



# 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>2020 – 2021 LICENSE FEE SCHEDULE</b>		
<b>Fee Per Occupant</b>	<b>Minimum Annual License Fee</b>	
<b>\$13.10</b>	<b>\$1005.00</b>	
$\frac{\text{Occupancy (as defined in Paragraph 1(ff))}}{\text{Total Annual Fee (If less than \$1005.00, enter \$1005.00)}} = \frac{\$13.10}{\text{Occupancy (as defined in Paragraph 1(ff))}}$		
<b>If Occupancy cannot be established by local building/fire codes, use formula below:</b>		
$\frac{\text{Total Square Footage (entire Licensed Premises)}}{\text{Occupancy (as defined in Paragraph 1(ff))}} = \frac{\text{Total Square Footage (entire Licensed Premises)}}{20}$		

- (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 2020–2021 Contract Year is \$1005.00 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.**

<p><b><u>LEGAL NAME</u></b></p> <p><small>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</small></p> <p><b><u>TRADE NAME</u></b></p> <p><small>(Doing business under the name of)</small></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <small>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</small></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <small>(If Partnership)</small></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <small>(City/State)</small></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><small>(Street Address)</small></p> <p><small>(City) (State) (Zip)</small></p> <p><small>(Phone) (Phone 2)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Email Address) (Web Address)</small></p> <p><b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small></p> <p><small>(Street Address)</small></p> <p><small>(City) (State) (Zip)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Contact Phone) (Contact Phone 2)</small></p> <p><small>(Email Address – if different from above)</small></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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <small>(if different from above)</small></p>	<p><b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%; text-align:center;">FOR BMI USE ONLY</td> <td style="width:33%; text-align:center;">ACL1</td> <td style="width:33%; text-align:center;">LI-2020/APR</td> </tr> </table> <p>Customer Number _____</p>	FOR BMI USE ONLY	ACL1	LI-2020/APR
FOR BMI USE ONLY	ACL1	LI-2020/APR		
<p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b>  <b>BMI, Licensing Dept</b>  <b>10 Music Square E., Nashville, TN 37203</b>  <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>				



## 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	\$13.07
101-200	\$17.12
201-300	\$25.68
300+	\$38.77

- (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 (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.**

<p><b><u>LEGAL NAME</u></b></p> <p><i>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p> <p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Phone) (Phone 2)</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>(Contact Name) (Title)</i></p> <p><i>(Contact Phone) (Contact Phone 2)</i></p> <p><i>(Email Address – if different from above)</i></p>
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<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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <i>(if different from above)</i></p> <p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to: BMI, Licensing Dept 10 Music Square E., Nashville, TN 37203</b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%; text-align:center;">FOR BMI USE ONLY</td> <td style="width:33%; text-align:center;">ARCM-AV1</td> <td style="width:33%; text-align:center;">LI-2019/OCT</td> </tr> <tr> <td colspan="3" style="text-align:center; padding-top: 10px;">Customer Number</td> </tr> </table>	FOR BMI USE ONLY	ARCM-AV1	LI-2019/OCT	Customer Number		
FOR BMI USE ONLY	ARCM-AV1	LI-2019/OCT					
Customer Number							





# 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	\$34.73	100 or less	\$5.40	100 or less	\$8.68
101-200	\$49.15	101-200	\$8.36	101-200	\$11.38
201-300	\$68.30	201-300	\$10.04	201-300	\$17.08
300+	\$93.61	300+	\$12.64	300+	\$25.77

- (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 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 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 Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</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>(Phone) (Phone 2)</i>
<b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b>	<i>(Contact Name) (Title)</i>
Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i>	<i>(Email Address) (Web Address)</i>
State of Incorporation _____ Federal Tax ID No. _____	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
Partners' Names <i>(If Partnership)</i>	<i>(Street Address)</i>
1. _____	<i>(City) (State) (Zip)</i>
2. _____	<i>(Contact Name) (Title)</i>
3. _____	<i>(Contact Phone) (Contact Phone 2)</i>
<b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b>	<i>(Email Address – if different from above)</i>
Local, State, or Federal _____	
Municipality Name _____ <i>(City/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>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>FOR BMI USE ONLY</b>	<b>ARCM1</b>
	<b>LI-2019/OCT</b>	
<b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to: BMI, Licensing Dept 10 Music Square E., Nashville, TN 37203 Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b>	<b>Customer Number</b>	



## 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	\$13.07
101-200	\$17.12
201-300	\$25.68
300+	\$38.77

- (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 (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.**

<p><b><u>LEGAL NAME</u></b></p> <p><i>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p> <p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Phone) (Phone 2)</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>(Contact Name) (Title)</i></p> <p><i>(Contact Phone) (Contact Phone 2)</i></p> <p><i>(Email Address – if different from above)</i></p>
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<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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <i>(if different from above)</i></p> <p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b> <b>BMI, Licensing Dept</b> <b>10 Music Square E., Nashville, TN 37203</b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b> <b>TO BE COMPLETED BY BMI</b> <b>BROADCAST MUSIC INC.</b></p> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="width:33%; text-align:center;">FOR BMI USE ONLY</td> <td style="width:33%; text-align:center;">ARC-AV1</td> <td style="width:33%; text-align:center;">LI-2019/OCT</td> </tr> <tr> <td colspan="3" style="text-align:center; padding-top: 10px;">Customer Number</td> </tr> </table>	FOR BMI USE ONLY	ARC-AV1	LI-2019/OCT	Customer Number		
FOR BMI USE ONLY	ARC-AV1	LI-2019/OCT					
Customer Number							





# 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	\$37.34	100 or less	\$5.77	100 or less	\$ 9.31
101-200	\$52.85	101-200	\$8.98	101-200	\$12.22
201-300	\$73.42	201-300	\$10.74	201-300	\$18.37
300+	\$100.65	300+	\$13.58	300+	\$27.67

- (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 (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**

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<p><b><u>LEGAL NAME</u></b></p> <p><small>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</small></p> <p><b><u>TRADE NAME</u></b></p> <p><small>(Doing business under the name of)</small></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <small>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</small></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <small>(If Partnership)</small></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <small>(City/State)</small></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><small>(Street Address)</small></p> <p><small>(City) (State) (Zip)</small></p> <p><small>(Phone) (Phone 2)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Email Address) (Web Address)</small></p> <p><b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small></p> <p><small>(Street Address)</small></p> <p><small>(City) (State) (Zip)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Contact Phone) (Contact Phone 2)</small></p> <p><small>(Email Address – if different from above)</small></p>
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<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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <small>(if different from above)</small></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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# 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 (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.

## 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 Traffic & Annual Music Fee in the space provided.

LICENSE FEE SCHEDULE

Annual Passenger Category	Annual Passenger Traffic	2020 Annual Music Fee
1	Less than 1,000,000	\$ 916.50
2	1,000,000 to 10,000,000	\$1,282.30
3	10,000,001 to 25,000,000	\$1,647.80
4	25,000,001 to 45,000,000	\$2,015.10
5	more than 45,000,000	\$2,380.90

$$\frac{\text{Annual Passenger Traffic}}{\text{2020 Annual Music Fee}} = \frac{\text{2020 Annual Music Fee}}{\text{2020 Annual Music Fee}}$$

- (e) Annual Music Fee for each Term year after 2020 shall be calculated by an adjustment of the 2020 Annual Music Fee based upon the percentage increase or decrease in the United States Consumer Price Index (Urban, All Items) between September 2019 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) day 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) day 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.**

<p><b><u>LEGAL NAME</u></b></p> <p><i>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p> <p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Phone) (Phone 2)</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>(Contact Name) (Title)</i></p> <p><i>(Contact Phone) (Contact Phone 2)</i></p> <p><i>(Email Address – if different from above)</i></p>			
<p><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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <i>(if different from above)</i></p> <p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to: BMI, Licensing Dept 10 Music Square E., Nashville, TN 37203 Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>	<p><b><u>FOR ADMINISTRATIVE USE ONLY</u></b> <b><u>TO BE COMPLETED BY BMI</u></b> <b><u>BROADCAST MUSIC INC.</u></b></p> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="width:33%; text-align:center;"><b>FOR BMI USE ONLY</b></td> <td style="width:33%; text-align:center;"><b>36AIR</b></td> <td style="width:33%; text-align:center;"><b>LI-2019/OCT</b></td> </tr> </table> <p style="text-align:center; margin-top: 10px;"><b>Customer Number</b></p>	<b>FOR BMI USE ONLY</b>	<b>36AIR</b>	<b>LI-2019/OCT</b>
<b>FOR BMI USE ONLY</b>	<b>36AIR</b>	<b>LI-2019/OCT</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: City: \_\_\_\_\_ State: \_\_\_\_\_ 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, 2020 and end on December 31, 2020 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 2020 shall be \$204.00.
- (b) LICENSEE hereby warrants that in calendar year 2020 it's Air Show will occur on a total of \_\_\_\_\_ number of days.
- (c) The annual fee for 2020 is \$204.00 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 Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</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>(Phone)</i>	<i>(Phone 2)</i>
<b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b>	<i>(Contact Name)</i>	<i>(Title)</i>
Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i>	<i>(Email Address)</i>	<i>(Web Address)</i>
State of Incorporation _____ Federal Tax ID No. _____	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>	
Partners' Names <i>(If Partnership)</i>	<i>(Street Address)</i>	
1. _____	<i>(City)</i>	<i>(State) (Zip)</i>
2. _____	<i>(Contact Name)</i>	<i>(Title)</i>
3. _____	<i>(Contact Phone)</i>	<i>(Contact Phone 2)</i>
<b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b>	<i>(Email Address – if different from above)</i>	
Local, State, or Federal _____		
Municipality Name _____ <i>(City/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>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>Please Sign &amp; Return this Entire License Agreement &amp; Payment to: BMI, Licensing Dept 10 Music Square E., Nashville, TN 37203 Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b>	<b>FOR BMI USE ONLY</b>	<b>39ARSW</b>	<b>LI-2019/OCT</b>
	<b>Customer Number</b>		



# 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 2020, the annual license fee rate shall be an adjustment of the 2020 rate based upon the percentage increase or decrease in the United States Consumer Price Index (National, All Items) between October 2019 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.....

**(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, this rate will represent a prorated fee calculated 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 Fee (All Schedules)	
2020	
\$347.00	

**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

<b>Year</b>	2020
<b>Attendance Fee Rate</b>	\$6.57

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

No. of Rides	Highest Ticket Price Per Ride					
	\$0 - \$1.41	\$1.42 - \$2.59	\$2.60 - \$3.68	\$3.69 - \$4.78	\$4.79 - \$5.87	\$5.88 - Over
<b>1-3</b>	\$113.00	\$148.00	\$224.00	\$305.00	\$384.00	\$464.00
<b>4-7</b>	\$148.00	\$224.00	\$305.00	\$384.00	\$464.00	\$537.00
<b>8-11</b>	\$224.00	\$305.00	\$384.00	\$464.00	\$537.00	\$618.00
<b>12-16</b>	\$305.00	\$384.00	\$464.00	\$537.00	\$618.00	\$695.00
<b>17-Over</b>	\$384.00	\$464.00	\$537.00	\$618.00	\$695.00	\$813.00

- 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\*

<b>Year</b>	2020
<b>Entertainment Costs Fee</b>	1.33%

\* 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 the first day of (month/year) \_\_\_\_\_ and end on the last day of December \_\_\_\_\_ 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.**

<p><b><u>LEGAL NAME</u></b></p> <p><small>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</small></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><small>(Street Address)</small></p>
<p><b><u>TRADE NAME</u></b></p> <p><small>(Doing business under the name of)</small></p>	<p><small>(City) (State) (Zip)</small></p>
<p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <small>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</small></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <small>(If Partnership)</small></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <small>(City/State)</small></p>	<p><small>(Phone) (Phone 2)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Email Address) (Web Address)</small></p>
	<p><b><u>MAILING ADDRESS</u></b></p> <p><small>(if different from Licensed Premises)</small></p> <p><small>(Street Address)</small></p> <p><small>(City) (State) (Zip)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Contact Phone) (Contact Phone 2)</small></p> <p><small>(Email Address – if different from above)</small></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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <small>(if different from above)</small></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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<p><b>Please Sign &amp; Return this Entire License Agreement &amp; Payment to:</b></p> <p><b>BMI, Licensing Dept</b></p> <p><b>10 Music Square E., Nashville, TN 37203</b></p> <p><b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>	<p><b>Customer Number</b></p>			



# 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 \$30.60 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 \$380.00, pro-rated if the initial Term is less than a full calendar year.
- (b) For all years subsequent to 2020, the annual license fee rate shall be an adjustment of the 2020 rate based upon the percentage increase or decrease in the United States Consumer Price Index (National, All Items) between July 2020 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 2020 shall be an adjustment of the 2020 minimum annual license fee of \$380.00 based upon the percentage increase or decrease in the United States Consumer Price Index (National, All Items) between July 2020 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.

# of Lanes	x	Rate per Lane	=	Initial Fee*
				*If initial term is less than a full calendar year, this will represent a prorated fee.

## 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-*

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**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 (1) year periods, 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 Delaware 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><small>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</small></p> <p><b><u>TRADE NAME</u></b></p> <p><small>(Doing business under the name of)</small></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <small>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</small></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <small>(If Partnership)</small></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <small>(City/State)</small></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><small>(Street Address)</small></p> <p><small>(City) (State) (Zip)</small></p> <p><small>(Phone) (Phone 2)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Email Address) (Web Address)</small></p> <p><b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small></p> <p><small>(Street Address)</small></p> <p><small>(City) (State) (Zip)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Contact Phone) (Contact Phone 2)</small></p> <p><small>(Email Address – if different from above)</small></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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <small>(if different from above)</small></p> <p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b>  <b>BMI, Licensing Dept</b>  <b>10 Music Square E., Nashville, TN 37203</b>  <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></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> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="width:33%; text-align:center;"><b>FOR BMI USE ONLY</b></td> <td style="width:33%; text-align:center;"><b>36B</b></td> <td style="width:33%; text-align:center;"><b>LI-2019/AUG</b></td> </tr> <tr> <td colspan="3" style="text-align:center; padding-top: 10px;"><b>Customer Number</b></td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>36B</b>	<b>LI-2019/AUG</b>	<b>Customer Number</b>		
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<b>Customer Number</b>							



# 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.



**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	\$0.89
251 - 500	\$0.71
501 - 10,000	\$0.53
10,001 - 20,000	\$0.46
20,001 - 75,000	\$0.37
75,001 and Over	\$0.24

(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 2020 is \$222.00.**

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 2019 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 Delaware 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 Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p> <p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Phone) (Phone 2)</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>(Contact Name) (Title)</i></p> <p><i>(Contact Phone) (Contact Phone 2)</i></p> <p><i>(Email Address – if different from above)</i></p>
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<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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <i>(if different from above)</i></p>	<p><b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b></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:33%; text-align:center;"><b>36C</b></td> <td style="width:33%; text-align:center;"><b>LI-2019/OCT</b></td> </tr> </table> <p>Customer Number _____</p>	<b>FOR BMI USE ONLY</b>	<b>36C</b>	<b>LI-2019/OCT</b>
<b>FOR BMI USE ONLY</b>	<b>36C</b>	<b>LI-2019/OCT</b>		
<p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b>  <b>BMI, Licensing Dept</b>  <b>10 Music Square E., Nashville, TN 37203</b>  <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>				

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 Delaware (hereinafter called BMI) with principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10019, and \_\_\_\_\_

*(Legal Name of LICENSEE)*

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, amphitheaters, 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><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>	



# Commercial Music Service License Agreement

05CMS2

LI-10/06-05CMS2

AGREEMENT made at New York, N.Y. on \_\_\_\_\_, between BROADCAST MUSIC, INC., a corporation organized under the laws of the State of Delaware (hereinafter called BMI) with principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030, and

Name of Corporation, Partnership, or Individual Owner (Legal Name of Licensee)	
Legal Structure _____ <small>(Corporation, Partnership, Individual Owner)</small>	State of Inc. (if corp) _____
Names of Partners (if Partnership) _____	
(hereinafter called LICENSEE) with offices located at _____ <small>(Street Address)</small>	
City _____	State _____ Zip _____
Telephone No. _____ Doing business under the name of _____	
located at _____ <small>(Street Address)</small>	
City _____	State _____ Zip _____

(the "Agreement").

**WHEREAS**, BMI is engaged in licensing the public performance of non-dramatic renditions of the separate musical works of which BMI has the right to license the public performing right, and

**WHEREAS**, LICENSEE is engaged in the business of operating Subscription Music Services (including storecast music services) primarily to individual places of entertainment, resort, residential common public areas, business, industry and others which are not under LICENSEE's direct or indirect ownership or control (each of which is hereinafter called a "Commercial Subscriber Location" and is defined hereinafter), and

**WHEREAS**, LICENSEE has applied to BMI for a blanket performing rights license for its Subscription Music Services, and

**WHEREAS**, LICENSEE and BMI agree that the license fees to be paid by LICENSEE to BMI under this License Agreement for the term are reasonable for the rights granted.

**IT IS HEREBY AGREED AS FOLLOWS:**

1. The "Term" of this Agreement shall be See Attached Interim ("Commencement Date") through June 30, 2009. Each Contract Year under this Agreement shall be the period from July 1st through the following June 30<sup>th</sup>. If the initial Contract Year of the Agreement is a period less than 12 (twelve) full months, then the license fee for the initial contract period shall be prorated accordingly.
2. (a) "Subscription Music Service(s)" as used herein shall mean and be limited to services providing non-dramatic, audio-only performances of recorded music (including music-on-hold performances), whether vocal or instrumental, provided to Commercial Subscriber Locations (as defined below) on a subscription basis using proprietary systems not available to the general public and regardless of the means employed by LICENSEE to provide such music to a Commercial Subscriber Location. Subscription Music Services shall only include those that are intended to be used as an accompaniment to routine activities, including, but not limited to, work, shopping, conversation, dining and relaxation, as long as such music is not offered to commercial subscribers as an accompaniment to dancing or is used by a DJ/VJ. Subscription Music Services shall include the provision of storecast music which shall mean only the non-dramatic performances of recorded music interspersed with advertising announcements for which consideration may or may not be received for the placing of the advertisement and audible solely to persons physically at the Commercial Subscriber



Location and by means of loudspeakers, in the immediate vicinity of such Commercial Subscriber Location. Music performances used as a type of entertainment at bowling centers as defined in subparagraph 2(b) below (e.g., Rock N Bowl, Midnight Bowl or Laser Bowl) are excluded, as is any other situation at the bowling centers in which the LICENSEE provided music is played at elevated sound levels, or any other situation in which music is used and promoted as a featured form of entertainment. Subscription Music Services shall also exclude interactive music services. Notwithstanding the foregoing, Subscription Music Services by LICENSEE shall be those services programmed solely by LICENSEE. LICENSEE's Subscription Music Services shall not include any services or programming obtained by LICENSEE from Muzak, LLC, any Muzak affiliate, or any other similar programming entity. Such shall be subject to separate licensing by BMI.

(b) "Commercial Subscriber Location(s)" as used herein shall mean a physical establishment located in the United States, its Commonwealths, territories and possessions to which LICENSEE provides its Subscription Music Services, regardless of means of distribution or reception, including music-on-hold customers, but excluding those customers that subscribe only to LICENSEE's additional services which include message on hold, sound system equipment, drive-through equipment, drive-through maintenance, commercial TV or video music services. Commercial Subscriber Locations *shall not under any circumstances* extend to (i) ballrooms, discotheques, dance studios, or bowling centers; (ii) any theme park, skating rink, or nightclub or other location where an admission fee or cover charge is assessed (limited to such portion of the premises from which the event or entertainment for which admission is charged is intended to be observed or heard, and provided that any other portion of such premises shall be covered by this Agreement); or (iii) any music supplied by LICENSEE that is used in instructed health club classes.

3. This license shall be deemed to embrace:

PLEASE  
CHECK  
APPROPRIATE  
BOX

- LICENSEE's owned music service operations only;
- LICENSEE's owned music service operations as well as those of its sub-distributors for which LICENSEE assumes the obligations under this Agreement. LICENSEE shall annex as Schedule A hereto a list of **all** of its sub-distributors and shall indicate whether each is one for whom LICENSEE is assuming the obligations hereunder or not. LICENSEE shall supply BMI with subsequent additions and deletions to Schedule A hereof at least once in each year of this Agreement, within ten (10) days of BMI's request.

4. BMI hereby grants to LICENSEE a non-exclusive license to perform publicly and to cause or permit to be performed publicly in the United States, its Commonwealths, territories and possessions, by means of Subscription Music Services to and at one or more Commercial Subscriber Locations, all the musical works of which BMI shall, during the Term, own or control the right to grant public performing right licenses. Except to the extent that music on telephone hold lines originating at a Commercial Subscriber Location is audible at remote locations on telephone lines as part of "music-on-hold", LICENSEE's performances shall be audible only within and immediately adjacent to the Commercial Subscriber Location. In no event shall this license extend to any other type of performances whatsoever or to transmissions by any satellite, television, cable or radio systems and/or stations to a location other than Commercial Subscriber Locations, and any such locations receiving such transmissions shall not be licensed pursuant to this Agreement.

#### 5. License Fee Definitions and Calculations

(a) "**Base License Fee**" shall mean the fee resulting from multiplying the total number of locations serviced by LICENSEE as of the Commencement Date of this Agreement, times \$36.36, and multiplying that amount times the entire period of the Term inclusive of any prorated initial partial Contract Year, as adjusted based upon an Initial Adjustment pursuant to Paragraph 5(b) below.

(b) "**Initial Adjustment**" shall mean an adjustment to the Base License Fee that will occur if as of the Commencement Date of this Agreement, LICENSEE had a total of more than [ ] Commercial Subscriber Locations receiving its Subscription Music Service(s). The Initial Adjustment to the Base License Fee will be calculated by taking the number of locations in excess of [ ] and designating it as the numerator and [ ] as the denominator. That fraction will be multiplied by the [\$ ] and the result will represent the increase in the Base License Fee for the Term.

(c) "**Annual License Fee**" with respect to any Contract Year shall mean the Base License Fee, divided by the number of Contract Years in the Term of this Agreement as adjusted, (that is, [\$ ] plus any applicable Initial Adjustment) plus the sum of the Organic Location Surplus Adjustments, if any for all prior Contract Years.

(d) "**Contract Year**" shall mean the following one-year period: Commencement Date through June 30, 2009. If the initial Contract Year is less than 12 (twelve) full months, then the license fees for that initial Contract Year shall be prorated accordingly.

(e) **“Total Locations”** shall mean the total number of Commercial Subscriber Locations existing as of June 30 of any Contract Year.

(f) **“Acquired Service”** shall mean: (i) LICENSEE’s acquisition of another background music service business via a purchase where LICENSEE obtains the controlling interest in all or a portion of the assets of a seller or of the equity of a seller; or (ii) LICENSEE’s merger with another background music service business which merger results in LICENSEE retaining or obtaining a controlling interest.

(g) **“Total Acquired Locations”** shall mean the total number of Commercial Subscriber Locations that were acquired during any Contract Year as of June 30 of that Contract Year as a result of LICENSEE acquisition of an Acquired Service where that service prior to its acquisition did not have a separate final license Agreement with BMI.

(h) **“Total Allowed Locations”** with respect to any Contract Year shall be as follows:

- (A) in the initial Contract Year, the Total Acquired Locations for the subject Contract Year plus 8% of the Total Acquired Locations for the subject Contract Year pro-rated as of the date of acquisition plus [ ] Commercial Subscriber Locations;
- (B) in each of the following Contract Year(s), the Total Acquired Locations for the subject Contract Year plus 8% of the Total Acquired Locations for the subject Contract Year pro-rated as of the date of acquisition plus 108% multiplied by the greater of either the Total Locations as of the prior Contract Year or the Total Allowed Locations as of the prior Contract Year.

Except as provided in Paragraph 18(c) below, in no event shall the foregoing calculations of Total Allowed Locations ever result in a sum less than the following: [ ] Commercial Subscriber Locations in the Contract Year 2008-2009. See Schedule B attached for EXAMPLES that illustrate Total Allowed Locations.

(i) **“Organic Location Surplus”** with respect to any subject Contract Year shall mean the Total Locations in the subject Contract Year minus Total Allowed Locations for the subject Contract Year. If Total Locations in the subject Contract Year minus Total Allowed Locations for the subject Contract Year equals zero or a negative number, no Organic Location Surplus and no Organic Location Surplus Adjustment shall be applicable for the subject Contract Year.

(j) **“Organic Location Surplus Adjustment”** shall be calculated with respect to any subject Contract Year by dividing the Organic Location Surplus for such Contract Year by Total Allowed Locations for such Contract Year and multiplying that product by the sum of (i) the Annual License Fee for such Contract Year plus (ii) the Acquired Service Fees for such Contract Year for all previously acquired Acquired Services. See Schedule B attached for EXAMPLES that illustrate the Organic Location Surplus Adjustment.

(k) **“Acquired Service Fee”** shall mean the additional annual fee payable by LICENSEE with respect to each Acquired Service. If LICENSEE acquires an Acquired Service that prior to its acquisition had already entered into a separate final license Agreement with BMI that covers the remainder of the Term after the acquisition occurs, the Acquired Service Fee shall be the amount equaling the remainder of the license fee owing under said final license Agreement; such fees shall be paid from the date of acquisition forward according to the payment schedule set forth in Paragraph 6 below. If LICENSEE acquires an Acquired Service that has not entered into a final license Agreement with BMI that covers the remainder of the Term after the acquisition occurs, the additional license fee upward adjustment for such acquisition will be calculated from the date of acquisition forward as follows: Divide the number of Commercial Subscriber Locations that comprise the Acquired Service by the Total Allowed Locations in that Contract Year (excluding from Total Allowed Locations those Commercial Subscriber Locations being acquired from the subject Acquired Service); then multiply that fraction by the sum of (i) the Annual License Fee for the current Contract Year plus (ii) the Acquired Service Fees for that Contract Year for all previously acquired Acquired Services. See Schedule B attached for EXAMPLES that illustrate the Acquired Service Fees.

In the event LICENSEE acquires an Acquired Service that has entered into a final license with BMI for only a portion of the Term of this Agreement, then, in that event, the terms of that license shall apply for the balance of the term of said license. Thereafter, the terms and conditions of this Agreement will be applicable and those Commercial Subscriber Locations, existing as of the day after the expiration of any such aforementioned final license, will be treated as Acquired Locations for purposes of calculating (effective as of the day after the expiration of any such aforementioned final license) the fees due to BMI pursuant to this Agreement for the remainder of the Term of this Agreement.

(l) **“Monthly Acquired Service Fee”** shall mean one-twelfth of the Acquired Service Fees for all Acquired Services acquired during the Term up to the last day of the prior calendar month.

## 6. License Fees

LICENSEE agrees to pay BMI for the license granted herein the license fees as stated below.

For the initial Contract Year Commencement Date through June 30, 2009: (If the initial Contract Year be for a period less than 12 (twelve) full months, then the license fees payable for said initial Contract Year shall be prorated accordingly).

