public affairs programming during the period. Please identify such programming below.
Local Newscasts
Local News Based Public Affairs Programming

PROMOTIONAL CLIPS TO PROMOTE VIEWERSHIP OF STATION AND ITS TELEVISION PROGRAMMING (see Paragraph 3(a)(ii)(C) of the Agreement):

Please check here if the TV Station Web Site contained individually retrievable, archived promotional announcements to promote viewership of station and its television programming during the period.
Please check the appropriate box(es) to indicate the type(s) of programming:
Syndicated Programs
Network Programs
Local Programming

I hereby certify on this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ that the above is true and correct.

By:
(SIGNATURE)
(PRINT NAME OF SIGNER)
(TITLE OF SIGNER)



**DIGITAL SIGNAL QUESTIONNAIRE**

*This questionnaire should be filled out and e-mailed to BMI during the month of October 2002, 2003 and 2004.*

<b>Legal Name of Licensee:</b> _____ <b>Analog Signal Call Letters:</b> _____ <b>Station's Address:</b> _____ <b>City:</b> _____ <b>State:</b> _____
---

**1. Is the station currently broadcasting a digital signal?**

- Yes  
 No (Skip all remaining questions)

**2. What are the call letters of your digital signal? \_\_\_\_\_-DT**

**3. What are the current weekly hours of on-air operation of your digital signal? \_\_\_\_\_**

**4. Does your digital signal programming consist completely of simulcasts of your analog signal programming?**

- Yes (Skip the last question)  
 No

**5. If your digital signal programming differs from your analog signal programming, or if you have multicast programming in your digital signal, please identify all non-simulcast programming broadcast in your digital signal, including broadcast dates and times. (Please add additional sheets as necessary.)**

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**Local Marketing Agreement Amendment to Local Television Station Music Performance License Agreement**

WHEREAS, \_\_\_\_\_ ("LICENSEE") has entered into a Local Marketing Agreement ("LMA") with \_\_\_\_\_ ("LMA OPERATOR") for the television station \_\_\_\_\_ (the "STATION") for the period \_\_\_\_\_ through \_\_\_\_\_; it is hereby agreed to as follows:

1. LICENSEE and LMA OPERATOR add LMA OPERATOR as a party to the BMI Local Television Blanket [Per Program] License Agreement, including all extensions, schedules and exhibits thereto, in effect between LICENSEE and BMI ("the License"), and LMA OPERATOR shall assume, with LICENSEE, all of the rights and obligations of LICENSEE set forth in the License for the full period of the LMA with respect to the STATION.

2. LICENSEE/LMA OPERATOR (circle one) shall be responsible in the first instance for the payment of any fees owing to BMI and for the submission to BMI of any reports or other information pursuant to the License for the full period of the LMA with respect to the STATION.

3. LICENSEE remains fully liable for all its obligations under the License. Even if the LMA OPERATOR is responsible in the first instance for the payment of fees and submissions of reports or other information to BMI as set forth in Paragraph 2 above, if LMA OPERATOR defaults in any way on those obligations, LICENSEE remains responsible for fulfilling those obligations.

4. LICENSEE and LMA OPERATOR jointly designate the following single address for billing, and other regular correspondence, and the following single address for any notices in accordance with the License.

Billing Address: \_\_\_\_\_ Notice Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In the event that the LMA between LICENSEE and LMA OPERATOR terminates, both LICENSEE and LMA OPERATOR shall notify BMI of the termination within 30 days, and submit all required statements, reports and payments through the date of said termination. In the event that both LICENSEE and LMA OPERATOR fail to notify BMI of the termination of the LMA, then both LICENSEE and LMA OPERATOR shall remain obligated under this agreement for all statements, reports and payments.

Dated: [ ] [ ]  
*LICENSEE*

By: [ ]

Title: [ ]

Dated: [ ] [ ]  
*LMA OPERATOR*

By: [ ]

Title: [ ]

Broadcast Music, Inc. hereby consents and agrees to the amendment of the above-mentioned License Agreement.

**BROADCAST MUSIC, INC.**

Dated: [ ] By: [ ]

Title: [ ]



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**BMI<sup>®</sup>**

NEW YORK • NASHVILLE • LOS ANGELES • ATLANTA • MIAMI • PUERTO RICO • LONDON



# Music License for Meetings, Conventions, Trade Shows and Expositions

## 1. DEFINITIONS

- (a) **"Event"** shall mean a convention that includes an assemblage of delegates, representatives and/or members of an organization(s) convened for a common purpose, a meeting which includes individuals assembled together for purposes of communicating information to each other (i.e. panels, seminars, symposiums, convocations, conferences, caucuses, forums, assemblies, congresses, institutes) or otherwise transacting business, an exposition at which products and services are displayed, or a trade, industrial or consumer show, or other activity of LICENSEE of not more than fourteen (14) consecutive days. An **"Event"** shall mean a concert which is sponsored, conducted, endorsed or approved by LICENSEE, unless the concert is open to members of the general public who are not affiliated with the LICENSEE.
- (b) A **"Function"** shall include activity conducted, sponsored, endorsed or approved by LICENSEE occurring in connection with an Event, including, but not limited to, meals, plenary sessions, breakouts, meetings, receptions, concerts, cocktail parties, dinners, dances, dinner-dances, variety shows, seminars, or any other similar spectator or participatory activity.
- (c) **"Attendees"** shall mean the number of persons present where any live, recorded or audio-visual music is performed or played at each of LICENSEE's Events whether or not any admission charge, registration fee or other payment is required to be made in connection with the attendance, but shall not include those required to produce the Event, such as LICENSEE's employees working at the Event, exhibitor personnel, administrative, service contractor and temporary personnel, or credentialed members of the press. In the case of a trade show or convention where live or recorded music is performed on the exhibit floor, the number of Attendees shall be the total number of persons registered at the trade show / convention. If no music is performed on the exhibit floor, the number of Attendees shall mean the total attendance at each Function held during the trade show or convention at which music is performed; provided, however, that in no event shall the number of Attendees for a given trade show or convention exceed the total number of persons registered at the trade show / convention. In the case of a meeting which does not have an exhibit floor and consists only of a series of Functions, the number of Attendees shall be the total attendance at each Function at which music is performed, with the number not to exceed the total registered attendance of the entire meeting.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE a non-exclusive license to perform, present or cause the live and/or recorded performance during Events of all musical works of which BMI shall have the right to grant public performance licenses during the Term hereof. This license does not include: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein; or (ii) the right to broadcast, telecast or otherwise transmit, including via the Internet or on-line service, the performances licensed hereunder to persons outside of any premises at which an Event occurs.
- (b) LICENSEE may be responsible for securing other rights including, but not limited to, synchronization and mechanical rights.
- (c) BMI may withdraw from the license your right to perform any musical work as to which a legal action has been brought or a claim made that BMI does not have the right to license the work or that the work infringes another work.

## 3. INDEMNITY BY BMI

BMI agrees to indemnify you, your officers and employees against any and all claims that may be made against you with respect to the performance of any music licensed under this Agreement at the time of your performances. You agree to give BMI immediate notice of any claim, to deliver to BMI any related papers and to cooperate with BMI in the matter, of which BMI shall be in full charge.

## 4. ARBITRATION

All disputes of any kind arising in connection with the terms of this Agreement shall be submitted to the American Arbitration Association in New York, New York under its rules then in effect. The arbitrators shall be selected as follows: each of us shall, by written notice to the other, have the right to appoint one arbitrator. If, within ten (10) days after such notice by one of us, the other one does not, by written notice, appoint another arbitrator, the first arbitrator shall be the only arbitrator. However, if we each appoint an arbitrator, the two arbitrators shall appoint a third arbitrator. If ten (10) days pass after the second arbitrator's appointment and the two arbitrators cannot agree upon the third arbitrator, then either of us may, in writing, request the American Arbitration Association to appoint the third arbitrator. The arbitration award shall be entirely binding on both of us and judgment may be entered in any appropriate court. The award shall include an amount for the costs, expenses and attorneys' fees of arbitration, which shall be paid by the losing party.

## 5. NOTICES

Any notices to be given are to be in writing and shall be deemed given on the day they are sent by ordinary first-class U.S. mail to the other of us at its mailing address or any different address which either of us later designates in writing. Any notices you send to BMI shall be addressed to the attention of the Licensing Department. Any notices BMI sends to you shall be addressed to the attention of the person signing this Agreement for you unless you advise BMI to address notices to someone else.

## 6. MISCELLANEOUS

This Agreement is our entire understanding, shall not be binding until signed by both of us, and no waiver or change shall be valid unless in writing and signed by us. Your rights are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any parts of this Agreement may be found by a court of competent jurisdiction to be void or unenforceable shall not affect the validity or enforceability of any other parts.

## 7. FEES

LICENSEE agrees to pay BMI for each one year Term of the Agreement a license fee based upon the following:

<u>Calendar Year</u>	<u>Per Attendee Rate</u>
<b>2017</b>	<b>\$.07</b>

- (a) For each year after the year 2000, the per attendee rate shall be an adjustment of the rate for the previous calendar year based upon the percentage increase or decrease in the United States Consumer Price Index (National, All Items) ("CPI") between September of the year which is two years before such year and September of the preceding year, rounded to the nearest penny (for example, the rate for the year 2001 shall be an adjustment of the rate for the year 2000, based upon the percentage difference in the CPI between September 1999 and September 2000). BMI shall inform you of the adjusted rate by the end of each calendar year.
- (b) The minimum annual fee billed and payable for 2017 shall be \$155 per year. The minimum annual fee for each year after 2017 shall be an adjustment of the minimum annual fee for the previous calendar year based upon the percentage increase or decrease in the CPI between September of the year which is two years before such year and September of the preceding year, rounded to the nearest five dollars.
- (c) You agree to pay to BMI for each calendar year the total fee due. The minimum annual fee (\$155) only is due simultaneously with your execution and return of this Agreement. The remainder of the actual license fee for each calendar year shall be due within thirty (30) days from the beginning of the following calendar year, upon submission of the report required in Paragraph 8, along with the minimum annual fee for the following calendar year.
- (d) The license fee for each calendar year shall be based upon LICENSEE's actual total number of Attendees for that calendar year as set forth on the report required by Paragraph 8. If such report reveals that the actual fee due BMI for that report's calendar year is greater than the minimum annual fee previously paid, LICENSEE shall pay the difference at the same time it submits the report and pays its minimum annual fee for the following calendar year.



**8. REPORTING OF EVENTS**

At the same time as the payment for the second and subsequent calendar years is due, you agree to furnish BMI (on forms available from BMI) with a report setting forth:

- (i) the total number of Events held during the previous calendar year;
- (ii) the total number of Attendees at all Events held during the previous calendar year; and
- (iii) the total license fee for the previous calendar year and the minimum annual license fee for the current calendar year.

**9. VERIFICATION OF / FAILURE TO REPORT**

- (a) BMI is entitled to verify the information submitted by LICENSEE in its report under Paragraph 8, by any source, including the examination of LICENSEE's books and records. As such, LICENSEE is required to retain such books and records for a period of not less than three years after the calendar year contained in LICENSEE's report, copies of which books and records shall be turned over to BMI upon its request. If after such examination, BMI is still unable to verify said information, BMI shall be entitled to unilaterally assess LICENSEE a reasonable annual fee using any source.
- (b) In the event LICENSEE fails to submit a report as required under Paragraph 8 within thirty (30) days after BMI has given LICENSEE written notice of its failure to do so, BMI shall be entitled to unilaterally assess LICENSEE a reasonable annual fee using any source, including an examination of LICENSEE's books and records as set forth above.

**10. TERM OF AGREEMENT**

The initial Term of this annual Agreement begins on January 1, \_\_\_\_\_ and shall end on December 31, \_\_\_\_\_ and shall continue annually unless canceled by either you or BMI at the end of the initial Term or any following one (1) year Term by giving thirty (30) days advance written notice to the other of us. BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the Agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice. If there is any breach or default by you of this Agreement, BMI shall have the right to cancel it, but the cancellation shall become effective only if the breach or default continues thirty (30) days after the date of BMI's written notice to you. The right to cancel is in addition to any other remedies which BMI may have. BMI may enforce any of its rights under this Agreement at any time even if it has not done so earlier.

