# 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 ($1^1/_2$%) 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 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.

**15. NOTICES**

Except as otherwise provided for in Paragraph 8(c) herein, all notices, if any, under this Agreement will be in writing and deemed given upon "mailing," when sent by ordinary first-class U.S. mail to the party intended, at its mailing address herein stated, or any other address which either party may designate. Any such notices sent to BMI shall be to the attention of the Vice President, Licensing Department at 10 Music Square East, Nashville, TN 37203. Any notice sent to LICENSEE shall be to the attention of the person signing this Agreement on behalf of LICENSEE or such other person as LICENSEE may advise BMI in writing.

**16. FEES AND REPORTING**

(a) In consideration of the license granted herein, LICENSEE agrees to pay to BMI an annual license fee for each Contract Year of this Agreement. The annual license fee for Ambient Music shall be computed based on LICENSEE's annual Attendance (total number of Attendees) for the previous Contract Year (Category 1). The annual license fee for Live Music shall be computed as a percentage of LICENSEE's Live Music Entertainment Costs for the previous Contract Year (Category 2). The annual license fee for the 2017-2018 Contract Year is as follows:

**2017 – 2018 LICENSE FEE SCHEDULE**

| **Category 1**<br>**Ambient Music Fee**<br>(see Paragraph 1(d) for definition) | **Category 2**<br>**Live Music Entertainment Costs Fee**<br>(see Paragraph 1(f) for definition) |
|---|---|
| **$.0067** | **1.36%** |

| | | | | | |
|---|---|---|---|---|---|
| (1) | _____<br>LICENSEE's 2017-2018 Attendance | X | **.0067**<br>License Fee Rate (Category1) | = | $_____<br>Ambient Music License Fee |
| (2) | _____<br>LICENSEE's 2017-2018 Live Music Entertainment Costs | X | **.0136**<br>License Fee Rate (Category 2) | = | $_____<br>Live Music Entertainment License Fee |
| | | | **Total License Fee:** | | $_____<br>**(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 2017-2018 Contract Year is $353 and shall be adjusted in subsequent Contract Years by the CPI-U, as explained in Paragraph 16(c), and shall be rounded to the nearest dollar.

**17. MUSIC USE REPORTING**

For each Contract Year, with thirty (30) days' advanced written notice from BMI, LICENSEE shall provide to BMI a music use report. Such music use report shall identify each musical composition performed at Licensed Premises, whether by live or recorded means, by title and artist. BMI may request music use reports from LICENSEE for no more than three (3) days in any Contract Year.

**18. MISCELLANEOUS**

This Agreement constitutes the entire understanding between the parties, will not be binding until signed by both parties, and cannot be waived or added to or modified orally, and no waiver, addition or modification shall be valid unless in writing and signed by the parties. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained herein are found by a court of competent jurisdiction to be void or unenforceable shall not affect the validity or enforceability of any other provisions. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**19. TERM OF AGREEMENT**

The initial Term of this Agreement shall begin on the first day of (*month/year*) _____ and end on the last day of (*month/year*) _____ and shall continue thereafter for additional Terms of one (1) year each unless cancelled by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "Contract Year") upon thirty (30) days' advance notice to the other party.

## AGREEMENT

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

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

| **TO BE COMPLETED BY LICENSEE** | **FOR ADMINISTRATIVE USE ONLY** **TO BE COMPLETED BY BMI** 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. ***(SIGN HERE – PLEASE INCLUDE PAYMENT)*** | |
| Signature | |
| Print Name / Title | |
| Signatory Email Address* *(if different from above)* | **FOR BMI USE ONLY** **ZOO1** **LI-2016/MAY** |
| *In order to receive a copy of your executed Agreement, please provide the email address of the Signatory | **EFFECTIVE: April 2017** |
| | **ACCOUNT NO.** **COID** |

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

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