- The Annual License Fee, which will be payable in advance in equal monthly installments on the first day of the month, commencing on the Commencement Date, plus
- twelve Monthly Acquired Service Fees, each of which shall be payable at the time each monthly installment of the Annual License Fee is payable, plus
- the Organic Location Surplus Adjustment, if any, for the subject Contract Year payable on or before August 31, 2009.

**MINIMUM ANNUAL FEE:** LICENSEE agrees that it shall pay a minimum annual fee of not less than \$36.36 times forty-five (45) locations. Such fee shall be payable in equal monthly installments.

7. BMI may impose an interest charge of one percent (1%) per month from the date payment was due on any payment that is received by BMI more than fifteen (15) days after the due date.

8. LICENSEE will submit to BMI on April 15<sup>th</sup>, July 15<sup>th</sup>, October 15<sup>th</sup> and January 15<sup>th</sup> of each Contract Year an electronic report, in a form and format acceptable to BMI and LICENSEE, of those musical compositions performed during the previous calendar quarter, as follows:

(a) With respect to Subscription Music Services distributed to Commercial Subscriber Locations by delivery of tangible medium, for example, tapes or CDs, LICENSEE shall provide BMI with an initial list of all tapes and CDs which were available to its Commercial Subscriber Locations during the previous quarter, indicating such tapes and CDs by name and/or number, whichever methods are used by LICENSEE to identify such recordings. With respect to each such tape and CD, LICENSEE shall list each musical composition contained thereon, giving the title of the composition, the recording artist, and the writer and publisher to the extent indicated on the source material (tape, CD, etc.) of such work. Further quarterly reports required hereunder shall be in the form of updates to said initial list by listing any tape or CD 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. Also, LICENSEE shall provide BMI with the average number of Commercial Subscriber Locations which were supplied with each tape or CD during the previous quarter by LICENSEE and LICENSEE's sub-distributors.

(b) With respect to Subscription Music Services distributed to Commercial Subscriber Locations by means of satellite or other wireless relay, telephone lines, cables, wires or other conductors by which separate channels containing music are delivered from the central LICENSEE studio to a Commercial Subscriber Location, LICENSEE shall provide with respect to each such channel, the name or other legend of the channel transmitted, a listing by title, writer and publisher of each musical composition transmitted over each channel, an indication of the number of days per month and the number of hours per day each channel was transmitted by LICENSEE during the previous quarter, and a statement of the average number of Commercial Subscriber Locations of both LICENSEE and LICENSEE's sub-distributors which received the channel during the previous quarter.

(c) In the event that LICENSEE acquires information in the normal course of business as to what was actually performed and listened to with respect to the Subscription Music Service distributed by delivery of tangible medium or what musical works were actually listened to by customers receiving the Subscription Music Service by satellite, telephone lines, cable, wireless or other electronic means, then LICENSEE will within thirty (30) days notify BMI of such ability and provide such information to BMI upon BMI's request.

(d) In the event that BMI desires LICENSEE to submit the music information described above on a monthly basis, BMI will give no less than 60 days' advance notice to LICENSEE and LICENSEE will thereafter submit such music reports on a monthly basis, said reports to be received by BMI no later than 20 days after the month in which the performances took place.

9. LICENSEE will file a report certified by its CEO or CFO on or before July 20<sup>th</sup> of each Contract Year, as to the number of Commercial Subscriber Locations serviced on June 30<sup>th</sup> of the previous Contract Year.

10. (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 LICENSEE's books and records for the purpose of determining the number of Commercial Subscriber Locations being serviced by LICENSEE as of the Commencement Date of this Agreement, June 30, 2009, and to such extent as may be necessary to verify any and all statements rendered and accountings made hereunder. With respect to audits conducted by BMI during the Term, LICENSEE shall give BMI's auditors full access to all relevant records of LICENSEE, including names and addresses of, and any other pertinent information concerning, the Commercial Subscriber Locations of LICENSEE. BMI agrees to instruct its auditors not to make any list of names and addresses of subscribers of LICENSEE except insofar as necessary for the verification of

LICENSEE's statements and accountings to BMI and not to make any such list available to any third party or to any person within BMI except on a need-to-know basis as it pertains to the audit, and to destroy any such list upon completion of the audit or, if a deficiency be found as to which such data may be relevant, upon the payment or other disposition of such audit deficiency.

(b) BMI shall not audit more than once in any twelve (12) month period.

(c) In the event LICENSEE claims relief pursuant to Paragraph 18, then in that event, BMI will not be limited to audit one time with respect to the any twelve (12) month period where such relief is claimed and BMI shall have the right to conduct one (1) additional audit of LICENSEE's books and records as to each temporary abatement or permanent adjustment within two (2) years of the claiming of such abatement and/or permanent adjustment.

11. LICENSEE will advise each Commercial Subscriber Location of a unique identifier (supplied by BMI). This identifier will be used by each Commercial Subscriber Location to identify to BMI that it is a Commercial Subscriber Location. Should BMI change the unique identifier, BMI will so advise LICENSEE and LICENSEE will promptly advise its Commercial Subscriber Locations of said change.

12. BMI agrees to indemnify, save harmless and defend LICENSEE, its officers and employees, and the proprietors of the Commercial Subscriber Locations supplied by it hereunder from and against any and all claims, demands or suits (and liabilities, expenses and costs associated therewith, including without limitation the reasonable fees of counsel of the indemnified party's choosing but excluding such counsel fees should BMI elect to control the matter and retain counsel at its sole expense) that may be made or brought against them or any of them with respect to the performances 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. 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 said counsel shall cooperate with BMI's counsel. Such indemnity shall not apply to performances at the Commercial Subscriber Locations after written request by BMI to LICENSEE that they refrain from such performances, unless LICENSEE uses its best efforts to immediately prevent such performances, it being understood that a determination of willful infringement by an arbitrator or court of competent jurisdiction shall be conclusive proof that LICENSEE did not use its best efforts.

13. BMI reserves the right to withdraw from the license granted hereunder, upon written notice to LICENSEE, 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 composition.

14. It is agreed that LICENSEE will assign this Agreement to any financially stable subsidiary, affiliated or associated company of LICENSEE in connection with any sale, merger, reorganization or consolidation in which LICENSEE is a party and will insure that the obligations of this Agreement are assumed by the purchaser or surviving entity.

15. 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 Vice President of Licensing, 10 Music Square East, Nashville, TN, 37203, with a copy to the General Counsel, 7 World Trade Center, 250 Greenwich Street, New York, NY, 10007-0030. 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.

16. 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) 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 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.

17. Upon any material breach or default of the terms and conditions of this Agreement by LICENSEE, 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 LICENSEE's receipt of written notice thereof without LICENSEE having acted to cure such material breach or default. For purposes of this paragraph acting to cure means: (i) that if such breach is curable within thirty days of said notification, LICENSEE cures the breach or default; or (ii) in the event the breach is not curable within thirty (30) days, LICENSEE makes diligent efforts to commence to cure said breach or default within thirty (30) days of written notice thereof by BMI. 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. For purposes of this Paragraph 17, a "material breach or default" by LICENSEE shall include, but not be limited to, failure to pay within fifteen (15) days after its respective due date any license fee and failure to timely submit reports which are required by this Agreement.

#### **18. Force Majeure Event**

(a) This Agreement shall not be terminated nor shall LICENSEE be held liable for damages in the event that a hurricane, blizzard, earthquake, flood or tornado or other Act of God beyond the reasonable control of LICENSEE, including a satellite failure, disrupts the transmission or receipt of service (hereinafter a "disruption of service") to some or all of LICENSEE's Commercial Subscriber Locations licensed hereunder (hereinafter a "Force Majeure Event"); provided, however, that LICENSEE exercises reasonable due diligence to overcome the act or event and provided further that LICENSEE notifies BMI in writing within thirty (30) days as to the occurrence of the Force Majeure Event, and as soon as practical, but not more than within sixty (60) days of such occurrence, as to the identity of all Commercial Subscriber Locations so affected, and notifies BMI in writing promptly once LICENSEE is able to and does resume service to such locations or, as the case may be, the date(s) each such location again accepts service. In no event shall changes in economic conditions or insufficiency of funds constitute a Force Majeure Event.

(b) A Force Majeure Event may result in a temporary pro rata abatement of license fees due to BMI hereunder in the event of a temporary disruption of service to some or all Commercial Subscriber Locations; provided, however, that if LICENSEE fails to provide written notice of its ability (or its customers' ability) to perform within thirty (30) days of the ability to resume performance hereunder (it being understood that with respect to the capacity of customers who receive service such notice obligation shall be serial and shall arise as LICENSEE learns of such event with respect to affected customers) then but only in such event the amount of any pro rata abatement of license fee claimed by LICENSEE hereunder shall be reduced in half. In the event that LICENSEE fails to provide said written notice within sixty (60) days of its ability (or its customers' ability) to resume performance then no temporary pro rata fee abatement shall be available hereunder. As used in this subparagraph "temporary" shall mean any disruption lasting ninety (90) days or less in duration. Any disruption of service lasting more than ninety (90) days shall be permanent and qualify for additional relief pursuant to subparagraph (c) of this section. A temporary abatement shall be prorated for any Commercial Subscriber Location based on the number of days of service disruption in the month during which the service disruption occurred. Notwithstanding anything to the contrary herein, a temporary fee abatement shall be available only in those instances where a disruption of service lasts for any given Commercial Subscriber Location for more than 15 consecutive days; except that in the case of a satellite failure an abatement shall be available only in those instances where the disruption of service lasts for more than seven (7) days.

(c) Should a Force Majeure Event result in the cancellation by Commercial Subscriber Locations of their LICENSEE service due to business closure, destruction, or loss of service for a period of more than ninety (90) days and said cancellations exceed 10% of the Commercial Subscriber Locations served in the month prior to the occurrence of the Force Majeure Event, the Annual License Fee shall thereafter be reduced (including a pro rata reduction for the Contract Year within which the Force Majeure Event occurs prospective from the end date of any temporary fee abatement), by the percentage equal to the percentage constituted by the number of Commercial Subscriber Locations served by the LICENSEE that cancelled service due to Force Majeure Events divided by the total number of Commercial Subscriber Locations as of June 30<sup>th</sup> of the prior Contract Year. In this event the Total Allowed Locations for the year affected as defined in Paragraph 5(h) shall be reduced by the same percentage amount (i.e. the percentage constituted by the number of Commercial Subscriber Locations served by LICENSEE that cancelled service during the year due to Force Majeure Events divided by the total number of Commercial Subscriber Locations being serviced by LICENSEE as of June 30<sup>th</sup> of the prior Contract Year), and in calculating Total Allowed Locations for the ensuing year, the 8% growth factor will be applied to the reduced number of Total Allowed Locations for the Contract Year in which the cancellation adjustment occurred. Growth for all subsequent years will be calculated accordingly. Notwithstanding the foregoing, in no event shall a fee adjustment under this subparagraph be greater than 50% of the otherwise applicable license fee for the year. Any Commercial Subscriber Location for which a permanent fee adjustment is granted hereunder which later re-subscribes to the LICENSEE Subscription Music Service shall be considered a new organic growth subscriber location, unless it is an account acquired under circumstances set forth in Paragraph 5(f) hereinabove.

(d) Any claim for a temporary fee abatement pursuant to subparagraph (b) above or fee adjustment for service cancellation pursuant to subparagraph (c) above shall be accompanied by an affidavit of a duly authorized officer of LICENSEE or the affected LICENSEE stating the factual basis for the claim.

19. 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. 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, this Agreement has been executed by the duly authorized representatives of BMI and LICENSEE all as of the date above written.

<b>Broadcast Music, Inc.</b>	<b>Licensee</b>
	Legal Name of Licensee
	Signature
	Print Name of Signatory
	Title of Signatory <small>(a) If corporation, state corporate office held; (b) If partnership, write "partner";            (c) If individual owner, write "Individual owner"</small>



**SCHEDULE B**  
**TO LICENSE AGREEMENT EXAMPLES**

LICENSEE Scenario:

# of Locations as of June 30, 2005 = 1,000  
 Annual License Fee (w/o Adjustments) = \$36,360

Total Allowed Locations (Contract Years):

<u>2005-06</u>	<u>2006-07</u>	<u>2007-08</u>	<u>2008-09</u>
1,080	1,166	1,260	1,360

**EXAMPLE 1:** Assume that LICENSEE acquires a competitor with 200 Commercial Subscriber Locations on March 31, 2007 and that such competitor has not entered into a final license Agreement with BMI. Further assume the following: (i) no other Acquired Services have been acquired or will be acquired through June 30, 2007, (ii) the Total Allowed Locations for the Contract Year 2006-2007, immediately prior to the subject acquisition, are 1,166 Commercial Subscriber Locations, and (iii) the Annual License Fee for the Contract Year 2006-2007 is \$36,360. The additional liability due BMI on an annual basis would be as follows: \$36,360 Annual License Fee x (200 Commercial Subscriber Locations/1,166 Commercial Subscriber Locations) = \$6,236.71. A Monthly Acquired Service Fee based on the foregoing and equal to \$1,559.18 would be due thereafter through the remainder of the Term. In addition, if we assume no other acquisitions occur on or before June 30, 2007, the Total Allowed Locations for the Contract Year 2006-2007 would now be adjusted to provide for these newly acquired Commercial Subscriber Locations as well as provide for growth on these newly acquired Commercial Subscriber Locations pro-rated at 8% for the remainder of the Contract Year; as a result, the Total Allowed Locations for the Contract Year 2006-2007 would equal the sum of (1,166 Commercial Subscriber Locations + 200 acquired Commercial Subscriber Locations) + ((200 acquired Commercial Subscriber Locations x 8%)/4) or 1,370 Commercial Subscriber Locations.

In order to subsequently determine the Total Allowed Locations for the Contract Year 2007-2008, the following calculation would be required: the Total Acquired Locations for the Contract Year 2007-2008 plus 8% of the Total Acquired Locations for the Contract Year 2007-2008 pro-rated as of the date of acquisition plus 108% multiplied by the greater of either the Total Locations as of the prior Contract Year or the Total Allowed Locations as of the prior Contract Year.

**EXAMPLE 2:** Assume that no Acquired Services have been purchased during the Term, but, nonetheless, LICENSEE grows from 1,000 Commercial Subscriber Locations on July 1, 2005 to 1,050 Commercial Subscriber Locations as of June 30, 2006 to 1,150 Commercial Subscriber Locations as of June 30, 2007. In this example, LICENSEE would not be subject to an adjustment as of June 30, 2005 or June 30, 2007 since no Organic Location Surplus exists with respect to the subject Contract Years.

Alternatively, assume that no Acquired Services have been purchased during the Term, but, nonetheless, LICENSEE grows from 1,000 Commercial Subscriber Locations as of July 1, 2005 to 1,050 Commercial Subscriber Locations as of June 30, 2006 to 1,200 Commercial Subscriber Locations as of June 30, 2007. Since LICENSEE would have been allowed only 1,166 Total Allowed Locations as of June 30, 2007, LICENSEE would have exceeded targeted growth and the Organic Location Surplus would equal 34 Commercial Subscriber Locations, and an adjustment would be due for the Contract Year ending June 30, 2007.

In order to compensate BMI for such Organic Location Surplus LICENSEE would be responsible for an Organic Location Surplus Adjustment. If we assume the Annual License Fee for the Contract Year 2006-2007 is \$36,360, the Organic Location Surplus Adjustment would be: \$36,360 Annual License Fee x (34 Commercial Subscriber Locations/1,166 Total Allowed Locations) = \$1,060.24. That amount would be due on August 31, 2007. Additionally, subsequent monthly installments of the Annual License Fee, beginning on July 1, 2007, would reflect a portion of such Organic Location Surplus Adjustment and would equal \$3,030 (which equates to one-twelfth of the Annual License Fee (\$36,360)/12) plus \$88.35 (which equates to one-twelfth of the Organic Location Surplus Adjustment (\$1,060.24)/12).

Based on the foregoing example, the Total Allowed Locations for the subsequent Contract Year ending June 30, 2008 would be determined as follows: the Total Acquired Locations for the Contract Year 2007-2008 plus 8% of the Total Acquired Locations for the Contract Year 2006-2007 pro-rated as of the date of acquisition plus 108% multiplied by the greater of either the Total Locations as of the prior Contract Year (i.e. Total Locations as of the prior Contract Year = 1,300 Commercial Subscriber Locations) or the Total Allowed Locations as of the prior Contract Year (i.e. Total Allowed Locations as of the prior Contract Year = 1,250 Commercial Subscriber Locations).





## BMI/Commercial Music Service Interim Blanket License Agreement

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.

<b>Broadcast Music, Inc.</b>	<b>Licensee</b>
	Legal Name
	Signature
	Print Name of Signatory
	Title of Signatory



**BMI/Commercial Music Service (For Proprietary Services Only)**  
**Interim Blanket License Agreement**

The following are the terms and conditions of the BMI/Commercial Music Service 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 commercial 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 commercial music service ("Commercial Music Service") that delivers commercial music service programming to commercial establishments ("Commercial Subscriber Locations"); and

WHEREAS, LICENSEE's Commercial 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 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 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 Commercial Music Service (For Proprietary Services Only) 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 2004-2009 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 5 and 6 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 the 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). Paragraph 8 is hereby amended and restated as follows: "LICENSEE will submit to BMI on or before the forty-fifth (45<sup>th</sup>) day following each calendar quarter during the Contract Year an electronic report, in a form and format acceptable to BMI and LICENSEE, of those musical compositions performed during each month of the applicable calendar quarter, as well as a quarterly Distribution Report due on April 15<sup>th</sup>, July 15<sup>th</sup>, October 15<sup>th</sup> and January 15<sup>th</sup> of each Contract Year as follows:".

3. Paragraph 9 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 10(a), shall be amended to remove the words "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 hereinunder".
5. Paragraph 10(c) shall be deleted in its entirety.
6. Paragraph 18 shall be deleted in its entirety.
7. Schedule B shall be deleted in its entirety.

It is hereby further agreed as follows:

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 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.

<b>Broadcast Music, Inc.</b>	<b>Licensee</b>
	Legal Name
	Signature
	Print Name of Signatory
	Title of Signatory



# 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 2020 Contract Year, LICENSEE shall pay an Annual License Fee Per Licensed Premises of \$360.40.
- (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 Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p> <p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Phone) (Phone 2)</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>(Contact Name) (Title)</i></p> <p><i>(Contact Phone) (Contact Phone 2)</i></p> <p><i>(Email Address – if different from above)</i></p>
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<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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <i>(if different from above)</i></p> <p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b>  <b>BMI, Licensing Dept</b>  <b>10 Music Square E., Nashville, TN 37203</b>  <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></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> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="width:33%; text-align:center;">FOR BMI USE ONLY</td> <td style="width:33%; text-align:center;">COFF1</td> <td style="width:33%; text-align:center;">LI-2019/SEPT</td> </tr> <tr> <td colspan="3" style="text-align:center; padding-top: 10px;">Customer Number</td> </tr> </table>	FOR BMI USE ONLY	COFF1	LI-2019/SEPT	Customer Number		
FOR BMI USE ONLY	COFF1	LI-2019/SEPT					
Customer Number							





# 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 2019-2020 Contract Year, the number of Full-time Students as for all covered branch campuses shall be reported for the Fall 2019 academic term upon execution of this Agreement.
- (d) **"Base Student Fee"** for the 2019-2020 Contract Year shall be \$0.383 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 2019-2020 Contract Year shall be \$302.98 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 2018-2022 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 2019-2020 Contract Year is \$0.0710 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 2020-2021 Contract Year, as compared to the Base Student Fee payable for the 2019-2020 Contract Year will be adjusted based upon the percentage difference between the CPI-U in July 2020 and the CPI-U in July 2019.
- (m) **"Term"** shall mean the period commencing July 1, \_\_\_\_\_ and ending June 30, 2020 (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				
		2018	2019	2020	2021	2022
Level 1	< 1,000	\$352	\$359	\$366	\$373	\$380
Level 2	1,000 – 4,999	\$407	\$415	\$423	\$431	\$440
Level 3	5,000 – 9,999	\$557	\$568	\$579	\$591	\$603
Level 4	10,000 – 19,999	\$722	\$736	\$751	\$766	\$781
Level 5	20,000 +	\$908	\$926	\$945	\$964	\$983

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 2019-2020 Contract Year shall be paid by LICENSEE to BMI on or before February 1, 2020. 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 Delaware corporation with principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030, and the entity described below and referred to herein as LICENSEE.

<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>(Phone) (Phone 2)</i>	<i>(Contact Name) (Title)</i>
<i>(Contact Name) (Title)</i>	<i>(Contact Phone) (Contact Phone 2)</i>
<i>(Email Address)</i>	<i>(Email Address)</i>
<i>(Web Address)</i>	<b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b>
<b>FICE Code Number</b>	Local, State, or Federal _____
	Municipality Name _____ <i>(City/State)</i>
<b><u>TO BE COMPLETED BY LICENSEE</u></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><u>FOR ADMINISTRATIVE USE ONLY</u></b> <b>TO BE COMPLETED BY BMI</b> <b>BROADCAST MUSIC, INC.</b>
<i>(Signature)</i>	
<i>(Print Name / Title)</i>	
<i>(Signatory Email Address, if different from above)</i>	FOR BMI USE ONLY      COLL1      LI-2020/JAN
Please Sign & Return this <u>Entire</u> License Agreement & Payment to: BMI, Licensing Dept 10 Music Square E., Nashville, TN 37203 Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a>	<b>Customer Number</b>



# 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:

**2020 LICENSE FEE SCHEDULE**

<u>Annual Attendance</u>	<u>Attendance Fee Rate</u> (Fee per Thousand Attendees)
500 to 15,000	\$245.20 minimum fee
15,001 to 50,000	\$16.40 per thousand
50,001 to 150,000	\$14.30 per thousand
150,001 to 500,000	\$12.30 per thousand
500,001 to 1,000,000	\$10.20 per thousand
1,000,000 and more	\$9.00 per thousand

**Minimum Annual Fee is \$245.40**

$$\frac{\text{X Applicable Rate} = \$}{\text{(Attendance)} \qquad \qquad \qquad \text{(Annual Fee)}}$$

- (e) Attendance Fee Rate for each Term year after 2019 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 2018 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.***

<u>LEGAL NAME</u>	<u>LICENSED PREMISES</u>	
<i>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</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>(Phone)</i>	<i>(Phone 2)</i>
<b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b>	<i>(Contact Name)</i>	<i>(Title)</i>
Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i>	<i>(Email Address)</i>	<i>(Web Address)</i>
State of Incorporation _____ Federal Tax ID No. _____	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>	
Partners' Names <i>(If Partnership)</i>	<i>(Street Address)</i>	
1. _____	<i>(City)</i>	<i>(State) (Zip)</i>
2. _____	<i>(Contact Name)</i>	<i>(Title)</i>
3. _____	<i>(Contact Phone)</i>	<i>(Contact Phone 2)</i>
<b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b>	<i>(Email Address – if different from above)</i>	
Local, State, or Federal _____		
Municipality Name _____ <i>(City/State)</i>		
<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.		
Signature _____		
Print Name / Title _____		
Signatory Email Address _____ <i>(if different from above)</i>	<b>FOR BMI USE ONLY</b>	<b>39CS</b>
	<b>LI-2019/OCT</b>	
<b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to: BMI, Licensing Dept 10 Music Square E., Nashville, TN 37203 Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b>	<b>Customer Number</b>	





## Concert Band/Wind Ensemble

"Concert Band/Wind Ensemble/Symphonic Band" shall mean and be restricted to the

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(Name of the Organization)

Which, as of the date of this agreement, is described as one of the following:

- Concert Band
- Wind Ensemble
- Symphonic Band
- Wind Symphony Orchestra

### 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 \_\_\_\_\_ (not less than \$150.00) which amount shall be payable upon the execution of this agreement.

**(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 anyone 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 on the first day of \_\_\_\_\_ and ending on the last day of \_\_\_\_\_ 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 Delaware (hereinafter called BMI) with principal offices located at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030, and

<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 COMPLETE LEGAL INFORMATION BELOW</u></b>	<i>(Contact Name) (Title)</i>
Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i>	<i>(Email Address) (Web Address)</i>
State of Incorporation _____ Federal Tax ID No. _____	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
Partners' Names <i>(If Partnership)</i>	<i>(Street Address)</i>
1. _____	<i>(City) (State) (Zip)</i>
2. _____	<i>(Telephone Number) (Fax Number)</i>
3. _____	<i>(Contact Name) (Title)</i>
<b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b>	<i>(Email Address – if different from above)</i>
Local, State, or Federal _____	
Municipality Name _____ <i>(City/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>52CBWE</b>	<b>LI-2017/SEPT</b>
			<b>EFFECTIVE: September 2017</b>
	<b>ACCOUNT NO.</b>	<b>COID</b>	



## 1. DEFINITIONS

- (a) **LICENSEE** shall mean Copyright Solutions, LLC, an organization which assists church organizations with copyright administration and compliance.
- (b) **Licensed Member** shall mean each location of a non-profit 501(c)(3) tax exempt church or religious organization with whom LICENSEE has contracted to provide certain copyright administration services and that is identified on Schedule A which shall be created by LICENSEE and attached hereto upon execution and as updated from time to time.
- (c) **Licensed Premises** shall mean Licensed Members church or other place of worship identified on Schedule A and its campus and buildings thereon.
- (d) **Member(s)** shall mean a person listed in a licensed Members records as a member of its church or other place of worship.

## 2. BMI GRANT

- (a) BMI hereby grants to licensed Member 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, including but not limited to, performances at meetings, social events, exercise classes, music-on-hold, and ambient music performed within Licensed Premises. 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) any musical performances or events for which a separate ticket and fee is required.
- (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 and licensed Members, 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 musical works licensed under this Agreement. Such indemnity shall be limited to musical works, which are licensed by BMI at the time of Licensed Members performances. BMI will, upon reasonable written request, advise Licensed Member whether particular musical works are available for performance as part of BMI's repertoire. Licensed Member shall provide the title and the writer/composer of each musical composition requested to be identified. LICENSEE and Licensed Member 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. It is understood that BMI will not hold LICENSEE responsible for a Licensed Member's misrepresentation to LICENSEE of its total number of Members. In the event that BMI or LICENSEE discovers such under-reporting by a Licensed Member, Licensed Member shall pay the difference between the license fee paid to BMI and the license fee that would have been due had the number of Members been reported correctly within twenty (20) days of notice from BMI of the under-reporting.

## 4. BREACH OR DEFAULT

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, 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 (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-rata 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. 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. REVIEW OF STATEMENTS AND/OR ACCOUNTINGS**

BMI shall have the right by its authorized representatives, upon reasonable notice to Licensed Member, at any time during customary business hours, to examine the books and records of account of Licensed Member 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.

**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 (1) month after the due date.

**11. STATE OR LOCAL TAX**

In the event that the payment of any license fee to BMI by LICENSEE or Licensed Member 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 or Licensed Member, LICENSEE and Licensed Member agree to pay to EMI 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 and Licensed Member.

