# Music License for Dance Classes
## (20-999 Locations)

**1. DEFINITIONS**

(a) **Background Music** shall mean recorded music, whether vocal or instrumental, designed to be used as an unobtrusive accompaniment to routine activities, including, but not limited to, conversation and relaxation, as long as such music is not intended to accompany non-instructional dancing or any other type of entertainment.

(b) **Live Music** shall mean music performed by or in conjunction with musicians, singers and other entertainers actually present and performing at any licensed location.

**2. BMI GRANT**

(a) BMI hereby grants to LICENSEE a non-exclusive license to perform, present or cause the performance of all musical works of which BMI shall have the right to grant public performance licenses during the Term hereof. Said license shall be restricted to performance of music in the manner described herein and is granted in consideration of the payment of the license fees as set forth herein and is subject to all of the terms and conditions hereof. This license does not include: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music license hereunder in any other context which may constitute an exercise of the "grand rights" therein; (ii) the right to broadcast, telecast, cablecast or otherwise transmit the performances licensed hereunder to persons outside of the licensed premises; or (iii) performances of music by means of coin-operated phono-record player (jukebox).

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

(c) The license granted to LICENSEE pursuant to Paragraph 2(a) shall extend to performances of recorded music in designated instructional area(s) (the "studio") on each licensed premises listed and to be listed during the Term of this Agreement on Schedule A hereof (each of which is referred to herein as a "licensed location" or "a licensed premises"), as long as LICENSEE is engaged in operating between 20 and 999 separate licensed locations where recorded music not otherwise licensed by BMI is performed, for use during athletic classes and instruction, including, but not limited to, classes in aerobics, gymnastics, slimnastics, social dancing, ballroom dancing, jazz dancing, tap dancing, square dancing, modern dancing, and ballet, as those terms are commonly understood in the dance profession. This license shall also extend to performances of recorded background music at the license locations adjacent to or outside of the studio. However, in no event shall this license authorize performances of music outside the perimeter of the licensed locations into any area not owned and/or controlled by LICENSEE. This license shall also extend to performances of incidental live or recorded music at the licensed location for promotional social dances and to dance recitals by students and instructors, as long as no admission fee is charged. In no event, however, shall this license authorize the performance of any music in any restaurant, cocktail lounge, nightclub, bar or other similar facility which may be a part of any licensed location.

(d) LICENSEE hereby warrants and represents that, as of the date of this Agreement, LICENSEE operates between twenty (20) and nine hundred and ninety-nine (999) locations.

(e) Except as otherwise expressly authorized above, this license shall be limited to performances at the licensed locations either by the playing of records, prerecorded tapes, or other mechanical or electronic devices or via the reception of broadcast audio transmissions on receiving apparatus and amplifications thereof for public performance, and such performances may be produced only through loudspeakers located at the licensed locations.

**3. INDEMNITY BY BMI**

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

**4. BREACH OR DEFAULT/WAIVER**

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues thirty (30) days after LICENSEE's receipt of written notice thereof. The right to cancel shall be in addition to any and all other remedies which BMI may have. No waiver by BMI of full performance of this Agreement by LICENSEE in any one or more instances shall be a waiver of the right to require full and complete performance of this Agreement thereafter or of the right to cancel this Agreement in accordance with the terms of this Paragraph.

**5. CANCELLATION OF ENTIRE CATEGORY**

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

**6. OFFER OF COMPARABLE AGREEMENT**

In the event that BMI, at any time during the Term hereof, shall, for the same class and category as that of LICENSEE, issue licenses granting rights similar to those in this Agreement on a more favorable basis, BMI shall, for the balance of the Term, offer LICENSEE a comparable agreement.

