# Music License for Retail Establishments

**1. DEFINITIONS**

(a) **Licensed Retail Premises** shall mean a retail store or establishment open to the general public which is used exclusively for the sale of goods and/or services to the public. Licensed Retail Premises shall not include the common area of a shopping center or mall. Licensed Retail Premises shall also not include eating and drinking establishments such as restaurants, bars, grills, nightclubs or similar premises. However, a bar, café or restaurant owned and operated by LICENSEE that is located within a Licensed Retail Premises listed on Licensed Retail Premises List and that is operated by LICENSEE as an additional service for store patrons may be included in this license upon reporting and payment of fees for all applicable music uses under the License Fee Schedule.

(b) **Recorded Music** shall mean music performed by: (1) the reception of radio broadcasts, including internet webcasts, and further transmission of those broadcasts over a loudspeaker or system of loudspeakers; (2) the use of LICENSEE's (as distinguished from a commercial/background music service's) audio tapes, records, CD's, DAT's by means of LICENSEE's audio-only tape, record, CD, DAT players; or (3) non-live audio-visual uses of music (such as the use of a large-screen projection television or like medium, video tapes and/or multiple televisions).

(c) **Live Music, for the purposes of this Agreement only,** shall mean music performed by musicians, singers or other entertainers actually present and performing in the space to which this Agreement applies or recorded music which is used as an accompaniment to any other activity such as (but not limited to) fashion shows, puppet shows, comedy acts, disc jockeys, etc.

(d) **Chain Operation** shall mean ten (10) or more licensable locations, that are owned and operated by LICENSEE whether directly or through a wholly owned or majority controlled subsidiary.

(e) **Square Footage** shall mean the entire interior space of that establishment, and any adjoining outdoor space used to serve patrons, whether on a seasonal basis or otherwise.

**2. BMI GRANT**

(a) BMI grants LICENSEE a non-exclusive license to perform publicly at each of the Licensed Retail Premises listed on Licensed Retail Premises List annexed hereto (as may from time to time be amended) by means of Live Music or Recorded Music, (as these terms are defined herein) and not otherwise, non-dramatic performances of all musical works of which BMI controls the right to grant public performance licenses during the Term of this Agreement.

(b) This Agreement does not include: (1) the right to present the music in any way which may be a use of the "grand rights"; or (2) the right to transmit performances outside of the Licensed Retail Premises; or (3) 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; or (4) any Licensed Retail Premises to which an admission fee is charged.

(c) BMI may withdraw from the license LICENSEE's right to perform any musical work as to which a legal action has been brought or a claim made that BMI does not have the right to license the work or that the work infringes another work.

**3. BMI COMMITMENT TO CUSTOMER / INDEMNITY**

So long as LICENSEE is not in default or arrears in payment under this Agreement, BMI agrees to indemnify, save harmless and defend LICENSEE, its officers and employees, from and against any and all claims, demands or suits of Copyright Infringement that may be made or brought against them or any of them with respect to the public performance of any musical work licensed under this Agreement. Such indemnity shall be limited to the works which are licensed by BMI at the time of LICENSEE's public performances. 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. BMI will, upon reasonable written request, advise you whether specific musical works are available for performance, under this Agreement, if LICENSEE provides the title and the writer/composer of each musical work.

**4. TERMINATION OF AGREEMENT BY LICENSEE**

In the event that you sell the Licensed Retail Premises or close the business during the Term of this Agreement and you send BMI written notice by certified mail within 30 days of the sale or closing, BMI will adjust your fees pro rata from the date of sale or closing, and will refund to you any unearned licensed fees paid hereunder. If such notice is received more than 30 days after the sale or closing, BMI will adjust your fees prospectively for the remainder of the contract year in which BMI received the notice. In either event, your credit adjustment hereunder shall not reduce your annual fee due BMI below the annual minimum fee applicable under the Agreement. If you do not timely notify BMI in accordance with this Paragraph prior to the end of the contract year in which the sale or closing occurred, this Agreement will remain in effect for the entire year, and you will be responsible for the entire annual fee due to BMI hereunder.