**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 DAY BUSINESS REVIEW**

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

**14. 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 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.

**15. FEES AND REPORTING**

(a) In consideration of the license granted herein, LICENSEE agrees to pay to BMI an annual license fee for each Licensed Member (each location) for each Contract Year of this Agreement The annual license fee shall be computed based on each Licensed Member location's total number of Members for the previous Contract Year. The annual license fee for the 2020 Contract Year is as follows:

2020 LICENSE FEE SCHEDULE			
Licensed Member Location's Total Number of Members			License Fee Per Licensed Premises
1	to	199	\$54.06
200	to	499	\$87.83
500	to	1,999	\$162.14
2,000	to	5,999	\$263.47
6,000	to	14,999	\$674.26
15,000 +			\$809.36

- (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 each Licensed Members total number of Members for the previous Contract Year and shall be due to BMI no later than twenty (20) days after the commencement of the current Contract Year along with a Schedule A listing each Licensed Member, address of the Licensed Premises, and total number of Members of the Licensed Member.
- (c) For each subsequent Contract Year, the annual license fees shall be an adjustment of the previous Contract Year fees based up on the 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* penny.
- (d) For each Contract Year during which LICENSEE's annual License Fees due to BMI, as calculated pursuant to Paragraph 15 of the Agreement, exceed \$175,000, BMI shall discount such applicable License Fees for any amounts in excess of \$175,000 based upon the following tiers:

- 5% discount on annual License Fees of \$175,000 - \$224,999
- 7.5% discount on annual License Fees of \$225,000 - \$299,999
- 10% discount on annual License Fees in excess of \$300,000

**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 part of this Agreement.

**17. EXPERIMENTAL NATURE OF LICENSE**

This Agreement, including the license fees outlined herein, shall be deemed experimental in nature. The Agreement is being entered into without prejudice to the positions of LICENSEE or BMI as to appropriate rates and terms and is not binding on either party's respective position in any future negotiation.

**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 term of one (1) year each unless cancelled by either party at 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 Delaware 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 Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p> <p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Phone) (Phone 2)</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>(Contact Name) (Title)</i></p> <p><i>(Contact Phone) (Contact Phone 2)</i></p> <p><i>(Email Address – if different from above)</i></p>
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<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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <i>(if different from above)</i></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>			
	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"><b>FOR BMI USE ONLY</b></td> <td style="width:33%;"><b>CCLI</b></td> <td style="width:33%;"><b>LI-2019/OCT</b></td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>CCLI</b>	<b>LI-2019/OCT</b>
<b>FOR BMI USE ONLY</b>	<b>CCLI</b>	<b>LI-2019/OCT</b>		
<p><b>Please Sign &amp; Return this Entire License Agreement &amp; Payment to:</b></p> <p><b>BMI, Licensing Dept</b></p> <p><b>10 Music Square E., Nashville, TN 37203</b></p> <p><b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>	<p><b>Customer Number</b></p>			

## BMI Cruise Line Agreement/2020 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 2020 BMI Cruise Line Agreement (“2020 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, \_\_\_\_\_. 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 2020. 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 2020 License Fees.

- (a) LICENSEE shall, with respect to each Licensed Premises, make an estimated payment for the license fees due for the contract year 2020 (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 2019, LICENSEE’s estimated license fees for the contract year 2020 shall be the license fees payable under the 2020 Schedules A and B using LICENSEE’s 2019 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 2019, or if a particular vessel licensed hereunder was not in operation during the 2019 contract year, LICENSEE shall estimate its 2020 license fee by utilizing its actual number of cabins and a good faith estimate of its entertainment expenditures and applying those figures to the 2020 Schedules A and B.
  - (c) The final license fee due to BMI for contract year 2020 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 2020, 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

(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.

**2020 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	\$242.00
B	150th – 299th	\$223.00
C	300th – 499th	\$207.00
D	500th and Remainder	\$189.00

- (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 \$ \_\_\_\_\_ = \$ \_\_\_\_\_

\*(35% of lowest GROUP fee entered above)

**TOTAL NUMBER OF LOCATIONS LICENSED =** ..... \_\_\_\_\_

**NUMBER OF LOCATIONS WITH AUDIO VISUAL =** ..... \_\_\_\_\_

**TOTAL ANNUAL FEE =** ..... \$ \_\_\_\_\_

- (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 2019, 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>	
<i>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</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>(Phone)</i>	<i>(Phone 2)</i>
<b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b>	<i>(Contact Name)</i>	<i>(Title)</i>
Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i>	<i>(Email Address)</i>	<i>(Web Address)</i>
State of Incorporation _____ Federal Tax ID No. _____	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>	
Partners' Names <i>(If Partnership)</i>	<i>(Street Address)</i>	
1. _____	<i>(City)</i>	<i>(State) (Zip)</i>
2. _____	<i>(Contact Name) (Title)</i>	
3. _____	<i>(Contact Phone) (Contact Phone 2)</i>	
<b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b>	<i>(Email Address – if different from above)</i>	
Local, State, or Federal _____		
Municipality Name _____ <i>(City/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>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>FOR BMI USE ONLY</b>	<b>40C</b>
<b>FOR BMI USE ONLY</b>	<b>LI-2019/OCT</b>	
<b>Please Sign &amp; Return this Entire License Agreement &amp; Payment to: BMI, Licensing Dept 10 Music Square E., Nashville, TN 37203 Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b>	<b>Customer Number</b>	



# 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 \$94.00 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 2020, 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.

**2020 LICENSE FEE SCHEDULE**

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.

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	\$177.00	\$278.00	\$350.00	Up to 1500	\$94.00
60-124	\$350.00	\$559.00	\$697.00	1501-2500	\$189.00
125-249	\$526.00	\$837.00	\$1050.00	2501-5000	\$377.00
250-374	\$697.00	\$1,120.00	\$1,398.00	Over 5000	\$753.00
375 & over	\$933.00	\$1,492.00	\$1,866.00		

\*\*Additional floors (levels) within Category C, are \$94.00 each.

**MUSIC POLICY STATEMENT**

Indicate music use by entering **one** appropriate category below.

Category (Instructional, Instructional/Background, Background)

*(Indicate Category A, B, or C from above)*

Average number of Different Students or Participants Per Week

Indicate the Number of Floors

For Category C only, Indicate the Square Footage

LICENSEE's Total Annual Fee

**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.**

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>	
<small>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</small>	<small>(Street Address)</small>	
<b><u>TRADE NAME</u></b>	<small>(City)</small>	<small>(State) (Zip)</small>
<small>(Doing business under the name of)</small>	<small>(Phone)</small>	<small>(Phone 2)</small>
<b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b>	<small>(Contact Name)</small>	<small>(Title)</small>
Legal Structure _____ <small>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</small>	<small>(Email Address)</small>	<small>(Web Address)</small>
State of Incorporation _____ Federal Tax ID No. _____	<b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small>	
Partners' Names <small>(If Partnership)</small>	<small>(Street Address)</small>	
1. _____	<small>(City) (State) (Zip)</small>	
2. _____	<small>(Contact Name) (Title)</small>	
3. _____	<small>(Contact Phone) (Contact Phone 2)</small>	
<b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b>	<small>(Email Address – if different from above)</small>	
Local, State, or Federal _____		
Municipality Name _____ <small>(City/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>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>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to: BMI, Licensing Dept 10 Music Square E., Nashville, TN 37203 Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b>	<b>FOR BMI USE ONLY</b>	<b>4040A</b>	<b>LI-2020/MAR</b>
	<b>Customer Number</b>		



# 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, 2020 through June 30, 2021, 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):

<b>BMI:</b> 10 Music Square East Nashville, TN 37203 Attn: Vice President Licensing	<b>LICENSEE:</b>
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- (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 Delaware 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.

<p><b><u>LEGAL NAME</u></b></p> <p><i>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p> <p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Phone) (Phone 2)</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>(Contact Name) (Title)</i></p> <p><i>(Contact Phone) (Contact Phone 2)</i></p> <p><i>(Email Address – if different from above)</i></p>						
<p><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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <i>(if different from above)</i></p> <p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b>  <b>BMI, Licensing Dept</b>  <b>10 Music Square E., Nashville, TN 37203</b>  <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>	<p><b><u>FOR ADMINISTRATIVE USE ONLY</u></b> <b><u>TO BE COMPLETED BY BMI</u></b> <b><u>BROADCAST MUSIC INC.</u></b></p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="width: 33%; text-align: center;">FOR BMI USE ONLY</td> <td style="width: 33%; text-align: center;">DJB1</td> <td style="width: 33%; text-align: center;">LI-2019/OCT</td> </tr> <tr> <td colspan="3" style="text-align: center; padding: 10px;">Customer Number</td> </tr> </table>	FOR BMI USE ONLY	DJB1	LI-2019/OCT	Customer Number		
FOR BMI USE ONLY	DJB1	LI-2019/OCT					
Customer Number							



# 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 \$52.00 per Serviced Establishment.
- (c) The Annual License Fee for the Contract Year commencing January 1, 2020, 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.**

<p><b><u>LEGAL NAME</u></b></p> <p><i>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p> <p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Phone) (Phone 2)</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>(Contact Name) (Title)</i></p> <p><i>(Contact Phone) (Contact Phone 2)</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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <i>(if different from above)</i></p> <p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to: BMI, Licensing Dept 10 Music Square E., Nashville, TN 37203</b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%; text-align:center;">FOR BMI USE ONLY</td> <td style="width:33%; text-align:center;">DMM1</td> <td style="width:33%; text-align:center;">LI-2019/OCT</td> </tr> <tr> <td colspan="3" style="text-align:center; padding-top: 10px;">Customer Number</td> </tr> </table>	FOR BMI USE ONLY	DMM1	LI-2019/OCT	Customer Number		
FOR BMI USE ONLY	DMM1	LI-2019/OCT					
Customer Number							



# BMI Music License For Eating & Drinking Establishments

## With a BMI Music License You Get a Seal of Compliance & Access to 15 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 2020 shall be an adjustment of the 2020 rate based upon the percentage increase or decrease in the United States Consumer Price Index (Urban, All Items) between October 2019 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 \$ 388.00 for 2019 (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

www.bmi.com/ede

For all of the ways music is used in your establishment, enter the corresponding amount under Rate Per Year Per Occupant 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> <ul style="list-style-type: none"> <li>• Multiple Singers/Instrumentalist                             <table style="width: 100%; border: none;"> <tr> <td style="width: 45%;"></td> <td style="width: 15%;">5-7 nights</td> <td style="width: 20%;">\$6.30</td> <td style="width: 20%;"></td> </tr> <tr> <td>How many nights per week? _____ <i>(1 night= no more than 5 times in any one month)</i></td> <td>2-4 nights</td> <td>\$5.30</td> <td></td> </tr> <tr> <td></td> <td>1 night or less</td> <td>\$4.75</td> <td></td> </tr> </table> </li> <li>• Single Singer/Instrumentalist                             <table style="width: 100%; border: none;"> <tr> <td style="width: 45%;"></td> <td style="width: 15%;">5-7 nights</td> <td style="width: 20%;">\$4.60</td> <td style="width: 20%;"></td> </tr> <tr> <td>How many nights per week? _____ <i>(1 night= no more than 5 times in any one month)</i></td> <td>2-4 nights</td> <td>\$3.80</td> <td></td> </tr> <tr> <td></td> <td>1 night or less</td> <td>\$3.50</td> <td></td> </tr> </table> </li> </ul> <p style="text-align: right;"><b>Enter ONLY the highest amount that applies here.....→</b></p>					5-7 nights	\$6.30		How many nights per week? _____ <i>(1 night= no more than 5 times in any one month)</i>	2-4 nights	\$5.30			1 night or less	\$4.75			5-7 nights	\$4.60		How many nights per week? _____ <i>(1 night= no more than 5 times in any one month)</i>	2-4 nights	\$3.80			1 night or less	\$3.50	
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<b>2. Enhanced Recorded Music*</b> Type of Enhanced Recorded? _____ (Karaoke, DVDs, Video Tapes, VJs) <i>(1 night = no more than 5 times in any one month)</i> <table style="width: 100%; border: none;"> <tr> <td style="width: 45%;"></td> <td style="width: 15%;">5-7 nights</td> <td style="width: 20%;">\$3.65</td> <td style="width: 20%;"></td> </tr> <tr> <td></td> <td>2-4 nights</td> <td>\$3.50</td> <td></td> </tr> <tr> <td></td> <td>1 night or less</td> <td>\$3.40</td> <td></td> </tr> </table> How many nights per week? _____ <b>Recorded Music*</b> Type of Recorded Music? _____ (CDs/Tapes/Records, Free-Play Jukebox, DJ, IPOD/MP3/Other Digital Music) \$3.15 <p style="text-align: right;"><b>Enter ONLY the highest amount that applies here.....→</b></p>					5-7 nights	\$3.65			2-4 nights	\$3.50			1 night or less	\$3.40													
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<b>7. Occupancy*</b> Total Premise Occupancy _____ <i>(If greater than 1,000 occupants, enter 1,000)</i> OR If Occupancy <u>cannot</u> be established by local building/fire codes, use formula below:  Total Square Footage of Entire Premises _____ ÷ 20 = _____ Occupancy			(Enter Occupancy)																								
<b>8. SUBTOTAL (Multiply Line 6 by Line 7)</b> If \$388.00 or Less, Enter Annual Minimum Fee of \$388.00.....			<b>→</b>																								
<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, enter the fee here. If the jukebox is already licensed under the JLO license, please enter Vendor name, address and phone no. below.  Jukebox Fee = \$388.00 Name/Company _____ JLO Certificate # _____ Address _____ Phone # _____ City _____ State _____ Zip _____																											
*Refer to Paragraph 10(c-m) on Page 2																											
<b>GROSS ANNUAL FEE ALL USES (Add Lines 8 and 9)</b>																											
If More Than \$11,570.00, Enter Maximum Fee of \$11,570.00.....			<b>→</b>																								
<b>APPLICABLE DISCOUNT(S).....</b>			<b>→</b>																								
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\*Eligible for 10% Timely Pay Discount if paying in FULL. If you wish to pay by Credit Card, Call Your BMI Representative at 1-888-689-5264.

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

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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 Delaware corporation with principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030, and the entity described below and referred to herein as "LICENSEE" or "you".

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<i>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</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>(Phone) (Phone 2)</i>
<b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b>	<i>(Contact Name) (Title)</i>
Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i>	<i>(Email Address) (Web Address)</i>
State of Incorporation _____ Federal Tax ID No. _____	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
Partners' Names <i>(If Partnership)</i>	<i>(Street Address)</i>
1. _____	<i>(City) (State) (Zip)</i>
2. _____	<i>(Contact Name) (Title)</i>
3. _____	<i>(Contact Phone) (Contact Phone 2)</i>
<b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b>	<i>(Email Address – if different from above)</i>
Local, State, or Federal _____	
Municipality Name _____ <i>(City/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.		
Signature		
Print Name / Title		
Signatory Email Address <i>(if different from above)</i>		
	<b>FOR BMI USE ONLY</b>	<b>EDE1</b>
	<b>LI-2019/APR</b>	
<b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to: BMI, Licensing Dept 10 Music Square E., Nashville, TN 37203 Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b>	<b>Customer Number</b>	



# BMI Music License For Eating & Drinking Establishments

With a BMI Music License  
You Get a Seal of Compliance &  
Access to 15 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 2021 shall be an adjustment of the 2021 rate based upon the percentage increase or decrease in the United States Consumer Price Index (Urban, All Items) between October 2020 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 \$395.00 for 2020 (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

www.bmi.com/ede

For all of the ways music is used in your establishment, enter the corresponding amount under Rate Per Year Per Occupant on the appropriate line(s) to the right.

Music Type	Frequency Per Week	Rate Per Year Per Occupant	Enter Fee Calculation																								
<b>1. <u>Live Music*</u></b> <ul style="list-style-type: none"> <li>• Multiple Singers/Instrumentalist                             <table style="width: 100%; border: none;"> <tr> <td style="width: 45%;"></td> <td style="width: 15%;">5-7 nights</td> <td style="width: 20%;">\$6.40</td> <td style="width: 20%;"></td> </tr> <tr> <td>How many nights per week? _____</td> <td>2-4 nights</td> <td>\$5.40</td> <td></td> </tr> <tr> <td style="padding-left: 20px;">(1 night= no more than 5 times in any one month)</td> <td>1 night or less</td> <td>\$4.85</td> <td></td> </tr> </table> </li> <li>• Single Singer/Instrumentalist                             <table style="width: 100%; border: none;"> <tr> <td style="width: 45%;"></td> <td style="width: 15%;">5-7 nights</td> <td style="width: 20%;">\$4.70</td> <td style="width: 20%;"></td> </tr> <tr> <td>How many nights per week? _____</td> <td>2-4 nights</td> <td>\$3.85</td> <td></td> </tr> <tr> <td style="padding-left: 20px;">(1 night= no more than 5 times in any one month)</td> <td>1 night or less</td> <td>\$3.55</td> <td></td> </tr> </table> </li> </ul> <p style="text-align: right;"><b>Enter ONLY the highest amount that applies here.....➔</b></p>					5-7 nights	\$6.40		How many nights per week? _____	2-4 nights	\$5.40		(1 night= no more than 5 times in any one month)	1 night or less	\$4.85			5-7 nights	\$4.70		How many nights per week? _____	2-4 nights	\$3.85		(1 night= no more than 5 times in any one month)	1 night or less	\$3.55	
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LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

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

<b>LEGAL NAME</b>	<b>LICENSED PREMISES</b>	
(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)	(Street Address)	
<b>TRADE NAME</b>	(City)	(State) (Zip)
(Doing business under the name of)	(Phone)	(Phone 2)
<b>PLEASE COMPLETE LEGAL INFORMATION BELOW</b>	(Contact Name)	(Title)
Legal Structure _____ (Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)	(Email Address)	(Web Address)
State of Incorporation _____ Federal Tax ID No. _____	<b>MAILING ADDRESS</b> (if different from Licensed Premises)	
Partners' Names (If Partnership)	(Street Address)	
1. _____	(City)	(State) (Zip)
2. _____	(Contact Name)	(Title)
3. _____	(Contact Phone)	(Contact Phone 2)
<b>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</b>	(Email Address – if different from above)	
Local, State, or Federal _____		
Municipality Name _____ (City/State)		

**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.			
Signature			
Print Name / Title			
Signatory Email Address (if different from above)			
	FOR BMI USE ONLY	EDE1	LI-2019/DEC
<b>Please Sign &amp; Return this Entire License Agreement &amp; Payment to: BMI, Licensing Dept 10 Music Square E., Nashville, TN 37203 Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b>	<b>Customer Number</b>		



# BMI Music License For Eating & Drinking Establishments

With a BMI Music License  
You Get a Seal of Compliance &  
Access to 15 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.

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## 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 2020 shall be an adjustment of the 2020 rate based upon the percentage increase or decrease in the United States Consumer Price Index (Urban, All Items) between October 2019 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 \$ 388.00 for 2019 (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**

*For all of the ways music is used in your establishment, enter the corresponding amount under Rate Per Year per Occupant 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 enter the **OCCASIONAL USE** rate, if applicable.  
**FOR ALL OTHER USES OF MUSIC:** Please enter the **FULL USE** fee. 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	OCCASIONAL USE Rate Per Year Per Occupant	Enter Fee Calculation
<b>1. Live Music*</b>				
• Multiple Singers/Instrumentalist	5-7 nights	\$6.30		
<b>How many nights per week?</b> _____ <i>(1 night = no more than 5 times in any one month)</i>	2-4 nights	\$5.30		
	1 night or less	\$4.75	\$1.58	
• Single Singer/Instrumentalist	5-7 nights	\$4.60		
<b>How many nights per week?</b> _____ <i>(1 night = no more than 5 times in any one month)</i>	2-4 nights	\$3.80		
	1 night or less	\$3.50	\$1.16	
<b>Enter ONLY the highest amount that applies here.....➔</b>				

<b>2. Enhanced Recorded Music*</b>				
<b>Type of Enhanced Music?</b> _____ (Karaoke, DVDs, Video Tapes, VJs)	5-7 nights	\$3.65		
<i>(1 night = no more than 5 times in any one month)</i>	2-4 nights	\$3.50		
<b>How many nights per week?</b> _____	1 night or less	\$3.40	\$1.12	
<b>Recorded Music*</b>				
<b>Type of Recorded Music?</b> _____ (CDs/Tapes/Records, Free-Play Jukebox, DJ, IPOD/MP3/Other Digital Music)		\$3.15	\$1.04	
<b>Enter ONLY the highest amount that applies here.....➔</b>				

<b>3. Admission or Cover Charge*</b> <i>(at any time)</i>		\$2.00	\$0.65	
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<b>4. Dancing to Live or Recorded Music*</b> <i>(at any time)</i>		\$2.00	\$0.65	
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<b>5. Television and/or Radio*</b> <i>skip this Section if you have entered a fee in Section 2)</i>		\$1.40	\$0.46	
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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 _____	<i>(If greater than 1,000 occupants, enter 1,000)</i>			
OR				
If Occupancy <b>cannot</b> be established by local building/fire codes, use formula below:				
Total Square Footage of Entire Premises _____	÷ 20	_____	Occupancy	<i>(Enter Occupancy)</i>

<b>8. SUBTOTAL - FULL USE</b> <i>(Multiply Line 6 by Line 7)</i>	OR	<b>SUBTOTAL - OCCASIONAL USE ONLY</b> <i>(Multiply Line 6 by Line 7)</i>		
If \$388.00 or Less, Enter Annual Minimum Fee of \$388.00.....➔		If \$193.76 or Less, Enter Annual Minimum Fee of \$193.76.....➔		

<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, enter the fee here. If the jukebox is already licensed under the JLO license, please enter Vendor name, address and phone no. below.</i>				
Name/Company _____	JLO Cert # _____	Jukebox Fee = \$388.00		
Address _____	Phone _____			
City _____	State _____	Zip _____		

\*Refer to Paragraph 10 (c-m) on Page 2

<b>GROSS ANNUAL FEE ALL USES (Add Lines 8 and 9)</b> If More Than \$11,570.00, Enter Maximum Fee of \$11,570.00..... ➔	
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<b>APPLICABLE DISCOUNT(S)..... ➔</b>	
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<b>*ANNUAL FEE..... ➔</b>	
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\*Eligible for 10% Timely Pay Discount if paying in FULL. If you wish to pay by Credit Card, Call Your BMI Representative at 1-888-689-5264.

**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 Delaware corporation with principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030, and the entity described below and referred to herein as "LICENSEE" or "you".

<p><b><u>LEGAL NAME</u></b></p> <p><i>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p>
<p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p>	<p><i>(Street Address)</i></p> <hr/> <p><i>(City) (State) (Zip)</i></p> <hr/> <p><i>(Phone) (Phone 2)</i></p> <hr/> <p><i>(Contact Name) (Title)</i></p> <hr/> <p><i>(Email Address) (Web Address)</i></p>
<p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i></p> <hr/> <p><i>(Street Address)</i></p> <hr/> <p><i>(City) (State) (Zip)</i></p> <hr/> <p><i>(Contact Name) (Title)</i></p> <hr/> <p><i>(Contact Phone) (Contact Phone 2)</i></p> <hr/> <p><i>(Email Address – if different from above)</i></p>

**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.</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> <hr/> <p>Print Name / Title</p> <hr/> <p>Signatory Email Address <i>(if different from above)</i></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:33%; text-align:center;"><b>EDE1</b></td> <td style="width:33%; text-align:center;"><b>LI-2019/APR</b></td> </tr> <tr> <td colspan="3" style="text-align:center; padding-top: 10px;">Customer Number</td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>EDE1</b>	<b>LI-2019/APR</b>	Customer Number		
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- (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.

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## 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.

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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 2021 shall be an adjustment of the 2021 rate based upon the percentage increase or decrease in the United States Consumer Price Index (Urban, All Items) between October 2020 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 \$395.00 for 2020 (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**

*For all of the ways music is used in your establishment, enter the corresponding amount under Rate Per Year per Occupant 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 enter the **OCCASIONAL USE** rate, if applicable.  
**FOR ALL OTHER USES OF MUSIC:** Please enter the **FULL USE** fee. 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	OCCASIONAL USE Rate Per Year Per Occupant	Enter Fee Calculation
<b>1. Live Music*</b>				
• Multiple Singers/Instrumentalist	5-7 nights	\$6.40		
<b>How many nights per week?</b> _____	2-4 nights	\$5.40		
(1 night = no more than 5 times in any one month)	1 night or less	\$4.85	\$1.61	
• Single Singer/Instrumentalist	5-7 nights	\$4.70		
<b>How many nights per week?</b> _____	2-4 nights	\$3.85		
(1 night = no more than 5 times in any one month)	1 night or less	\$3.55	\$1.18	
<b>Enter ONLY the highest amount that applies here.....➔</b>				

<b>2. Enhanced Recorded Music*</b>				
<b>Type of Enhanced Music?</b> _____				
(Karaoke, DVDs, Video Tapes, VJs)	5-7 nights	\$3.70		
(1 night = no more than 5 times in any one month)	2-4 nights	\$3.55		
<b>How many nights per week?</b> _____	1 night or less	\$3.45	\$1.14	
<b>Recorded Music*</b>				
<b>Type of Recorded Music?</b> _____				
(CDs/Tapes/Records, Free-Play Jukebox, DJ, IPOD/MP3/Other Digital Music)		\$3.20	\$1.06	
<b>Enter ONLY the highest amount that applies here.....➔</b>				

<b>3. Admission or Cover Charge*</b> (at any time)		\$2.05	\$0.66	
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<b>4. Dancing to Live or Recorded Music*</b> (at any time)		\$2.05	\$0.66	
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<b>5. Television and/or Radio*</b> <small>skip this Section if you have entered a fee in Section 2)</small>		\$1.40	\$0.47	
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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 <b>cannot</b> be established by local building/fire codes, use formula below:				
Total Square Footage of Entire Premises _____	÷ 20	_____	Occupancy	(Enter Occupancy)

<b>8. SUBTOTAL - FULL USE</b> (Multiply Line 6 by Line 7)	OR	<b>SUBTOTAL - OCCASIONAL USE ONLY</b> (Multiply Line 6 by Line 7)		
If \$395.00 or Less, Enter Annual Minimum Fee of \$395.00.....➔		If \$197.17 or Less, Enter Annual Minimum Fee of \$197.17..... ➔		

<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, enter the fee here. If the jukebox is already licensed under the JLO license, please enter Vendor name, address and phone no. below.</i>				
			Jukebox Fee = \$395.00	
Name/Company _____	JLO Cert # _____			
Address _____	Phone _____			
City _____	State _____	Zip _____		

\*Refer to Paragraph 10 (c-m) on Page 2

<b>GROSS ANNUAL FEE ALL USES (Add Lines 8 and 9)</b>	
If More Than \$11,774.00, Enter Maximum Fee of \$11,774.00..... ➔	

<b>APPLICABLE DISCOUNT(S)..... ➔</b>	
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<b>*ANNUAL FEE..... ➔</b>	
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\*Eligible for 10% Timely Pay Discount if paying in FULL. If you wish to pay by Credit Card, Call Your BMI Representative at 1-888-689-5264.