**AGREEMENT**

AGREEMENT, made at New York, N.Y. on (Date Will Be Entered by BMI Upon Execution) \_\_\_\_\_ between BROADCAST MUSIC, INC. (hereinafter called BMI), a state of New York corporation with its principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030 and the entity described below and referred to thereafter as "LICENSEE" or "You:"

<b>LEGAL NAME</b>	<b>LICENSED PREMISES</b>	
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>	
<b>TRADE NAME</b>	<i>(City)</i>	<i>(State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number)</i>	<i>(Fax Number)</i>
<b>PLEASE CHECK APPROPRIATE BOX</b>	<i>(Contact Name)</i>	<i>(Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address)</i>	<i>(Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b>MAILING ADDRESS</b>	
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	<i>(if different from Licensed Premises)</i>	
<i>(State of Incorporation, if different from Licensed Premises)</i>	<i>(Street Address)</i>	
<i>(Enter names of partners)</i>	<i>(City) (State) (Zip)</i>	
<input type="checkbox"/> Other _____	<i>(Telephone Number)</i>	<i>(Fax Number)</i>
Federal Tax ID No. _____	<i>(Contact Name)</i>	<i>(Title)</i>
<b>GOVERNMENT ENTITIES</b>	<i>(Email Address- if different from above)</i>	
<i>(if applicable, please check one)</i>		
<input type="checkbox"/> Federal <input type="checkbox"/> State _____		
<i>(State)</i>		
<input type="checkbox"/> Local _____		
<i>(Municipality/City and State)</i>		

<b>TO BE COMPLETED BY LICENSEE</b>	<b>FOR ADMINISTRATIVE USE ONLY</b>		
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. <b>(SIGN HERE - PLEASE INCLUDE PAYMENT)</b>	<b>TO BE COMPLETED BY BMI</b> <b>BROADCAST MUSIC INC.</b>		
Signature			
Print Name / Title			
Signatory Email Address* <i>(if different from above)</i>			
<b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory</b>	<b>FOR BMI USE ONLY</b>	<b>45-97</b>	<b>LI-2016/NOV</b>
<b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b>	<b>EFFECTIVE:</b> <b>January 2017</b>		
<b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b>	<b>ACCOUNT NO.</b>	<b>COID</b>	

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

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# Music License for Venue

## - with less than 10,000 seats -

### 1. DEFINITIONS

- (a) **LICENSEE** shall mean the entity identified on Page 4 herein that presents an Attraction at a Venue.
- (b) **Venue** shall include, but not be limited to, a concert hall, stadium, auditorium, civic center, coliseum, theatre, amphitheater, stage, or similar facility, whether enclosed or not, where an Attraction may be presented, located within the United States of America, its territories and possessions.
- (c) **Attractions** shall mean concerts, variety shows (excluding circuses), pageants and other similar spectator events (including events sponsored by charitable organizations or for charitable purposes) that include music, whether or not music is the principal type of entertainment.
- (d) **Seating Capacity** shall mean the total number of seats permanently affixed in the Venue where the Attraction is presented plus any temporary seats added within the Venue for a particular Attraction. If the total number of seats available for the Attraction shall be less than that of the permanent Seating Capacity of the Venue, "Seating Capacity" shall mean the total number of seats available for the particular Attraction. If a Venue does not have permanent seating, "Seating Capacity" shall mean the total number of persons attending a particular Attraction. If a Venue has lawn seating, then "Seating Capacity" shall mean the total number of seats permanently affixed in the Venue, in addition to total lawn Seating Capacity as determined by the local Fire Marshall.
- (e) **Gross Ticket Revenues** shall mean the total monies received, directly or indirectly, by LICENSEE or their authorized representatives from all ticket sales per Attraction. The term "Gross Ticket Revenues" shall not include: 1) federal, state and/or local taxes; 2) building/facility charge per ticket sold; 3) ticketing agent/service charge placed on each ticket sold; or 4) facility parking fees. Should the artist/performing act(s) choose to donate a portion of their fees from each ticket sale to a particular charity, then the appropriate deduction may be taken from the "Gross Ticket Revenues"; provided however, that BMI be given copies of said artist/performing act(s) agreement(s) stipulating such with the exact amount of the charitable donation per ticket sold.
- (f) **Benefit Event** shall mean a public entertainment performance or social event held to raise funds for a specific person or cause in which all proceeds less direct expenses are donated to charity.

### 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE, for the Term of this Agreement, a non-exclusive license solely to perform, present or cause the performance of, as part of Attractions in Venues, **including recorded music** performed in conjunction with Attractions before, after or during the intermissions thereof, all the musical works as to which BMI shall have the right to grant public performance licenses during the Term. Such license shall be restricted to performance of music in the manner described herein, and is granted in consideration of payment of the license fees as set forth herein and is subject to all of the terms and conditions hereof. This license does not include: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any context which may constitute an exercise of the "grand rights" therein; or (ii) the right to simultaneously broadcast, telecast, cablecast, or otherwise transmit (including by the Internet or on-line service) the performances licensed hereunder to persons outside of the Venue in which they originate; (iii) performances of music by means of a coin-operated phonorecord player (jukebox).
- (b) BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

### 3. REVIEW OF STATEMENTS/ACCOUNTINGS

- (a) BMI shall have the right to verify such data or information that is required to be furnished by LICENSEE pursuant to Paragraph 10, by reference to a reliable, published, third-party industry source (such as Pollstar) and by BMI's authorized representatives, at any time during customary business hours, and upon thirty (30) days advance written notice, examining those portions of LICENSEE's books and records of account to such extent as may be necessary to verify any and all statements and/or accountings made hereunder. BMI shall consider all data and information coming to its attention as the result of any such examination of LICENSEE's books and records confidential.
- (b) In the event that BMI discovers an inaccuracy in any information reported by LICENSEE pursuant to Paragraph 10, either through an examination of LICENSEE's books and records, or otherwise, and as a result it is revealed that LICENSEE underpaid license fees to BMI, and the correct license fee is not paid to BMI within thirty (30) days of BMI's notice to LICENSEE of the inaccuracy or underpayment, then LICENSEE shall pay a late payment charge on the additional license fees due as a result of the examination(s) of one and one-half percent (1½%) per month, or the maximum rate permitted by law, whichever is less, from the date(s) the license fees should have been paid pursuant to this Agreement.

### 4. LATE PAYMENT CHARGE

BMI may impose a late payment charge of one and one-half percent (1½%) per month from the date any payment is due hereunder on any payment that is received by BMI more than one (1) month after the due date.

### 5. INDEMNITY BY BMI

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 musical works licensed under this Agreement. Such indemnity shall be limited to musical works which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

**6. BREACH OR DEFAULT/WAIVER**

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues for thirty (30) days after the date of BMI’s written notice to LICENSEE thereof. 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 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.

**7. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to the American Arbitration Association in the City, County and State of New York for arbitration under its then prevailing arbitration rules. The arbitrator(s) to be selected as follows: Each of the parties 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 in 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. 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.

**9. FEES**

- (a) LICENSEE agrees to pay BMI a license fee for each performance of an Attraction that LICENSEE promotes, except where another person, entity or Venue is responsible for paying the license fee for that performance. Such license fee shall be computed on the basis set forth in the License Fee Schedule of this Agreement.
- (b) License fees for Attractions **with** paid admission shall be calculated pursuant to Schedule A of the License Fee Schedule. License fees for Attractions **with no** paid admission (i.e., free to guests) or Benefit Events shall be calculated pursuant to Schedule B of the License Fee Schedule. License fees outlined in Schedule B for subsequent Contract Years will be adjusted by the Consumer Price Index, as described in subparagraph 9(c) hereunder.
- (c) In no event shall an Attraction’s annual license fee for any Contract Year be less than the Minimum Annual Fee for the applicable year. The Minimum Annual Fee for the 2017 Contract Year is \$236. The Minimum Annual Fee for subsequent Contract Years shall be an adjustment of the previous Contract Year rates based upon any percentage increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding July and the next preceding July, and shall be rounded to the nearest dollar.
- (d) When an Attraction is believed to be comprised entirely of musical compositions for which BMI shall not have the right to grant public performance licenses, LICENSEE may, at its option, submit a schedule, including writer and publisher information, for all those musical compositions performed at said Attraction, *including opening acts and recorded music, if any*, and in those instances in the opinion of BMI, where all of the musical compositions performed at said Attraction are ones to which BMI does not have the right to grant public performance licenses, no fee shall be due and payable to BMI. In the event no schedule is submitted to BMI, LICENSEE must pay the applicable fee for said Attraction pursuant to Schedule A (or in the case of a Benefit Event or no charge Attraction, Schedule B) of this Agreement.

**LICENSE FEE SCHEDULE**

<b>SCHEDULE A</b>		
<b>EVENTS <u>WITH</u> PAID ADMISSION</b>		
<b><u>Seating Capacity</u></b>		<b><u>% of Gross Ticket Revenue</u></b>
0	to 2,500	0.80%
2,501	to 3,500	0.60%
3,501	to 5,000	0.40%
5,001	to 9,999	0.30%
<b>SCHEDULE B</b>		
<b>FREE OR BENEFIT EVENTS</b>		
<b><u>Seating Capacity</u></b>		<b><u>Fee Per Benefit Event With No Charge</u></b>
0	to 250	\$16.00
251	to 750	\$19.00
751	to 1,500	\$31.00
1,501	to 2,500	\$51.00
2,501	to 5,000	\$74.00
5,001	to 7,500	\$100.00
7,501	to 9,999	\$141.00

**Minimum Annual Fee is \$236**

## 10. REPORTING OF ATTRACTIONS/PAYMENT

- (a) Upon signing this Agreement, LICENSEE shall pay at least the Minimum Annual Fee, plus any additional amounts immediately due as initially reported. LICENSEE shall submit reports and payments for those Attractions which actually were presented during each period on a quarterly basis and shall pay all fees due. For all quarterly periods, reports and payments shall be due on the twentieth (20<sup>th</sup>) day of January, April, July and October of each year of this Agreement for all Attractions presented by LICENSEE during the prior calendar quarter. Should LICENSEE fail to report and submit payments to BMI within thirty (30) days after the specified date, then BMI will apply estimated billings to the account based on either LICENSEE's prior year's corresponding quarter figures or reports from a reliable, published, third-party industry source (e.g., Pollstar), whichever is higher. BMI shall give written notice to LICENSEE of the estimated fee calculated. LICENSEE shall have thirty (30) days after such written notice by BMI to submit the report. If BMI does not receive the report from LICENSEE within those thirty (30) days, BMI and LICENSEE agree that BMI's Estimated License Fee shall then be established as the Actual License Fee for the period unreported by LICENSEE. BMI and LICENSEE further agree that such established Actual License Fee (subject to adjustment by audit) shall also become the Estimated License Fee for the following contract period. LICENSEE agrees to waive its right to file its report for any period in which BMI's Estimated License Fee becomes the Actual License Fee. Any differences between the estimated and the actual reported fee shall be payable by LICENSEE when the report is submitted. If BMI's estimated fee is greater than the actual reported fee, then LICENSEE's account shall be credited with the difference, provided however that LICENSEE's annual license fee shall not fall below the Minimum Annual Fee.
- (b) Upon payment of license fees to BMI, LICENSEE shall furnish to BMI a statement, on forms available from BMI, signed by an officer or auditor of LICENSEE, setting forth all performances of *all* Attractions occurring during the applicable calendar quarter in LICENSEE's Venue. Such statement shall include the name of each Attraction, the Seating Capacity for each Attraction, the dates of each Attraction, the number of performances each day and the Gross Ticket Revenues (as defined in Paragraph 1(e)) for a regularly scheduled performance of each Attraction. LICENSEE's statement shall also include performances of Attractions where another person, entity or Venue is responsible for paying the license fee. A statement shall be furnished to BMI by LICENSEE for each calendar quarter during the Term of the Agreement, regardless of whether or not any performances occurred during that calendar quarter.
- (c) In the event that LICENSEE engages in the presentation of an Attraction in conjunction with, or sells or otherwise transfers the promotional responsibility of an Attraction to other persons or entities licensed separately by BMI under another BMI Music Performance Agreement, LICENSEE shall indicate on the statement required by subparagraph 10(b) hereof the names of all other persons, entities or Venues promoting or co-promoting, or otherwise responsible for, each Attraction and shall identify which party is responsible for payment of the BMI license fee for such Attraction. Transferring liability for promoted Attractions to anyone **but** a licensed promoter or co-promoter of the Attractions is not permitted. If the responsible promoter, co-promoter or person, entity, or Venue is not licensed by BMI under a BMI Music Performance Agreement, LICENSEE shall be deemed liable for payment of the fees due for such Attraction. In the event BMI receives a fee for an Attraction from both LICENSEE and one or more of its co-promoters or other promoter, or person, entity or Venue, the total of which exceeds the amount due, BMI shall refund or credit the excess proportionally among all promoters, co-promoters, persons, entities, or Venues who made payment.
- (d) LICENSEE shall deliver to BMI for each calendar quarter, by the twentieth (20<sup>th</sup>) day following the end of the calendar quarter, copies of any programs or lists of the musical works presented by LICENSEE in its Attractions during such quarter. Programs prepared for audiences or for 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.

