# 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 ($90^{th}$) 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 2018 based upon any percentage increase in the United States Consumer Price Index (Urban, All Items) between October 2017 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

***Check off the corresponding Rate Per Year Per Occupant for the ways music is used in the Licensed Premises.***
***Enter the amount(s) on the appropriate line(s) to the right.***

| Music Type | Frequency Per Week | Rate Per Year Per Occupant | ☑ | Enter Fee Calculation |
|---|---|---|---|---|
| **1. Live Music*** | *(Check only one rate box, if applicable)* | | | |
| • Multiple Singers/Instrumentalists | 5-7 nights | $6.05 | ☐ | |
| | 2-4 nights | $5.05 | ☐ | |
| *( 1 night = no more than 5 times in any one month)* | 1 night or less | $4.55 | ☐ | |
| • Single Singer/Instrumentalist | 5-7 nights | $4.40 | ☐ | |
| | 2-4 nights | $3.65 | ☐ | |
| *( 1 night = no more than 5 times in any one month)* | 1 night or less | $3.35 | ☐ | |
| **Enter ONLY the highest amount checked above here.....➔** | | | | **$** |
| **2. Enhanced Recorded Music*** | | | | |
| ☐ Karaoke ☐ DVDs ☐ Video Tapes ☐ VJs | 5-7 nights | $3.50 | ☐ | |
| | 2-4 nights | $3.35 | ☐ | |
| *(1 night = no more than 5 times in any one month)* | 1 night or less | $3.25 | ☐ | |
| **Recorded Music*** | | | | |
| ☐ iPod / MP3 / Other Digital Music ☐ Free-Play Jukebox | | $3.00 | ☐ | |
| ☐ CDs / Tapes / Records ☐ DJ | | | | |
| **Enter ONLY the highest amount checked above here.....➔** | | | | **$** |
| **3. Admission or Cover Charge*** *(at any time)* | | $1.90 | ☐ | **$** |
| **4. Dancing To Live or Recorded Music*** (*at any time*) | | $1.90 | ☐ | **$** |
| **5. Television and/or Radio*** (*skip this Section if you have checked any box in Section 2*) | | $1.30 | ☐ | **$** |
| **6. TOTAL RATE PER YEAR PER OCCUPANT (*Sum of Lines 1–5*).....➔** | | | | **$** |
| **7. Occupancy*** | | | | |
| • **Clubhouse or Other Common Recreational Area(s) Occupancy** _____ (*If greater than 1,000 occupants, enter 1,000*) | | | | |
| **OR** | | | | |
| • **If Occupancy cannot be established by local building/fire codes, use formula below:** | | | | *(Enter Occupancy)* |
| Total Square Footage of Clubhouse or Other Common Recreational Area(s) _____ ÷ 20 = _____ Occupancy | | | | |
| **8. ANNUAL FEE *(Multiply Line 6 by Line 7)*** ***If $370.00 or Less, Enter Annual Minimum Fee of $370.00*.....➔*** | | | | **$** |
| **9. Jukebox Fee*** | | | | |
| *If your jukebox is licensable by the JLO (Jukebox License Office) but is not already licensed under a JLO license, check here and enter the amount on the line to the right.* | Jukebox Fee = | $370.00 | ☐ | **$** |
| *If the jukebox is already licensed under the JLO license, please enter Vendor name, address and phone number below.* | | | | |
| Name/Company _____ JLO Cert. # _____ | | | | |
| Address _____ Phone _____ | | | | |
| City _____ State _____ Zip _____ | | | | |

***Refer to Paragraph 1 on Page 1***

| | |
|---|---|
| **ANNUAL FEE ALL USES (*Add Lines 8 and 9*)** **If More Than $11,060, Enter Maximum Fee of $11,060.....➔** | **$** |
| **IF PAYING IN FULL, PLEASE TAKE 10% DISCOUNT.....➔** *(If You Wish To Pay By Credit Card, Call Your BMI Representative at 1-888-689-5264)* | **$(  )** |
| **ANNUAL FEE (*Less 10% Full Pay Discount, if applicable*).....➔** | **$** |

**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 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*.**

**LEGAL NAME**

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

**TRADE NAME**

*(Doing business under the name of)*

**PLEASE CHECK APPROPRIATE BOX**

☐ Individual Ownership

☐ LLC ☐ Corporation _____ *(State of Incorporation, if different from Licensed Premises)*

☐ LLP ☐ Partnership _____ *(Enter names of partners)*

☐ Other _____

Federal Tax ID No. _____

**GOVERNMENT ENTITIES**
**(if applicable, please check one)**

☐ Federal ☐ State _____ *(State)*

☐ Local _____ *(Municipality/City and State)*

**LICENSED PREMISES**

*(Street Address)*

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

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

*(Contact Name)* *(Title)*

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

**MAILING ADDRESS**
**(if different from Licensed Premises)**

*(Street Address)*

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

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

*(Contact Name)* *(Title)*

*(Email Address- if different from above)*

**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.

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

Signature

Print Name / Title

Signatory Email Address*
***(if different from above)***

***In order to receive a copy of your executed Agreement, please provide the email address of the Signatory**

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

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

| FOR BMI USE ONLY | RESC1 | LI-2017SEPT |
|---|---|---|
| | | EFFECTIVE: October 2017 |
| ACCOUNT NO. | COID | |