**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 Delaware corporation with principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030, and the entity described below and referred to herein as "LICENSEE" or "you".

<p><b><u>LEGAL NAME</u></b></p> <p><i>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p>
<p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p>	<p><i>(Street Address)</i></p> <hr/> <p><i>(City) (State) (Zip)</i></p> <hr/> <p><i>(Phone) (Phone 2)</i></p> <hr/> <p><i>(Contact Name) (Title)</i></p> <hr/> <p><i>(Email Address) (Web Address)</i></p>
<p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i></p> <p><i>(Street Address)</i></p> <hr/> <p><i>(City) (State) (Zip)</i></p> <hr/> <p><i>(Contact Name) (Title)</i></p> <hr/> <p><i>(Contact Phone) (Contact Phone 2)</i></p> <hr/> <p><i>(Email Address – if different from above)</i></p>

**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.</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> <hr/> <p>Print Name / Title</p> <hr/> <p>Signatory Email Address <i>(if different from above)</i></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:33%; text-align:center;"><b>EDE1</b></td> <td style="width:33%; text-align:center;"><b>LI-2019/DEC</b></td> </tr> <tr> <td colspan="3" style="text-align:center; padding: 10px;"><b>Customer Number</b></td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>EDE1</b>	<b>LI-2019/DEC</b>	<b>Customer Number</b>		
<b>FOR BMI USE ONLY</b>	<b>EDE1</b>	<b>LI-2019/DEC</b>					
<b>Customer Number</b>							
<p><b>Please Sign &amp; Return this Entire License Agreement &amp; Payment to:</b></p> <p><b>BMI, Licensing Dept</b> <b>10 Music Square E., Nashville, TN 37203</b> <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>							



# 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 2019 - 2020 Contract Year, which includes agreements commencing between October 2019 and September 2020 is \$256.00. 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.

**2019 – 2020 LICENSE FEE SCHEDULE**

<b>SCHEDULE A EVENTS WITH PAID ENTRY FEES FOR ADMISSION</b>	
<u>Annual Participation</u>	<u>% of Gross Revenue</u>
0 to 9,999	0.30%
10,000 and more	0.23%

<b>SCHEDULE 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	\$23.00
751 to 1,500	\$37.00
1,501 to 2,500	\$60.00
2,501 to 5,000	\$90.00
5,001 to 7,500	\$118.00
7,501 to 9,999	\$165.00
10,000 to 15,000	\$251.00
15,001 to 20,000	\$343.00
20,001 to 25,000	\$414.00
25,001 to 40,000	\$455.00
40,001 and Over	\$631.00

***The Minimum Annual Fee for the 2019 - 2020 Contract Year is \$256.00***

**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, than 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>	
<i>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</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>(Phone)</i>	<i>(Phone 2)</i>
<b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b>	<i>(Contact Name)</i>	<i>(Title)</i>
Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i>	<i>(Email Address)</i>	<i>(Web Address)</i>
State of Incorporation _____ Federal Tax ID No. _____	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>	
Partners' Names <i>(If Partnership)</i>	<i>(Street Address)</i>	
1. _____	<i>(City)</i>	<i>(State) (Zip)</i>
2. _____	<i>(Contact Name)</i>	<i>(Title)</i>
3. _____	<i>(Contact Phone)</i>	<i>(Contact Phone 2)</i>
<b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b>	<i>(Email Address – if different from above)</i>	
Local, State, or Federal _____		
Municipality Name _____ <i>(City/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>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>FOR BMI USE ONLY</b>	<b>ENRAC1</b>	<b>LI-2020/FEB</b>
<b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b> <b>BMI, Licensing Dept</b> <b>10 Music Square E., Nashville, TN 37203</b> <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b>	<b>Customer Number</b>		



# Interim Music License for Facilities -10,000 or More-

WHEREAS, BMI has been negotiating with concert promoters over the reasonable license fees, terms and conditions of a BMI Facilities license which will authorize the public performance of BMI affiliated musical works at musical attractions for the period commencing July 1, 2018 (the "2018 Facilities Agreement"); and

WHEREAS, upon the conclusion of those negotiations, BMI intends to quote new final blanket license fees and terms to LICENSEE and all other venues and facilities for the period commencing July 1, 2018; and

WHEREAS, LICENSEE and BMI desire to enter into this Interim Music License Agreement pending the finalization of such license fees, terms and conditions;

NOW THEREFORE, by signing below LICENSEE and BMI agree as follows:

## 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. INTERIM LICENSE FEES**

- (a) LICENSEE agrees to pay BMI an interim license 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) This license shall be deemed to be an application to BMI for a license under Section XIV of the BMI consent decree. LICENSEE agrees to be bound by all of the terms and conditions in this License on an interim fee basis for the period commencing July 1, 2018 (the "Interim License Period"), continuing on a month to month basis until the final license fees and terms are determined either by negotiations or as may be determined by the BMI rate court in a proceeding to determine reasonable BMI final blanket license fees for venues and promoter/presenters for this period. LICENSEE's interim quarterly and annual license fees shall be adjusted retroactively to July 1, 2018 at such time as final fees and terms are determined.
- (c) Once final fees are determined, LICENSEE shall be obligated to pay BMI any additional monies owed BMI as a result of such retroactive adjustment of rates or fees if such rates are higher than the interim fees, and BMI shall be obligated to credit LICENSEE's account any monies owed LICENSEE as a result of such retroactive adjustment of rates or fees in the event the rates are lower than the interim rate.
- (d) The minimum annual fee billed and payable shall be \$150.00 per year.
- (e) 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 (20th) 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.

**INTERIM LICENSE FEE SCHEDULE**

<b>SCHEDULE A. INTERIM 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. INTERIM 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 the first day of (month/year) \_\_\_\_\_ and shall continue on a month-to-month basis, subject to the right of either party to this agreement to terminate the Interim License prospectively on thirty (30) days' prior 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, 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>
<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 COMPLETE LEGAL INFORMATION BELOW</u></b>	<i>(Contact Name) (Title)</i>
Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i>	<i>(Email Address) (Web Address)</i>
State of Incorporation _____ Federal Tax ID No. _____	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
Partners' Names <i>(If Partnership)</i>	<i>(Street Address)</i>
1. _____	<i>(City) (State) (Zip)</i>
2. _____	<i>(Telephone Number) (Fax Number)</i>
3. _____	<i>(Contact Name) (Title)</i>
<b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b>	<i>(Email Address – if different from above)</i>
Local, State, or Federal _____	
Municipality Name _____ <i>(City/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</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>			
*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>39M</b>
<b>PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO:</b>			<b>LI-2018/JULY</b>
<b>BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203</b>	<b>ACCOUNT NO.</b>	<b>COID</b>	<b>EFFECTIVE: July 2018</b>
			<b>INTERIM</b>



# Interim Music License for Festivals / Special Events

WHEREAS, BMI has been negotiating with concert promoters over the reasonable license fees, terms and conditions of a BMI festivals/special events license which will authorized the public performance of BMI affiliated musical works at Festivals and Events for the period commencing July 1, 2018 (the "2018 Festival/Special Events Agreement"); and

WHEREAS, upon the conclusion of those negotiations, BMI intends to quote new final blanket license fees and terms to LICENSEE and all other venues and festivals/special events for the period commencing July 1, 2018; and

WHEREAS, LICENSEE and BMI desire to enter into this Interim Music License Agreement pending the finalization of such license fees, terms and conditions;

NOW THEREFORE, by signing below LICENSEE and BMI agree as follows:

## 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 fourteen (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. INTERIM LICENSE FEES**

- (a) LICENSEE agrees to pay BMI an interim license 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 an interim license 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 an interim license fee for each performance computed on the basis set forth in **Schedule C** of this Agreement.

**SCHEDULE A**

<b>INTERIM LICENSE FEE SCHEDULE FOR EACH FESTIVAL OR SPECIAL EVENT <u>WITH PAID ADMISSION</u></b>	
<b>Attendance</b>	<b>Interim License Fee</b>
0 – 9,999	0.4% of gross ticket revenue (or \$255.00*, whichever is higher)
10,000 or More	0.3% of gross ticket revenue (or \$255.00*, whichever is higher)

**SCHEDULE B**

<b>INTERIM LICENSE FEE SCHEDULE FOR EACH FESTIVAL OR SPECIAL EVENT WHICH IS <u>FREE TO ATTENDEES</u></b>
The Interim 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 for each Festival or Special Event or \$255.00* for each Festival or Special Event, whichever is higher.

**SCHEDULE C**

<b>INTERIM 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	\$19.00	7,501	to	10,000	\$165.00
251	to	750	\$22.00	10,001	to	15,000	\$249.00
751	to	1,500	\$37.00	15,001	to	20,000	\$343.00
1,501	to	2,500	\$60.00	20,001	to	25,000	\$413.00
2,501	to	5,000	\$90.00	25,001	to	40,000	\$454.00
5,001	to	7,500	\$117.00	40,001	or	over	\$629.00

**\* \$255.00 minimum fee for contract year 2020 shall be CPI adjusted annually pursuant to Paragraph 5(c)**

- (b) The minimum interim license fees billed and payable for:
  - (i) Schedule A Festival/Special Event for which there is *Paid Admission*: minimum interim license fees shall be \$255.00 per Festival/Special Event for contract year 2020 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 interim license fees shall be \$255.00 per Festival/Special Event for contract year 2020 and shall be CPI adjusted annually pursuant to Paragraph 5(c) for each subsequent contract year.
  - (iii) Schedule C Benefit Event: minimum interim license fees shall be \$255.00 for contract year 2020 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 2020 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**

- One Festival, Special Event or Benefit Event per year (herein called "**Class 1 Presenter**") or
- Two or More Festivals, Special Events or Benefit Events per year (herein called "**Class 2 Presenter**")

- (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 the first day of (month/year) \_\_\_\_\_ and shall continue thereafter on a month-to-month basis, subject to the right of either party to this agreement to terminate the interim License prospectively on thirty (30) days prior 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 Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</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>(Phone)</i>	<i>(Phone 2)</i>
<b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b>	<i>(Contact Name)</i>	<i>(Title)</i>
Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i>	<i>(Email Address)</i>	<i>(Web Address)</i>
State of Incorporation _____ Federal Tax ID No. _____	<b><u>MAILING ADDRESS</u></b> <b>(if different from Licensed Premises)</b>	
Partners' Names <i>(If Partnership)</i>	<i>(Street Address)</i>	
1. _____	<i>(City)</i>	<i>(State) (Zip)</i>
2. _____	<i>(Contact Name) (Title)</i>	
3. _____	<i>(Contact Phone) (Contact Phone 2)</i>	
<b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b>	<i>(Email Address – if different from above)</i>	
Local, State, or Federal _____		
Municipality Name _____ <i>(City/State)</i>		
<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.		
Signature		
Print Name / Title		
Signatory Email Address <i>(if different from above)</i>	<b>FOR BMI USE ONLY</b>	<b>FSE1 Interim</b>
<b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to: BMI, Licensing Dept 10 Music Square E., Nashville, TN 37203 Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b>	<b>LI-2019/SEPT</b>	
	<b>Customer Number</b>	



# 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:

**2019-2020 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)
A	Group Fitness Classes	\$0.3010
B	Ambient Music	\$0.2100
C	TV and/or Radio <u>Only</u>	\$0.1300

$$\begin{array}{ccccccc}
 & & & \mathbf{X} & & = & \\
 \hline
 & \text{(Category/Music Use)} & & \text{(Total Members)} & & \text{(Member Fee)} & = \text{(Total Annual License Fee)}
 \end{array}$$

**\*Pursuant to Sub-paragraph 9(c), the total annual license fee per Licensed Premises shall not be less than \$335.00, shall not be greater than \$2,288.00 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 2019-2020 Contract Year of \$335.00 and a maximum annual license fee per Licensed Premises for the 2019-2020 Contract Year of \$2,288.00.

- (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 any time 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**

THIS AGREEMENT made and entered into on *(Date will be entered by BMI upon execution)* \_\_\_\_\_ between BROADCAST MUSIC, INC., a Delaware 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 Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p> <p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Phone) (Phone 2)</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>(Contact Name) (Title)</i></p> <p><i>(Contact Phone) (Contact Phone 2)</i></p> <p><i>(Email Address – if different from above)</i></p>
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<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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <i>(if different from above)</i></p> <p><b>Please Sign &amp; Return this Entire License Agreement &amp; Payment to:</b>  <b>BMI, Licensing Dept</b>  <b>10 Music Square E., Nashville, TN 37203</b>  <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b> <b>TO BE COMPLETED BY BMI</b> <b>BROADCAST MUSIC INC.</b></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:33%; text-align:center;"><b>FIT1</b></td> <td style="width:33%; text-align:center;"><b>LI-2020/JAN</b></td> </tr> <tr> <td colspan="3" style="text-align:center; height: 30px;"><b>Customer Number</b></td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>FIT1</b>	<b>LI-2020/JAN</b>	<b>Customer Number</b>		
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<b>Customer Number</b>							



# 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:

**2020-2021 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)
A	Group Fitness Classes	\$0.3060
B	Ambient Music	\$0.2140
C	TV and/or Radio <u>Only</u>	\$0.1320

$$\begin{array}{ccccccc}
 & & & \mathbf{X} & & = & \\
 \hline
 & \text{(Category/Music Use)} & & \text{(Total Members)} & & \text{(Member Fee)} & \text{(Total Annual License Fee)}
 \end{array}$$

**\*Pursuant to Sub-paragraph 9(c), the total annual license fee per Licensed Premises shall not be less than \$341.00, shall not be greater than \$2,327.00 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 2020-2021 Contract Year of \$341.00 and a maximum annual license fee per Licensed Premises for the 2020-2021 Contract Year of \$2,327.00.

- (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 any time 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**

THIS AGREEMENT made and entered into on *(Date will be entered by BMI upon execution)* \_\_\_\_\_ between BROADCAST MUSIC, INC., a Delaware 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 Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p> <p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Phone) (Phone 2)</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>(Contact Name) (Title)</i></p> <p><i>(Contact Phone) (Contact Phone 2)</i></p> <p><i>(Email Address – if different from above)</i></p>
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<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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <i>(if different from above)</i></p> <p><b>Please Sign &amp; Return this Entire License Agreement &amp; Payment to:</b>  <b>BMI, Licensing Dept</b>  <b>10 Music Square E., Nashville, TN 37203</b>  <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b> <b>TO BE COMPLETED BY BMI</b> <b>BROADCAST MUSIC INC.</b></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:33%; text-align:center;"><b>FIT1</b></td> <td style="width:33%; text-align:center;"><b>LI-2020/JAN</b></td> </tr> <tr> <td colspan="3" style="text-align:center; height: 30px;"><b>Customer Number</b></td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>FIT1</b>	<b>LI-2020/JAN</b>	<b>Customer Number</b>		
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<b>Customer Number</b>							



# 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 2020 Contract Year shall be \$351.11. License fees for the 2020 Contract Year shall be due upon the signing of the Agreement.
- (b) For Contract Year 2020, 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 \$159.64.
- (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 (month/year) \_\_\_\_\_ and end on the last day of (month/year) \_\_\_\_\_ 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 periods 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>	
<small>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</small>	<small>(Street Address)</small>	
<b><u>TRADE NAME</u></b>	<small>(City)</small>	<small>(State) (Zip)</small>
<small>(Doing business under the name of)</small>	<small>(Phone)</small>	<small>(Phone 2)</small>
<b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b>	<small>(Contact Name)</small>	<small>(Title)</small>
Legal Structure _____ <small>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</small>	<small>(Email Address)</small>	<small>(Web Address)</small>
State of Incorporation _____ Federal Tax ID No. _____	<b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small>	
Partners' Names <small>(If Partnership)</small>	<small>(Street Address)</small>	
1. _____	<small>(City) (State) (Zip)</small>	
2. _____	<small>(Contact Name) (Title)</small>	
3. _____	<small>(Contact Phone) (Contact Phone 2)</small>	
<b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b>	<small>(Email Address – if different from above)</small>	
Local, State, or Federal _____		
Municipality Name _____ <small>(City/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>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>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to: BMI, Licensing Dept 10 Music Square E., Nashville, TN 37203 Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b>	<b>FOR BMI USE ONLY</b>	<b>FNL1</b>	<b>LI-2019/OCT</b>
	<b>Customer Number</b>		



# 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>2020 – 2021 LICENSE FEE SCHEDULE</b>	
<b>Category 1</b> Annual Fee Per Bed	<b>Category 2</b> Annual Fee Per Facility
<b>\$4.99</b>	<b>\$511.00</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 \$4.99) will be \_\_\_\_\_.

For Category 2 LICENSEEs, the number of facilities licensed hereunder will be \_\_\_\_\_ and the estimated license fee (# of facilities x \$511.00) 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 \$511.00.
- (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.



**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, 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 Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p> <p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Phone) (Phone 2)</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>(Contact Name) (Title)</i></p> <p><i>(Contact Phone) (Contact Phone 2)</i></p> <p><i>(Email Address – if different from above)</i></p>
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<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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <i>(if different from above)</i></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b> <b>TO BE COMPLETED BY BMI</b> <b>BROADCAST MUSIC INC.</b></p>						
<p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b> <b>BMI, Licensing Dept</b> <b>10 Music Square E., Nashville, TN 37203</b> <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"><b>FOR BMI USE ONLY</b></td> <td style="width:33%;"><b>36H</b></td> <td style="width:33%;"><b>LI-2019/OCT</b></td> </tr> <tr> <td colspan="3" style="text-align:center; padding-top: 10px;"><b>Customer Number</b></td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>36H</b>	<b>LI-2019/OCT</b>	<b>Customer Number</b>		
<b>FOR BMI USE ONLY</b>	<b>36H</b>	<b>LI-2019/OCT</b>					
<b>Customer Number</b>							



## Hotel / Motel

### 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 of 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 20<sup>th</sup> 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 20<sup>th</sup> 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.

**SCHEDULE A - LIVE MUSIC AND ENTERTAINMENT FEE\***

Bracket of Annual Live Music and Entertainment Costs	Annual License Fee for Calendar Year* 2020	Bracket of Annual Live Music and Entertainment Costs	Annual License Fee for Calendar Year* 2020
Less Than \$2,000.00	\$248.00	\$250,000.00 to \$299,999.99	\$9,371.00
\$2,000.00 to \$4,999.99	\$344.00	\$300,000.00 to \$349,999.99	\$10,212.00
\$5,000.00 to \$9,999.99	\$519.00	\$350,000.00 to \$399,999.99	\$11,347.00
\$10,000.00 to \$14,999.99	\$679.00	\$400,000.00 to \$449,999.99	\$11,917.00
\$15,000.00 to \$24,999.99	\$1,022.00	\$450,000.00 to \$499,999.99	\$12,767.00
\$25,000.00 to \$34,999.99	\$1,360.00	\$500,000.00 to \$599,999.99	\$13,567.00
\$35,000.00 to \$49,999.99	\$1,691.00	\$600,000.00 to \$749,999.99	\$14,804.00
\$50,000.00 to \$64,999.99	\$2,022.00	\$750,000.00 to \$999,999.99	\$17,269.00
\$65,000.00 to \$79,999.99	\$2,555.00	\$1,000,000.00 to \$1,499,999.99	\$19,736.00
\$80,000.00 to \$99,999.99	\$3,404.00	\$1,500,000.00 to \$1,999,999.99	\$22,204.00
\$100,000.00 to \$119,999.99	\$4,259.00	\$2,000,000.00 to \$2,999,999.99	\$24,675.00
\$120,000.00 to \$139,999.99	\$5,107.00	\$3,000,000.00 to \$3,999,999.99	\$27,138.00
\$140,000.00 to \$159,999.99	\$5,959.00	\$4,000,000.00 to \$4,999,999.99	\$32,072.00
\$160,000.00 to \$179,999.99	\$6,809.00	\$5,000,000.00 to \$5,999,999.99	\$35,773.00
\$180,000.00 to \$199,999.99	\$7,662.00	\$6,000,000.00 to \$6,999,999.99	\$44,408.00
\$200,000.00 to \$249,999.99	\$8,510.00	\$7,000,000.00 and over	\$46,381.00

\* 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	2020 (Without AV)	2020 (With AV)
1 – 100	\$402.00	\$602.00
101 – 300	\$475.00	\$713.00
301 – 500	\$552.00	\$831.00
501 – 750	\$736.00	\$1,106.00
Over 750	\$981.00	\$1,468.00
2. One of: (a) Dancing; (b) Cover, Minimum or Admission Charge; or (c) Shows or Acts**		
No. of Rooms	2020 (Without AV)	2020 (With AV)
1 – 100	\$533.00	\$801.00
101 – 300	\$735.00	\$1,104.00
301 – 500	\$1,111.00	\$1,666.00
501 – 750	\$1,468.00	\$2,204.00
Over 750	\$1,953.00	\$2,932.00
3. Two of: (a) Dancing; (b) Cover, Minimum or Admission Charge; or (c) Shows or Acts**		
No. of Rooms	2020 (Without AV)	2020 (With AV)
1 – 100	\$735.00	\$1,104.00
101 – 300	\$1,111.00	\$1,666.00
301 – 500	\$1,649.00	\$2,471.00
501 – 750	\$2,200.00	\$3,405.00
Over 750	\$2,928.00	\$4,394.00
4. All of: (a) Dancing; (b) Cover, Minimum or Admission Charge; and (c) Shows or Acts**		
No. of Rooms	2020 (Without AV)	2020 (With AV)
1 – 100	\$1,222.00	\$1,832.00
101 – 300	\$1,888.00	\$2,833.00
301 – 500	\$2,530.00	\$3,802.00
501 – 750	\$3,156.00	\$4,736.00
Over 750	\$4,199.00	\$6,298.00

\* 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	2020 (Without AV)	2020 (With AV)
1 - 100	\$233.00	\$354.00
101 - 300	\$284.00	\$429.00
301 - 500	\$334.00	\$500.00
501 - 750	\$442.00	\$671.00
Over 750	\$593.00	\$889.00
2. One of: (a) Dancing; (b) Cover, Minimum or Admission Charge; or (c) Shows or Acts**		
No. of Rooms	2020 (Without AV)	2020 (With AV)
1 - 100	\$319.00	\$477.00
101 - 300	\$442.00	\$671.00
301 - 500	\$578.00	\$870.00
501 - 750	\$754.00	\$1,136.00
Over 750	\$1,002.00	\$1,508.00
3. Two of: (a) Dancing; (b) Cover, Minimum or Admission Charge; or (c) Shows or Acts**		
No. of Rooms	2020 (Without AV)	2020 (With AV)
1 - 100	\$442.00	\$671.00
101 - 300	\$581.00	\$870.00
301 - 500	\$823.00	\$1,235.00
501 - 750	\$1,201.00	\$1,803.00
Over 750	\$1,599.00	\$2,397.00
4. All of: (a) Dancing; (b) Cover, Minimum or Admission Charge; and (c) Shows or Acts**		
No. of Rooms	2020 (Without AV)	2020 (With AV)
1 - 100	\$1,222.00	\$1,832.00
101 - 300	\$1,873.00	\$2,833.00
301 - 500	\$2,513.00	\$3,802.00
501 - 750	\$3,133.00	\$4,736.00
Over 750	\$4,174.00	\$6,298.00



**16. TERM OF AGREEMENT**

**Term** shall mean the period beginning on the first day of (month/year) \_\_\_\_\_ and ending on the last day of December \_\_\_\_\_. Thereafter, this Agreement will automatically renew for additional one-year periods, unless timely cancelled. This Agreement may be cancelled as of December 31, 2020 or December 31 of any additional one-year period by either party on thirty (30) days' advance written notice.

**BMI HOTEL / MOTEL ANNUAL LICENSE FEE CALCULATION WORKSHEET**

<b>ENTER NUMBER OF GUEST ROOMS AT LICENSEE'S PREMISES.....</b>		
<b>Live Music and Entertainment Fee</b>		
(a)	Enter LICENSEE's Costs for the services of musicians for the prior year.....	1. \$
(b)	Enter LICENSEE'S Costs for services of all Entertainers such as (emcees, dancers, DJs or VJs, Karaoke Host, etc. for the prior year.....	2. \$
(c)	Enter agreed value of any room, board, or other accommodations or services given to musicians and all entertainers as part of payment for their services for the prior year.....	3. \$
(d)	Total Live Music and Entertainment Costs from all uses above (sum of lines 1, 2, and 3).....	4. \$
(e)	Based on Live Music and Entertainment Costs on Line 4, enter appropriate Annual License Fee from Schedule A.....	5. \$
<b>Recorded Music Fee</b>		
(f)	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 _____ Karaoke Hosts _____ Other (Comedians, Emcees, etc.)	
(g)	Did the business use music such as CDs, tape, digital, video, records, and free-play jukeboxes? <input type="checkbox"/> Yes <input type="checkbox"/> No	
(h)	Did the business use TVs in common areas such as lobby, bar, restaurant, fitness clubs, etc.? <input type="checkbox"/> Yes <input type="checkbox"/> No	
(i)	Based on the number of rooms entered above and the number of boxes checked in (f), enter appropriate fee from Schedule B (if no live music was used) or Schedule C (if live AND recorded music was used).....	6. \$
<b>ESTIMATED LICENSE FEE</b> (Add Line 5 and Line 6 or, if no Live Music or Entertainment, enter Total from Line 6) .....		7. \$
*If AH&LA member, Insert member # _____. Deduct the 1% AH&LA* (and any other applicable discounts) here.....		8. \$
*(Subparagraph 14(a)(2) <b>Total Estimated License Fee</b>		9. \$

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 Delaware 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.

