# Music License for Dance Classes

**1. DEFINITIONS**

(a) **Background Music** shall mean recorded music, whether vocal or instrumental, designed to be used as an unobtrusive accompaniment to routine activities, including, but not limited to, conversation and relaxation, as long as such music is not intended to accompany non-instructional dancing or any other type of entertainment.

(b) **Instructional Use** shall mean the performance of recorded music in a designated area on the LICENSEE's premises (the "studio") for use during dance instruction including, but not limited to, classes in social dancing, ballroom dancing, jazz dancing, tap dancing, square dancing, modern dancing, and ballet, as those terms are commonly understood in the dance profession.

(c) **Background Use** shall mean the performance of recorded Background Music on the licensed premises adjacent to or outside of the studio.

**2. BMI GRANT**

(a) BMI hereby grants to LICENSEE a non-exclusive license to perform, present, or cause the public performance of all musical works of which BMI shall have the right to grant public performance licenses during the Term hereof. Said license shall be restricted to performance on the licensed premises either by the playing of records, prerecorded tapes, or other mechanical devices or via the reception of broadcast audio transmissions on receiving apparatus and amplifications thereof for public performance, and such performances may be reproduced only through loudspeakers on the licensed premises and is granted in consideration of the payment of the license fees as set forth herein and is subject to all of the terms and conditions hereof. 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; (ii) the right to broadcast, cablecast, telecast or otherwise transmit the performances licensed hereunder to persons outside of the premises; or (iii) performances of music by means of a coin-operated phonorecord player (jukebox).

(b) 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.

(c) In no event shall this license authorize performances of music outside the perimeter of LICENSEE's premises into an area not owned and/or controlled by LICENSEE. This license shall also extend to performances of incidental live or recorded music on the licensed premises for promotional social dances and to dance recitals by students and instructors, as long as no admission is charged.

**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's Clearance Department 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. 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.

**6. 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.

**7. TERMINATION OF AGREEMENT BY LICENSEE**

If LICENSEE shall permanently cease to operate the 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 License Fee Schedule.

**8. 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.

**9. FEES**

LICENSEE agrees to pay to BMI for each Contract Year during the Term of this Agreement a license fee as follows:

(a) (i) **INSTRUCTIONAL USE ONLY** – If LICENSEE uses recorded music on the premises that is only for dance instruction and the music is not audible other than incidentally outside of the studio when classes are in session and no music is used when classes are not in session, then LICENSEE shall pay the appropriate fee on the License Fee Schedule under the category Instructional Use Only.

(ii) **BACKGROUND AND INSTRUCTIONAL USE** – If LICENSEE uses recorded music on the premises both in classes and instruction and the music is also audible other than incidentally anywhere else on the premises outside of the studio while classes are in session or otherwise, then LICENSEE shall pay the appropriate fee on the License Fee Schedule under the category Background and Instructional Use.

(iii) **BACKGROUND USE ONLY** – If LICENSEE uses music on the premises that is *only* for "Background Use" as defined in the license and *no* music is used for dance instruction (or no such activities take place), then LICENSEE shall pay the appropriate fee on the License Fee Schedule under the category Background Use Only. Each individual floor (level) where music is audible is to be considered a separate premise, but the annual fee for all floors (levels) after the first shall be $90.00 regardless of square footage.

(b) LICENSEE warrants and represents that during the twelve-month period preceding the initial Term of this Agreement (or if LICENSEE did not operate during that full twelve-month period, LICENSEE shall make a good-faith estimate for the first Contract Year of this Agreement) LICENSEE's number of floors (levels) and students are as set forth in the Music Policy Statement and License Fee Schedule which are part of this Agreement.

(c) The first annual fee due hereunder shall be payable upon the signing of this Agreement by LICENSEE. The fee for each subsequent Contract Year shall be in the respective amount determined in accordance with this Paragraph, subject to any adjustment pursuant to this Paragraph, and shall be paid to BMI no later than ten (10) days following the beginning of each such Contract Year.

(d) **For Instructional Use Only and Background and Instructional Use** – The amount of the license fee for the second and subsequent Contract Years of this Agreement shall be an adjustment of the first year's fee based upon the percentage increase or decrease in the United States Consumer Price Index (National, All Items) between September 2018, and September of the year preceding each anniversary date of this Agreement, rounded to the nearest dollar. BMI will advise LICENSEE in writing of the amount of each new fee.

