Music Performance Agreement

# Indoor Recreational Facilities
## Multiple Locations

**36**

**LI-2017/SEPT-36**

**1. DEFINITIONS**

(a) **Contract Year** shall mean each consecutive twelve-month period.

(b) **Licensed Locations** shall mean indoor recreational facilities of not more than 20,000 square feet owned and operated or franchised by LICENSEE, which publicly perform musical works and are listed or will be listed on Schedule A. Such indoor recreational facilities licensed hereunder do not include health clubs, dance studios, or similar facilities.

(c) **LICENSEE** shall mean the entity described herein which owns and/or operates or franchises the Licensed Locations. LICENSEE must own or operate **at least 25 locations** to be licensable hereunder.

**2. GRANT**

BMI grants to LICENSEE a non-exclusive license to publicly perform or cause the public performance at the Licensed Locations by means of recorded and live music all musical works of which BMI controls the right to grant public performance licenses, at the time of the performance, during the Term of this Agreement. This license includes, but is not limited to, music performed: (1) over telephones in the form of music-on-hold; (2) as recorded background music; (3) in audiovisual presentations; and (4) in television and radio programming received by LICENSEE at the Licensed Locations.

This license does not include: (a) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, or the right to use the musical works in any context which constitutes the exercise of "grand rights"; (b) the right to broadcast, telecast, cablecast or otherwise transmit (including by satellite, the Internet or on-line service) the performances outside of the Licensed Locations, except to the extent that music on telephone hold lines originating at a Licensed Location is audible at remote locations on telephone lines as part of "music-on-hold"; (c) the right to perform music by means of any coin-operated phonorecord player as defined in the Copyright Act ("Jukebox') where a Jukebox License Office ("JLO") agreement may be obtained for such Jukebox, or, by any coin-operated digital music service that does not qualify as a Jukebox; and (d) any performances of live music at more than four shows, acts or events at each Licensed Location during any month or by more than seven musicians.

BMI may withdraw from the works licensed hereunder any musical work as to which a legal action has been instituted or a claim made that BMI does not have the right to license public performances of that work.

**3. REVIEW OF STATEMENT / ACCOUNTINGS**

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

**4. INDEMNITY BY BMI**

Provided that LICENSEE is not in default or breach of this Agreement, BMI agrees to indemnify, save harmless, and defend its officers and employees against any and all claims that may be made against them with respect to the performance of any musical works licensed under this Agreement at the time of LICENSEE's performances. LICENSEE agrees to give BMI immediate notice of any claim demand or suit, to deliver to BMI any papers pertaining thereto, and to cooperate with BMI in the matter, of which BMI will be in full charge.

**5. TERMINATION OF AGREEMENT BY LICENSEE**

If LICENSEE permanently ceases operations of any of the Licensed Locations, this Agreement will end with respect to that Licensed Location, provided that within ten (10) days of the cessation LICENSEE gives written notice to BMI, stating the effective date that the location ceased operation, and if applicable, the name of the new owner/operator of the location. LICENSEE must pay all license fees and file all reports due hereunder through the effective date of the cessation of business at the Licensed Location.

**6. BREACH OR DEFAULT / WAIVER**

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

**7. CANCELLATION OF ENTIRE CATEGORY**

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

**8. OFFER OF COMPARABLE AGREEMENT**

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

**9. ASSIGNMENT**

This Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, but no assignment shall relieve the parties hereto of their respective obligations hereunder.

**10. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement (except for those falling within the jurisdiction of the BMI rate court) shall be submitted to arbitration in the City, County and State of New York for arbitration under the then prevailing Commercial Arbitration Rules of the American Arbitration Association. The award made in the arbitration shall be binding and conclusive on the parties and the judgment may be, but need not be, entered in any court having jurisdiction, including but not limited to the courts of New York State. Such award shall include the fixing of the costs, expenses and reasonable attorney's fees of arbitration, which shall be borne by the unsuccessful party.

**11. NOTICES**

Any notice under this Agreement shall be in writing and deemed given upon mailing when sent by ordinary first-class U.S. mail to the party intended, at its mailing address stated, or any other address which either party may designate. Any such notice sent to BMI shall be to the attention of the Vice President, Licensing Department at 10 Music Square East, Nashville, TN 37203. Any such notice sent to LICENSEE shall be to the attention of the person signing the Agreement on LICENSEE's behalf or such person as LICENSEE may advise BMI in writing.