**5. 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 the right to cancel this Agreement in accordance with the terms of the Paragraph.

## 6. ARBITRATION

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement, not subject to the jurisdiction of the BMI Rate Court, 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 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 a 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 costs, expenses, and attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

## 7. NOTICES

Unless otherwise stated herein, any notice 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 as 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, BMI, 10 Music Square East, Nashville, Tennessee, 37203.

## 8. FEES

(a) LICENSEE warrants that the Licensed Retail Premises listed on Licensed Retail Premises List are within the Class(es) shown on the License Fee Schedule.

(b) LICENSEE agrees to pay BMI the total annual license fees as set forth on the LICENSE FEE SCHEDULE payable for each Licensed Retail Premises listed on Licensed Retail Premises List. License fees are payable quarterly in January, April, July and October of each contract year with payment due by the twentieth (20th) day of each quarter.

(c) Notwithstanding subparagraph 8(b), if any quarterly payment is not received by the 90th day after such payment is due, LICENSEE'S right to make quarterly payments shall immediately terminate for the remainder of this Agreement and the unpaid portion of the Annual Fee will be immediately due and payable.

(d) The schedules of the Annual Fee shall be adjusted for calendar year 2019 of the Agreement and for each subsequent calendar year based on the percentage increase in the United States Consumer Price Index (National, All Items) between the preceding October and the October prior thereto. BMI will notify LICENSEE of the amount of each new fee.

(e) BMI may impose a late payment charge of one and one-half percent (1½%) per month from the date any payment or report was due on any payment that is received by BMI more than thirty (30) days after the due date.

(f) 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 licensees, LICENSEE agrees to pay to BMI the full amount of such tax together with LICENSEE's fee payment(s); provided however, that (a) BMI shall make reasonable efforts to be exempted or excused from paying such tax, and (b) BMI is permitted by law to pass through such tax to LICENSEE.

## 9. REPORTING

(a) On or before the 20th day of the first month following each contract year of the Term, LICENSEE shall furnish BMI with a statement which shall include the following information for each Licensed Retail Premises for such contract year: (1) trade name, address, phone number and contact name; (2) total Square Footage; (3) whether the Licensed Retail Premises was added or deleted during the contract year and the date of and reason for any additions or deletions; and (4) type of music usage for each Licensed Retail Premises listed.

(b) If the actual license fee due BMI is greater than the estimated license fee already paid by LICENSEE to BMI during the previous contract year (or part thereof), LICENSEE agrees to pay to BMI an amount equal to the difference between the actual and the estimated license fees within thirty (30) days of BMI's billing therefor.

(c) If the actual license fee due BMI is less than the estimated license fee already paid by LICENSEE to BMI during the previous calendar year (or part thereof), BMI agrees to credit the difference to the account of LICENSEE, and if such difference shall occur during the last calendar year of the Term, BMI agrees to refund the same promptly.

(d) This Agreement will extend to each Licensed Retail Premises added to Licensed Retail Premises List as of the day on which Recorded Audio, Audio-Visual, Live, Recorded with Acts is first performed at such added Licensed Retail Premises, as long as payment for and reporting of that Licensed Retail Premises is made as required herein. LICENSEE shall give BMI written notice within twenty (20) days of the time music is being performed at any Licensed Retail Premises not listed on Licensed Retail Premises List. The notice will include the address and square footage of additional Licensed Retail Premises, type of music used as stipulated in Paragraph 9(a), and the month music use began. At the same time, LICENSEE will pay the correct license fee on the License Fee Schedule, prorated to the first day of the month in which the music use began; provided however, the license fee for that Licensed Retail Premises will not be less than the applicable minimum fee. If LICENSEE notifies BMI that any Licensed Retail Premises discontinue(s) music use, LICENSEE will receive a credit of fees paid for said Licensed Retail Premises, prorated to the beginning of the month of discontinuance. However, the license fee for that Licensed Retail Premises will not be less than the minimum fee.