<b>ENTER LEGAL NAME</b>	<b>LICENSED PREMISES</b>
(Name of Individual, Corporation, LLC, LLP, Partnership or Government Entity, etc.)	(Street Address)
<b>ENTER TRADE NAME</b>	(City) (State) (Zip)
(Doing business under the name of)	(Phone) (Phone 2)
<b>PLEASE COMPLETE LEGAL INFORMATION BELOW</b>	(Contact Name) (Title)
Legal Structure _____ (Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)	(Email Address) (Web Address)
State of Incorporation _____ Federal Tax ID No. _____	<b>MAILING ADDRESS</b>
Partners' Names (If Partnership)	(Street Address)
1. _____	(City) (State) (Zip)
2. _____	(Contact Name) (Title)
3. _____	(Contact Phone) (Contact Phone 2)
<b>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</b>	<b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b>
Local, State, or Federal _____	
Municipality Name (City/State) _____	
<b>TO BE COMPLETED BY LICENSEE</b>	
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.	
Signatory	
Signatory Name / Title	
Signatory Email Address (if different from above)	
Please Sign & Return this <u>Entire</u> License Agreement & Payment to: <b>BMI, Licensing Dept</b> <b>10 Music Square E., Nashville, TN 37203</b> <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b>	FOR BMI USE ONLY
	HTL1
	LI-2019/DEC
	Customer Number



## 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 2020 Contract Year shall be \$91.20. 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 (month/year) \_\_\_\_\_ 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) day 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.**

<p><b><u>LEGAL NAME</u></b></p> <p><small>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</small></p> <p><b><u>TRADE NAME</u></b></p> <p><small>(Doing business under the name of)</small></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <small>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</small></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <small>(If Partnership)</small></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <small>(City/State)</small></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><small>(Street Address)</small></p> <p><small>(City) (State) (Zip)</small></p> <p><small>(Phone) (Phone 2)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Email Address) (Web Address)</small></p> <p><b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small></p> <p><small>(Street Address)</small></p> <p><small>(City) (State) (Zip)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Contact Phone) (Contact Phone 2)</small></p> <p><small>(Email Address – if different from above)</small></p>
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<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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <small>(if different from above)</small></p>	<p><b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%; text-align:center;">FOR BMI USE ONLY</td> <td style="width:33%; text-align:center;">IBVM</td> <td style="width:33%; text-align:center;">LI-2019/OCT</td> </tr> </table> <p>Customer Number _____</p>	FOR BMI USE ONLY	IBVM	LI-2019/OCT
FOR BMI USE ONLY	IBVM	LI-2019/OCT		
<p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b>  <b>BMI, Licensing Dept</b>  <b>10 Music Square E., Nashville, TN 37203</b>  <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>				



# Indoor Recreational Facilities 1-24 Locations

## 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 \$660.00 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.



**16. TERM OF AGREEMENT**

The initial Term of this Agreement shall begin on the first day of (month/year) \_\_\_\_\_ and shall end of the last day of (month/year) \_\_\_\_\_. 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 Delaware 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").

<p><b><u>LEGAL NAME</u></b></p> <p><i>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p>		
<p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p>	<p><i>(Street Address)</i></p>		
<p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><i>(City) (State) (Zip)</i></p> <p><i>(Phone) (Phone 2)</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>(Contact Name) (Title)</i></p>		
	<p><i>(Contact Phone) (Contact Phone 2)</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>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b></p>		
<p>Signature</p>			
<p>Print Name / Title</p>			
<p>Signatory Email Address <i>(if different from above)</i></p>			
<p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to: BMI, Licensing Dept 10 Music Square E., Nashville, TN 37203 Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>	<p><b>FOR BMI USE ONLY</b></p>	<p><b>36J</b></p>	<p><b>LI-2020/JAN</b></p>
	<p><b>Customer Number</b></p>		





## Indoor Recreational Facilities Multiple Locations

### 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 \$550.00 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>	\$440.00
101 <sup>st</sup>	-	200 <sup>th</sup>	\$390.00
201 <sup>st</sup>	-	300 <sup>th</sup>	\$330.00
301 <sup>st</sup>	and more		\$280.00

**NOTE: The License Fees herein are successive, not cumulative. Therefore, if a LICENSEE has 250 locations, fees would be \$440.00 per Licensed Location for the first 100 Licensed Locations, \$390.00 per Licensed Location for the 101<sup>st</sup> through the 200<sup>th</sup> Licensed Location and \$330.00 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 owner 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.



**16. TERM OF AGREEMENT**

The initial Term of this Agreement shall begin on the first day of (month/year) \_\_\_\_\_ and shall end of the last day of (month/year) \_\_\_\_\_. 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 Delaware 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").

<p><b><u>LEGAL NAME</u></b></p> <p><i>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p> <p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Phone) (Phone 2)</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>(Contact Name) (Title)</i></p> <p><i>(Contact Phone) (Contact Phone 2)</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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <i>(if different from above)</i></p>	<p><b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b></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:33%; text-align:center;"><b>36L</b></td> <td style="width:33%; text-align:center;"><b>LI-2020/JAN</b></td> </tr> <tr> <td colspan="3" style="text-align:center; padding-top: 10px;"><b>Customer Number</b></td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>36L</b>	<b>LI-2020/JAN</b>	<b>Customer Number</b>		
<b>FOR BMI USE ONLY</b>	<b>36L</b>	<b>LI-2020/JAN</b>					
<b>Customer Number</b>							
<p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b>  <b>BMI, Licensing Dept</b>  <b>10 Music Square E., Nashville, TN 37203</b>  <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>							



# LASER SHOWS

AGREEMENT made at New York, N.Y. on \_\_\_\_\_ between BROADCAST MUSIC, INC., a corporation organized under the laws of the State of Delaware (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)

Legal Structure \_\_\_\_\_  
(Individual, Corporation, LLC, Partnership, etc.)

State of Incorporation (if corp) \_\_\_\_\_

Partners' Names (if partnership) \_\_\_\_\_

## 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 \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Telephone \_\_\_\_\_  
Solely for:  Laser Shows

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 the first day of \_\_\_\_\_ and end on the last day of \_\_\_\_\_. 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 \_\_\_\_\_ 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 rate 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 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) day 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.

<p align="center"><b>TO BE COMPLETED BY LICENSEE</b></p> <p><b>By signing this Agreement you agree that the foregoing in 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 align="center"><b><u>FOR ADMINISTRATIVE USE ONLY</u></b>  <b>TO BE COMPLETED BY BMI BROADCAST MUSIC, INC.</b></p>		
<p align="center">Signature</p>	<p align="center"><b>FOR BMI USE ONLY</b></p>		
<p align="center">Print Name / Title</p>	<p align="center">13</p>	<p align="center">LI-2017-SEPT</p>	
<p align="center">Signatory Email Address</p>	<p align="center"><b>ACCOUNT NO.</b></p>	<p align="center"><b>COID</b></p>	<p align="center"><b>EFFECTIVE September 2017</b></p>
<p align="center"><b>*In order to receive a copy of your executed Agreement, Please provide the email address of the Signatory.</b></p>			

## **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.

## 2020 RATE SCHEDULE FOR LOCAL GOVERNMENTS

<b>SCHEDULE A</b>					
<b>Population</b>	<b>LICENSEE's Population</b>			<b>Base License Fee</b>	<b>Schedule A Fee</b>
	1	-	50,000	\$364.00	
	50,001	-	75,000	\$724.00	
	75,001	-	100,000	\$871.00	
	100,001	-	125,000	\$1,160.00	
	125,001	-	150,000	\$1,452.00	
	150,001	-	200,000	\$1,887.00	
	200,001	-	250,000	\$2,320.00	
(Enter Population here)	250,001	-	300,000	\$2,759.00	
	300,001	-	350,000	\$3,192.00	
	350,001	-	400,000	\$3,631.00	
	400,001	-	450,000	\$4,063.00	
	450,001	-	500,000	\$4,500.00	
	500,001	-	plus	\$5,514.00 plus \$500 for every 100,000 population increment or portion thereof above 500,000 up to a maximum annual fee of \$72,548.00	
				<b>SCHEDULE A FEE</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>\$364.00</b> . No Special Events fee applies to LICENSEES qualifying under this schedule.	
<b>SCHEDULE C FEE</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 2020 AND THEREAFTER**

For each calendar year commencing 2021, 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 the first day of (month/year) \_\_\_\_\_, 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 Delaware 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.

<p><b><u>LEGAL NAME</u></b></p> <p><small>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</small></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><small>(Street Address)</small></p>
<p><b><u>TRADE NAME</u></b></p> <p><small>(Doing business under the name of)</small></p>	<p><small>(City) (State) (Zip)</small></p>
<p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <small>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</small></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <small>(If Partnership)</small></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <small>(City/State)</small></p>	<p><small>(Phone) (Phone 2)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Email Address) (Web Address)</small></p>
	<p><b><u>MAILING ADDRESS</u></b></p> <p><small>(if different from Licensed Premises)</small></p> <p><small>(Street Address)</small></p> <p><small>(City) (State) (Zip)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Contact Phone) (Contact Phone 2)</small></p> <p><small>(Email Address – if different from above)</small></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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <small>(if different from above)</small></p> <p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b>  <b>BMI, Licensing Dept</b>  <b>10 Music Square E., Nashville, TN 37203</b>  <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></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> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="width:33%; text-align:center;">FOR BMI USE ONLY</td> <td style="width:33%; text-align:center;">LGE1</td> <td style="width:33%; text-align:center;">LI-2019/DEC</td> </tr> </table> <p style="text-align:center; margin-top: 10px;">Customer Number _____</p>	FOR BMI USE ONLY	LGE1	LI-2019/DEC
FOR BMI USE ONLY	LGE1	LI-2019/DEC		



# National Football League

## 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>
2020	\$8,322.00	\$831.00

(b) The Annual License Fee and the Playoff Per Game License Fee for each Contract Year after 2020 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 2021, 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, 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.

**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 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**

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 (herein referenced as "LICENSEE")</u></b></p> <p><small>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</small></p> <p style="text-align: center;"><b><u>TRADE NAME</u></b></p> <p><small>(Doing business under the name of)</small></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <small>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</small></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <small>(If Partnership)</small></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <small>(City/State)</small></p>	<p style="text-align: center;"><b><u>LICENSED PREMISES</u></b></p> <p><small>(Street Address)</small></p> <hr/> <p><small>(City) (State) (Zip)</small></p> <hr/> <p><small>(Phone) (Phone 2)</small></p> <hr/> <p><small>(Contact Name) (Title)</small></p> <hr/> <p><small>(Email Address) (Web Address)</small></p> <hr/> <p style="text-align: center;"><b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small></p> <hr/> <p><small>(Street Address)</small></p> <hr/> <p><small>(City) (State) (Zip)</small></p> <hr/> <p><small>(Contact Name) (Title)</small></p> <hr/> <p><small>(Contact Phone) (Contact Phone 2)</small></p> <hr/> <p><small>(Email Address – if different from above)</small></p>
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<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> <hr/> <p style="text-align: center;">Signature</p> <hr/> <p style="text-align: center;">Print Name / Title</p> <hr/> <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 TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b></p> <hr/> <table style="width:100%; border: none;"> <tr> <td style="width:33%; border: none; text-align: center;"><b>FOR BMI USE ONLY</b></td> <td style="width:33%; border: none; text-align: center;"><b>70</b></td> <td style="width:33%; border: none; text-align: center;"><b>LI-2019/OCT</b></td> </tr> </table> <hr/> <p style="text-align: center;">Customer Number</p>	<b>FOR BMI USE ONLY</b>	<b>70</b>	<b>LI-2019/OCT</b>
<b>FOR BMI USE ONLY</b>	<b>70</b>	<b>LI-2019/OCT</b>		
<p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b>  <b>BMI, Licensing Dept</b>  <b>10 Music Square E., Nashville, TN 37203</b>  <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>				



# 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><u>CONTRACT YEAR/HOCKEY SEASON BEGINNING IN</u></b>	<b><u>ANNUAL LICENSE FEE</u></b>
2020	\$5,303.00

(b) The Annual License Fee for each Contract Year after 2020 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 2021, 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 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**

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 Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p>	
<p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p>	<p><i>(Street Address)</i></p>	
<p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><i>(City)</i> _____ <i>(State)</i> _____ <i>(Zip)</i> _____</p>	<p><i>(Phone)</i> _____ <i>(Phone 2)</i> _____</p>
	<p><i>(Contact Name)</i> _____ <i>(Title)</i> _____</p>	<p><i>(Email Address)</i> _____ <i>(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)</i> _____ <i>(State)</i> _____ <i>(Zip)</i> _____</p>	
	<p><i>(Contact Name)</i> _____ <i>(Title)</i> _____</p>	<p><i>(Contact Phone)</i> _____ <i>(Contact Phone 2)</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>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b></p>	
<p>Signature _____</p>	<p>FOR BMI USE ONLY      76      LI-2019/OCT</p>	
<p>Print Name / Title _____</p>		
<p>Signatory Email Address _____ <i>(if different from above)</i></p>		
<p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b> <b>BMI, Licensing Dept</b> <b>10 Music Square E., Nashville, TN 37203</b> <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>	<p>Customer Number _____</p>	



Music-On-Hold  
Service

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Account #

**LI-11/17-36M**

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>
---

<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>	



# Music License for Motion Picture Theatres

## 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 (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 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 2019 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.

**2020 LICENSE FEE SCHEDULE  
(FILL IN APPLICABLE 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	\$33.54	1B	Under 150	\$67.06
2A	150 - 299	\$44.73	2B	150 - 299	\$89.41
3A	300 - 599	\$78.22	3B	300 - 449	\$156.47
4A	600 - 899	\$111.74	4B	450 - 599	\$223.92
5A	900 & Over	\$167.62	5B	600 & Over	\$335.25

**THERE SHALL BE A TOTAL MINIMUM FEE OF \$167.62**

FEE COMPUTATION					
Using the totals from the THEATRE COMPLEX SCHEDULE below and the appropriate Class and Fee from the LICENSE FEE SCHEDULE above to calculate the following:					
	Average Seating Capacity	Fee From License Fee Schedule		Total Number of Screens From Theatre Complex Schedule	Fee
ALL Enclosed Complexes			X		
	Box A				
ALL Drive-In Complexes			X		
	Box B				
The Total First Year's Fee for both Enclosed and Drive-In Complexes is payable in full upon signing of this Agreement				<b>TOTAL FEE</b>	

**THEATRE COMPLEX SCHEDULE**

Name of Complex	Address, City, and State of Complex	Enclosed Complexes		Drive-In Complexes	
		Total Seating Capacity Each Complex	Total Number of Screens Each Complex	Total Auto Capacity Each Complex	Total Number of Screens Each Complex
		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 pages	Drive-In Screens Total other pages
		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		ALSO ENTER IN BOX "B" UNDER FEE COMPUTATION	

**TOTAL NUMBER OF COMPLEXES LISTED ON ALL PAGES**

\*Use Additional sheet if more room is needed but total all pages here

**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.**

<p><b><u>LEGAL NAME</u></b></p> <p><i>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</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 COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><i>(Phone) (Phone 2)</i></p> <p><i>(Contact Name) (Title)</i></p> <p><i>(Email Address) (Web Address)</i></p>						
	<p><b><u>MAILING ADDRESS</u></b> <b><i>(if different from Licensed Premises)</i></b></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Contact Name) (Title)</i></p> <p><i>(Contact Phone) (Contact Phone 2)</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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <i>(if different from above)</i></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>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b>  <b>BMI, Licensing Dept</b>  <b>10 Music Square E., Nashville, TN 37203</b>  <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></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:33%; text-align:center;"><b>41</b></td> <td style="width:33%; text-align:center;"><b>LI-2019/NOV</b></td> </tr> <tr> <td colspan="3" style="text-align:center; padding-top: 10px;"><b>Customer Number</b></td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>41</b>	<b>LI-2019/NOV</b>	<b>Customer Number</b>		
<b>FOR BMI USE ONLY</b>	<b>41</b>	<b>LI-2019/NOV</b>					
<b>Customer Number</b>							



# 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 2020-2021 Contract Year is as follows:

**2020-2021 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>\$.0074</b>		<b>1.50%</b>	
(1)	$\frac{\text{LICENSEE's 2020-2021 Attendance}}{\text{Attendance}} \times .0074 = \text{Ambient Music License Fee}$		
(2)	$\frac{\text{LICENSEE's 2020-2021 Live Music Entertainment Costs}}{\text{Entertainment Costs}} \times .0150 = \text{Live Music Entertainment License Fee}$		
<b>Total License Fee:</b>			$\text{(add lines 1 and 2)*}$

\*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 2020-2021 Contract Year is \$391.00 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.**

<p><b><u>LEGAL NAME</u></b></p> <p><small>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</small></p>	<p><b><u>LICENSED PREMISES</u></b></p>		
<p><b><u>TRADE NAME</u></b></p> <p><small>(Doing business under the name of)</small></p>	<p><small>(Street Address)</small></p>		
<p><b>PLEASE COMPLETE LEGAL INFORMATION BELOW</b></p> <p>Legal Structure _____ <small>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</small></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <small>(If Partnership)</small></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <small>(City/State)</small></p>	<p><small>(City) (State) (Zip)</small></p> <p><small>(Phone) (Phone 2)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Email Address) (Web Address)</small></p>		
	<p><b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small></p>		
	<p><small>(Street Address)</small></p>		
	<p><small>(City) (State) (Zip)</small></p>		
	<p><small>(Contact Name) (Title)</small></p>		
	<p><small>(Contact Phone) (Contact Phone 2)</small></p>		
	<p><small>(Email Address – if different from above)</small></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>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b></p>		
<p>Signature</p>			
<p>Print Name / Title</p>			
<p>Signatory Email Address <small>(if different from above)</small></p>			
<p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b> <b>BMI, Licensing Dept</b> <b>10 Music Square E., Nashville, TN 37203</b> <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>	<p><b>FOR BMI USE ONLY</b></p>	<p><b>MSM1</b></p>	<p><b>LI-2019/SEPT</b></p>
	<p><b>Customer Number</b></p>		



# 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 2019 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.

### **2020 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	\$269.00	75 - 124	5	\$1,174.00
10 - 29	2	\$469.00	125 - 199	6	\$1,403.00
30 - 49	3	\$701.00	200 - 349	7	\$1,732.00
50 - 74	4	\$940.00	350 and Over	8	\$2,125.00

## 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.**

<p><b><u>LEGAL NAME</u></b></p> <p><i>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p> <p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Phone) (Phone 2)</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>(Contact Name) (Title)</i></p> <p><i>(Contact Phone) (Contact Phone 2)</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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <i>(if different from above)</i></p> <p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b>  <b>BMI, Licensing Dept</b>  <b>10 Music Square E., Nashville, TN 37203</b>  <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b> <b>TO BE COMPLETED BY BMI</b> <b>BROADCAST MUSIC INC.</b></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:33%; text-align:center;"><b>42</b></td> <td style="width:33%; text-align:center;"><b>LI-2019/NOV</b></td> </tr> <tr> <td colspan="3" style="text-align:center; padding-top: 10px;"><b>Customer Number</b></td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>42</b>	<b>LI-2019/NOV</b>	<b>Customer Number</b>		
<b>FOR BMI USE ONLY</b>	<b>42</b>	<b>LI-2019/NOV</b>					
<b>Customer Number</b>							



# Music License for Music On Hold Service

1. The term of this agreement shall be the period of one (1) year beginning on the first day of \_\_\_\_\_ and ending on the last day of \_\_\_\_\_ 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."

2. As used in this agreement, the following words shall have the following respective meanings:

(a) "Music-on-hold": a telephonic transmission service whereby music is performed for telephone callers while they are being held on the line;

(b) "Music-on-hold service": a business operation which provides audio tapes to its customers for music-on-hold use;

(c) "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;

(d) "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 ( $1\frac{1}{2}\%$ ) 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.

# 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 Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</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>(Phone)</i>	<i>(Phone 2)</i>
<b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b>	<i>(Contact Name)</i>	<i>(Title)</i>
Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i>	<i>(Email Address)</i>	<i>(Web Address)</i>
State of Incorporation _____ Federal Tax ID No. _____	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>	
Partners' Names <i>(If Partnership)</i>	<i>(Street Address)</i>	
1. _____	<i>(City) (State) (Zip)</i>	
2. _____	<i>(Contact Name) (Title)</i>	
3. _____	<i>(Contact Phone) (Contact Phone 2)</i>	
<b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b>	<i>(Email Address – if different from above)</i>	
Local, State, or Federal _____		
Municipality Name _____ <i>(City/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>	
Signature	<b>BROADCAST MUSIC INC.</b>	
Print Name / Title		
Signatory Email Address <i>(if different from above)</i>	<b>FOR BMI USE ONLY</b>	<b>36M</b>
	<b>LI-2020/MAR</b>	
<b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to: BMI, Licensing Dept 10 Music Square E., Nashville, TN 37203 Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b>	<b>Customer Number</b>	



# 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	\$34.73	100 or less	\$5.40	100 or less	\$ 8.68
101-200	\$49.15	101-200	\$8.36	101-200	\$11.38
201-300	\$68.30	201-300	\$10.01	201-300	\$17.08
300+	\$93.61	300+	\$12.64	300+	\$25.77

- (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.**

<p><b><u>LEGAL NAME</u></b></p> <p><small>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</small></p>	<p><b><u>LICENSED PREMISES</u></b></p>
<p><b><u>TRADE NAME</u></b></p> <p><small>(Doing business under the name of)</small></p>	<p><small>(Street Address)</small></p>
<p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <small>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</small></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <small>(If Partnership)</small></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <small>(City/State)</small></p>	<p><small>(City) (State) (Zip)</small></p> <p><small>(Phone) (Phone 2)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Email Address) (Web Address)</small></p>
	<p><b><u>MAILING ADDRESS</u></b></p> <p><small>(if different from Licensed Premises)</small></p>
	<p><small>(Street Address)</small></p>
	<p><small>(City) (State) (Zip)</small></p>
	<p><small>(Contact Name) (Title)</small></p>
	<p><small>(Contact Phone) (Contact Phone 2)</small></p>
	<p><small>(Email Address – if different from above)</small></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>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>			
<p>Print Name / Title</p>			
<p>Signatory Email Address <small>(if different from above)</small></p>	<p><b>FOR BMI USE ONLY</b></p>	<p><b>PTRM1</b></p>	<p><b>LI-2019/OCT</b></p>
<p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b> <b>BMI, Licensing Dept</b> <b>10 Music Square E., Nashville, TN 37203</b></p>	<p><b>Customer Number</b></p>		



# 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	\$37.34	100 or less	\$5.77	100 or less	\$ 9.34
101-200	\$52.85	101-200	\$8.98	101-200	\$12.22
201-300	\$73.42	201-300	\$10.74	201-300	\$18.37
300+	\$100.65	300+	\$13.58	300+	\$27.67

- (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.**

<p><b><u>LEGAL NAME</u></b></p> <p><small>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</small></p> <p><b><u>TRADE NAME</u></b></p> <p><small>(Doing business under the name of)</small></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <small>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</small></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <small>(If Partnership)</small></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <small>(City/State)</small></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><small>(Street Address)</small></p> <p><small>(City) (State) (Zip)</small></p> <p><small>(Phone) (Phone 2)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Email Address) (Web Address)</small></p> <p><b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small></p> <p><small>(Street Address)</small></p> <p><small>(City) (State) (Zip)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Contact Phone) (Contact Phone 2)</small></p> <p><small>(Email Address – if different from above)</small></p>
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<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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <small>(if different from above)</small></p> <p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to: BMI, Licensing Dept 10 Music Square E., Nashville, TN 37203</b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%; text-align:center;">FOR BMI USE ONLY</td> <td style="width:33%; text-align:center;">PTR1</td> <td style="width:33%; text-align:center;">LI-2019/OCT</td> </tr> <tr> <td colspan="3" style="text-align:center; padding-top: 10px;">Customer Number</td> </tr> </table>	FOR BMI USE ONLY	PTR1	LI-2019/OCT	Customer Number		
FOR BMI USE ONLY	PTR1	LI-2019/OCT					
Customer Number							



# 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. Notwithstanding the foregoing, one or more work(s) or catalog(s) of works by one or more BMI songwriter(s) may be excluded from this license if notice is received by BMI that such BMI songwriter(s) objects to the use of their copyrighted work(s) for the intended uses by LICENSEE. BMI shall provide written notice to LICENSEE of any such exclusion. Any performance by LICENSEE of any excluded work(s) or catalog(s) of works at any Event or Function following receipt of such notice shall not be covered by the grant under, and shall be deemed a material breach of, this Agreement, even if the venue or establishment at which the Event or Function takes place is separately licensed to publicly perform the work(s) or catalog(s) of works. LICENSEE shall not rely on, or use as a defense, any such separate license in any legal action or claim arising out of any performance of such excluded work(s).
- (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 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.
- (c) 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).

## 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>
2020	\$.06



- (a) For each year after 2020, 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 2020 shall be an adjustment of the rate for the year 2020, based upon the percentage increase in the CPI between September 2019 and September 2020). 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 2020 shall be \$159.00. The Minimum Annual Fee for each year after 2020 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 on a year-to-year basis thereafter for a period not to exceed four (4) years unless cancelled earlier 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. Notwithstanding the foregoing, in the event that LICENSEE is obtaining this license for political Events and Functions during a political campaign (e.g., candidate for specific government office), or during a term of office, this Agreement shall automatically expire upon expiration, termination or dissolution of such political campaign or term.

**AGREEMENT**

THIS 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:"

<p><b><u>LEGAL NAME</u></b></p> <p><small>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</small></p> <p><b><u>TRADE NAME</u></b></p> <p><small>(Doing business under the name of)</small></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <small>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</small></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <small>(If Partnership)</small></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <small>(City/State)</small></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><small>(Street Address)</small></p> <p><small>(City) (State) (Zip)</small></p> <p><small>(Phone) (Phone 2)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Email Address) (Web Address)</small></p> <p><b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small></p> <p><small>(Street Address)</small></p> <p><small>(City) (State) (Zip)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Contact Phone) (Contact Phone 2)</small></p> <p><small>(Email Address – if different from above)</small></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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <small>(if different from above)</small></p> <p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b>  <b>BMI, Licensing Dept</b>  <b>10 Music Square E., Nashville, TN 37203</b>  <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></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> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="width:33%; text-align:center;">FOR BMI USE ONLY</td> <td style="width:33%; text-align:center;">POL1</td> <td style="width:33%; text-align:center;">LI-2019/JUL</td> </tr> <tr> <td colspan="3" style="text-align:center; padding-top: 10px;">Customer Number</td> </tr> </table>	FOR BMI USE ONLY	POL1	LI-2019/JUL	Customer Number		
FOR BMI USE ONLY	POL1	LI-2019/JUL					
Customer Number							



# 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**

<b>LICENSE FEE SCHEDULE FOR EACH PRIVATE SATELLITE BROADCAST/ VIDEO CONFERENCE EVENT WITH PAID ADMISSION</b>	
<b>Attendance</b>	<b>License Fee</b>
0 – 9,999	0.4% of gross ticket revenue (or \$255.01*, whichever is higher)
10,000 or More	0.3% of gross ticket revenue (or \$255.01*, whichever is higher)

**SCHEDULE B**

<b>LICENSE FEE SCHEDULE FOR EACH PRIVATE SATELLITE BROADCAST/ VIDEO CONFERENCE EVENT WHICH IS FREE TO ATTENDEES</b>
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 \$255.01* for each Private Satellite Broadcast/Video Conference Event, 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	\$21.25	7,501	to 10,000	\$177.09
251	to 750	\$25.52	10,001	to 15,000	\$269.18
751	to 1,500	\$39.67	15,001	to 20,000	\$368.34
1,501	to 2,500	\$63.75	20,001	to 25,000	\$446.26
2,501	to 5,000	\$94.92	25,001	to 40,000	\$488.78
5,001	to 7,500	\$127.51	40,001	or over	\$680.02

**\$255.01** minimum fee for Contract Year 2020 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 \$255.01 per Private Satellite Broadcast/Video Conference Event for Contract Year 2020 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 \$255.01 per Private Satellite Broadcast/Video Conference Event for Contract Year 2020 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 \$255.01 for Contract Year 2020 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 (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>	
<i>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</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>(Phone)</i>	<i>(Phone 2)</i>
<b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b>	<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>	
Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i>	<i>(Street Address)</i>	
State of Incorporation _____ Federal Tax ID No. _____	<i>(City) (State) (Zip)</i>	
Partners' Names <i>(If Partnership)</i>	<i>(Contact Name) (Title)</i>	
1. _____	<i>(Contact Phone) (Contact Phone 2)</i>	
2. _____	<i>(Email Address – if different from above)</i>	
3. _____		
<b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b>		
Local, State, or Federal _____		
Municipality Name _____ <i>(City/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>BROADCAST MUSIC INC.</b>		
Signature _____	<b>FOR BMI USE ONLY</b>	<b>PSVC1</b>	<b>LI-2020/OCT</b>
Print Name / Title _____			
Signatory Email Address _____ <i>(if different from above)</i>			
<b>Please Sign &amp; Return this Entire License Agreement &amp; Payment to:</b>			
<b>BMI, Licensing Dept</b>			
<b>10 Music Square E., Nashville, TN 37203</b>			
<b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b>	<b>Customer Number</b>		



# 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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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 twelve (12) month period multiplied by the appropriate 2020 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 (12) month period, the minimum annual license fee for calendar year 2020 shall be \$415.00 per team. LICENSEE's Attendance for the initial Term is \_\_\_\_\_ and its license fee is \_\_\_\_\_.