## 11. TERMINATIONS OF AGREEMENT BY LICENSEE

If LICENSEE permanently ceases to present Attractions, this Agreement and LICENSEE's obligation to BMI shall thereupon terminate, provided that LICENSEE shall, within ten (10) days thereafter, give written notice of such termination to BMI, setting forth the effective date thereof and that LICENSEE shall submit all reports and pay to BMI all fees due hereunder until said effective date.

## 12. CANCELLATION OF ENTIRE CATEGORY

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

## 13. STATE OR LOCAL TAX

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with license fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

## 14. OKLAHOMA RATE CHANGE NOTICE

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

## 15. COLORADO 3 BUSINESS DAY REVIEW

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

## 16. 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 herein 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 designate to BMI in writing.

## 17. MISCELLANEOUS

This Agreement constitutes the entire understanding between the parties, will not be binding until signed by both parties, and 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. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**18. CUSTOMER OUTREACH**

LICENSEE agrees to accept from time to time pre-recorded messages from BMI that may contain important information regarding your account.

**19. TERM OF AGREEMENT**

The initial Term of this Agreement shall begin on the first day of (month/year) \_\_\_\_\_ and end on the last day of December \_\_\_\_\_ and shall continue thereafter for additional Terms of one (1) year each unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "Contract Year") upon thirty (30) days advance written notice to the other party.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<small>(Name of Corporation, Partnership, or Individual Owner)</small>	<small>(Street Address)</small>
<b><u>TRADE NAME</u></b>	<small>(City) (State) (Zip)</small>
<small>(Doing business under the name of)</small>	<small>(Telephone Number) (Fax Number)</small>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<small>(Contact Name) (Title)</small>
<input type="checkbox"/> Individual Ownership	<small>(Email Address) (Web Address)</small>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<small>(State of Incorporation, if different from Licensed Premises)</small>	
<small>(Enter names of partners)</small>	
<input type="checkbox"/> Other _____	<small>(Street Address)</small>
Federal Tax ID No. _____	<small>(City) (State) (Zip)</small>
<b><u>GOVERNMENT ENTITIES</u></b> <small>(if applicable, please check one)</small>	<small>(Telephone Number) (Fax Number)</small>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<small>(Contact Name) (Title)</small>
<small>(State)</small>	<small>(Email Address – if different from above)</small>
<input type="checkbox"/> Local _____	
<small>(Municipality/City and State)</small>	

<p style="text-align:center;"><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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.</p> <p style="text-align:center;"><b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b></p>	<p style="text-align:center;"><b>FOR ADMINISTRATIVE USE ONLY</b> <b>TO BE COMPLETED BY BMI</b> <b>BROADCAST MUSIC INC.</b></p>						
Signature							
Print Name / Title							
Signatory Email Address* <small>(if different from above)</small>							
<p><b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b></p>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; text-align:center;"><b>FOR BMI USE ONLY</b></td> <td style="width:20%; text-align:center;"><b>VEN1</b></td> <td style="width:30%; text-align:center;"><b>LI-2017/JULY</b></td> </tr> <tr> <td style="height: 30px;"></td> <td style="height: 30px;"></td> <td style="text-align:center;"><b>EFFECTIVE:</b> <b>January 2017</b></td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>VEN1</b>	<b>LI-2017/JULY</b>			<b>EFFECTIVE:</b> <b>January 2017</b>
<b>FOR BMI USE ONLY</b>	<b>VEN1</b>	<b>LI-2017/JULY</b>					
		<b>EFFECTIVE:</b> <b>January 2017</b>					

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

<b>ACCOUNT NO.</b>	<b>COID</b>	
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\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.





# Music License for Video Music Service

## 1. DEFINITIONS

- (a) **LICENSEE** is the entity identified on Page 4 which is engaged in the business of operating a subscription Video Music Service which it offers to subscribers pursuant to written agreements, and such subscribers operate individual places of entertainment, resort, residential common public areas, business, industry and/or others which are not under LICENSEE's direct or indirect ownership or control.
- (b) **Video Music Service** shall mean and be limited to non-dramatic performances of recorded music as part of music videos provided by LICENSEE on video tape, DVD or like medium to premises either by terrestrial delivery of such video tapes or by closed circuit satellite transmission.
- (c) **Music Video** shall mean a video tape, DVD or like medium produced by LICENSEE or according to LICENSEE's specifications and which may include advertising messages and information in addition to music ("advertisements").
- (d) **Serviced Premises** shall mean a premise which subscribes to LICENSEE's Video Music Service, either directly or indirectly. Serviced Premises shall not under any circumstances include:
  - (i) any premises where food and/or drink is provided and which is not self-service or which serves alcoholic beverages (including wine or beer);
  - (ii) any premises to which a direct or indirect admission fee is charged; or
  - (iii) any premises where the Video Music Service is offered as an accompaniment to dancing, aerobics or other similar physical exercise or entertainment.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE a non-exclusive license to perform publicly and to cause or permit to be performed publicly, by means of LICENSEE's Video Music Services at one or more Serviced Premises, all the separate musical compositions of which BMI shall, during the Term hereof, own or control the right to grant public performance licenses. LICENSEE's performances shall be audible only within the Serviced Premises supplied by LICENSEE. In no event shall this license extend to any other type of performances whatsoever or to any cable television system or cable radio system or to transmission by any radio or television station to a place other than on LICENSEE's Serviced Premises. Nothing contained herein shall be interpreted or construed as the consent of BMI to the performance of any musical composition except to LICENSEE's Serviced Premises. BMI shall not collect or demand separate license fees from LICENSEE's Serviced Premises for the providing by LICENSEE of Video Music Services which are licensed hereunder.
- (b) BMI reserves the right to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

## 3. INDEMNITY BY BMI

BMI agrees to indemnify, save harmless and defend LICENSEE, its officers and employees, and the proprietors of the Serviced Premises supplied by LICENSEE, 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 musical works licensed under this Agreement. Such indemnity shall be limited to musical works which are licensed by BMI at the time of LICENSEE's performances. Such indemnity shall not apply to performances at the Serviced Premises of LICENSEE after LICENSEE's receipt of written request by BMI (which request shall be made at the earliest practicable time) that the Serviced Premises refrain from such performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. LICENSEE agrees to give BMI immediate notice of any such claim, demand or suit, either against it or against any Serviced Premises supplied by it, to deliver to BMI any papers pertaining thereto, and to cooperate and to make a good-faith effort to cause the Serviced Premises to cooperate with respect thereto, and BMI shall have full charge of the defense of any such claim, demand or suit. LICENSEE, however, shall have the right to engage counsel, at its own expense, who may participate in the defense of any such action or proceeding and with whom counsel for BMI shall cooperate.

## 4. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues for thirty (30) days after the date of BMI's written notice to LICENSEE thereof. 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 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.

## 5. 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.

## 6. DISCONTINUANCE

In the event that LICENSEE ceases to provide its Video Music Service to a Serviced Premises for which it had been paying BMI a license fee hereunder, LICENSEE shall use its best efforts to promptly remove any of LICENSEE's program content materials to prevent unauthorized public performances of BMI-licensed music through use of LICENSEE's Video Music Service by said premises thereafter.

## 7. LATE PAYMENT CHARGE

BMI may impose a late payment charge of one and one-half percent (1<sup>1</sup>/<sub>2</sub>%) per month from the date any payment is due hereunder on any payment that is received by BMI more than one (1) month after the due date.

## 8. FEES

- (a) Subject to subparagraphs (b) and (c) below, LICENSEE agrees to pay BMI an annual license fee for each Serviced Premise(s) which receives Music Videos (with or without advertising) as follows: (i) for calendar year 2017, an annual license fee of \$91.95 per Serviced Premises; (ii) for each calendar year commencing 2018, the annual license fee per Serviced Premise(s) shall be the prior year's per Serviced Premise(s) fee adjusted for the percentage increase in the United States Consumer Price Index (Urban, All Items) between the preceding July and the July prior thereto.
- (b) Notwithstanding anything to the contrary in subparagraph (a) above, LICENSEE's annual license fee for 2017 shall not be less than the sum of \$4,137.51. For each subsequent calendar year commencing 2018, the annual minimum license fee shall be adjusted by the CPI, as described in subparagraph (a)(ii) above.
- (c) LICENSEE shall attach to this Agreement a list of locations identifying the legal name, trade name and address of each premises using the Video Music Service, whether or not the premises is a Serviced Premises. LICENSEE shall specify for each such premises the following:
  - (i) the Video Music Service is with or without advertisements;
  - (ii) food and/or drink is provided and, if so, which are not self-service or which serve alcoholic beverages (including wine or beer);
  - (iii) a direct or indirect admission fee is charged; or
  - (iv) the Video Music Service is offered as an accompaniment to dancing, aerobics or other similar physical exercise or entertainment.

## 9. REPORTING

- (a) LICENSEE shall submit to BMI a monthly report (on a form to be supplied by BMI) containing a list of all additions or deletions to its initial list in the same form and containing the same information as set forth in Paragraph 8(c) above. In addition, such monthly reports shall contain the dates on which the additions or deletions took place, the total number of Serviced Premises licensed during such month and the total fees due for such month.
- (b) Serviced Premises shall be added to the monthly reports if such premises become serviced by LICENSEE on or after the first day of such month but before the sixteenth day of the month, and shall be deleted if LICENSEE ceases servicing the premises between the sixteenth day of the month and the last day of the month. The full fee shall be paid for those premises added to the report on or before the fifteenth day or cancelled before the sixteenth day.
- (c) The monthly reports shall be submitted by the twentieth (20th) day of the month following the month for which the report is due, and LICENSEE shall pay, with each such monthly report, the license fee due for the month of the report.
- (d) LICENSEE agrees to provide BMI, at the same time that it pays license fees pursuant to Paragraph 8 hereof, with reports of musical compositions as follows:
  - (i) At such time as LICENSEE makes its first payment pursuant to this Agreement, LICENSEE shall provide BMI with an initial list of all records and tapes which were available to its Serviced Premises during the previous month, indicating such recordings/tapes by name and/or number, whichever methods are used by LICENSEE to identify such recordings. With respect to each such record and tape, LICENSEE shall list each musical composition contained thereon, giving the title of the composition and the writer and publisher to the extent indicated on the source material (record, tape, sheet music, etc.) of such work. Further monthly reports required hereunder shall be in the form of updates to said initial list by listing any record or tape added since the last list supplied to BMI, with title, writer and publisher information, as well as an indication of any recordings on a previous list which have been modified (such as compositions added or deleted) or discontinued. In the event that BMI makes a written request therefore, LICENSEE agrees to provide BMI with a copy of one of the recordings/tapes which LICENSEE then supplies as part of its Video Music Service, but LICENSEE need not provide a recording/tape to BMI more than once per month. However, if at any time during the Term, LICENSEE offers to its Serviced Premises a recording/tape which contains a new format in the way music is used on the recording/tape or in the way the recording/tape is produced, then LICENSEE shall provide a copy such newly formatted recording/tape to BMI within thirty (30) days of the date it is first offered to a Serviced Premises. Also, LICENSEE shall provide BMI with the average number of Serviced Premises which were supplied with each record or tape during the previous quarter.