**10. REPORTING OF ANNUAL FEES**

(a) At the same time that LICENSEE pays its license fee hereunder for the second and subsequent Contract Years, LICENSEE shall submit a report, on a form available from BMI, certified by LICENSEE or by the auditor of LICENSEE, indicating the average number of different students or participants per week during the previous Contract Year who attended dance classes using music on the licensed premises (except if Background Use only), whether LICENSEE's music was Instructional Use Only or both Background and Instructional or Background Use only, and the number of floors (levels) comprising the licensed premises. If any such report causes the licensed premises to fall into a Category other than that for which LICENSEE is then currently paying BMI license fees, BMI shall adjust LICENSEE's fee pursuant to Paragraph 11 to reflect LICENSEE's new fee, effective with the Contract Year following such change of Category.

(b) If the adjusted fee is greater than the license fee already paid by LICENSEE for the Contract Year, LICENSEE agrees to pay BMI the difference within thirty (30) days of the mailing by BMI to LICENSEE of the adjusted statement of license fees.

(c) If the adjusted fee is less than the license fee already paid by LICENSEE to BMI for the Contract Year, BMI agrees to credit the difference to the account of LICENSEE, and if such adjustment occurs in the last Contract Year of this Agreement, BMI shall refund said sum promptly.

(d) In the event that LICENSEE fails to submit a report pursuant to this Paragraph, and BMI subsequently is made aware of a current change of Category, BMI shall have the option, in lieu of its right of cancellation pursuant to this Paragraph, to notify LICENSEE in writing by certified mail of its knowledge of such change and adjust LICENSEE's fee for the then current Contract Year in accordance with this Paragraph as if LICENSEE had reported such change for the previous year. LICENSEE shall have thirty (30) days from the date of BMI's notice to submit the missing reports. If such reports are not received by BMI by the end of said 30-day period, LICENSEE agrees to waive its right to submit such past due reports thereafter and authorizes BMI to deem the adjusted fee accurate.

**MUSIC POLICY STATEMENT**

Indicate music use by checking **one** appropriate category below.

☐ **CATEGORY A** - Instructional Use Only

☐ **CATEGORY B** - Background and Instructional Use

Indicate number of floors (levels) _____

☐ **CATEGORY C** – Background Use Only

Indicate number of floors (levels) _____

**LICENSE FEE SCHEDULE**

**1.** These rates apply when music is utilized for Instructional Use Only, Background and Instructional Use, or Background Use Only. This includes, but is not limited to, records, tapes, CD's, broadcasts, satellite signals, and/or cablecasts.

**2. USING YOUR CATEGORY AS INDICATED ABOVE, CHECK THE APPLICABLE BOX BELOW.**

| | CATEGORY A | | CATEGORY B | | | | CATEGORY C | | |
|---|---|---|---|---|---|---|---|---|---|
| **Average Number of Different Students or Participants Per Week** | **INSTRUCTIONAL USE ONLY** | | **BACKGROUND AND INSTRUCTIONAL USE** | | | | Square Footage | **BACKGROUND USE ONLY** | |
| | ✓ | | ✓ | Single Floor (level) | ✓ | Multiple Floor (level) | | ✓ | Single Floor (level) |
| Under 60 Students | | $170 | | $267 | | $336 | Up to 1500 | | $90 |
| 60-124 | | $336 | | $537 | | $670 | 1501-2500 | | $181 |
| 125-249 | | $505 | | $804 | | $1,009 | 2501-5000 | | $363 |
| 250-374 | | $670 | | $1,077 | | $1,344 | Over 5000 | | $724 |
| 375 & over | | $897 | | $1,434 | | $1,794 | | | |

LICENSEE's total annual fee within Category C, including additional floors (levels) (each at $90), is _____

LICENSEE's total annual fee within Category A or B is $_____

**11. 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.

**12. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of 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.

**13. NOTICES**

Any notice required or permitted to be given under this Agreement in writing and shall be deemed given when sent by first-class U.S. mail to the party intended, at its mailing address herein stated, or any other address which either party hereto may designate. Any such notice sent to BMI shall be to the attention of the Licensing Department. Any such 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.

**14. 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.

**15. 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 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***.

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

**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 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.**

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

| FOR BMI USE ONLY | 40 | LI-2017/NOV |
|---|---|---|
| ACCOUNT NO. | COID | EFFECTIVE: January 2018 |