(e) In the event that LICENSEE, with multiple Licensed Retail Premises, operates less than ten (10) Licensed Retail Premises during any reporting period, the license fee for each such Licensed Retail Premises for the period and the next advance payment period shall be the appropriate fee (prorated, if applicable) as then being charged by BMI for single Licensed Retail Premises, less any payments previously made for such period for each such Licensed Retail Premises. However, the license fee for each Licensed Retail Premises will not be less than the applicable minimum fee.

(f) 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.

(g) BMI may from time to time review music use at your Licensed Retail Premises. BMI may make inquiries in person or by phone as to the accuracy of music use reported. If BMI thereafter believes that you are not paying license fees consistent with the use of music at the Licensed Retail Premises, BMI will notify you by mail. If you agree to BMI's assessment of fees due pursuant to this Agreement, the adjusted billing will be reflected on your next invoice. If you dispute BMI's assessment of fees due pursuant to this Agreement, you must notify BMI within 30 days of the notification by BMI. If within 90 days of such notification by BMI you do not respond or you and BMI cannot agree upon an appropriate fee, either party may commence an arbitration proceeding pursuant to Paragraph 6 to resolve the dispute over the amount of your 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.

## 10. CANCELLATION OF ENTIRE CATEGORY

BMI shall have the right to cancel the 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.

## 11. 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.

## 12. MISCELLANEOUS

This Agreement constitutes the entire understanding between the parties and supersedes all prior and/or current Music Performance Agreements used for the class and category of music use defined herein between the parties which are heretofore null and void. This Agreement shall not be

# 2018 License Fee Schedule

## Schedule 1A: RECORDED MUSIC
## One (1) to Nine (9) Licensed Retail Premises

(A **MINIMUM FEE** of not less than the lowest **CLASS** fee applies to each Licensed Retail Premises.)

| Class | Total Square Footage Of Each Licensed Retail Premises | a) Annual License Fee for *Audio-Only* Performances* | b) Annual License Fee for *Audio-Visual* Performances* |
|---|---|---|---|
| 1. | 2,000 or less | $236.46 | $319.20 |
| 2. | 2,001 to 2,500 | $319.90 | $431.84 |
| 3. | 2,501 to 5,000 | $458.98 | $619.60 |
| 4. | 5,001 to 7,500 | $737.15 | $995.12 |
| 5. | 7,501 to 10,000 | $1,015.28 | $1,370.65 |
| 6. | 10,001 to 12,500 | $1,293.48 | $1,746.20 |
| 7. | 12,501 to 15,000 | $1,571.63 | $2,121.69 |
| 8. | 15,001 to 17,500 | $1,849.77 | $2,497.24 |
| 9. | over 17,500 | $2,016.70 | $2,722.54 |

## Schedule 1B: RECORDED MUSIC
## Chains with Ten (10) or More Licensed Retail Premises

(A **MINIMUM FEE** of not less than the lowest **CLASS** fee applies to each Licensed Retail Premises. These fees are successive. "Successive" means that the first 300 premises using *Audio-Only* will pay Class (1) fees; the 301st through the 500th will pay Class (2) fees, etc. The same form of computation of fees applies to premises using *Audio-Visual.*)

| Class | Number of Licensed Retail Premises | a) Annual License Fee for *Audio-Only* Performances* | b) Annual License Fee for *Audio-Visual* Performances* |
|---|---|---|---|
| 1. | 1 to 300 | $236.46 | $319.20 |
| 2. | 301 to 500 | $208.63 | $281.64 |
| 3. | 501 to 800 | $187.76 | $253.47 |
| 4. | 801 to 2,000 | $166.91 | $225.30 |
| 5. | over 2,000 | $146.05 | $197.14 |

***If both Audio and Audio-Visual performances are utilized at the Licensed Retail Premises, the higher fee shall apply.**