## **10. REVIEW OF STATEMENTS AND/OR ACCOUNTINGS**

- (a) BMI shall have the right by its authorized representatives, at any time during customary business hours and upon no less than thirty (30) days' advance written notice, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify any and all statements rendered and accountings made hereunder. LICENSEE shall give BMI's auditor full access to all relevant records of LICENSEE, including names and addresses of, and any other pertinent information concerning, the subscribers of LICENSEE. BMI shall consider all data and information coming to its attention as the result of any such examination as confidential.
- (b) BMI shall not audit more than once in any twelve (12) month period unless an audit reveals a deficiency of more than ten percent (10%) between the amount paid by LICENSEE and the amount actually found to be due BMI for the audited period, in which case BMI may conduct an additional audit during the said twelve-month period.
- (c) If any audit conducted by BMI reveals a deficiency of more than ten percent (10%) between the amount paid by LICENSEE and the amount actually found to be due BMI for the audited period, LICENSEE shall pay, in addition to the sum additionally due, interest at the rate of one and one-half percent (1 1/2%) per month from the date the payment was due. If any such deficiency is more than twenty-five percent (25%), LICENSEE shall additionally pay a surcharge of fifteen percent (15%) of that total amount remaining due to BMI.
- (d) All information provided to BMI by LICENSEE pursuant to Paragraphs 4 and 5 shall be deemed confidential and BMI shall not disclose such information to any third party. LICENSEE shall mark all such submissions "CONFIDENTIAL."

## **11. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with license fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

## **12. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to the American Arbitration Association in the City, County and State of New York for arbitration under its then prevailing arbitration rules. The arbitrator(s) to be selected as follows: Each of the parties 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 in 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.

## **13. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

## **14. NOTICES**

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed duly given when sent by ordinary first-class U.S. mail to the party for whom it is intended, at its address hereinabove stated, or any other address which either party hereto may from time to time designate for such purpose, and when such notice is so mailed, it shall be deemed given upon the mailing thereof. Any such notice sent to BMI shall be to the person signing this Agreement on behalf of LICENSEE or such other person as LICENSEE may advise BMI in writing.

## **15. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, will not be binding until signed by both parties, and 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. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

## **16. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

## **17. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.



**18. TERM OF AGREEMENT**

The initial Term of this Agreement shall begin on the first day of (month/year) \_\_\_\_\_ and end on the last day of (month/year) \_\_\_\_\_ and shall continue thereafter for additional Terms of one (1) year each unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "Contract Year") upon thirty (30) days advance notice to the other party.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<small>(Name of Corporation, Partnership, or Individual Owner)</small>	<small>(Street Address)</small>
<b><u>TRADE NAME</u></b>	<small>(City) (State) (Zip)</small>
<small>(Doing business under the name of)</small>	<small>(Telephone Number) (Fax Number)</small>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<small>(Contact Name) (Title)</small>
<input type="checkbox"/> Individual Ownership	<small>(Email Address) (Web Address)</small>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<small>(State of Incorporation, if different from Licensed Premises)</small>	
<small>(Enter names of partners)</small>	
<input type="checkbox"/> Other	<small>(Street Address)</small>
Federal Tax ID No. _____	<small>(City) (State) (Zip)</small>
<b><u>GOVERNMENT ENTITIES</u></b> <small>(if applicable, please check one)</small>	<small>(Telephone Number) (Fax Number)</small>
<input type="checkbox"/> Federal <input type="checkbox"/> State	<small>(Contact Name) (Title)</small>
<small>(State)</small>	<small>(Email Address – if different from above)</small>
<input type="checkbox"/> Local	
<small>(Municipality/City and State)</small>	

<p><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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.</p> <p><b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b></p> <p><b>TO BE COMPLETED BY BMI</b></p> <p><b>BROADCAST MUSIC INC.</b></p>						
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EFFECTIVE: January 2017							
Print Name / Title							
Signatory Email Address* <small>(if different from above)</small>							
*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.							
<b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b>							
<b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b>							

ACCOUNT NO.	COID
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\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.



# Music License for YMCA

For Locations With Health and Wellness Facilities

## 1. DEFINITIONS

- (a) **LICENSEE** shall mean the legal entity identified on Page 4 herein which is a YMCA, a non-profit public charity.
- (b) **Licensed Premises** shall mean LICENSEE's YMCA location, which contains a health and wellness facility within the premises, identified on Page 4 herein, or, in the event of multiple locations, LICENSEE's YMCA locations identified on Schedule A which shall be attached hereto.
- (c) **Member** shall mean each paying customer with a membership to Licensed Premises.
- (d) **Group Fitness Classes** shall mean any fitness class held at Licensed Premises for groups of participants, including, but not limited to, classes in aerobics, hip-hop, kick boxing, spinning, and other similar group exercise classes.
- (e) **Recorded Music** shall mean the performance of background music, foreground music, or as part of audio-visual presentations, by mechanical or electronic means, including, but not limited to, CDs, DVDs, digital audio files (e.g., MP3, WAV), records and tapes.
- (f) **Live Music** shall mean music performed by musicians, singers or other entertainers actually present and performing at the Licensed Premises. For purposes of this Agreement, Live Music shall specifically exclude any music performed by musicians, singers or other entertainers present at Licensed Premises for which a separate fee is charged to hear the performers.
- (g) **Ambient Music** shall mean, for purposes of this Agreement, Recorded Music or Live Music, whether vocal or instrumental, used as an accompaniment to: (i) non-class fitness training, including, but not limited to, individual/non-class weight-lifting and individual/non-class use of exercise equipment, and (ii) conversation and relaxation. Ambient Music does not include music used in Group Fitness Classes.
- (h) **TV and Radio** shall mean, for purposes of this Agreement, commercial broadcast television and radio.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE a non-exclusive license to perform, present, or cause the public performance at the Licensed Premises of all musical works of which BMI shall have the right to grant public performance licenses during the Term. This license does not include: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein; (ii) the right to broadcast, cablecast, telecast or otherwise transmit (including by the Internet or on-line service) the performances licensed hereunder to persons outside of Licensed Premises; (iii) performances of music by means of a coin-operated phonorecord player (jukebox); or (iv) performances of music in commercial music services or commercial music video services at the Licensed Premises that are not part of Group Fitness Classes.
- (b) BMI reserves the right to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

## 3. INDEMNITY BY BMI

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 musical works licensed under this Agreement. Such indemnity shall be limited to musical works which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

## 4. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues for thirty (30) days after the date of BMI's written notice to LICENSEE thereof. 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 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.

## 5. CANCELLATION OF ENTIRE CATEGORY

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days' advance written notice.

**6. 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.

**7. TERMINATION OF AGREEMENT BY LICENSEE**

If LICENSEE shall permanently cease to operate the Licensed Premises, whether by reason of sale or lease thereof or otherwise, this Agreement and LICENSEE's obligation to BMI shall thereupon terminate, provided that: (i) LICENSEE shall, within ten (10) days of cessation of operation, give written notice of such termination to BMI, setting forth the effective date thereof and the name of the new owner or operator of the premises, and (ii) LICENSEE shall pay to BMI all license fees due hereunder until the effective date of cessation of operation. The license fee due BMI by LICENSEE through the effective date of termination shall be a proration of the license fee for the Contract Year of termination, but in no event shall the license fee be prorated to an amount less than the minimum annual fee, outlined in Paragraph 9(c) herein.

**8. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to the American Arbitration Association in the City, County and State of New York for arbitration under its then prevailing arbitration rules. The arbitrator(s) to be selected as follows: Each of the parties 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 in 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.

**9. FEES**

For each Contract Year during the Term of this Agreement, LICENSEE agrees to pay to BMI a license fee pursuant to the License Fee Schedule. LICENSEE warrants and represents that during the twelve-month period preceding the initial Term of this Agreement (or if Licensed Premises was not in operation during that full twelve-month period, LICENSEE shall make a good-faith estimate for the first Contract Year of this Agreement) LICENSEE's music use policy, highest number of Total Members and license fee are as follows:

**2017-2018 LICENSE FEE SCHEDULE**

For clarification, refer to Sub-paragraph 9(a) below

<u>Category</u> (choose only one)		<u>Music Use</u>	<u>Member Fee</u> (per member)
<input type="checkbox"/>	A	Group Fitness Classes	\$0.288
<input type="checkbox"/>	B	Ambient Music	\$0.201
<input type="checkbox"/>	C	TV and/or Radio <u>Only</u>	\$0.124

$$\frac{\text{(Category)}}{\text{(Total Members)}} \times \text{(Member Fee)} = \$ \text{(Total Annual License Fee*)}$$

\*Pursuant to Sub-paragraph 9(c), the total annual license fee per Licensed Premises shall not be less than \$321, shall not be greater than \$2,188 and should be rounded to the nearest penny.

NOTE: If Licensed Premises music use falls under more than one category, the higher per Member Fee shall apply.

(a) (i) **Group Fitness Classes** – If LICENSEE offers Group Fitness Classes at Licensed Premises which utilize Recorded Music or Live Music, either exclusively or in addition to performances of Ambient Music and/or performances of TV and/or Radio, LICENSEE shall pay a license fee for each Member pursuant to Category A of the License Fee Schedule.

(ii) **Ambient Music** – If LICENSEE does not utilize music in connection with Group Fitness Classes at Licensed Premises, but uses Recorded Music or Live Music at the Licensed Premises as Ambient Music, either exclusively or in addition to performances of TV and/or Radio, LICENSEE shall pay a license fee for each Member pursuant to Category B of the License Fee Schedule.

(iii) **TV and/or Radio** – If the performance of music at Licensed Premises is limited to performances via television(s) and radio(s) and LICENSEE does not offer Group Fitness Classes and does not use Ambient Music, LICENSEE shall pay a license fee for each Member pursuant to Category C of the License Fee Schedule.

- (b) The annual license fee for the first Contract Year, as calculated in Paragraph 9 herein, shall be payable upon the signing of this Agreement by LICENSEE.
- (c) Regardless of the calculated license fee, there is a minimum annual license fee per Licensed Premises for the 2017-2018 Contract Year of \$321 and a maximum annual license fee per Licensed Premises for the 2017-2018 Contract Year of \$2,188.
- (d) All license fees for Contract Years after the first Contract Year shall be an adjustment of the immediately preceding Contract Year's license fees based upon the percentage increase or decrease in the United States Consumer Price Index (All Urban Consumers—CPI-U) between the preceding September and the next preceding September. The per Member license fee for each Music Use Category, as identified in the License Fee Schedule, shall be rounded to the nearest tenth of a cent and the Minimum and Maximum annual license fees shall be rounded to the nearest dollar. BMI will advise LICENSEE in writing of the license fee rates for each subsequent Contract Year.
- (e) License fee payments for subsequent Contract Years shall be based upon the highest number of Members at Licensed Premises at anytime during the preceding Contract Year and shall be paid to BMI no later than ten (10) days following the beginning of each such Contract Year.
- (f) BMI shall discount the annual license fee by 5% in any Contract Year if: (i) the annual license fee is paid in full and in a timely manner for such Contract Year in accordance with Sub-paragraph 9(e) above and (ii) LICENSEE does not otherwise owe BMI any fees under this or any prior BMI agreement.

#### **10. REPORTING**

- (a) At the same time that LICENSEE pays its license fee for the second and subsequent Contract Years, LICENSEE shall submit a report, on a form available from BMI, certified by LICENSEE or by the auditor of LICENSEE, indicating the highest number of Members, as well as the music uses at Licensed Premises, in the preceding Contract Year.
- (b) In the event that LICENSEE fails to submit a report pursuant to Sub-paragraph 10 (a) and BMI subsequently is made aware of the change in music use at Licensed Premises such that a change in License Fee Category is appropriate, BMI shall have the option, in lieu of its right to cancel the Agreement, to notify LICENSEE in writing by certified mail of its knowledge of such change and to adjust LICENSEE's license fee for the then current Contract Year in accordance with this Paragraph as if LICENSEE had reported such change for the previous Contract Year. LICENSEE shall have thirty (30) days from the date of BMI's notice to submit the missing report. If such report is not received by BMI by the end of the said thirty (30) day period, LICENSEE agrees to waive its right to submit such past due reports thereafter and authorizes BMI to deem the adjusted fee accurate.