**12. STATE OR LOCAL TAX**

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

**13. MISCELLANEOUS**

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

**14. FEES**

LICENSEE agrees to pay BMI an annual license fee for each Licensed Location for each Contract Year of the Term. LICENSEE shall pay an annual license fee for each Licensed Location as follows:

(a) For **LICENSEE's with up to 99 locations**, the annual license fee per Licensed Location shall be $550 per Contract Year.

(b) For **LICENSEE's with 100 or more locations**, the annual license fee per Contract Year shall be as follows:

| Number of Licensed Locations | Annual Fee Per Location |
|---|---|
| 1st - 100th | $440 |
| 101st - 200th | $390 |
| 201st - 300th | $330 |
| 301st and more | $280 |

**NOTE: The License Fees herein are successive, not cumulative. Therefore, if a LICENSEE has 250 locations, fees would be $440 per Licensed Location for the first 100 Licensed Locations, $390 per Licensed Location for the 101st through the 200thLicensed Location and $330 per Licensed Location for the 201st through the 250th Licensed Location.**

(c) The annual license fee for the initial Contract Year is due upon the signing of this Agreement.

(d) LICENSEE warrants that as of the date of this Agreement the total number of Licensed Locations owned and/or operated by or franchised by LICENSEE is _____ . As such, LICENSEE's annual fee for the initial Contract Year is _____ .

(e) For each subsequent Contract Year, license fees are due no later than twenty (20) days after the beginning of the Contract Year.

**15. REPORTING**

LICENSEE agrees to submit a Schedule A report to BMI annually listing all locations to be licensed hereunder as follows:

(a) For the initial Contract Year, LICENSEE shall complete the Schedule A report attached hereto which identifies all Licensed Locations owned and/or operated by or franchised by LICENSEE and licensed hereunder. Such Schedule A shall be submitted to BMI as part of this Agreement.

(b) For each subsequent Contract Year, LICENSEE shall submit a Schedule A report, on forms to be supplied by BMI, listing all Licensed Locations to be licensed hereunder. Such Schedule A will provide the basis for LICENSEE's fee calculation for the commencing Contract Year and will be due, along with payment of LICENSEE's annual license fee, within twenty (20) days after the beginning of the Contract Year.

(c) This Agreement shall extend to each Licensed Location as of the date that LICENSEE commences ownership or operation of the location provided that such location is reported to BMI on the Schedule A submitted to BMI for the next commencing Contract Year.

## SCHEDULE A – Licensed Locations

| NAME | ADDRESS | CITY | STATE | ZIP CODE | SIZE (Square Feet) |
|---|---|---|---|---|---|
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*IF MORE SPACE IS REQUIRED, ATTACH SHEET(S)*

**16. TERM OF AGREEMENT**

The initial Term of this Agreement shall begin on _____ and shall end on _____ . The Term shall continue for additional periods of one (1) year each, unless cancelled by either party at the end of any period upon thirty (30) days advance written notice, or otherwise cancelled pursuant to Paragraphs 5, 6 and 7.

## AGREEMENT

AGREEMENT, made at New York, N.Y. on *(Date will be entered by BMI)* _____ between BROADCAST MUSIC, INC. ("BMI"), a 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").

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

**ENTER LEGAL NAME:**

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

**ENTER TRADE NAME:**

_____
(Doing business under the name of)

**CHECK APPROPRIATE BOX AND COMPLETE**

☐ Individual Ownership

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

☐ LLP ☐ Partnership _____
(Enter names of partners)

☐ Other _____

Fed. Tax ID # _____

**LICENSEE ADDRESS**

_____
*(Street Address)*

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

_____
*(Telephone Number)* *(Fax Number)*

_____
*(Contact Name)* *(Title)*

_____
*(Email Address)*

**MAILING ADDRESS**
**(if different from Licensee Address)**

_____
*(Street Address)*

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

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

_____
*(Contact Name)* *(Title)*

_____
*(Email Address)*

**TO BE COMPLETED BY LICENSEE**
**By signing this Agreement you represent that you have read, understood, and agree to all of the terms and conditions herein and your signature below is evidence of this.**

***(SIGN HERE – PLEASE INCLUDE PAYMENT)***

_____
Signature

_____
Print Name / Title

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

| FOR BMI USE ONLY | | |
|---|---|---|
| | | |
| **Account No.** | **COID** | |