Music Performance Agreement

# National Football League

**70-NFL**

**LI-2017/NOV**

## 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:

| LICENSE FEE SCHEDULE | | |
|---|---|---|
| **CONTRACT YEAR / FOOTBALL SEASON BEGINNING IN** | **ANNUAL LICENSE FEE** | **PLAYOFF PER GAME LICENSE FEE** |
| 2015 | $7,715 | $771 |
| 2016 | $7,730 | $773 |
| 2017 | $7,812 | $781 |
| 2018 | $7,964 | $796 |

(b) The Annual License Fee and the Playoff Per Game License Fee for each Contract Year after 2018 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 2019, 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 (30th) 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 August 1, 2018 and end on July 31, 2019 and shall be extended for additional Terms of one (1) year each unless cancelled by either party as of the end of the initial Term or any additional Term upon notice by regular first-class U.S. mail not less than thirty (30) days prior to the end of any such Term.

## AGREEMENT

AGREEMENT made at New York, N.Y. on *(Date will be entered by BMI upon execution)* _____ between BROADCAST MUSIC, INC., a corporation organized under the laws of the State of New York (herein called "BMI") with principal offices at 320 West 57th Street, New York, N.Y. 10019 and:

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

**ENTER LEGAL NAME (herein referenced as "LICENSEE")**

_____
(Name of Corporation, Partnership, or Individual Owner)

**ENTER TRADE NAME:**

_____
(Doing business under the name of)

**CHECK APPROPRIATE BOX AND COMPLETE**

☐ Individual Ownership

☐ LLC ☐ Corporation _____
(State of Incorporation, if different from Business Address)

☐ LLP ☐ Partnership _____
(Enter names of partners)

☐ Other _____

Fed. Tax ID # _____

**BUSINESS ADDRESS**

*(Street Address)*

*(City)* *(State)* *(Zip)*

*(Telephone No.)* *(Fax Number)*

*(Contact Name)* *(Title)*

*(Email Address)* *(Web Address)*

**MAILING ADDRESS**

*(Street Address)*

*(City)* *(State)* *(Zip)*

*(Telephone No.)* *(Fax Number)*

*(Contact Name)* *(Title)*

*(Email Address)*

**TO BE COMPLETED BY LICENSEE**

**By signing this Agreement you represent that you have the authority to bind LICENSEE and that you have read, understood, and agree to all of the terms and conditions herein.**

_____
Signature

_____
Print Name / Title

**FOR ADMINISTRATIVE USE ONLY**
**TO BE COMPLETED BY BMI**
BROADCAST MUSIC, INC.

**FOR BMI USE ONLY**

| | |
|---|---|
| | |
| **Account No.** | **COID** |