#### **11. REVIEW OF STATEMENTS AND/OR ACCOUNTINGS**

BMI shall have the right, upon reasonable notice to LICENSEE, by its authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE, but limited to such extent as may be necessary to verify any and all statements and reports rendered and accountings made hereunder or under any prior agreement with BMI. BMI shall consider all data and information coming to its attention as the result of any such examination of books and records as confidential.

#### **12. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one-half percent (1½%) per month from the date any payment is due hereunder on any payment that is received by BMI more than one (1) month after the due date.

#### **13. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with license fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

#### **14. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

#### **15. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

#### **16. 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 herein 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.

#### **17. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, will not be binding until signed by both parties, and 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. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**18. TERM OF AGREEMENT**

The initial Term of this Agreement shall begin on the first day of (month/year)\_\_\_\_\_ and end on the last day of (month/year)\_\_\_\_\_ and shall continue thereafter for additional Terms of one (1) year each unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "Contract Year") upon thirty (30) days advance notice to the other party.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<small>(Name of Corporation, Partnership, or Individual Owner)</small>	<small>(Street Address)</small>
<b><u>TRADE NAME</u></b>	<small>(City) (State) (Zip)</small>
<small>(Doing business under the name of)</small>	<small>(Telephone Number) (Fax Number)</small>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<small>(Contact Name) (Title)</small>
<input type="checkbox"/> Individual Ownership	<small>(Email Address) (Web Address)</small>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<small>(State of Incorporation, if different from Licensed Premises)</small>	
<small>(Enter names of partners)</small>	
<input type="checkbox"/> Other	<small>(Street Address)</small>
Federal Tax ID No. _____	<small>(City) (State) (Zip)</small>
<b><u>GOVERNMENT ENTITIES</u></b> <small>(if applicable, please check one)</small>	<small>(Telephone Number) (Fax Number)</small>
<input type="checkbox"/> Federal <input type="checkbox"/> State	<small>(Contact Name) (Title)</small>
<small>(State)</small>	<small>(Email Address – if different from above)</small>
<input type="checkbox"/> Local	
<small>(Municipality/City and State)</small>	

<b>TO BE COMPLETED BY LICENSEE</b> 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. <b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b>	<b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b>		
Signature			
Print Name / Title			
Signatory Email Address* <small>(if different from above)</small>			
<small>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</small>	<b>FOR BMI USE ONLY</b>	<b>YMCA1</b>	<b>LI-2017/JULY</b>
<b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b> <b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b>	<small>ACCOUNT NO.</small>	<small>COID</small>	<b>EFFECTIVE: August 2017</b>



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# Music License for Zoo/Aquarium

## 1. DEFINITIONS

- (a) **LICENSEE** shall mean the entity identified on Page 4 herein that owns and/or operates the Licensed Premises.
- (b) **Licensed Premises** shall mean LICENSEE's zoo or aquarium location identified on Page 4 herein, or, in the event of multiple locations, LICENSEE's zoo or aquarium locations identified on Schedule A, which shall be attached hereto by LICENSEE.
- (c) **Attendee(s)** shall mean any person who enters the Licensed Premises, whether or not any admission charge, registration fee, membership fee, or other payment is required to be made in connection with the entrance, but shall not include employees working at the Licensed Premises, including, but not limited to, personnel, administrative staff, service contractors, medical professionals, temporary personnel, credentialed members of the press, performers or musicians.
- (d) **Ambient Music** shall mean music performed by mechanical or electronic means, including, but not limited to, CDs, DVDs, digital audio files (e.g., MP3, WAV), records, and tapes performed as background music, foreground music, or as part of audio-visual presentations.
- (e) **Live Music** shall include performances of live music by singers or musicians, as well as performances of recorded music by a disc jockey, video jockey or other similar hosts or emcees.
- (f) **Live Music Entertainment Costs** shall mean all direct and indirect expenditures paid by LICENSEE, or on LICENSEE's behalf, for all entertainment utilizing Live Music in connection with LICENSEE's activities at the Licensed Premises. The term "Entertainment Costs" shall not include normal stage props and equipment unless the entity or person rendering or presenting entertainment services specifically requires specialized stage props and equipment. If any regularly or temporarily employed staff member of LICENSEE performs as part of an act containing Live Music entertainment in addition to performing other duties, that is part of employees base wages (inclusive of overtime, if any) which equals the proportion of his or her time spent performing Live Music and entertainment services shall be included in Entertainment Costs. The term "Entertainment Costs" shall include the value of any accommodations or services (including without limitation, room and board) which are made available to any entity, person rendering, or presenting entertainment activities as part of the consideration for such entertainment services. For purposes of this Agreement, the value of such accommodations or services shall be deemed to be one-half (1/2) of the prevailing rate charged to guests for similar accommodations or services at the facility where the person or entity is being accommodated and/or served.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE a non-exclusive license to perform, present, or cause the public performance at the Licensed Premises of all musical works of which BMI shall have the right to grant public performance licenses during the Term. This license does not include: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein; (ii) the right to broadcast, cablecast, telecast or otherwise transmit (including by the Internet or on-line service) the performances licensed hereunder to persons outside of Licensed Premises; or (iii) performances of music by means of a coin-operated phonorecord player (jukebox).
- (b) BMI reserves the right to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

## 3. INDEMNITY BY BMI

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 musical works licensed under this Agreement. Such indemnity shall be limited to musical works, which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

## 4. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues for thirty (30) days after the date of BMI's written notice to LICENSEE thereof. 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 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.

## 5. CANCELLATION OF ENTIRE CATEGORY

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days' advance written notice.

## 6. 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.

## **7. TERMINATION OF AGREEMENT BY LICENSEE**

If LICENSEE shall permanently cease to operate the Licensed Premises, whether by reason of sale or lease thereof or otherwise, this Agreement and LICENSEE's obligation to BMI shall thereupon terminate, provided that: (i) LICENSEE shall, within ten (10) days of cessation of operation, give written notice of such termination to BMI, setting forth the effective date thereof and the name of the new owner or operator of the premises, and (ii) LICENSEE shall pay to BMI all license fees due hereunder until the effective date of cessation of operation. The license fee due BMI by LICENSEE through the effective date of termination shall be a pro-ration of the license fee for the Contract Year of termination, but in no event shall the license fee be prorated to an amount less than the minimum annual fee, outlined in Paragraph 16(d) herein.

## **8. CHANGES TO YOUR MUSIC USE POLICY**

- (a) **Changes to Ambient Music** - Pursuant to Paragraph 16 herein, LICENSEE pays license fees to BMI for the use of Ambient Music at Licensed Premises. LICENSEE may change its Ambient Music Use Policy, either by introducing the public performance of Ambient Music at Licensed Premises or by temporarily or permanently discontinuing the public performance of Ambient Music at Licensed Premises, prospectively at any time during the Term on thirty (30) days' advance written notice to BMI. LICENSEE may change its Ambient Music Use Policy no more than three (3) times in any Contract Year. LICENSEE shall call its Customer Relations Executive at 1-877-264-2137 to notify BMI of a change in its Ambient Music Use Policy, however all such changes by LICENSEE, to be effective, must be made to BMI in writing within thirty (30) days of such change. Upon receipt of written notification, BMI will adjust LICENSEE's fees pro rata from the date of the change in Ambient Music Use Policy. If such notice is received more than thirty (30) days after the change, such change will be effective commencing on the first of the month following the date of BMI's receipt of the notice and BMI will adjust LICENSEE's fees, or issue a pro rata credit for any unearned license fees paid in advance, prospectively for the remainder of the Contract Year in which BMI received the notice. Provided, however, that LICENSEE's license fee adjustment hereunder shall not reduce LICENSEE's annual fee due BMI below the annual minimum fee applicable under the Agreement.
- (b) **Changes to Live Music** - Pursuant to Paragraph 16 herein, LICENSEE pays license fees to BMI for the public performances of Live Music at Licensed Premises. The license fee for such performance of Live Music is based upon LICENSEE's Live Music Entertainment Costs in the preceding year. As such, changes to LICENSEE's current Live Music policy will be reflected in the Live Music Entertainment Costs reported to BMI pursuant to Paragraph 16 herein. As such, there is no pro-ration of LICENSEE's license fee for changes to LICENSEE's Live Music Use Policy.
- (c) BMI may from time to time review LICENSEE's Music Use Policy (including any changes made to its policy) and make inquiries in person or by phone as to its accuracy. If BMI thereafter believes that LICENSEE has not accurately represented its Music Use Policy to BMI, BMI will notify LICENSEE by mail. If LICENSEE agrees to BMI's assessment of its Music Use Policy, the change will be reflected on LICENSEE's next billing. If LICENSEE disputes BMI's assessment of its Music Use Policy, LICENSEE must notify BMI within thirty (30) days of the notification by BMI. If within ninety (90) days of such notification by BMI, LICENSEE does not respond or LICENSEE and BMI cannot agree upon an appropriate fee, either party may commence an arbitration proceeding pursuant to Paragraph 9 herein to resolve the dispute over the amount of LICENSEE's license fees. Such right shall be in addition to any and all other remedies BMI may have under the Agreement, including the right to cancel this Agreement. LICENSEE may not change its Music Use Policy under sub-paragraph (a) above, if LICENSEE's fee is subject to dispute hereunder.
- (d) In the event of a discontinuance of both Ambient and Live Music at Licensed Premises, this Agreement shall continue in effect, except that no minimum or other fee shall be payable during the period of discontinuance. In such event, LICENSEE agrees to notify BMI of such discontinuance in accordance with the notice provisions outlined in sub-paragraph 8(a) herein. Thereafter, LICENSEE shall notify BMI promptly when LICENSEE resumes the use of music at the Licensed Premises and LICENSEE's Ambient Music Use Policy, which is in effect at the time of discontinuance, will continue to be applicable until LICENSEE notifies BMI of a change.

## **9. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to the American Arbitration Association in the City, County and State of New York for arbitration under its then prevailing arbitration rules. The arbitrator(s) to be selected as follows: Each of the parties 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 in 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.

## **10. REVIEW OF STATEMENTS AND/OR ACCOUNTINGS**

BMI shall have the right, by its authorized representatives, upon reasonable notice to LICENSEE, at any time during customary business hours, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify any and all statements and reports rendered and accountings made hereunder or under any prior agreement with BMI. BMI shall consider all data and information coming to its attention as the result of any such examination of books and records as confidential.

## **11. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one-half percent (1½%) per month from the date any payment is due hereunder on any payment that is received by BMI more than one (1) month after the due date.

## **12. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full

amount of such tax together with license fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

**13. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

**14. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

**15. NOTICES**

Except as otherwise provided for in Paragraph 8(c) herein, 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 herein 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.

**16. FEES AND REPORTING**

(a) In consideration of the license granted herein, LICENSEE agrees to pay to BMI an annual license fee for each Contract Year of this Agreement. The annual license fee for Ambient Music shall be computed based on LICENSEE's annual Attendance (total number of Attendees) for the previous Contract Year (Category 1). The annual license fee for Live Music shall be computed as a percentage of LICENSEE's Live Music Entertainment Costs for the previous Contract Year (Category 2). The annual license fee for the 2017-2018 Contract Year is as follows:

**2017 – 2018 LICENSE FEE SCHEDULE**

<b>Category 1</b>		<b>Category 2</b>	
<b>Ambient Music Fee</b> (see Paragraph 1(d) for definition)		<b>Live Music Entertainment Costs Fee</b> (see Paragraph 1(f) for definition)	
<b>\$.0067</b>		<b>1.36%</b>	
(1)	_____ X _____	<b>.0067</b>	= \$ _____
	LICENSEE's 2017-2018 Attendance	License Fee Rate (Category 1)	Ambient Music License Fee
(2)	_____ X _____	<b>.0136</b>	= \$ _____
	LICENSEE's 2017-2018 Live Music Entertainment Costs	License Fee Rate (Category 2)	Live Music Entertainment License Fee
<b>Total License Fee:</b>			\$ _____
<b>(add lines 1 and 2)*</b>			

\*In no event shall the per Licensed Premises annual license fee for any Contract Year be less than the minimum fee as outlined in Paragraph 16(d).