<b>2020 LICENSE FEE SCHEDULE</b>	
<u>Attendance</u>	<u>Attendance Fee Rate Per Thousand</u>
0 - 999,999	\$8.00
1,000,000 - 1,999,999	\$7.50
2,000,000 - 2,999,999	\$6.50
3,000,000 and above	\$5.60

- (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 2020 shall be an adjustment of the 2020 Attendance Fee Rate based upon the percentage increase or decrease in the United States Consumer Price Index (Urban, All Items) between September 2020 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 2020 shall be an adjustment of the 2020 minimum annual license fee of \$415.00 based upon the percentage increase or decrease in the United States Consumer Price Index (Urban, All Items) between September 2020 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 the first day of (month/year) \_\_\_\_\_ and end on the last day (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**

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

<p><b><u>LEGAL NAME</u></b></p> <p><small>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</small></p>	<p><b><u>LICENSED PREMISES</u></b></p>	
<p><b><u>TRADE NAME</u></b></p> <p><small>(Doing business under the name of)</small></p>	<p><small>(Street Address)</small></p>	
<p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <small>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</small></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <small>(If Partnership)</small></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <small>(City/State)</small></p>	<p><small>(City) (State) (Zip)</small></p> <p><small>(Phone) (Phone 2)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Email Address) (Web Address)</small></p>	
	<p><b><u>MAILING ADDRESS</u></b></p> <p><small>(if different from Licensed Premises)</small></p>	
	<p><small>(Street Address)</small></p>	
	<p><small>(City) (State) (Zip)</small></p>	
	<p><small>(Contact Name) (Title)</small></p>	
	<p><small>(Contact Phone) (Contact Phone 2)</small></p>	
	<p><small>(Email Address – if different from above)</small></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>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>		
<p>Print Name / Title</p>		
<p>Signatory Email Address <small>(if different from above)</small></p>		
<p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b> <b>BMI, Licensing Dept</b> <b>10 Music Square E., Nashville, TN 37203</b> <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>	<p><b>FOR BMI USE ONLY</b></p>	<p><b>36SL</b></p>
	<p><b>LI-2019/OCT</b></p>	
	<p><b>Customer Number</b></p>	



# 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 twelve (12) month period multiplied by the appropriate 2020 Attendance Fee Rate of \$8.30 per thousand (as may be adjusted pursuant to Paragraph 4[c]). Notwithstanding LICENSEE's total Attendance in such prior twelve (12) month period, the minimum annual license fee for the Contract Year shall be \$415.00 per team (as may be adjusted pursuant to Paragraph 4[d]). LICENSEE'S Attendance for the first Contract Year is \_\_\_\_\_ and its license 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 2020 shall be an adjustment of the 2020 Attendance Fee Rate based upon the percentage increase or decrease in the United States Consumer Price Index (Urban, All Items) between September 2020 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 2020 shall be an adjustment of the 2020 minimum annual license fee of \$415.00 based upon the percentage increase or decrease in the United States Consumer Price Index (Urban, All Items) between September 2020 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**

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

<p><b><u>LEGAL NAME</u></b></p> <p><i>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p> <p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Phone) (Phone 2)</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>(Contact Name) (Title)</i></p> <p><i>(Contact Phone) (Contact Phone 2)</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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <i>(if different from above)</i></p>	<p><b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b></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:33%; text-align:center;"><b>36S</b></td> <td style="width:33%; text-align:center;"><b>LI-2019/OCT</b></td> </tr> <tr> <td colspan="3" style="text-align:center; padding-top: 10px;">Customer Number</td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>36S</b>	<b>LI-2019/OCT</b>	Customer Number		
<b>FOR BMI USE ONLY</b>	<b>36S</b>	<b>LI-2019/OCT</b>					
Customer Number							
<p><b>Please Sign &amp; Return this Entire License Agreement &amp; Payment to:</b>  <b>BMI, Licensing Dept</b>  <b>10 Music Square E., Nashville, TN 37203</b>  <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>							



# Interim Music License for Promoter/Presenter

WHEREAS, BMI has been negotiating with concert promoters over the reasonable fees, terms and conditions of a BMI promoter/presenter license which will authorize the public performance of BMI affiliated musical works at musical attractions for the period commencing July 1, 2018 (the "2018 Promoter/Presenters Agreement"); and

WHEREAS, upon the conclusion of those negotiations, BMI intends to quote new final blanket license fees and terms to LICENSEE and all other venues and promoter/presenters for the period commencing July 1, 2018; and

WHEREAS, LICENSEE and BMI desire to enter into this Interim Music License Agreement pending the finalization of such terms and conditions;

NOW THEREFORE, by signing below LICENSEE and BMI agree as follows:

## 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. INTERIM LICENSE FEES**

- (a) LICENSEE agrees to pay BMI an interim license fee for each performance of an Attraction that LICENSEE promotes during the Term, except where another person, entity or Venue is responsible for paying the license fee for that performance. Such interim license fee shall be computed on the basis set forth in the Interim License Fee Schedule of this Agreement. This license shall be deemed to be an application to BMI for a license under Section XIV of the BMI consent decree. LICENSEE agrees to be bound by all of the terms and conditions in this License on an interim fee basis for the period commencing July 1, 2018 (the "Interim License Period"), continuing on a month to month basis until the final license fees and terms are determined either by negotiations or as may be determined by the BMI rate court in a proceeding to determine reasonable BMI final blanket license fees for venues and promoter/presenters for this period. LICENSEE's interim quarterly and annual license fees shall be adjusted retroactively to July 1, 2018 at such time as final fees and terms are determined.
- (b) Once final fees are determined, LICENSEE shall be obligated to pay BMI any additional monies owed BMI as a result of such retroactive adjustment of rates or fees if such rates are higher than the interim fees, and BMI shall be obligated to credit LICENSEE's account any monies owed LICENSEE as a result of such retroactive adjustment of rates or fees in the event the rates are lower than the interim rate.
- (c) License fees for Attractions *with* paid admission shall be calculated pursuant to Schedule A of the Interim 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 Interim 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.
- (d) 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 2020 Contract Year is \$251.00. 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.
- (e) 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.

**INTERIM LICENSE FEE SCHEDULE**

<b>SCHEDULE A</b>			
<b>EVENTS WITH PAID ADMISSION</b>			
<b>Seating Capacity</b>			<b>% of Gross Ticket Revenue</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%
10,000	and	Over	0.15%

  

<b>SCHEDULE B</b>			
<b>FREE OR BENEFIT EVENTS</b>			
<b>Seating Capacity</b>			<b>Fee Per Benefit Event With No Charge</b>
0	to	250	\$16.00
251	to	750	\$20.00
751	to	1,500	\$34.00
1,501	to	2,500	\$55.00
2,501	to	5,000	\$78.00
5,001	to	7,500	\$107.00
7,501	to	9,999	\$150.00
10,000	to	15,000	\$226.00
15,001	to	20,000	\$310.00
20,001	to	25,000	\$378.00
25,001	to	40,000	\$411.00
40,001	and	Over	\$571.00

**Minimum Annual Fee is \$251.00**

## 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. 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.

## 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. 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.

## 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. CUSTOMER OUTREACH

LICENSEE agrees to accept from time to time pre-recorded messages from BMI that may contain important information regarding your account.

**17. TERM OF AGREEMENT**

The initial Term of this Agreement shall begin on the first day of (month/year) \_\_\_\_\_ and shall continue on a month-to-month basis, subject to the right of either party to this agreement to terminate the Interim License prospectively on thirty (30) days' prior 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, NY 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 Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p> <p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Phone) (Phone 2)</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>(Contact Name) (Title)</i></p> <p><i>(Contact Phone) (Contact Phone 2)</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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <i>(if different from above)</i></p>	<p><b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%; text-align:center;">FOR BMI USE ONLY</td> <td style="width:33%; text-align:center;">PRM1 Interim</td> <td style="width:33%; text-align:center;">LI-2019/SEPT</td> </tr> <tr> <td colspan="3" style="text-align:center; padding-top: 10px;">Customer Number</td> </tr> </table>	FOR BMI USE ONLY	PRM1 Interim	LI-2019/SEPT	Customer Number		
FOR BMI USE ONLY	PRM1 Interim	LI-2019/SEPT					
Customer Number							
<p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b>  <b>BMI, Licensing Dept</b>  <b>10 Music Square E., Nashville, TN 37203</b>  <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>							



# 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:

### 2020 LICENSE FEE SCHEDULE

Annual Attendance			Attendance Fee Rate (Fee Per Thousand Attendees)	
500	to	15,000	\$240.70	minimum fee
15,001	to	50,000	\$16.20	per thousand
50,001	to	150,000	\$14.10	per thousand
150,001	to	500,000	\$12.10	per thousand
500,001	to	1,000,000	\$10.00	per thousand
1,000,001		and more	\$8.80	per thousand

**Minimum Annual Fee is \$240.70**

$$\frac{\text{Attendees}}{\text{(Attendees)}} \times \text{Applicable Rate} = \text{Annual Fee} \text{ (Annual Fee)}$$

(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 2020 Contract Year is \$240.70 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 2020 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**

THIS AGREEMENT, made at New York, N.Y. on (Date Will Be Entered by BMI Upon Execution) \_\_\_\_\_ between BROADCAST MUSIC, INC. ("BMI"), a Delaware 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"):

<p><b><u>LEGAL NAME</u></b></p> <p><i>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p>	
<p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p>	<p><i>(Street Address)</i></p>	
<p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><i>(City) (State) (Zip)</i></p> <p><i>(Phone) (Phone 2)</i></p> <p><i>(Contact Name) (Title)</i></p> <p><i>(Email Address) (Web Address)</i></p>	
<p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p>	<p><b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i></p>	
<p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p>	<p><i>(Street Address)</i></p>	
<p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p>	<p><i>(City) (State) (Zip)</i></p>	
<p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p>	<p><i>(Contact Name) (Title)</i></p>	
<p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p>	<p><i>(Contact Phone) (Contact Phone 2)</i></p>	
<p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p>	<p><i>(Email Address – if different from above)</i></p>	
<p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p>	<p><b><u>FOR ADMINISTRATIVE USE ONLY</u></b> <b><u>TO BE COMPLETED BY BMI</u></b> <b><u>BROADCAST MUSIC INC.</u></b></p>	
<p><b><u>TO BE COMPLETED BY LICENSEE</u></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.</p>	<p><b><u>FOR BMI USE ONLY</u></b></p>	
<p>Signature _____</p>	<p><b>RACE1</b></p>	
<p>Print Name / Title _____</p>	<p><b>LI-2019/OCT</b></p>	
<p>Signatory Email Address _____ <i>(if different from above)</i></p>	<p><b>Customer Number</b></p>	
<p>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to: <b>BMI, Licensing Dept</b> <b>10 Music Square E., Nashville, TN 37203</b> <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>	<p><b>Customer Number</b></p>	



# 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:
- 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.
  - 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.
  - 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.
  - 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 2020 based upon any percentage increase in the United States Consumer Price Index (Urban, All Items) between October 2019 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 RESCIND**

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**

For all of the ways music is used in your business, enter the corresponding amount under Rate Per Year Per Occupant 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> <ul style="list-style-type: none"> <li>• Multiple Singers/Instrumentalist                             <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;"></td> <td style="width: 20%;">5-7 nights</td> <td style="width: 20%;">\$6.30</td> <td style="width: 20%;"></td> </tr> <tr> <td>How many nights per week? _____ <i>(1 night = no more than 5 times in any one month)</i></td> <td>2-4 nights</td> <td>\$5.30</td> <td></td> </tr> <tr> <td></td> <td>1 night or less</td> <td>\$4.75</td> <td></td> </tr> </table> </li> <li>• Single Singer/Instrumentalist                             <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;"></td> <td style="width: 20%;">5-7 nights</td> <td style="width: 20%;">\$4.60</td> <td style="width: 20%;"></td> </tr> <tr> <td>How many nights per week? _____ <i>(1 night = no more than 5 times in any one month)</i></td> <td>2-4 nights</td> <td>\$3.80</td> <td></td> </tr> <tr> <td></td> <td>1 night or less</td> <td>\$3.50</td> <td></td> </tr> </table> </li> </ul> <p style="text-align: right;"><b>Enter ONLY the highest amount that applies here.....➔</b></p>					5-7 nights	\$6.30		How many nights per week? _____ <i>(1 night = no more than 5 times in any one month)</i>	2-4 nights	\$5.30			1 night or less	\$4.75			5-7 nights	\$4.60		How many nights per week? _____ <i>(1 night = no more than 5 times in any one month)</i>	2-4 nights	\$3.80			1 night or less	\$3.50	
	5-7 nights	\$6.30																									
How many nights per week? _____ <i>(1 night = no more than 5 times in any one month)</i>	2-4 nights	\$5.30																									
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	1 night or less	\$3.50																									
<b>2. Enhanced Recorded Music*</b> Type of Enhanced Recorded? _____ (Karaoke, DVDs, Video Tapes, VJs) <i>(1 night = no more than 5 times in any one month)</i> <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;"></td> <td style="width: 20%;">5-7 nights</td> <td style="width: 20%;">\$3.65</td> <td style="width: 20%;"></td> </tr> <tr> <td></td> <td>2-4 nights</td> <td>\$3.50</td> <td></td> </tr> <tr> <td></td> <td>1 night or less</td> <td>\$3.40</td> <td></td> </tr> </table> How many nights per week? _____ <b>Recorded Music*</b> Type of Recorded Music? _____ (CDs/Tapes/Records, Free-Play Jukebox, IPOD/MP3/Other Digital Music) <p style="text-align: right;"><b>Enter ONLY the highest amount that applies here.....➔</b></p>					5-7 nights	\$3.65			2-4 nights	\$3.50			1 night or less	\$3.40													
	5-7 nights	\$3.65																									
	2-4 nights	\$3.50																									
	1 night or less	\$3.40																									
<b>3. Admission or Cover Charge* (at any time)</b>		\$2.00																									
<b>4. Dancing to Live or Recorded Music* (at any time)</b>		\$2.00																									
<b>5. Television and/or Radio* (skip this Section if you have entered a fee in Section 2)</b>		\$1.40																									
<b>6. TOTAL RATE PER YEAR PER OCCUPANT (Sum of Lines 1-5).....➔</b>																											
<b>7. Occupancy*</b> <ul style="list-style-type: none"> <li>• Clubhouse or Other Common Recreational Area(s) Occupancy _____ <i>(If greater than 1,000 occupants, enter 1,000)</i></li> <li style="text-align: center;"><b>OR</b></li> <li>• If Occupancy <u>cannot</u> be established by local building/fire codes, use formula below:                              Total Square Footage of Clubhouse or Other Common Recreational Area(s) _____ + 20 = _____ Occupancy</li> </ul> <p style="text-align: right;"><i>(Enter Occupancy)</i></p>																											
<b>8. SUBTOTAL (Multiply Line 6 by Line 7)</b> If \$388.00 or Less, Enter Annual Minimum Fee of \$388.00.....➔																											
<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, enter the fee here. If the jukebox is already licensed under the JLO license, please enter Vendor name, address and phone number below. <p style="text-align: right;">Jukebox Fee = \$388.00</p> Name/Company _____ JLO Cert. # _____ Address _____ Phone _____ City _____ State _____ Zip _____																											
<i>*Refer to Paragraph 1 on Page 1</i>																											
<b>GROSS FEE ALL USES (Add Lines 8 and 9)</b> If More Than \$11,570.00, Enter Maximum Fee of \$11,570.00.....➔																											
<b>APPLICABLE DISCOUNT(S).....➔</b>																											
<b>*ANNUAL FEE.....➔</b>																											
<b>*Eligible for 10% Timely Pay Discount if paying in FULL. If you wish to pay by Credit Card, Call Your BMI Representative at 1-888-689-5264.</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.**

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>	
(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)	(Street Address)	
<b><u>TRADE NAME</u></b>	(City)	(State) (Zip)
(Doing business under the name of)	(Phone)	(Phone 2)
<b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b>	(Contact Name)	(Title)
Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i>	(Email Address)	(Web Address)
State of Incorporation _____ Federal Tax ID No. _____	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>	
Partners' Names <i>(If Partnership)</i>	(Street Address)	
1. _____	(City) (State) (Zip)	
2. _____	(Contact Name) (Title)	
3. _____	(Contact Phone) (Contact Phone 2)	
<b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b>	(Email Address – if different from above)	
Local, State, or Federal _____		
Municipality Name _____ <i>(City/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><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>			
<p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b>  <b>BMI, Licensing Dept</b>  <b>10 Music Square E., Nashville, TN 37203</b>  <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>	<b>FOR BMI USE ONLY</b>	<b>RESC1</b>	<b>LI-2019/APR</b>
	<b>Customer Number</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:
- 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.
  - 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.
  - 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.
  - 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 2021 based upon any percentage increase in the United States Consumer Price Index (Urban, All Items) between October 2020 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**

For all of the ways music is used in your business, enter the corresponding amount under Rate Per Year Per Occupant 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>			
• Multiple Singers/Instrumentalist	5-7 nights	\$6.40	
How many nights per week? _____ <i>(1 night = no more than 5 times in any one month)</i>	2-4 nights	\$5.40	
	1 night or less	\$4.85	
• Single Singer/Instrumentalist	5-7 nights	\$4.70	
How many nights per week? _____ <i>(1 night = no more than 5 times in any one month)</i>	2-4 nights	\$3.85	
	1 night or less	\$3.55	
<b>Enter ONLY the highest amount that applies here.....→</b>			
<b>2. Enhanced Recorded Music*</b>			
Type of Enhanced Recorded? _____ <i>(Karaoke, DVDs, Video Tapes, VJs)</i>	5-7 nights	\$3.70	
	2-4 nights	\$3.55	
<i>(1 night = no more than 5 times in any one month)</i>	1 night or less	\$3.45	
How many nights per week? _____			
<b>Recorded Music*</b>			
Type of Recorded Music? _____		\$3.20	
<i>(CDs/Tapes/Records, Free-Play Jukebox, IPOD/MP3/Other Digital Music)</i>			
<b>Enter ONLY the highest amount that applies here.....→</b>			
<b>3. Admission or Cover Charge* (at any time)</b>		\$2.05	
<b>4. Dancing to Live or Recorded Music* (at any time)</b>		\$2.05	
<b>5. Television and/or Radio* (skip this Section if you have entered a fee in Section 2)</b>		\$1.40	
<b>6. TOTAL RATE PER YEAR PER OCCUPANT (Sum of Lines 1-5).....→</b>			
<b>7. Occupancy*</b>			
• Clubhouse or Other Common Recreational Area(s) Occupancy _____ <i>(If greater than 1,000 occupants, enter 1,000)</i>			
<b>OR</b>			
• If Occupancy cannot be established by local building/fire codes, use formula below:			
Total Square Footage of Clubhouse or Other Common Recreational Area(s) _____ + 20 = _____ Occupancy			<i>(Enter Occupancy)</i>
<b>8. SUBTOTAL (Multiply Line 6 by Line 7)</b>			
If \$395.00 or Less, Enter Annual Minimum Fee of \$395.00.....→			
<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, enter the fee here. If the jukebox is already licensed under the JLO license, please enter Vendor name, address and phone number below.</i>			
			Jukebox Fee = \$395.00
Name/Company _____	JLO Cert. # _____		
Address _____	Phone _____		
City _____	State _____	Zip _____	
<b>*Refer to Paragraph 1 on Page 1</b>			
<b>GROSS FEE ALL USES (Add Lines 8 and 9)</b>			
If More Than \$11,774.00, Enter Maximum Fee of \$11,774.00.....→			
<b>APPLICABLE DISCOUNT(S).....→</b>			
<b>*ANNUAL FEE.....→</b>			
<b>*Eligible for 10% Timely Pay Discount if paying in FULL. If you wish to pay by Credit Card, Call Your BMI Representative at 1-888-689-5264.</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><small>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</small></p> <p><b><u>TRADE NAME</u></b></p> <p><small>(Doing business under the name of)</small></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <small>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</small></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names (if Partnership)</p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <small>(City/State)</small></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><small>(Street Address)</small></p> <p><small>(City) (State) (Zip)</small></p> <p><small>(Phone) (Phone 2)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Email Address) (Web Address)</small></p> <p><b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small></p> <p><small>(Street Address)</small></p> <p><small>(City) (State) (Zip)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Contact Phone) (Contact Phone 2)</small></p> <p><small>(Email Address – if different from above)</small></p>
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<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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address* _____ <small>(if different from above)</small></p> <p><b>Please Sign &amp; Return this Entire License Agreement &amp; Payment to:</b>  <b>BMI, Licensing Dept</b>  <b>10 Music Square E., Nashville, TN 37203</b>  <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b> <b>TO BE COMPLETED BY BMI</b> <b>BROADCAST MUSIC INC.</b></p> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="width:33%; text-align:center;"><b>FOR BMI USE ONLY</b></td> <td style="width:33%; text-align:center;"><b>RESC1</b></td> <td style="width:33%; text-align:center;"><b>LI-2019/DEC</b></td> </tr> <tr> <td colspan="3" style="text-align:center; padding-top: 10px;">Customer Number _____</td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>RESC1</b>	<b>LI-2019/DEC</b>	Customer Number _____		
<b>FOR BMI USE ONLY</b>	<b>RESC1</b>	<b>LI-2019/DEC</b>					
Customer Number _____							



# 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 2020 based upon any percentage increase in the United States Consumer Price Index (Urban, All Items) between October 2019 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 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.

**MUSIC POLICY / FEE CALCULATION**

*For all of the ways music is used in your establishment, enter the corresponding amount under Rate Per Year per Occupant 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 enter the **OCCASIONAL USE** rate, if applicable.  
**FOR ALL OTHER USES OF MUSIC:** Please enter the **FULL USE** fee. 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	OCCASIONAL USE Rate Per Year Per Occupant	Enter Fee Calculation
<b>1. Live Music*</b>				
• Multiple Singers/Instrumentalist	5-7 nights	\$6.30		
<b>How many nights per week?</b> _____ <i>(1 night = no more than 5 times in any one month)</i>	2-4 nights	\$5.30		
	1 night or less	\$4.75	\$1.58	
• Single Singer/Instrumentalist	5-7 nights	\$4.60		
<b>How many nights per week?</b> _____ <i>(1 night = no more than 5 times in any one month)</i>	2-4 nights	\$3.80		
	1 night or less	\$3.50	\$1.16	
<b>Enter ONLY the highest amount that applies here..... →</b>				
<b>2. Enhanced Recorded Music*</b>				
<b>Type of Enhanced Recorded?</b> _____ <i>(Karaoke, DVDs, Video Tapes, VJs)</i>	5-7 nights	\$3.65		
<i>(1 night = no more than 5 times in any one month)</i>	2-4 nights	\$3.50		
<b>How many nights per week?</b> _____	1 night or less	\$3.40	\$1.12	
<b>Recorded Music*</b>				
<b>Type of Recorded Music?</b> _____ <i>(CDs/Tapes/Records, Free-Play Jukebox, DJ, Ipod/MP3/Other Digital Music)</i>		\$3.15	\$1.04	
<b>Enter ONLY the highest amount that applies here..... →</b>				
<b>3. Admission or Cover Charge*</b> <i>(at any time)</i>		\$2.00	\$0.65	
<b>4. Dancing to Live or Recorded Music*</b> <i>(at any time)</i>		\$2.00	\$0.65	
<b>5. Television and/or Radio*</b> <i>(skip this Section if you have entered a fee in Section 2)</i>		\$1.40	\$0.46	
<b>6. TOTAL RATE PER YEAR PER OCCUPANT (Sum of Boxes 1- 5)..... →</b>				
<b>7. Occupancy*</b>				
• Clubhouse or Other Common Recreational Area(s) Occupancy _____ <i>(If greater than 1,000 occupants, enter 1,000)</i>				
OR				
• If Occupancy <u>cannot</u> be established by local building/fire codes, use formula below: Total Square Footage of Clubhouse or Other Common Recreational Area(s) _____ ÷ 20 = _____ Occupancy				<i>(Enter Occupancy)</i>
<b>8. SUBTOTAL - FULL USE</b> <i>(Multiply Line 6 by Line 7)</i>		<b>SUBTOTAL - OCCASIONAL USE ONLY</b> <i>(Multiply Line 6 by Line 7)</i>		
OR				
If \$388.00 or Less, Enter Annual Minimum Fee of \$388.00..... →		If \$193.76 or Less, Enter Annual Minimum Fee of \$193.76..... →		
<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, enter the fee here. If the jukebox is already licensed under the JLO license, please enter Vendor name, address and phone no. below.</i>				
				Jukebox Fee = \$ 388.00
Name/Company _____	JLO Cert # _____			
Address _____	Phone _____			
City _____	State _____	Zip _____		
<i>*Refer to Paragraph 1 on Page 1</i>				
<b>GROSS ANNUAL FEE ALL USES (Add Lines 8 and 9)</b> If More Than \$11,570.00, Enter Maximum Fee of \$11,570.00..... →				
<b>APPLICABLE DISCOUNT(S)..... →</b>				
<b>*ANNUAL FEE..... →</b>				
<b>*Eligible for 10% Timely Pay Discount if paying in FULL. If you wish to pay by Credit Card, Call Your BMI Representative at 1-888-689-5264.</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.**

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>	
(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)	(Street Address)	
<b><u>TRADE NAME</u></b>	(City)	(State) (Zip)
(Doing business under the name of)	(Phone)	(Phone 2)
<b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b>	(Contact Name)	(Title)
Legal Structure _____ <small>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</small>	(Email Address)	(Web Address)
State of Incorporation _____ Federal Tax ID No. _____	<b><u>MAILING ADDRESS</u></b> (if different from Licensed Premises)	
Partners' Names (If Partnership)	(Street Address)	
1. _____	(City) (State) (Zip)	
2. _____	(Contact Name) (Title)	
3. _____	(Contact Phone) (Contact Phone 2)	
<b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b>	(Email Address – if different from above)	
Local, State, or Federal _____		
Municipality Name _____ <small>(City/State)</small>		

<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.			
Signature			
Print Name / Title			
Signatory Email Address* <small>(if different from above)</small>			
<b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to: BMI, Licensing Dept 10 Music Square E., Nashville, TN 37203 Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b>	<b>FOR BMI USE ONLY</b>	<b>RESC1</b>	<b>LI-2019/APR</b>
	<b>Customer Number</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 2021 based upon any percentage increase in the United States Consumer Price Index (Urban, All Items) between October 2020 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 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.

