# Music License for Digital Messaging Media Services

**1. DEFINITIONS**

(a) **"LICENSEE"** shall mean the entity identified on Page 4 which is engaged in the business of operating a Digital Messaging Media Service which is distributed to commercial venues.

(b) **"Distribution System"** shall mean the system by which LICENSEE electronically transmits Sound Recordings and video images to Serviced Establishments as it may be configured by LICENSEE from time-to-time during the Term and by means of which music is publicly performed by Digital Messaging Media Service in Serviced Establishments.

(c) **"Digital Messaging Media Service"** shall mean services operating within the Territory which employ a medium upon which digital videos and phonorecords are streamed or played, including, but not limited to, recorded musical compositions, streams or other transmissions of musical works from or by the device; and including news and human interest stories, consumer technology information, entertainment and sports highlights, video advertising, or other video music offerings.

(d) **"Serviced Establishment"** shall mean the establishment in which LICENSEE's Digital Messaging Media Service is placed for operation which makes no direct or indirect charge for admission.

(e) **"Play"** shall mean each public performance of a Sound Recording by a Digital Messaging Media Service.

(f) **"Sound Recording"** shall mean a sound recording embodying a musical work.

(g) **"Territory"** shall mean the United States, its commonwealths, territories, trust territories and possessions including without limitation the Commonwealth of Puerto Rico, Guam, and the U.S. Virgin Islands.

(h) **"Works"** shall mean all of the musical compositions for which BMI controls the right to grant non-dramatic public performing rights at the time of the performance during the Term.

**2. BMI GRANT**

BMI hereby grants to LICENSEE, for the Term, a nonexclusive license to transmit via its Digital Messaging Media Service through LICENSEE's Distribution System. BMI further grants to LICENSEE's Serviced Establishments a license to publicly perform in such Serviced Establishments only (including adjoining areas such as a deck or patio), and by means of LICENSEE's Digital Messaging Media Service only, any or all of the Works. Nothing herein may be expressly or impliedly understood to grant to a Serviced Establishment a license to perform any Work other than through LICENSEE's Digital Messaging Media Service; or to use LICENSEE's Digital Messaging Media Service as a background, foreground, or commercial service.

**3. REPRESENTATIONS / WARRANTIES**

(a) BMI warrants, represents and covenants to LICENSEE that it has the right to grant the public performing rights in the Works.

(b) BMI shall, upon LICENSEE's request, advise LICENSEE whether particular individual Works are available for performance as part of BMI's repertoire.

**4. CUSTOMER OUTREACH**

LICENSEE agrees to accept from time to time pre-recorded telephone messages from BMI that may contain information regarding LICENSEE's account.

**5. LICENSE FEES AND PAYMENTS**

(a) For each Contract Year of the Term, LICENSEE shall pay an Annual License Fee to BMI for each Serviced Establishment. The Annual License Fee shall be calculated on a monthly basis by determining the monthly rate per system (the annual rate divided by 12) and applying that rate for each month to the total number of Serviced Establishments which feature the Digital Messaging Media Service as of the end of the preceding month. Monthly license fees shall be paid quarterly on or before the forty-fifth ($45^{th}$) day after the end of each calendar quarter.

(b) The Annual License Fee for the initial Contract Year shall be $50.00 per Serviced Establishment.

(c) The Annual License Fee for the Contract Year commencing January 1, 2018, and for each subsequent Contract Year, shall be the previous Contract Year's license fee 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.

**6. REPORTING**

(a) Within forty-five (45) days of the end of each calendar quarter, LICENSEE shall provide the following information with respect to each Serviced Establishment that was serviced by LICENSEE at any time during that calendar quarter:

(i) name and address of each Serviced Location;

(ii) Digital Messaging Media Service serial or other identification number, and whether the system is connected to the Distribution System;

(iii) for any newly-licensed Serviced Establishment, the date on which the Digital Messaging Media Service was placed in operation in a Serviced Establishment; and

(iv) for any Serviced Establishment that was inactivated, the date of inactivation; and

(v) the total number of Serviced Establishments licensed hereunder.

**7. 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.

**8. LATE PAYMENT CHARGE**

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.

**9. AUDIT**

BMI shall have the right, once with respect to each year of the Term, during customary business hours, on notice in writing to LICENSEE of not less than thirty (30) business days, to examine, through its Audit Department, the books and records of account of LICENSEE only to such extent as may be necessary to verify any reports and/or statements required by this Agreement.

**10. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

**11. 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.

**12. 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 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.

**13. 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.

**14. WITHDRAWAL OF WORKS**

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.

**15. 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.

**16. 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.

**17. 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.

**18. EXPERIMENTAL NATURE OF LICENSE**

BMI and LICENSEE agree that the terms of this Agreement shall be deemed experimental and that this Agreement is being entered into without prejudice to any position either party may take in any negotiation or proceeding for determination of reasonable fees for a license for Digital Messaging Media Service for any period subsequent to this license period.

**19. NOTICES**

Unless otherwise stated herein, all notices, if any, 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 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.

**20. 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 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.

**21. TERM**

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

| **TO BE COMPLETED BY LICENSEE** | **FOR ADMINISTRATIVE USE ONLY**<br>**TO BE COMPLETED BY BMI**<br>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.<br>***(SIGN HERE – PLEASE INCLUDE PAYMENT)*** | |
| Signature | |
| Print Name / Title | |
| Signatory Email Address*<br>*(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** | **DMM1** | **LI-2017/NOV** |
|---|---|---|
| | | **EFFECTIVE: January 2018** |
| **ACCOUNT NO.** | **COID** | |

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