- (b) The annual license fee for the first Contract Year shall be payable in full no later than thirty (30) days after the execution of this Agreement. The annual license fee for each subsequent Contract Year shall be based on LICENSEE's actual Attendance and Live Music Entertainment Costs for the previous Contract Year. LICENSEE shall report actual Attendance and Live Music Entertainment Costs for the previous Contract Year and shall submit the license fee payment for the forthcoming Contract Year no later than twenty (20) days after the commencement of the current Contract Year.
- (c) For each subsequent Contract Year, the annual license fee rates shall be an adjustment of the previous Contract Year rates based upon the percentage increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding February and the next preceding February. The Category 1 fee shall be rounded to the nearest hundredth of a cent and the Category 2 fee shall be rounded to the nearest hundredth of a percent.
- (d) In no event shall the per Licensed Premises annual license fee for any Contract Year be less than the minimum fee for the applicable year. The minimum annual license fee for the 2017-2018 Contract Year is \$353 and shall be adjusted in subsequent Contract Years by the CPI-U, as explained in Paragraph 16(c), and shall be rounded to the nearest dollar.

**17. MUSIC USE REPORTING**

For each Contract Year, with thirty (30) days' advanced written notice from BMI, LICENSEE shall provide to BMI a music use report. Such music use report shall identify each musical composition performed at Licensed Premises, whether by live or recorded means, by title and artist. BMI may request music use reports from LICENSEE for no more than three (3) days in any Contract Year.

**18. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, will not be binding until signed by both parties, and 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. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.



**19. TERM OF AGREEMENT**

The initial Term of this Agreement shall begin on the first day of (month/year) \_\_\_\_\_ and end on the last day of (month/year) \_\_\_\_\_ and shall continue thereafter for additional Terms of one (1) year each unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "Contract Year") upon thirty (30) days' advance notice to the other party.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<small>(Name of Corporation, Partnership, or Individual Owner)</small>	<small>(Street Address)</small>
<b><u>TRADE NAME</u></b>	<small>(City) (State) (Zip)</small>
<small>(Doing business under the name of)</small>	<small>(Telephone Number) (Fax Number)</small>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<small>(Contact Name) (Title)</small>
<input type="checkbox"/> Individual Ownership	<small>(Email Address) (Web Address)</small>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<small>(State of Incorporation, if different from Licensed Premises)</small> <small>(Enter names of partners)</small>	
<input type="checkbox"/> Other _____	<small>(Street Address)</small>
Federal Tax ID No. _____	<small>(City) (State) (Zip)</small>
<b><u>GOVERNMENT ENTITIES</u></b> <small>(if applicable, please check one)</small>	<small>(Telephone Number) (Fax Number)</small>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<small>(Contact Name) (Title)</small>
<small>(State)</small>	<small>(Email Address- if different from above)</small>
<input type="checkbox"/> Local _____	
<small>(Municipality/City and State)</small>	

<b>TO BE COMPLETED BY LICENSEE</b> 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. <b>(SIGN HERE - PLEASE INCLUDE PAYMENT)</b>	<b>FOR ADMINISTRATIVE USE ONLY</b> <b>TO BE COMPLETED BY BMI</b> <b>BROADCAST MUSIC INC.</b>		
Signature			
Print Name / Title			
Signatory Email Address* <small>(if different from above)</small>			
<small>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory</small>	<b>FOR BMI USE ONLY</b>	<b>ZOO1</b>	<b>LI-2017/JULY</b>
<b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b> <b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b>	<small>ACCOUNT NO.</small>	<small>COID</small>	<b>EFFECTIVE:</b> <b>April 2017</b>

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

® BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.





# Music License for Adult Entertainment Establishments

## 1. DEFINITIONS

- (a) **LICENSEE** shall mean the entity identified on Page 4 herein that owns and/or operates the Licensed Premises.
- (b) **Licensed Premises** shall mean the Adult Entertainment Establishment which is owned or operated by LICENSEE and which is identified on Page 4 herein, or, in the event of multiple locations, the Adult Entertainment Establishments identified on Schedule A which shall be attached hereto by LICENSEE.
- (c) **Adult Entertainment Establishment** shall mean an establishment that provides adult entertainment such as, but not limited to, striptease, erotic, nude or semi-nude performances, and includes, but is not limited to, burlesque houses, gentlemen's clubs, strip clubs, go-go bars and similar establishments.
- (d) **Jukebox** is a machine or device that (i) is employed solely for the performance of non-dramatic musical works by means of records, compact discs, mp3 files or other digital audio or video means upon being activated by insertion of coins, currency, tokens, or other monetary units or their equivalent; (ii) is located in an establishment making no direct or indirect charge for admission at the time of performance; (iii) is accompanied by a list which is comprised of the titles of all of the musical works available for performance on it, and is affixed to or otherwise appears on the phonorecord player, or is posted in the establishment in a prominent position where it can be readily examined by the public at the time of performance; and (iv) affords a choice of works available for performance and permits the choice to be made by the patrons of the establishment in which it is located at the time of performance (as distinguished from the establishment's employees or performers).
- (e) **Outside Ticket Services** shall mean third-party services, such as, but not limited to, Ticketmaster, Ticketweb and Ticketron which distribute tickets to the public for events at the Licensed Premises.
- (f) **Occupancy** shall mean the total maximum allowable occupancy loads/capacities for the entire premises of the Licensed Premises calculated under adopted building/fire codes, which shall not be limited to the number of available seats. If no such regulations are in effect in the applicable jurisdiction, then maximum occupancy shall be calculated as one (1) person for every twenty (20) square feet of the total Licensed Premises.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE a non-exclusive license to perform, present, or cause the public performance at the Licensed Premises of all musical works of which BMI shall have the right to grant public performance licenses during the Term. This license does not include: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein; or (ii) the right to broadcast, cablecast, telecast or otherwise transmit (including by the Internet or on-line service) the performances licensed hereunder to persons outside of Licensed Premises, other than by means of a music-on-hold telephone system operated by LICENSEE at the Licensed Premises.
- (b) This license does not authorize live concert performances at the Licensed Premises when tickets for such live concert performances can be purchased from or through Outside Ticket Services.
- (c) This license does not authorize performances occurring outside the Licensed Premises, including, but not limited to, conventions, trade shows and third-party events.
- (d) This license does not authorize performances at the Licensed Premises by means of a Jukebox that is licensed by the Jukebox License Office ("JLO") or via another BMI license. For the avoidance of doubt, neither the JLO license nor such other BMI license would authorize performances by means of a Jukebox that is activated by dancers or by LICENSEE's employees. In the event of Jukebox activation by LICENSEE's dancers or employees, this Adult Entertainment Establishment license would be necessary to authorize such performances.
- (e) BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

## 3. LATE PAYMENT CHARGE

BMI may impose a late payment charge of one and one-half percent (1½%) per month or the maximum rate permitted by law, whichever is less, from the date any payment is due hereunder on any payment that is received by BMI more than one (1) month after the due date. BMI shall impose a \$25.00 service charge for each unpaid check, draft or other means of payment LICENSEE submits to BMI.

## 4. INDEMNITY BY BMI

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 musical works licensed under this Agreement. Such indemnity shall be limited to musical works which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition

requested to be identified. 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, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues for thirty (30) days after the date of BMI's written notice to LICENSEE thereof. 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 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.

**6. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to the American Arbitration Association in the City, County and State of New York for arbitration under its then prevailing arbitration rules. The arbitrator(s) to be selected as follows: Each of the parties 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 in 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.

**7. FEES**

(a) In consideration of the license granted herein, LICENSEE agrees to pay BMI an Annual License Fee which is based on the Occupancy of Licensed Premises and is calculated as set forth in the License Fee Schedule below. In the event, that LICENSEE operates multiple Licensed Premises, LICENSEE shall submit to BMI annually a Schedule A, as described in Paragraph 1(b) which lists the address of each Licensed Premises and the Occupancy of each.

<b>2017 – 2018 LICENSE FEE SCHEDULE</b>	
<b>Fee Per Occupant</b>	<b>Minimum Annual License Fee</b>
<b>\$12.35</b>	<b>\$946</b>
$\frac{\text{Occupancy (as defined in Paragraph 1(f))}}{\text{Total Annual Fee (If less than \$946, enter \$946)}} = \frac{\$12.35}{\text{Total Annual Fee}}$	
<p><b>If Occupancy cannot be established by local building/fire codes, use formula below:</b></p> $\frac{\text{Total Square Footage (entire Licensed Premises)}}{\text{Occupancy (as defined in Paragraph 1(f))}} = \frac{\text{Total Square Footage}}{20}$	

- (b) LICENSEE shall pay the Annual License Fee for the initial Contract Year upon execution of this Agreement. The license fee payment for subsequent Contract Years shall be due no later than thirty (30) days after the anniversary date of this Agreement.
- (c) If LICENSEE does not otherwise owe BMI any fees under this or any other BMI agreement, LICENSEE shall receive a 5% discount for any Contract Year in which LICENSEE's Annual License Fee is paid in full and in a timely manner in accordance with subparagraph (b) above (the "Timely Pay Discount"). LICENSEE shall receive an additional 5% discount for the initial Contract Year if LICENSEE completes the licensing process online and pays the Annual License Fee online at [www.bmi.com](http://www.bmi.com) (the "Online Payment Discount"). The 5% Online Payment Discount shall continue for each subsequent Contract Year for which LICENSEE pays its Annual License Fee online.
- (d) For each subsequent Contract Year, the Fee Per Occupant and the Minimum Annual License Fee shall be an adjustment of the previous Contract Year rates based upon any percentage increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding February and the next preceding February. The Fee Per Occupant shall be rounded to the nearest five cents, and the Minimum Annual License Fee shall be rounded to the nearest dollar. BMI will advise LICENSEE in writing of the adjusted Per Occupant Fee and Minimum Annual License Fee as part of its annual billing process.
- (e) In no event shall the Licensed Premise's Annual License Fee for any Contract Year be less than the Minimum Annual License Fee for that Contract Year. The Minimum Annual License Fee for the 2017–2018 Contract Year is \$946 and shall be adjusted in subsequent Contract Years by the CPI-U, as explained in subsection (d) above.
- (f) Occupancy is subject to adjustment prospectively under this Agreement by either LICENSEE or BMI. LICENSEE may notify BMI of a change in Occupancy at any time during the Term by calling a Customer Relations Executive at 1-800-925-8451 to notify BMI of a change in Occupancy, and the change will be reflected in LICENSEE's next billing by BMI; however, doing so will not preserve LICENSEE's right to dispute BMI billings unless LICENSEE sends BMI timely notice of an Occupancy change in writing along with appropriate documentation issued by local building/fire authority substantiating such change. Billings adjusted by BMI hereunder

will include a *pro rata* credit for any unearned license fees paid in advance. LICENSEE also agrees that any changes made to Occupancy hereunder shall constitute a true and accurate representation prospectively from the date of the change. Any changes in Occupancy are subject to verification by any and all reasonable means which may include, but shall not be limited to, independent contacts by BMI representatives with LICENSEE's business establishment, use of public records, advertisements and third party observations. From time to time BMI may review Occupancy. If BMI thereafter believes that LICENSEE is not paying proper license fees because the Occupancy would result in higher license fees, BMI will notify LICENSEE by mail. If LICENSEE agrees to BMI's assessment of Occupancy, the change will be reflected in the next billing. If LICENSEE disputes BMI's revised Occupancy, LICENSEE must notify BMI within thirty (30) days of the notification by BMI. If within ninety (90) days of such notification by BMI, LICENSEE does not respond or LICENSEE and BMI cannot agree upon an appropriate Occupancy, either party may commence an arbitration proceeding pursuant to Paragraph 6 to resolve the dispute over the amount of license fees. Such right shall be in addition to any and all other remedies BMI may have under the Agreement, including the right to cancel this Agreement.