## Schedule 2: LIVE MUSIC
## Single Singer / Instrumentalist

(Schedule 2 fees are paid in addition to fees due to any other applicable schedules. A **MINIMUM FEE** of not less than the lowest **CLASS** fee applies to each Licensed Retail Premises.)

| Class | Total Square Footage Of Each Licensed Retail Premises | Annual Fee Per Premises |
|---|---|---|
| 1. | 2,000 or less | $208.63 |
| 2. | 2,001 to 2,500 | $278.17 |
| 3. | 2,501 to 5,000 | $465.92 |
| 4. | 5,001 to 6,500 | $605.02 |
| 5. | 6,501 to 7,500 | $695.42 |
| 6. | 7,501 to 8,500 | $799.73 |
| 7. | 8,501 to 9,500 | $904.06 |
| 8. | 9,501 to 10,000 | $973.55 |
| 9. | over 10,000 | $1,043.11 |

## Schedule 3: LIVE MUSIC
## Multiple Singers / Instrumentalists

(Multiple Singers or Instrumentalists and/or Performance of Recorded Music as Accompaniment to Acts / Events (i.e. Fashion Shows with Live Models, Seasonal Events with Live Performers))

- Schedule 3 fees are paid in addition to fees due to any other applicable schedules.
- $44.51 per day for each Licensed Retail Premises, with a **MAXIMUM FEE** for each Licensed Retail Premises for Schedule 3 of $3,588.32.
- If the only music employed by a Licensed Retail Premises is that for which fees are assessed pursuant to Schedule 3, then a **MINIMUM FEE** of $208.63 for each Licensed Retail Premises shall apply or $44.51 per day, whichever is greater.

## LICENSED RETAIL PREMISES REPORTING

**(Complete the following if there is only one (1) Licensed Retail Premises under this Agreement. If there is more than one (1) Licensed Retail Premises, please attach a list of all Licensed Retail Premises with appropriate information provided. In the address field simply enter "see attached list of Licensed Retail Premises" when appropriate.)**

**SCHEDULE 1A or 1B - Recorded Music**

Square Footage: _____ Audio-Only ☐ Audio-Visual ☐ **……Fee for Schedule 1A or 1B** **$** _____

**SCHEDULE 2 - Live Music–Single Singer / Instrumentalist**

Square Footage: _____ **……..Fee for Schedule 2** **$** _____

**SCHEDULE 3 - Live Music-Multiple Singers / Instrumentalists and/or Performance of Recorded Music as an Accompaniment to Acts**

# of Days with Live Music _____ X $44.51 per day = **Fee for Schedule 3** **$** _____ **(Attach a list of all events)**

**COMBINE FEES from SCHEDULES 1A or 1B and/or 2 & 3 as applicable……TOTAL ANNUAL FEE** **$** _____

binding until signed by both parties, and cannot be waived or added to or modified orally. No waiver, addition or modification shall be valid unless in writing and signed by the parties. The rights of LICENSEE hereunder shall be assignable provided that such assignment be subject to BMI's approval, which approval shall not be unreasonably withheld. This Agreement, its validity, construction and effect, shall in all instances be governed by the substantive laws of the State of New York, regardless of that state's choice-of-law rules. 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 provision of this Agreement. The headings are for convenience only and are not a part of the Agreement.

**13. OKLAHOMA RATE CHANGE NOTICE**
BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of the Agreement.

**14. COLORADO 3 BUSINESS DAY REVIEW**
LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after execution of the Agreement.

**15. TERM**
The Term of this Agreement shall begin on the first day of (*month/year*) _____ and end on the last day of December _____ (a "Contract Year"). It will continue annually unless cancelled by either LICENSEE or BMI at the end of the first Term or any following one (1) year Term by giving 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. 10007-00030, 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)* | |
| ***In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.** | |

| **FOR BMI USE ONLY** | | **RTL1** | **LI-2017/DEC** |
|---|---|---|---|
| | | | **EFFECTIVE: January 2018** |
| **ACCOUNT NO.** | **COID** | | |

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