**7. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to arbitration in the City, County and State of New York under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators to be selected as follows: Each of the parties hereto shall, by written notice to the other, have the right to appoint one arbitrator. If, within ten (10) days following the giving of such notice by one party, the other shall not, by written notice, appoint another arbitrator, the first arbitrator shall be the sole arbitrator. If two arbitrators are so appointed, they shall appoint a third arbitrator. If ten (10) days elapse after the appointment of the second arbitrator and the two arbitrators are unable to agree upon the third arbitrator, then either party may, in writing, request the American Arbitration Association to appoint the third arbitrator. The award made in the arbitration shall be binding and conclusive on the parties and judgment may be, but need not be, entered in any court having jurisdiction. Such award shall include the fixing of the cost, expenses and attorney's fees of arbitration, which shall be borne by the unsuccessful party.

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

(a) BMI shall have the right by its authorized representatives, at any time during customary business hours and upon thirty (30) days advance written notice, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify any and all statements rendered and accountings made hereunder. BMI shall consider all data and information coming to its attention as the result of any such examination of books and records as confidential.

(b) If any audit conducted reveals a deficiency of twenty-five percent (25%) or more between the amount of fees previously reported as being due by LICENSEE and the amount actually found to be due BMI for the audited period, LICENSEE shall pay, in addition to the sum additionally due, a surcharge of fifteen percent (15%) of the total amount remaining due BMI. If LICENSEE does not pay said surcharge and deficiency within thirty (30) days of written notice by BMI, an interest charge of one percent (1%) per month may be imposed by BMI on said surcharge and deficiency from the date of such written notification.

**9. FEES**

(a) LICENSEE's annual license fee for the first contract year is the total amount entered below, which shall be payable in full upon the signing of this Agreement. Each payment thereafter shall be made no later than twenty (20) days after the start of each contract year and shall constitute LICENSEE's fee for that contract year.

## LICENSE FEE SCHEDULE

**Each individual floor where music is audible is to be considered a separate location.**

| GROUP | LOCATION | ANNUAL FEE PER LOCATION |
|---|---|---|
| A | 1st – 149th | $233 |
| B | 150th – 299th | $215 |
| C | 300th – 499th | $199 |
| D | 500th and Remainder | $181 |

(b) In addition to the indicated annual fee per location, if any licensed location gives audio-visual performance of music, LICENSEE shall pay an additional fee equal to thirty-five percent (35%) of the lowest GROUP fee for which LICENSEE is eligible times the number of such locations having audio-visual performances.

**Complete with applicable information from LICENSE FEE SCHEDULE above:**

**NOTE:** The Groups are successive, not cumulative.

**For example:** 520 locations would cover 149 Group A, 150 Group B, 200 Group C and 21 Group D

GROUP A = _____ locations x $ _____ = $ _____

GROUP B = _____ locations x $ _____ = $ _____

GROUP C = _____ locations x $ _____ = $ _____

GROUP D = _____ locations x $ _____ = $ _____

AUDIO-VISUAL used at = _____ locations x $ _____ = $ _____

(Repeat lowest per location fee entered above)

**TOTAL ANNUAL FEE = ..... $ _____**

**TOTAL NUMBER OF LOCATIONS LICENSED =..... _____**

(c) The amount of the license fee for the second and subsequent contract years of this Agreement shall be an adjustment of the first year's fee based upon the percentage increase or decrease in the United States Consumer Price Index (National, All Items) between September 2017, and September of the year preceding each anniversary date of this Agreement, rounded to the nearest dollar. BMI will advise LICENSEE in writing of the amount of each new fee.

(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.***

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

| **TO BE COMPLETED BY LICENSEE** | **FOR ADMINISTRATIVE USE ONLY**<br>**TO BE COMPLETED BY BMI**<br>BROADCAST MUSIC INC. |
|---|---|
| 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.<br>***(SIGN HERE – PLEASE INCLUDE PAYMENT)*** | |
| Signature | |
| Print Name / Title | |
| Signatory Email Address*<br>*(if different from above)* | |
| ***In order to receive a copy of your executed Agreement, please provide the email address of the Signatory** | |

| **FOR BMI USE ONLY** | **40C** | **LI-2017/NOV** |
|---|---|---|
| | | **EFFECTIVE: January 2018** |
| **ACCOUNT NO.** | **COID** | |

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