#### **8. SALE OF LICENSED PREMISES OR CLOSING OF BUSINESS**

In the event that LICENSEE sells the Licensed Premises or closes the business during the Term of this Agreement, and LICENSEE sends BMI written notice by certified mail, by generally recognized same-day or overnight delivery service with receipt signature required, or via email to [licensing@bmi.com](mailto:licensing@bmi.com) within thirty (30) days of the sale or closing, BMI will adjust LICENSEE's fees *pro rata* from the date of sale or closing, and will refund to LICENSEE any unearned licensed fees paid hereunder. Any *pro rata* credit adjustment made hereunder shall not reduce LICENSEE's Annual License Fee below the Minimum Annual License Fee applicable under the Agreement.

#### **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. CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

#### **11. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with license fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

#### **12. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

#### **13. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

#### **14. CUSTOMER OUTREACH**

LICENSEE agrees to accept from time to time pre-recorded telephone messages from BMI that may contain information regarding your account.

#### **15. NOTICES**

Unless otherwise stated herein, 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 herein 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 designate to BMI in writing.

#### **16. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, will not be binding until signed by both parties, and 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. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**17. TERM OF AGREEMENT**

The initial Term of this Agreement shall begin on the first day of (month/year) \_\_\_\_\_ and end on the last day of (month/year) \_\_\_\_\_ and shall continue thereafter for additional Terms of one (1) year each unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "Contract Year") upon thirty (30) days advance written notice to the other party.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b><u>TRADE NAME</u></b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address) (Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<i>(State of Incorporation, if different from Licensed Premises)</i> <i>(Enter names of partners)</i>	
<input type="checkbox"/> Other _____	<i>(Street Address)</i>
Federal Tax ID No. _____	<i>(City) (State) (Zip)</i>
<b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i>	<i>(Telephone Number) (Fax Number)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<i>(Contact Name) (Title)</i>
<i>(State)</i>	<i>(Email Address- if different from above)</i>
<input type="checkbox"/> Local _____	
<i>(Municipality/City and State)</i>	

<b>TO BE COMPLETED BY LICENSEE</b> 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. <b>(SIGN HERE – PLEASE INCLUDE PAYMENT)</b>	<b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b>		
Signature			
Print Name / Title			
Signatory Email Address* <i>(if different from above)</i>			
<b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory</b>	<b>FOR BMI USE ONLY</b>	<b>ACL1</b>	<b>LI-2017/JULY</b>
<b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b>	ACCOUNT NO.	COID	<b>EFFECTIVE: August 2017</b>
<b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b>			



**Music License for  
INTERNATIONAL COUNCIL of AIR SHOWS  
MEMBER AIR SHOWS**

**1. DEFINITIONS**

- (a) "LICENSEE" shall mean the International Council of Air Shows member described herein.
- (b) "Licensed Premises" shall mean the following Air Show owned, operated or promoted by LICENSEE (if there are several Air Shows owned, operated or promoted by LICENSEE attach an additional sheet as Schedule A listing the name, location and dates of each Air Show.) :

**Name:** \_\_\_\_\_

**Location:** \_\_\_\_\_ **Dates:** \_\_\_\_\_

**2. BMI GRANT**

- (a) BMI hereby grants to LICENSEE a non-exclusive license to perform, present, or cause the public performance at the LICENSED PREMISES of all musical works of which BMI shall have the right to grant public performance licenses, at the time of the performance, during the Term hereof. This license does not include: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein; (ii) the right to broadcast, cablecast, telecast or otherwise transmit the performances licensed hereunder to persons outside of the premises including by satellite, the Internet or on-line service; or (iii) performances of music by means of a coin-operated phonorecord player (jukebox); (iv) performances of music in or as part of a concert, musical attraction or other activity or event for which a separate admission fee, or similar charge is made to attend.
- (b) BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

**3. TERM OF AGREEMENT**

The initial Term of this annual Agreement shall begin on January 1, 2017 and end on December 31, 2017 and shall continue thereafter unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "contract year") upon thirty (30) days advance written notice to the other party.

**4. FEES AND PAYMENT**

LICENSEE agrees to pay to BMI for each contract year during the Term of this Agreement a license fee which shall be the Daily Air Show Fee multiplied by the number of days on which the Air Show will occur as follows:

- (a) The Daily Air Show Fee for calendar year 2017 shall be \$191.00.
- (b) LICENSEE hereby warrants that in calendar year 2017 it's Air Show will occur on a total of \_\_\_\_\_ number of days.
- (c) The annual fee for 2017 is \$191.00 X \_\_\_\_\_ number of days = \_\_\_\_\_ and shall be due upon execution of this Agreement.
- (d) The Daily Air Show Fee for subsequent calendar years of this Agreement shall be the Daily Air Show Fee for the prior calendar year adjusted in accordance with the percentage increase or decrease in the United States Consumer Price Index – All Urban Consumers (CPI-U) between the preceding July and the next preceding July, rounded to the nearest dollar. BMI will advise LICENSEE in writing of the amount of the Daily Air Show Fee by January 10<sup>th</sup> of the year to which the fee applies. License fees for each subsequent calendar year of this Agreement shall be payable on or before January 31 of each calendar year.
- (e) The annual fee is subject to adjustment based on any change in the number of days LICENSEE conducts Air Shows. Such change may be initiated:
  - by LICENSEE by submission in writing indicating the change and identifying the LICENSED PREMISES for which the change occurred, or
  - by BMI who will provide written notice to LICENSEE of the adjustment.

**(f) TERMINATION OF AGREEMENT**

If LICENSEE shall permanently cease to operate Air Shows, or shall no longer be a member of the International Council of Air Shows, this Agreement shall terminate.

**(g) LATE PAYMENT CHARGE**

BMI may impose a late payment charge of 1.5% per month from the date any payment is due hereunder on any payment that is received by BMI more than one (1) month after the due date and interest shall accrue thereafter from the date payment was due.

**(h) INDEMNITY BY BMI**

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 the works which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

**(i) CANCELLATION OF ENTIRE CATEGORY**

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

**(j) BREACH OR DEFAULT/WAIVER**

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues thirty (30) days after the date of BMI's written notice to LICENSEE thereof. 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 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.

**(k) ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement, not subject to the jurisdiction of the BMI Rate Court, shall be submitted to arbitration in the City, County and State of New York under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators to be selected as follows: Each of the parties 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 a 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 in any court having jurisdiction. Such award shall include the fixing of costs, expenses, and attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

**11. NOTICES**

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed given when sent by first-class U.S. mail to the party intended, at its mailing address herein stated, or any other address which either party hereto may designate. Any such notice sent to BMI shall be to the attention of the Vice President, Licensing Department, BMI, 10 Music Square East, Nashville, Tennessee 37203. Any such 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.

**12. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, shall not be binding until signed by both parties, and, except as provided for in Paragraph 4(e), 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. The rights of LICENSEE shall not be assignable. 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b><u>TRADE NAME</u></b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address) (Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<i>(State of Incorporation, if different from Licensed Premises)</i>	
<input type="checkbox"/> Other _____	<i>(Street Address)</i>
Federal Tax ID No. _____	<i>(City) (State) (Zip)</i>
<b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i>	<i>(Telephone Number) (Fax Number)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<i>(Contact Name) (Title)</i>
<i>(State)</i>	<i>(Email Address – if different from above)</i>
<input type="checkbox"/> Local _____	
<i>(Municipality/City and State)</i>	

<p><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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.</p> <p><b><i>(SIGN HERE – PLEASE INCLUDE PAYMENT)</i></b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b></p> <p><b>TO BE COMPLETED BY BMI</b></p> <p><b>BROADCAST MUSIC INC.</b></p>
Signature	
Print Name / Title	
Signatory Email Address* <i>(if different from above)</i>	
*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.	
<b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b>	
<b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b>	

<b>FOR BMI USE ONLY</b>	39ARSW	<b>LI-2016/AUG</b>
ACCOUNT NO.	COID	<b>EFFECTIVE:</b> January 2017



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# Music License for Aircraft Music Service Audio-Visual Programming Only

## 1. DEFINITIONS

- (a) **“Music Service”** shall mean the Audio-Visual Programming that LICENSEE provides to airline companies for public performance in Serviced Aircraft.
- (b) **“Audio-Visual Programming”** shall mean the audio-visual content supplied or leased to airline companies by LICENSEE as part of its Music Service to one or more airline companies (and in no other manner whatsoever) which is delivered by satellite, pre-recorded tapes or other forms of recordation capable of audio-visual performance for use only while Serviced Aircraft are in the air, while passengers are boarding and disembarking from Serviced Aircraft or while passengers are seated when Serviced Aircraft are on the ground.
- (c) **“Serviced Aircraft”** shall mean all aircrafts utilizing LICENSEE’s Audio-Visual Programming.
- (d) **“Seating Capacity”** of a Serviced Aircraft shall mean the total number of passenger seats available for sale.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE for the Term of this Agreement a non-exclusive license to perform publicly in Serviced Aircraft as part of its Audio-Visual Programming offered in connection with the Music Service (and in no other manner whatsoever) all of the musical works for which BMI controls the right to grant public performance licenses during the Term (the “Works”). This license extends to Audio-Visual Programming offered by LICENSEE as part of its Music Service to one or more airline companies while Serviced Aircraft are in the air and while passengers are boarding and disembarking from Serviced Aircraft or are seated when Serviced Aircraft are on the ground. This license shall only apply to domestic flights over and to and from the United States, its territories and possessions, and to international flights originating or terminating in the United States, its territories and possessions, to the extent that BMI may have the right to license such performances outside of the United States.
- (b) Notwithstanding anything to the contrary contained herein, this license shall not include or extend to: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the “grand rights” therein; (ii) performances associated with advertising or commercial announcements of any kind or nature, except only LICENSEE’s recordings which are utilized in the Music Service programming; (iii) performances of the Works within any airport terminal buildings. This license shall extend only to the right of public performance (in the manner provided herein) of the Works and shall not be construed as authorizing LICENSEE to mechanically reproduce such Works by any method or means now or hereafter known.
- (c) BMI reserves the right to withdraw from the license granted hereunder any Work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such Work or that such Work infringes another composition.

## 3. INDEMNITY BY BMI

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 musical works licensed under this Agreement. Such indemnity shall be limited to musical works which are licensed by BMI at the time of LICENSEE’s performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI’s repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

## 4. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues for thirty (30) days after the date of BMI’s written notice to LICENSEE thereof. 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 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.



**5. FEES**

(a) LICENSEE agrees to pay BMI for all of each airline companies' Serviced Aircraft utilizing LICENSEE's Audio-Visual Programming for each month of the Term hereof the applicable license fee(s) as set forth in the License Fee Schedule below:

**MONTHLY LICENSE FEE SCHEDULE PER SERVICED AIRCRAFT**

<b>Audio-Visual Programming ONLY</b>	
<b><u>Seats Per Aircraft</u></b>	<b><u>Fee Per Aircraft</u></b>
100 or less	\$12.26
101-200	\$16.06
201-300	\$24.08
300+	\$36.36

- (b) Subject to Subparagraph 5(a) and (d) and Paragraph 6, LICENSEE agrees to pay to BMI for each month of the Term an estimated license fee as an advance of the actual fee. Such monthly estimated license fee shall be based upon LICENSEE's prior month's number of Serviced Aircraft. The first license fee payment shall be made upon the signing of this Agreement. Each payment thereafter shall be made no later than twenty (20) days after the last day of the month for which the fee is due.
- (c) BMI and LICENSEE acknowledge and agree that no fees will be due for any Serviced Aircraft during any period exceeding one (1) month during which such Serviced Aircraft are not in revenue service (e.g. while such Serviced Aircraft are being repaired or serviced).
- (d) For each subsequent Contract Year of this Agreement, the license fees outlined in the License Fee Schedule in Paragraph 5(a) shall be adjusted in accordance with the increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding July and the next preceding July.

**6. REPORTING**

- (a) At the same time as the license fee payments required by Paragraph 5 hereof are due, LICENSEE shall submit to BMI a monthly report, on report forms to be provided by BMI, certified either by an officer or by the auditor of LICENSEE, calculating the license fees due. The report form may also contain any other information regarding the subject matter of this Agreement which BMI reasonably requires.
- (b) If, after processing the monthly report, the actual license fee due BMI is less than the estimated license fee already paid for such month, BMI will credit the difference to the account of LICENSEE.
- (c) If, after processing the monthly report, the actual license fee due BMI is greater than the estimated license fee already paid for such month, LICENSEE will pay the difference between the actual and estimated license fee within thirty (30) days of receipt of BMI's adjusted statement.