**MUSIC POLICY / FEE CALCULATION**

*For all of the ways music is used in your establishment, enter the corresponding amount under Rate Per Year per Occupant 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 enter the **OCCASIONAL USE** rate, if applicable.  
**FOR ALL OTHER USES OF MUSIC:** Please enter the **FULL USE** fee. 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	OCCASIONAL USE Rate Per Year Per Occupant	Enter Fee Calculation
<b>1. Live Music*</b>				
• Multiple Singers/Instrumentalist	5-7 nights	\$6.40		
<b>How many nights per week?</b> _____ <i>(1 night = no more than 5 times in any one month)</i>	2-4 nights	\$5.40		
	1 night or less	\$4.85	\$1.61	
• Single Singer/Instrumentalist	5-7 nights	\$4.70		
<b>How many nights per week?</b> _____ <i>(1 night = no more than 5 times in any one month)</i>	2-4 nights	\$3.85		
	1 night or less	\$3.55	\$1.18	
<b>Enter ONLY the highest amount that applies here..... →</b>				

<b>2. Enhanced Recorded Music*</b>				
<b>Type of Enhanced Recorded?</b> _____ <i>(Karaoke, DVDs, Video Tapes, VJs)</i>	5-7 nights	\$3.70		
<i>(1 night = no more than 5 times in any one month)</i>	2-4 nights	\$3.55		
<b>How many nights per week?</b> _____	1 night or less	\$3.45	\$1.14	
<b>Recorded Music*</b>				
<b>Type of Recorded Music?</b> _____ <i>(CDs/Tapes/Records, Free-Play Jukebox, DJ, Ipod/MP3/Other Digital Music)</i>		\$3.20	\$1.06	
<b>Enter ONLY the highest amount that applies here..... →</b>				

<b>3. Admission or Cover Charge*</b> <i>(at any time)</i>		\$2.05	\$0.66	
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<b>4. Dancing to Live or Recorded Music*</b> <i>(at any time)</i>		\$2.05	\$0.66	
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<b>5. Television and/or Radio*</b> <i>(skip this Section if you have entered a fee in Section 2)</i>		\$1.40	\$0.47	
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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>				
• Clubhouse or Other Common Recreational Area(s) Occupancy _____ <i>(If greater than 1,000 occupants, enter 1,000)</i>				
OR				
• If Occupancy <u>cannot</u> be established by local building/fire codes, use formula below:				
Total Square Footage of Clubhouse or Other Common Recreational Area(s) _____ ÷ 20 = _____ Occupancy				<i>(Enter Occupancy)</i>

<b>8. SUBTOTAL - FULL USE</b> <i>(Multiply Line 6 by Line 7)</i>	OR	<b>SUBTOTAL - OCCASIONAL USE ONLY</b> <i>(Multiply Line 6 by Line 7)</i>		
If \$395.00 or Less, Enter Annual Minimum Fee of \$395.00..... →		If \$197.17 or Less, Enter Annual Minimum Fee of \$197.17..... →		

<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, enter the fee here. If the jukebox is already licensed under the JLO license, please enter Vendor name, address and phone no. below.</i>				
Name/Company _____	JLO Cert # _____	Jukebox Fee = \$395.00		
Address _____	Phone _____			
City _____	State _____	Zip _____		

\*Refer to Paragraph 1 on Page 1

<b>GROSS ANNUAL FEE ALL USES (Add Lines 8 and 9)</b>				
If More Than \$11,774.00, Enter Maximum Fee of \$11,774.00..... →				

<b>APPLICABLE DISCOUNT(S)..... →</b>				
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<b>*ANNUAL FEE..... →</b>				
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\*Eligible for 10% Timely Pay Discount if paying in FULL. If you wish to pay by Credit Card, Call Your BMI Representative at 1-888-689-5264.

**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><small>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</small></p> <p><b><u>TRADE NAME</u></b></p> <p><small>(Doing business under the name of)</small></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <small>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</small></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names (If Partnership)</p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <small>(City/State)</small></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p>(Street Address)</p> <p>(City) (State) (Zip)</p> <p>(Phone) (Phone 2)</p> <p>(Contact Name) (Title)</p> <p>(Email Address) (Web Address)</p> <p><b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small></p> <p>(Street Address)</p> <p>(City) (State) (Zip)</p> <p>(Contact Name) (Title)</p> <p>(Contact Phone) (Contact Phone 2)</p> <p>(Email Address – if different from above)</p>
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<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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address* _____ <small>(if different from above)</small></p> <p><b>Please Sign &amp; Return this Entire License Agreement &amp; Payment to:</b>  <b>BMI, Licensing Dept</b>  <b>10 Music Square E., Nashville, TN 37203</b>  <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></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> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="width:33%; text-align:center;"><b>FOR BMI USE ONLY</b></td> <td style="width:33%; text-align:center;"><b>RESC1</b></td> <td style="width:33%; text-align:center;"><b>LI-2019/DEC</b></td> </tr> <tr> <td colspan="3" style="text-align:center; padding-top: 10px;">Customer Number</td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>RESC1</b>	<b>LI-2019/DEC</b>	Customer Number		
<b>FOR BMI USE ONLY</b>	<b>RESC1</b>	<b>LI-2019/DEC</b>					
Customer Number							



# 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.

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 2021 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

# 2020 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	\$246.69	\$333.00
2.	2,001 to 2,500	\$333.73	\$450.51
3.	2,501 to 5,000	\$478.83	\$646.39
4.	5,001 to 7,500	\$769.03	\$1,038.16
5.	7,501 to 10,000	\$1,059.19	\$1,429.92
6.	10,001 to 12,500	\$1,349.42	\$1,821.71
7.	12,501 to 15,000	\$1,639.60	\$2,213.44
8.	15,001 to 17,500	\$1,929.76	\$2,605.23
9.	over 17,500	\$2,103.91	\$2,840.27

**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	\$246.69	\$333.00
2.	301 to 500	\$217.65	\$293.82
3.	501 to 800	\$195.88	\$264.43
4.	801 to 2,000	\$174.13	\$235.05
5.	over 2,000	\$152.37	\$205.67

\*If both Audio and Audio-Visual performances are utilized at the Licensed Retail Premises, the higher fee shall apply.

**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	\$217.65
2.	2,001 to 2,500	\$290.20
3.	2,501 to 5,000	\$486.07
4.	5,001 to 6,500	\$631.19
5.	6,501 to 7,500	\$725.49
6.	7,501 to 8,500	\$834.31
7.	8,501 to 9,500	\$943.15
8.	9,501 to 10,000	\$1015.65
9.	over 10,000	\$1,088.22

**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.
- \$46.43 per day for each Licensed Retail Premises, with a **MAXIMUM FEE** for each Licensed Retail Premises for Schedule 3 of \$3,743.50.
- 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 \$217.65 for each Licensed Retail Premises shall apply or \$46.43 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.)

**SQUARE FOOTAGE:** \_\_\_\_\_ (Square Footage is used to calculate Schedules 1A, 1B and 2)

**SCHEDULE 1A or 1B - Recorded Music**

Type of Recorded Music: \_\_\_\_\_ **Fee for Schedule 1A or 1B** \_\_\_\_\_

**SCHEDULE 2 - Live Music--Single Singer / Instrumentalist**

\*Calculated based on Square Footage above **Fee for Schedule 2** \_\_\_\_\_

**SCHEDULE 3 - Live Music-Multiple Singers / Instrumentalists and/or Performance of Recorded Music as an Accompaniment to Acts**

# of Days with Live Music \_\_\_\_\_ x \$46.43 per day (attach a list of all events) **Fee for Schedule 3** \_\_\_\_\_

**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 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.**

<p><b><u>LEGAL NAME</u></b></p> <p><i>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p> <p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Phone) (Phone 2)</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>(Contact Name) (Title)</i></p> <p><i>(Contact Phone) (Contact Phone 2)</i></p> <p><i>(Email Address – if different from above)</i></p>
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<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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <i>(if different from above)</i></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>			
	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"><b>FOR BMI USE ONLY</b></td> <td style="width:33%;"><b>RTL1</b></td> <td style="width:33%;"><b>LI-2019/DEC</b></td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>RTL1</b>	<b>LI-2019/DEC</b>
<b>FOR BMI USE ONLY</b>	<b>RTL1</b>	<b>LI-2019/DEC</b>		
<p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b></p> <p><b>BMI, Licensing Dept</b></p> <p><b>10 Music Square E., Nashville, TN 37203</b></p> <p><b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>	<p><b>Customer Number</b></p>			

**BMI MUSIC LICENSE**  
**January 1 – December 31, 2020**  
**APPLICATION AND AUTHORIZATION**

The undersigned, a member in good standing of Roller Skating Association International, Inc. ("RSA"), ("Member") hereby applies to participate in the music license between Broadcast Music, Inc. ("BMI") and RSA dated \_\_\_\_\_, between BMI and RSA (the "Agreement").

Member represents that it is a member in good standing of RSA and that it does not have any outstanding obligation to BMI. **Fees due for any location under an existing BMI Agreement must be paid in full to qualify for inclusion in the RSA Agreement.** The person signing this Application and Authorization shall be the contact person for Member with whom BMI and RSA may communicate as necessary regarding this Application and Authorization and the Agreement. Member agrees to notify BMI and RSA in writing of any change in the contact person, the telephone number or address. Member further agrees that this Application and Authorization shall become part of the Agreement.

Member agrees that BMI shall have the right to verify all data or information regarding any Licensed Premises as may be necessary in order for BMI to verify license fees due from Member in any manner necessary, including, but not limited to, the right to inspect the Licensed Premises and/or examine the books and records or other documents of Member which set forth the information needed to compute the license fee. Such information shall be made available to BMI by Member or RSA upon BMI's request.

Unless the fees due, as computed on the LICENSE FEE SCHEDULE on the reverse side of this Application and Authorization, accompany this Application and Authorization, there will be no license issued to the undersigned under the terms of the Agreement.

**RSA Member #** \_\_\_\_\_

Address of Location(s) to be Licensed:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(add additional sheets if necessary)

Circle the appropriate fee on the reverse side and enter the amount on the line below.

Fee Due: = \$ \_\_\_\_\_

Name of RSA Member: \_\_\_\_\_  
(Please Print)

By: \_\_\_\_\_  
(Contact Person)

Address: \_\_\_\_\_

Telephone: (        ) \_\_\_\_\_

Currently licensed by BMI    Y        N       

BMI Account #'s \_\_\_\_\_

**License Period: 1/1/20 – 12/31/20**

**IMPORTANT - MAKE YOUR CHECK PAYABLE TO "RSA"**

**Please return this form and your check (fees due) no later than January 30th to:**

**Roller Skating Association International**  
**6905 Corporate Drive**  
**Indianapolis, IN 46278**  
**ATTN: Stacy Thomas**

## CIRCLE APPLICABLE FEE FOR YOUR CENTER

**Use the Highest Price currently charged by Licensed Member for a Regularly Scheduled Skating Session**

LICENSE FEE SCHEDULE						
Highest Admission Price	Under 10,000 Square Feet of skating Rink		10,000 to 15,000 Square Feet of Skating Rink		Over 15,000 Square Feet of Skating Rink	
	Street Rate	RSA RATE	Street Rate	RSA RATE	Street Rate	RSA RATE
0 - 1.50	\$228	\$218.35	\$343	\$330.15	\$430	\$413.12
1.51 - 2.00	\$302	\$289.97	\$452	\$434.08	\$566	\$542.38
2.01 - 2.50	\$379	\$364.21	\$566	\$542.38	\$706	\$677.76
2.51 - 3.00	\$452	\$434.08	\$680	\$652.43	\$845	\$809.64
3.01 - 3.50	\$529	\$506.57	\$794	\$762.48	\$982	\$942.40
3.51 - 4.00	\$606	\$581.68	\$906	\$869.91	\$1,122	\$1,076.90
4.01 - 4.50	\$680	\$652.43	\$1,023	\$981.70	\$1,260	\$1,208.79
4.51 - 5.00	\$757	\$724.92	\$1,134	\$1,088.26	\$1,398	\$1,340.67
5.01 - 5.50	\$832	\$798.29	\$1,246	\$1,195.68	\$1,538	\$1,476.05
5.51 - 6.00	\$906	\$869.91	\$1,360	\$1,304.86	\$1,676	\$1,607.93
6.01 - 6.50	\$982	\$942.40	\$1,474	\$1,414.03	\$1,817	\$1,741.56
6.51 - 7.00	\$1,058	\$1,015.76	\$1,589	\$1,524.08	\$1,952	\$1,872.57
7.01 - 7.50	\$1,134	\$1,088.26	\$1,704	\$1,631.51	\$2,092	\$2,007.95
7.51 - 8.00	\$1,208	\$1,159.00	\$1,817	\$1,741.56	\$2,230	\$2,139.83
8.01 - 9.00	\$1,287	\$1,234.99	\$1,928	\$1,848.99	\$2,370	\$2,272.59
9.01 - 10.00	\$1,360	\$1,304.86	\$2,040	\$1,957.29	\$2,507	\$2,404.47
10.01 - 11.00	\$1,437	\$1,378.23	\$2,153	\$2,065.59	\$2,646	\$2,538.97
11.01 - 12.00	\$1,511	\$1,450.72	\$2,269	\$2,175.64	\$2,785	\$2,671.73
12.01 - 13.00	\$1,589	\$1,524.08	\$2,384	\$2,283.07	\$2,923	\$2,803.61
13.01 - 14.00	\$1,663	\$1,594.83	\$2,496	\$2,393.99	\$3,063	\$2,938.99
14.01 - 15.00	\$1,739	\$1,669.07	\$2,610	\$2,504.91	\$3,204	\$3,071.75
over 15.00	\$1,817	\$1,741.56	\$2,720	\$2,608.85	\$3,338	\$3,201.01

RSA rate includes a \$0.0275 per dollar administrative fee.

In the event that the Licensed Member operates the Licensed Premises for a portion of a calendar year (e.g. less than 12 months) due to 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 Licensed Member 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 Licensed Member's annual license fee as calculated above.

### SEASONAL CALCULATION

$$\$ \underline{\hspace{2cm}} \text{ Annual Fee} \text{ divided by } 12 = \$ \underline{\hspace{2cm}} \text{ Months Open} \times \underline{\hspace{2cm}} = \$ \underline{\hspace{2cm}} \text{ Prorated Fee}$$

LI-2019/OCT-RSA
Effective: January 2020



# 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:

**2020 LICENSE FEE SCHEDULE**

<b>Schedule A – Recorded Music Fee</b>			
<b>Number of Campsites</b>	<b>Number of Campsites</b>		<b>Fee Per Premises</b>
			<b>Fee Based on Number of Campsites</b>
_____	1	50	\$272.00
	51	100	\$321.00
	101	200	\$455.00
	201	350	\$634.00
	351	500	\$906.00
	Over 500		\$1,178.00
<b>Total Schedule A Fee</b>			\$

<b>Schedule B – Live Music and Entertainment Fee</b>			
<b>Annual Entertainment Cost</b>	<b>Annual Entertainment Costs</b>		<b>Live Music and Entertainment Fee</b>
			<b>Enter Fee Based on Annual Entertainment Cost Range</b>
\$ _____	\$0.00	\$5,000.00	\$277.00
	\$5,001.00	\$7,999.00	\$356.00
	\$8,000.00	\$9,999.00	\$418.00
	\$10,000.00	\$14,999.00	\$540.00
	\$15,000.00	\$24,999.00	\$724.00
	\$25,000.00	\$34,999.00	\$865.00
	\$35,000.00	\$49,000.00	\$991.00
	\$50,000.00 or more*		\$1,115.00
*Each dollar of expense over \$50,000 calculates using 8/10 of 1% (.008)			(Enter Calculated Overage Fee Here) \$
<b>Total Schedule B Fee</b>			\$
<b>Add Total of Schedule A &amp; B Fee</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 2020 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 (1½%) 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>
<i>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</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>(Phone) (Phone 2)</i>
<b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b>	<i>(Contact Name) (Title)</i>
Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i>	<i>(Email Address) (Web Address)</i>
State of Incorporation _____ Federal Tax ID No. _____	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
Partners' Names <i>(If Partnership)</i>	<i>(Street Address)</i>
1. _____	<i>(City) (State) (Zip)</i>
2. _____	<i>(Contact Name) (Title)</i>
3. _____	<i>(Contact Phone) (Contact Phone 2)</i>
<b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b>	<i>(Email Address – if different from above)</i>
Local, State, or Federal _____	
Municipality Name _____ <i>(City/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>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>Please Sign &amp; Return this Entire License Agreement &amp; Payment to:</b> <b>BMI, Licensing Dept</b> <b>10 Music Square E., Nashville, TN 37203</b> <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b>	<b>FOR BMI USE ONLY</b>	<b>36RVA</b>
	<b>LI-2019/DEC</b>	
	<b>Customer Number</b>	



# Music License for Schools

## 1. DEFINITIONS

- (a) **"Licensed Premises"** as used herein shall mean the educational institution identified by name and address on page 4 herein (the "School").
- (b) **"Premises"** shall include LICENSEE's school buildings and fields and any site located off LICENSEE's property that has been engaged for use by LICENSEE, including, but not limited to, those locations where School groups such as bands or choruses perform as part of their nonprofit, community outreach, educational activities, faculty & administration events, provided that such events are not promoted or sponsored by a third party.
- (c) **"Off-Site Location"** shall include any premises, other than Licensed Premises, which is under LICENSEE's sole control and attended solely by LICENSEE's faculty, administration, students, and social acquaintances.
- (d) **"Enrolled Students"** as used herein shall be the total number of students enrolled at the School at the start of the Fall 2020 academic term, and at the start of each subsequent academic year as this Agreement shall be extended. Student counts shall be reported for the Fall 2020 upon execution of this agreement.
- (e) **"Base Student Fee"** for the 2020-2021 Contract Year shall be based on the number of Enrolled Students at the School, as outlined in the table in Paragraph 13(a) herein. The fees in Paragraph 13(a) shall be subject to a CPI Adjustment for each subsequent Contract Year, rounded to the nearest tenth of a cent, for calculating the Base Student Fee for each year covered by the agreement.
- (f) **"Minimum Annual Fees"** shall mean that in no event shall the Total Base Student Fee for any Contract Year be less than the Minimum Annual Fee for the Contract Year. The Minimum Annual Fee for Contract Year 2020-2021 shall be \$152.72; this Minimum Fee shall be subject to a CPI Adjustment for each subsequent Contract Year, rounded to the nearest cent.
- (g) **"Compulsory Radio Station Rate"** shall mean the fee for non-commercial educational radio stations established under Section 118 of the U.S. Copyright Act. The Compulsory Radio Station Rate, as defined above, for Contract Years 2018-2022 is outlined in Paragraph 13(b) herein.
- (h) **"School Radio Station"** shall mean and be limited to a non-commercial educational radio station that is not affiliated with NPR.
- (i) **"Total School Radio Station Fee"** shall mean the total number of School Radio Stations multiplied by the Compulsory Rate outlined in Paragraph 13(b).
- (j) **"CPI Adjustment"** shall mean the adjustment made to the fees outlined in Paragraph 13(a) used to calculate the Base Student Fee, as well as the Minimum Annual Fee in each subsequent Contract Year, as determined in accordance with the percentage change in the Consumer Price Index – All Urban Consumers (CPI-U) as determined by the United States Department of Labor, between the preceding July and the next preceding July. By way of illustration, the Base Student Fees in the table at Paragraph 13(a) payable for the 2020-2021 Contract Year, as compared to the Base Student Fee payable for the 2019-2020 Contract Year, will be adjusted based upon the percentage difference between the CPI-U in July 2020 and the CPI-U in July 2019.
- (k) **"Term"** shall mean the period commencing July 1, 2020 and ending June 30, 2021 (the "Initial Term") and shall be extended for additional periods of one (1) year each, unless canceled pursuant to Paragraph 6 or Paragraph 7 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".
- (l) **"Musical Attractions"** shall mean concerts, stage shows, variety shows, symphonies, operas, recitals, chamber music and other similar performances presented or promoted exclusively by LICENSEE.
- (m) **"Orchestra"** shall mean a School orchestra, which consists primarily of student performers who may be augmented by faculty, staff, or other musicians. The Orchestra is offered by the institution to further education in music, including training musicians for professional careers or to better their general musical skills. The Orchestra staff is employed by the school, which also has ultimate fiscal responsibility for the Orchestra, and is governed by the institution, a steering committee or other similar body, and not a separate board of directors independent from the school.
- (n) **"Website"** shall mean the Internet computer service comprised of 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(c), so that BMI will know to exclude them from its routine Internet licensing sales efforts. LICENSEE warrants and represents that each such Website is primarily educational in nature and is operated for the primary purpose of promoting the School and its resources to current and prospective students, faculty, staff, alumni, and the local school community. For the avoidance of doubt, if LICENSEE owns or operates any website(s) with commercial activities or programming, LICENSEE agrees that any such websites shall be separately licensed by BMI.
- (o) **"Website Transmissions"** shall mean all transmissions of content over the Internet to individuals who access such transmissions from LICENSEE's Website(s) and receive such transmissions via a personal computer or other device capable of receiving such transmissions.
- (p) **"Locally Originated Programming"** shall mean television programming produced or which is inserted locally by LICENSEE on LICENSEE's Closed Circuit Television System including, without limitation, (i) programming on locally-originated channels, including advertising and promotional materials thereon; (ii) programming on public, educational and governmental ("PEG") access channels; (iii) public service announcements; (iv) programming on leased access channels; and (v) advertising and promotional materials inserted locally or through an interconnect by or on behalf of LICENSEE into national, regional or local cable programming services.
- (q) **"LICENSEE's Closed Circuit Television System"** shall mean a system of closed circuit distribution, MMDS, internet, broadband, including any linear feed via the Internet, broadband or other online service or other means of distribution which is owned and operated by LICENSEE and by which LICENSEE transmits Locally Originated Programming on LICENSEE's premises, except that it shall not include free over-the-air broadcast television.
- (r) **"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.
- (s) **"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, Off-Site Location, or by means of Intranet Transmissions, Closed Circuit Television transmissions or High School Radio Station broadcasts in the Territory all of the musical works to which BMI shall have the right to grant public performance licenses, including, but not limited to performances by student bands or orchestras, School theater groups, or other School performing groups, at sporting events, student unions, classrooms, socials, fairs/festivals, Musical Attractions, fitness centers, athletic facilities, special events such as orientation and graduation, and via "music-on-hold" (as that term is commonly understood) through LICENSEE's telephone system(s) at the Premises to persons connected to

the Premises by telephone, LICENSEE's Website Transmissions, including webcasts of School Radio Broadcasting Stations, and LICENSEE's Closed Circuit Television System, with respect to Locally Originated Programming only. This license is available to Schools with Enrollments of fewer than 6,000 students.

This grant of rights does not include:

- (a) performances of music via any form of televised transmission, whether over-the-air broadcast, cable, satellite or otherwise, except performances via (i) LICENSEE's Intranet Transmissions; (ii) Licensee's Website Transmissions; (iii) Licensee's School Radio Station; or (iv) LICENSEE's Closed Circuit Television System, with respect to Locally Originated Programming only;
- (b) dramatic rights, the right to publicly perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to perform the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein;
- (c) performances of music by means of a coin-operated phonorecord player (jukebox) or digital jukebox;
- (d) performances of arrangements or adaptations of BMI Works that require the permission of the composer of the underlying work to qualify as a derivative work, unless such permission has been obtained;
- (e) Musical Attractions held at the Premises which are promoted by outside promoters (which shall mean any person or entity other than LICENSEE);
- (f) Musical Attractions occurring outside of the Premises, except as part of community outreach, educational activities, or faculty & administration events at an off-site location;
- (g) performances by commercial radio stations; or
- (h) LICENSEE's student participation in national or regional sporting tournaments and competitions, and national or regional music and arts competitions, as the music licensing obligations for those events are licensed by the state and regional associations which organize the events or by the Music Educators National Conference.

This Agreement is not assignable, and no rights other than those mentioned are included in this Agreement.

### **3. EXAMINATION OF BOOKS AND RECORDS**

BMI, upon giving reasonable notice to LICENSEE in writing, shall have the right to examine the books and records of account of LICENSEE which pertain solely to this Agreement and which may be necessary to verify any statements rendered and accountings made hereunder.

### **4. INDEMNITY**

BMI agrees to indemnify, save harmless and defend LICENSEE, its officers and employees, from and against any and all claims, demands or suits that may be made or brought against them or any of them with respect to the performance of any material licensed under this Agreement. Such indemnity shall be limited to works which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon reasonable written request, advise LICENSEE whether specific musical works are available for performance, under this Agreement, if LICENSEE provides the title and the writer/composer of each musical work. LICENSEE agrees to give BMI immediate notice of any such claim, demand or suit, to deliver to BMI any papers pertaining thereto, and to cooperate with BMI with respect thereto, and BMI shall have full charge of the defense of any such claim, demand or suit.

### **5. BREACH OR DEFAULT/ WAIVER**

Upon any breach or default of the terms and conditions of this Agreement that continues for thirty (30) days after LICENSEE's receipt of written notice thereof, BMI may, at its sole option, cancel this Agreement. The right to cancel shall be in addition to any and all other remedies which BMI may have. No waiver by BMI of full performance of this Agreement by LICENSEE in any one or more instances shall be deemed a waiver of the right to require full and complete performance of this Agreement thereafter or of the right to cancel this Agreement in accordance with the terms of this Paragraph. In the event of such cancellation, BMI agrees to refund to LICENSEE any unearned license fees paid in advance to BMI by LICENSEE.

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

BMI shall have the right to cancel this Agreement, along with 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. CANCELLATION BY LICENSEE**

In the event LICENSEE ceases to operate as an educational institution, or if 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.

### **8. 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.

### **9. 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.

### **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. 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.

**12. 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.

**13. FEES / REPORTING**

In consideration of the license granted herein, LICENSEE agrees to pay license fees for each Contract Year, which shall be comprised of the sum of (as applicable): The Base Student Fee and the School Radio Station Fee. The Base Student Fee and School Radio Station Fee shall be reported and paid together.