**7. MUSIC REPORTS**

At the same time that each report required by Paragraph 6 hereof is due, LICENSEE agrees to provide BMI with (a) a report (electronically, if possible) of all Works utilized in the Audio-Visual Programming during the month reported, setting forth the title and, to the extent known or reasonably available to LICENSEE, the writer(s) and publisher(s) of each such composition, and (b) a copy of the music program(s) utilized by LICENSEE for the month covered by such report.

**8. REVIEW OF STATEMENTS AND/OR ACCOUNTINGS**

BMI shall have the right, upon reasonable notice to LICENSEE, by its authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify any and all statements and reports rendered and accountings made hereunder or under any prior agreement with BMI. BMI shall consider all data and information coming to its attention as the result of any such examination of books and records as confidential.

**9. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

#### **10. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one-half percent (1½%) per month from the date any payment is due hereunder on any payment that is received by BMI more than one month after the due date.

#### **11. OFFER OF COMPARABLE AGREEMENT**

In the event that BMI, at any time during the Term hereof, 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.

#### **12. ARBITRATION**

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

#### **13. 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 herein 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.

#### **14. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

#### **15. COLORADO 3 BUSINESS DAY REVIEW**

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

#### **16. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, will not be binding until signed by both parties, and 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. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**17. TERM OF AGREEMENT**

The Term of this Agreement is for a period of three (3) years beginning on the first day of \_\_\_\_\_ and ending on the last day of \_\_\_\_\_ and shall be extended for additional periods of one (1) year each, unless canceled by either party as of the initial Contract Year or any additional Contract Year upon not less than sixty (60) days' notice prior to the end of any such Contract Year. A "Contract Year" shall mean each consecutive twelve-month period beginning with the first month of the Agreement.

**AGREEMENT**

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

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b><u>TRADE NAME</u></b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address) (Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<i>(State of Incorporation, if different from Licensed Premises)</i>	
<input type="checkbox"/> Other _____	<i>(Street Address)</i>
Federal Tax ID No. _____	<i>(City) (State) (Zip)</i>
<b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i>	<i>(Telephone Number) (Fax Number)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<i>(Contact Name) (Title)</i>
<i>(State)</i>	<i>(Email Address – if different from above)</i>
<input type="checkbox"/> Local _____	
<i>(Municipality/City and State)</i>	

<p><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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.</p> <p><b><i>(SIGN HERE – PLEASE INCLUDE PAYMENT)</i></b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b></p> <p><b>TO BE COMPLETED BY BMI</b></p> <p><b>BROADCAST MUSIC INC.</b></p>
Signature	
Print Name / Title	
Signatory Email Address* <i>(if different from above)</i>	

<p><b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b></p> <p><b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b></p> <p><b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b></p>	<p><b>FOR BMI USE ONLY</b></p> <p>ARCM-AV1</p>	<p><b>LI-2017/JULY</b></p>
ACCOUNT NO.	COID	EFFECTIVE: January 2017

\* BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.





# Music License for Aircraft Music Service

## 1. DEFINITIONS

- (a) **“Music Service”** shall mean the Music Programming and/or Audio-Visual Programming that LICENSEE provides to airline companies for public performance in Serviced Aircraft.
- (b) **“Music Programming”** shall mean the audio-only music content supplied or leased to airline companies by LICENSEE as part of its Music Service to one or more airline companies (and in no other manner whatsoever) which is delivered by satellite, pre-recorded tapes or other forms of recordation capable of audio performance for use only while Serviced Aircraft are in the air, while passengers are boarding and disembarking from Serviced Aircraft or while passengers are seated when Serviced Aircraft are on the ground.
- (c) **“Audio-Visual Programming”** shall mean the audio-visual content supplied or leased to airline companies by LICENSEE as part of its Music Service to one or more airline companies (and in no other manner whatsoever) which is delivered by satellite, pre-recorded tapes or other forms of recordation capable of audio-visual performance for use only while Serviced Aircraft are in the air, while passengers are boarding and disembarking from Serviced Aircraft or while passengers are seated when Serviced Aircraft are on the ground.
- (d) **“Serviced Aircraft”** shall mean all aircrafts utilizing LICENSEE’s Music Programming and/or Audio-Visual Programming.
- (e) **“Seating Capacity”** of a Serviced Aircraft shall mean the total number of passenger seats available for sale.

## 2. BMI GRANT

- (a) BMI hereby grants to LICENSEE for the Term of this Agreement a non-exclusive license to perform publicly in Serviced Aircraft as part of its Music Programming and/or Audio-Visual Programming offered in connection with the Music Service (and in no other manner whatsoever) all of the musical works for which BMI controls the right to grant public performance licenses during the Term (the “Works”). This license extends to Music Programming and/or Audio-Visual Programming offered by LICENSEE as part of its Music Service to one or more airline companies while Serviced Aircraft are in the air and while passengers are boarding and disembarking from Serviced Aircraft or are seated when Serviced Aircraft are on the ground. This license shall only apply to domestic flights over and to and from the United States, its territories and possessions, and to international flights originating or terminating in the United States, its territories and possessions, to the extent that BMI may have the right to license such performances outside of the United States.
- (b) Notwithstanding anything to the contrary contained herein, this license shall not include or extend to: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the “grand rights” therein; (ii) performances associated with advertising or commercial announcements of any kind or nature, except only LICENSEE’s recordings which are utilized in the Music Service programming; (iii) performances of the Works within any airport terminal buildings. This license shall extend only to the right of public performance (in the manner provided herein) of the Works and shall not be construed as authorizing LICENSEE to mechanically reproduce such Works by any method or means now or hereafter known.
- (c) BMI reserves the right to withdraw from the license granted hereunder any Work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such Work or that such Work infringes another composition.

## 3. INDEMNITY BY BMI

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 musical works licensed under this Agreement. Such indemnity shall be limited to musical works which are licensed by BMI at the time of LICENSEE’s performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI’s repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. 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.

## 4. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues for thirty (30) days after the date of BMI’s written notice to LICENSEE thereof. 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 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.

## 5. FEES

- (a) LICENSEE agrees to pay BMI for all of each airline companies' Serviced Aircraft utilizing LICENSEE's Music Programming and/or Audio-Visual Programming for each month of the Term hereof the applicable license fee(s) computed as follows:

### MONTHLY LICENSE FEE SCHEDULE PER SERVICED AIRCRAFT

<u>CATEGORY A</u>		<u>CATEGORY B</u>		<u>CATEGORY C</u>	
Music Programming		Audio-Visual Programming (paid in addition to Category A)		Music Programming Boarding or Disembarking <u>Only</u>	
<u>Seats</u>	<u>Fee</u>	<u>Seats</u>	<u>Fee</u>	<u>Seats</u>	<u>Fee</u>
100 or less	\$32.57	100 or less	\$ 5.06	100 or less	\$ 8.15
101-200	\$46.10	101-200	\$ 7.84	101-200	\$10.68
201-300	\$64.06	201-300	\$ 9.41	201-300	\$16.02
300+	\$87.80	300+	\$11.85	300+	\$24.16

- (i) For each Serviced Aircraft that utilizes LICENSEE's Music Programming, LICENSEE shall pay a monthly license fee as set forth in Category A on the License Fee Schedule above.
- (ii) For each Serviced Aircraft that utilizes LICENSEE's Audio-Visual Programming in addition to Music Programming, LICENSEE shall pay a monthly license fee as set forth in Category B, in addition to the fees set forth in Category A in the License Fee Schedule above.
- (iii) For each Serviced Aircraft that utilizes LICENSEE's Music Programming during boarding or disembarking only, LICENSEE shall pay a monthly license fee as set forth in Category C on the License Fee Schedule above.
- (b) Subject to Subparagraph 5(a) and (d) and Paragraph 6, LICENSEE agrees to pay to BMI for each month of the Term an estimated license fee as an advance of the actual fee. Such monthly estimated license fee shall be based upon LICENSEE's prior month's number of Serviced Aircraft. The first license fee payment shall be made upon the signing of this Agreement. Each payment thereafter shall be made no later than twenty (20) days after the last day of the month for which the fee is due.
- (c) BMI and LICENSEE acknowledge and agree that no fees will be due for any Serviced Aircraft during any period exceeding one (1) month during which such Serviced Aircraft are not in revenue service (e.g. while such Serviced Aircraft are being repaired or serviced).
- (d) For each subsequent Contract Year of this Agreement, the license fees outlined in the License Fee Schedule in Paragraph 5(a) shall be adjusted in accordance with the increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding July and the next preceding July.

## 6. REPORTING

- (a) At the same time as the license fee payments required by Paragraph 5 hereof are due, LICENSEE shall submit to BMI a monthly report, on report forms to be provided by BMI, certified either by an officer or by the auditor of LICENSEE, calculating the license fees due. The report form may also contain any other information regarding the subject matter of this Agreement which BMI reasonably requires.
- (b) If, after processing the monthly report, the actual license fee due BMI is less than the estimated license fee already paid for such month, BMI will credit the difference to the account of LICENSEE.
- (c) If, after processing the monthly report, the actual license fee due BMI is greater than the estimated license fee already paid for such month, LICENSEE will pay the difference between the actual and estimated license fee within thirty (30) days of receipt of BMI's adjusted statement.

## 7. MUSIC REPORTS

At the same time that each report required by Paragraph 6 hereof is due, LICENSEE agrees to provide BMI with (a) a report (electronically, if possible) of all Works utilized in the Music Programming and Audio-Visual Programming during the month reported, setting forth the title and, to the extent known or reasonably available to LICENSEE, the writer(s) and publisher(s) of each such composition, and (b) a copy of the music program(s) utilized by LICENSEE for the month covered by such report.

## 8. REVIEW OF STATEMENTS AND/OR ACCOUNTINGS

BMI shall have the right, upon reasonable notice to LICENSEE, by its authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify any and all statements and reports rendered and accountings made hereunder or under any prior

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**AGREEMENT**

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<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<i>(Name of Corporation, Partnership, or Individual Owner)</i>	<i>(Street Address)</i>
<b><u>TRADE NAME</u></b>	<i>(City) (State) (Zip)</i>
<i>(Doing business under the name of)</i>	<i>(Telephone Number) (Fax Number)</i>
<b><u>PLEASE CHECK APPROPRIATE BOX</u></b>	<i>(Contact Name) (Title)</i>
<input type="checkbox"/> Individual Ownership	<i>(Email Address) (Web Address)</i>
<input type="checkbox"/> LLC <input type="checkbox"/> Corporation	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
<input type="checkbox"/> LLP <input type="checkbox"/> Partnership	
<i>(State of Incorporation, if different from Licensed Premises)</i> <i>(Enter names of partners)</i>	
<input type="checkbox"/> Other _____	<i>(Street Address)</i>
Federal Tax ID No. _____	<i>(City) (State) (Zip)</i>
<b><u>GOVERNMENT ENTITIES</u></b> <i>(if applicable, please check one)</i>	<i>(Telephone Number) (Fax Number)</i>
<input type="checkbox"/> Federal <input type="checkbox"/> State _____	<i>(Contact Name) (Title)</i>
<i>(State)</i>	<i>(Email Address – if different from above)</i>
<input type="checkbox"/> Local _____	
<i>(Municipality/City and State)</i>	

<p><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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.</p> <p><b><i>(SIGN HERE – PLEASE INCLUDE PAYMENT)</i></b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b></p> <p><b>TO BE COMPLETED BY BMI</b></p> <p><b>BROADCAST MUSIC INC.</b></p>
Signature	
Print Name / Title	
Signatory Email Address* <i>(if different from above)</i>	

<p><b>*In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.</b></p> <p><b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b></p> <p><b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b></p>	<p><b>FOR BMI USE ONLY</b></p>	<p>ARCM1</p>	<p>LI-2017/JULY</p>
	ACCOUNT NO.	COID	EFFECTIVE: January 2017



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