(a) The Base Student Fee for the 2020-2021 Contract Year is as follows:

<b>Enter Student Count:</b> _____	<b>Student Fee</b>
0-499	\$152.72
500-999	\$254.53
1,000-1,999	\$559.96
2,000-2,999	\$916.29
3,000-3,999	\$1,272.63
4,000-5,999	\$1,832.58
If student count 6,000 or greater, please contact BMI at (888) 689-5264	

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

<b>Check Appropriate Box</b>	<b>Number of Enrolled Students</b>	<b>Calendar Years</b>				
		<b>2017-2018</b>	<b>2018-2019</b>	<b>2019-2020</b>	<b>2020-2021</b>	<b>2021-2022</b>
Level 1 <input type="checkbox"/>	< 1,000	\$352	\$359	\$366	\$373	\$380
Level 2 <input type="checkbox"/>	1,000 – 4,999	\$407	\$415	\$423	\$431	\$440
Level 3 <input type="checkbox"/>	5,000 – 5,999	\$557	\$568	\$579	\$591	\$603

NOTE: If your station is a low power station, please be advised that the lowest Level 1 fee, as set forth above for each of the five years, shall apply to any High Radio Station with an authorized effective radiated power (ERP), as that term is defined in 47 C.F.R. § 73.310(a), of 100 Watts or less, as specified on its current FCC license. This fee applies to such low power stations regardless of the size of the student population. Please also note that, for purposes of the Compulsory Fee as outlined herein, only full-time students 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 School License invoice is sent in January.

(c) The Total Base Student Fees due BMI pursuant to this Agreement for the 2020-2021 Contract Year shall be paid by LICENSEE to BMI on or before February 1, 2021. For each subsequent Contract Year on or before November 1, LICENSEE shall report to BMI, on forms to be supplied by BMI, the total number of Enrolled Students as defined in Paragraph 1(d) 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 School Radio Station(s), and such other information as BMI may reasonably require with regard to any School Radio Station(s). The license fee due BMI pursuant to the Agreement for each subsequent Contract Year shall be paid by LICENSEE to BMI on or before the 20th day of January in the subsequent Contract Year.

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

**14. REPORTING OF MUSICAL WORKS**

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

- (a) All School Radio Station(s) licensed under the Compulsory Rate shall, upon written request from BMI made on not less than two (2) weeks’ advanced written 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 School Radio Station’s broadcast signal was also transmitted over the Internet; but such lists need not be furnished for more than two (2) weeks for each Contract Year of the Term of this Agreement.
- (b) LICENSEE shall deliver to BMI for each calendar quarter, by the tenth (10th) day following the end of the calendar quarter, copies of any programs of the musical works presented by LICENSEE in its Musical Attractions or on LICENSEE’s Website(s) during such quarter. Programs prepared for audiences or for the LICENSEE’s own use are to be included and shall include the presentation of encores to the extent possible. Nothing contained herein shall be deemed to require LICENSEE to deliver material not otherwise prepared.

**Exhibit A**

<b>Web Site Name</b>	<b>URL (Example: school.edu)</b>

**AGREEMENT**

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

<p><b><u>LEGAL NAME</u></b></p> <p><i>(Legal Name of LICENSEE)</i></p> <p><b><u>PREMISES ADDRESS</u></b> A High School with its principal offices at:</p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Contact Name) (Title)</i></p> <p><i>(Phone) (Phone 2)</i></p> <p><i>(Email Address)</i></p> <p><i>(Web Address)</i></p>	<p><b><u>NAME OF SCHOOL</u></b></p> <p><i>(Name of High School)</i></p> <p><b><u>MAILING ADDRESS</u></b> <i>(If different from Premises Address)</i></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Contact Name) (Title)</i></p> <p><i>(Contact Phone) (Contact Phone 2)</i></p> <p><i>(Email Address)</i></p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>						
<p><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><i>(Signature)</i></p> <p><i>(Print Name / Title)</i></p> <p><i>(Signatory Email Address, if different from above)</i></p>	<p><b><u>FOR ADMINISTRATIVE USE ONLY</u></b> <b>TO BE COMPLETED BY BMI</b> <b>BROADCAST MUSIC, INC.</b></p>						
<p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b> <b>BMI, Licensing Dept</b> <b>10 Music Square E., Nashville, TN 37203</b></p>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;"><b>FOR BMI USE ONLY</b></td> <td style="width:25%;"><b>HSC</b></td> <td style="width:25%;"><b>LI-2020/FEB</b></td> </tr> <tr> <td colspan="3" style="text-align:center; padding-top: 10px;"><b>Customer Number</b></td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>HSC</b>	<b>LI-2020/FEB</b>	<b>Customer Number</b>		
<b>FOR BMI USE ONLY</b>	<b>HSC</b>	<b>LI-2020/FEB</b>					
<b>Customer Number</b>							



## Shopping Center

### 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 (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 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).  
(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.

**Gross Leasable Area**

• LICENSEE warrants and represents that the Gross Leasable Area is.....

1  Sq. Ft.

(Gross Leasable Area of Shopping Center per Paragraph 15a)

**Background Use (See Schedule A below)**

• LICENSEE's Background Use will include audio-visual (projection TV, televisions, monitors, video cassettes, etc.).....

(Enter Yes or No above)

• 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**



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.

**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 Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p> <p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Phone) (Phone 2)</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>(Contact Name) (Title)</i></p> <p><i>(Contact Phone) (Contact Phone 2)</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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <i>(if different from above)</i></p> <p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b>  <b>BMI, Licensing Dept</b>  <b>10 Music Square E., Nashville, TN 37203</b>  <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></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> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="width:33%; text-align:center;">FOR BMI USE ONLY</td> <td style="width:33%; text-align:center;">43</td> <td style="width:33%; text-align:center;">LI-2019/APR</td> </tr> </table> <p style="text-align:center; margin-top: 10px;">Customer Number</p>	FOR BMI USE ONLY	43	LI-2019/APR
FOR BMI USE ONLY	43	LI-2019/APR		



# 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.

**2020 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	\$250.00	\$378.00	\$473.00
1.51 - 2.00	\$332.00	\$497.00	\$621.00
2.01 - 2.50	\$417.00	\$621.00	\$776.00
2.51 - 3.00	\$497.00	\$747.00	\$927.00
3.01 - 3.50	\$580.00	\$873.00	\$1,079.00
3.51 - 4.00	\$666.00	\$996.00	\$1,233.00
4.01 - 4.50	\$747.00	\$1,124.00	\$1,384.00
4.51 - 5.00	\$830.00	\$1,246.00	\$1,535.00
5.01 - 5.50	\$914.00	\$1,369.00	\$1,690.00
5.51 - 6.00	\$996.00	\$1,494.00	\$1,841.00
6.01 - 6.50	\$1,079.00	\$1,619.00	\$1,994.00
6.51 - 7.00	\$1,163.00	\$1,745.00	\$2,144.00
7.01 - 7.50	\$1,246.00	\$1,868.00	\$2,299.00
7.51 - 8.00	\$1,327.00	\$1,994.00	\$2,450.00
8.01 - 9.00	\$1,414.00	\$2,117.00	\$2,602.00
9.01 - 10.00	\$1,494.00	\$2,241.00	\$2,753.00
10.01 - 11.00	\$1,578.00	\$2,365.00	\$2,907.00
11.01 - 12.00	\$1,661.00	\$2,491.00	\$3,059.00
12.01 - 13.00	\$1,745.00	\$2,614.00	\$3,210.00
13.01 - 14.00	\$1,826.00	\$2,741.00	\$3,365.00
14.01 - 15.00	\$1,911.00	\$2,868.00	\$3,517.00
over 15.00	\$1,994.00	\$2,987.00	\$3,665.00

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 2020 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 the last day of December \_\_\_\_\_ 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.**

<p><b><u>LEGAL NAME</u></b></p> <p><i>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p> <p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Phone) (Phone 2)</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>(Contact Name) (Title)</i></p> <p><i>(Contact Phone) (Contact Phone 2)</i></p> <p><i>(Email Address – if different from above)</i></p>
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<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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <i>(if different from above)</i></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>			
	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"><b>FOR BMI USE ONLY</b></td> <td style="width:33%;"><b>SKT1</b></td> <td style="width:33%;"><b>LI-2019/OCT</b></td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>SKT1</b>	<b>LI-2019/OCT</b>
<b>FOR BMI USE ONLY</b>	<b>SKT1</b>	<b>LI-2019/OCT</b>		
<p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b></p> <p><b>BMI, Licensing Dept</b></p> <p><b>10 Music Square E., Nashville, TN 37203</b></p> <p><b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>	<p><b>Customer Number</b></p>			



# Interim Music License for Symphony Orchestra

WHEREAS, BMI has been negotiating with representatives of symphony orchestras over the reasonable fees, terms and conditions of a BMI symphony orchestra license covering the public performance of BMI-affiliated musical works at classical and pop concerts for the period commencing September 1, 2019 (the "2019 Symphony Orchestra Agreement"); and

WHEREAS, upon the conclusion of those negotiations, BMI intends to offer the new final blanket license fees and terms to LICENSEE and all other symphony orchestras for the period commencing September 1, 2019; and

WHEREAS, LICENSEE and BMI desire to enter into this Interim Music License Agreement pending the finalization of such terms and conditions to provide for license coverage pending the outcome of the negotiations;

NOW THEREFORE, by signing below LICENSEE and BMI agree as follows:

## 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, 2019 and shall continue on a month to month basis subject to the right of either party to this Agreement to terminate the Interim License prospectively on thirty (30) days' prior written notice.
- (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 Interim License Fee** shall mean interim 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 Interim License Fee** shall mean interim license fees paid at the commencement of the Contract Year which are based upon LICENSEE's Actual Interim License Fees for the prior Contract Year, and which LICENSEE pays with the expectation that the estimated amounts paid will be adjusted once Actual Interim 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 fundraising 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. 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. INTERIM LICENSE FEES**

(a) Upon execution of this Agreement, for the period commencing September 1, 2019, Orchestra shall pay interim 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
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%
2018-19	0.60%	0.350%	0.60%	0.40%	0.30%	0.15%
2019-20	0.60%	0.350%	0.60%	0.40%	0.30%	0.15%

- (b) This license shall be deemed to be an application to BMI for a license under Section XIV of the BMI consent decree effective September 1, 2019. LICENSEE agrees to be bound by all of the terms and conditions in this License on an interim fee basis for the period commencing September 1, 2019 (the "Interim License Period"), continuing on a month to month basis until the final BMI blanket license fees and terms are either determined by negotiations between the parties or are determined by the BMI rate court in a proceeding to determine reasonable BMI final blanket license fees for symphony orchestras for this period. LICENSEE's interim quarterly and annual license fees shall be adjusted retroactively to September 1, 2019 at such time as final fees and terms are determined.
- (c) Once final fees are so determined, LICENSEE shall be obligated to pay BMI the final license fees and terms prospectively and any additional fees owed BMI for retroactive periods as a result of such retroactive adjustment of rates or fees if such rates are higher than the interim fees. BMI shall be obligated to credit LICENSEE's account any monies owed LICENSEE as a result of such retroactive adjustment of rates or fees in the event the final rates are lower than the interim rate.
- (d) For each subsequent Contract Year of the Term, the interim license fee shall be payable on or before October 1<sup>st</sup> following the commencement of such year.
- (e) For each Contract Year, there shall be a Minimum Annual Interim License Fee per Orchestra. The Minimum Annual Interim License Fee for the 2019-2020 Contract Year is \$244.00. The Minimum Annual Interim 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.

## 7. ANNUAL FINANCIAL REPORTING

- (a) For each Contract Year, Orchestra shall pay an Estimated Interim 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.

## 8. 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.

## 9. 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.

## 10. 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.

## 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 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.



**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 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.

**13. TERM OF AGREEMENT**

The initial Term of this annual Agreement shall begin on the first day of (month/year) \_\_\_\_\_ and shall continue on a month-to-month basis, subject to the right of either party to this Agreement to terminate the Interim License prospectively on thirty (30) days' prior 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 ORCHESTRA.**

<b><u>LEGAL NAME</u></b>	<b><u>LICENSED PREMISES</u></b>
<i>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</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>(Phone) (Phone 2)</i>
<b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b>	<i>(Contact Name) (Title)</i>
Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i>	<i>(Email Address) (Web Address)</i>
State of Incorporation _____ Federal Tax ID No. _____	<b><u>MAILING ADDRESS</u></b> <i>(if different from Licensed Premises)</i>
Partners' Names <i>(If Partnership)</i>	<i>(Street Address)</i>
1. _____	<i>(City) (State) (Zip)</i>
2. _____	<i>(Contact Name) (Title)</i>
3. _____	<i>(Contact Phone) (Contact Phone 2)</i>
<b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b>	<i>(Email Address – if different from above)</i>
Local, State, or Federal _____	
Municipality Name _____ <i>(City/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>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>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to: BMI, Licensing Dept 10 Music Square E., Nashville, TN 37203 Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b>	<b>FOR BMI USE ONLY</b>	<b>SYM1</b>
	<b>LI-2019/SEPT</b>	
	<b>Customer Number</b>	



# 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 (1) year Term of the Agreement a license fee based upon the following:

<u>Calendar Year</u>	<u>Per Attendee Rate</u>
2020	\$.08

- (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 2020 shall be \$165.00 per year. The minimum annual fee for each year after 2020 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 (\$165.00) 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 the first day of January 1, \_\_\_\_\_ and shall end on the last day of 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**

THIS 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 Delaware 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:"

<p><b><u>LEGAL NAME</u></b></p> <p><i>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p> <p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Phone) (Phone 2)</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>(Contact Name) (Title)</i></p> <p><i>(Contact Phone) (Contact Phone 2)</i></p> <p><i>(Email Address – if different from above)</i></p>
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<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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <i>(if different from above)</i></p> <p><b>Please Sign &amp; Return this Entire License Agreement &amp; Payment to:</b>  <b>BMI, Licensing Dept</b>  <b>10 Music Square E., Nashville, TN 37203</b>  <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b> <b>TO BE COMPLETED BY BMI</b> <b>BROADCAST MUSIC INC.</b></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:33%; text-align:center;"><b>45-97</b></td> <td style="width:33%; text-align:center;"><b>LI-2019/OCT</b></td> </tr> <tr> <td colspan="3" style="text-align:center; padding-top: 10px;"><b>Customer Number</b></td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>45-97</b>	<b>LI-2019/OCT</b>	<b>Customer Number</b>		
<b>FOR BMI USE ONLY</b>	<b>45-97</b>	<b>LI-2019/OCT</b>					
<b>Customer Number</b>							



# Venue Musical Attractions Rider

For Eating and Drinking Establishments with Advance or Hard Ticket Purchases of \$25.00 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 2020 Contract Year is \$251.00. 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</b>		<b>EVENTS WITH PAID ADMISSION</b>	
<u>Seating Capacity</u>		<u>% of Gross Ticket Revenue</u>	
0	to 2,500	0.80%	
<b>SCHEDULE B</b>		<b>BENEFIT EVENTS</b>	
<u>Seating Capacity</u>		<u>Fee Per Benefit Event</u>	
0	to 250	\$16.00	
251	to 750	\$20.00	
751	to 1,500	\$34.00	
1,501	to 2,500	\$55.00	

**Minimum Annual Fee is \$251.00**

- (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 (*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 (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 Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</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>(Phone)</i>	<i>(Phone 2)</i>	
<b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b>	<i>(Contact Name)</i>	<i>(Title)</i>	
Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i>	<i>(Email Address)</i>	<i>(Web Address)</i>	
State of Incorporation _____ Federal Tax ID No. _____	<b><u>MAILING ADDRESS</u></b> <b>(if different from Licensed Premises)</b>		
Partners' Names <i>(If Partnership)</i>	<i>(Street Address)</i>		
1. _____	<i>(City) (State) (Zip)</i>		
2. _____	<i>(Contact Name) (Title)</i>		
3. _____	<i>(Contact Phone) (Contact Phone 2)</i>		
<b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b>	<i>(Email Address – if different from above)</i>		
Local, State, or Federal _____	<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.		
Municipality Name _____ <i>(City/State)</i>			
Signature	<b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b>		
Print Name / Title			
Signatory Email Address <i>(if different from above)</i>			
<b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to: BMI, Licensing Dept 10 Music Square E., Nashville, TN 37203 Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b>	<b>FOR BMI USE ONLY</b>	<b>VEDE1</b>	<b>LI-2019/SEPT</b>
	<b>Customer Number</b>		





# Interim Music License for Venue -with less than 10,000 seats-

WHEREAS, BMI has been negotiating with concert promoters over the reasonable license fees, terms and conditions of a BMI venue license which will authorize the public performance of BMI affiliated musical works at musical attractions for the period commencing July 1, 2018 (the "2018 Venue Agreement"); and

WHEREAS, upon the conclusion of those negotiations, BMI intends to quote new final blanket license fees and terms to LICENSEE and all other venues and promoter/presenters for the period commencing July 1, 2018; and

WHEREAS, LICENSEE and BMI desire to enter into this Interim Music License Agreement pending the finalization of such license fees, terms and conditions;

NOW THEREFORE, by signing below LICENSEE and BMI agree as follows:

## 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. INTERIM LICENSE FEES**

- (a) LICENSEE agrees to pay BMI an interim 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 interim license fee shall be computed on the basis set forth in the License Fee Schedule of this Agreement.
- (b) This license shall be deemed to be an application to BMI for a license under Section XIV of the BMI consent decree. LICENSEE agrees to be bound by all of the terms and conditions in this License on an interim fee basis for the period commencing July 1, 2018 (the "Interim License Period"), continuing on a month to month basis until the final license fees and terms are determined either by negotiations or as may be determined by the BMI rate court in a proceeding to determine reasonable BMI final blanket license fees for venues and promoter/presenters for this period. LICENSEE's interim quarterly and annual license fees shall be adjusted retroactively to July 1, 2018 at such time as final fees and terms are determined.
- (c) Once final fees are determined, LICENSEE shall be obligated to pay BMI any additional monies owed BMI as a result of such retroactive adjustment of rates or fees if such rates are higher than the interim fees, and BMI shall be obligated to credit LICENSEE's account any monies owed LICENSEE as a result of such retroactive adjustment of rates or fees in the event the rates are lower than the interim rate.
- (d) License fees for Attractions *with* paid admission shall be calculated pursuant to Schedule A of the Interim 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 Interim License Fee Schedule. Interim 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.
- (e) 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 2020 Contract Year is \$251.00. 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.
- (f) 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.

**INTERIM LICENSE FEE SCHEDULE**

<b>SCHEDULE A</b>			
<b>EVENTS WITH PAID ADMISSION</b>			
<b>Seating Capacity</b>			<b>% of Gross Ticket Revenue</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>Seating Capacity</b>			<b>Fee Per Benefit Event With No Charge</b>
0	to	250	\$16.00
251	to	750	\$20.00
751	to	1,500	\$34.00
1,501	to	2,500	\$55.00
2,501	to	5,000	\$78.00
5,001	to	7,500	\$107.00
7,501	to	9,999	\$150.00

**Minimum Annual Fee is \$251.00**

## 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 interim 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 shall continue on a month-to-month basis, subject to the right of either party to this agreement to terminate the Interim License prospectively on thirty (30) days' prior 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, NY 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 Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</i></p> <p><b><u>TRADE NAME</u></b></p> <p><i>(Doing business under the name of)</i></p> <p><b>PLEASE COMPLETE LEGAL INFORMATION BELOW</b></p> <p>Legal Structure _____ <i>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</i></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <i>(If Partnership)</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <i>(City/State)</i></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><i>(Street Address)</i></p> <p><i>(City) (State) (Zip)</i></p> <p><i>(Phone) (Phone 2)</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>(Contact Name) (Title)</i></p> <p><i>(Contact Phone) (Contact Phone 2)</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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <i>(if different from above)</i></p>	<p><b>FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%; text-align:center;">FOR BMI USE ONLY</td> <td style="width:33%; text-align:center;">VEN1 Interim</td> <td style="width:33%; text-align:center;">LI-2019/SEPT</td> </tr> <tr> <td colspan="3" style="text-align:center; padding-top: 10px;">Customer Number</td> </tr> </table>	FOR BMI USE ONLY	VEN1 Interim	LI-2019/SEPT	Customer Number		
FOR BMI USE ONLY	VEN1 Interim	LI-2019/SEPT					
Customer Number							
<p><b>Please Sign &amp; Return this Entire License Agreement &amp; Payment to:</b>  <b>BMI, Licensing Dept</b>  <b>10 Music Square E., Nashville, TN 37203</b>  <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>							



# 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 (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.

## 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 2020, an annual license fee of \$98.04 per Serviced Premises; (ii) for each calendar year commencing 2021, 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 2020 shall not be less than the sum of \$4,411.69. For each subsequent calendar year commencing 2021, 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.**

<p><b><u>LEGAL NAME</u></b></p> <p><small>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</small></p> <p><b><u>TRADE NAME</u></b></p> <p><small>(Doing business under the name of)</small></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <small>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</small></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <small>(If Partnership)</small></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <small>(City/State)</small></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><small>(Street Address)</small></p> <p><small>(City) (State) (Zip)</small></p> <p><small>(Phone) (Phone 2)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Email Address) (Web Address)</small></p> <p><b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small></p> <p><small>(Street Address)</small></p> <p><small>(City) (State) (Zip)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Contact Phone) (Contact Phone 2)</small></p> <p><small>(Email Address – if different from above)</small></p>
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<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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <small>(if different from above)</small></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b> <b>TO BE COMPLETED BY BMI</b> <b>BROADCAST MUSIC INC.</b></p>						
<p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b> <b>BMI, Licensing Dept</b> <b>10 Music Square E., Nashville, TN 37203</b> <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></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:33%; text-align:center;"><b>VMS1</b></td> <td style="width:33%; text-align:center;"><b>LI-2019/OCT</b></td> </tr> <tr> <td colspan="3" style="text-align:center; height: 40px; vertical-align: middle;"><b>Customer Number</b></td> </tr> </table>	<b>FOR BMI USE ONLY</b>	<b>VMS1</b>	<b>LI-2019/OCT</b>	<b>Customer Number</b>		
<b>FOR BMI USE ONLY</b>	<b>VMS1</b>	<b>LI-2019/OCT</b>					
<b>Customer Number</b>							





## Addendum to the BMI Music License for Video Music Service

In connection with the BMI Music License for Video Music Service made between Broadcast Music, Inc. ("BMI") and \_\_\_\_\_ ("LICENSEE"), dated \_\_\_\_\_, (the "Agreement") notwithstanding anything to the contrary set forth in the Agreement, the parties agree to the following modifications:

1. Paragraph 1(d)(i) shall be deleted in its entirety; and
2. Paragraph 8(c)(ii) shall be deleted in its entirety.

Except as set forth herein, all other terms and conditions of the Agreement shall remain in full force and effect.

The parties acknowledge their acceptance of, and agreement to, the foregoing by signing in the space provided below.

<b>Accepted and Agreed to By:</b>	<b>Broadcast Music, Inc.</b>
Licensee	
Authorized Signature	
Print Name of Signatory	
Print Title of Signatory	

Account Number: \_\_\_\_\_



# 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:

**2020-2021 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)
A	Group Fitness Classes	\$0.3060
B	Ambient Music	\$0.2140
C	TV and/or Radio <u>Only</u>	\$0.1320

$$\frac{\text{(Category/Music Use)}}{\text{(Total Members)}} \times \text{(Member Fee)} = \$ \text{(Total Annual License Fee*)}$$

\*Pursuant to Sub-paragraph 9(c), the total annual license fee per Licensed Premises shall not be less than \$341.00, shall not be greater than \$2,327.00 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 2020-2021 Contract Year of \$341.00 and a maximum annual license fee per Licensed Premises for the 2020-2021 Contract Year of \$2,327.00.

- (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 any time 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.**

<p><b><u>LEGAL NAME</u></b></p> <p><small>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</small></p> <p><b><u>TRADE NAME</u></b></p> <p><small>(Doing business under the name of)</small></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <small>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</small></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <small>(If Partnership)</small></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <small>(City/State)</small></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><small>(Street Address)</small></p> <p><small>(City) (State) (Zip)</small></p> <p><small>(Phone) (Phone 2)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Email Address) (Web Address)</small></p> <p><b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small></p> <p><small>(Street Address)</small></p> <p><small>(City) (State) (Zip)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Contact Phone) (Contact Phone 2)</small></p> <p><small>(Email Address – if different from above)</small></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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <small>(if different from above)</small></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> <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:33%; text-align:center;"><b>YMCA1</b></td> <td style="width:33%; text-align:center;"><b>LI-2019/AUG</b></td> </tr> </table> <p>Customer Number _____</p>	<b>FOR BMI USE ONLY</b>	<b>YMCA1</b>	<b>LI-2019/AUG</b>
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<p><b>Please Sign &amp; Return this Entire License Agreement &amp; Payment to:</b></p> <p><b>BMI, Licensing Dept</b></p> <p><b>10 Music Square E., Nashville, TN 37203</b></p> <p><b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>				



# 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 DAYS 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 2020-2021 Contract Year is as follows:

**2020 – 2021 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>\$.0072</b>		<b>1.45%</b>	
(1)	_____ X _____ LICENSEE's 2020-2021 Attendance	_____ = _____ <b>.0072</b> License Fee Rate (Category 1)	_____ = _____ Ambient Music License Fee
(2)	_____ X _____ LICENSEE's 2020-2021 Live Music Entertainment Costs	_____ = _____ <b>.0145</b> 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 2020-2021 Contract Year is \$377.00 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 of 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.**

<p><b><u>LEGAL NAME</u></b></p> <p><small>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</small></p> <p><b><u>TRADE NAME</u></b></p> <p><small>(Doing business under the name of)</small></p> <p><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure _____ <small>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</small></p> <p>State of Incorporation _____ Federal Tax ID No. _____</p> <p>Partners' Names <small>(If Partnership)</small></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____ <small>(City/State)</small></p>	<p><b><u>LICENSED PREMISES</u></b></p> <p><small>(Street Address)</small></p> <p><small>(City) (State) (Zip)</small></p> <p><small>(Phone) (Phone 2)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Email Address) (Web Address)</small></p> <p><b><u>MAILING ADDRESS</u></b> <small>(if different from Licensed Premises)</small></p> <p><small>(Street Address)</small></p> <p><small>(City) (State) (Zip)</small></p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Contact Phone) (Contact Phone 2)</small></p> <p><small>(Email Address – if different from above)</small></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>Signature _____</p> <p>Print Name / Title _____</p> <p>Signatory Email Address _____ <small>(if different from above)</small></p> <p><b>Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</b>  <b>BMI, Licensing Dept</b>  <b>10 Music Square E., Nashville, TN 37203</b>  <b>Or Online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></b></p>	<p><b>FOR ADMINISTRATIVE USE ONLY</b> <b>TO BE COMPLETED BY BMI</b> <b>BROADCAST MUSIC INC.</b></p> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="width:33%; text-align:center;">FOR BMI USE ONLY</td> <td style="width:33%; text-align:center;">ZOO1</td> <td style="width:33%; text-align:center;">LI-2019/SEPT</td> </tr> <tr> <td colspan="3" style="text-align:center; padding-top: 10px;">Customer Number</td> </tr> </table>	FOR BMI USE ONLY	ZOO1	LI-2019/SEPT	Customer Number		
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