# BMI Music License For
# Eating & Drinking Establishments

## With a BMI Music License You Get a Seal of Compliance & Access to More Than 12 Million Musical Works!

Terms and Conditions of Agreement
(For Definitions, see Paragraph 10)

**1. BMI GRANT**

BMI grants you a non-exclusive license to publicly perform at the Licensed Premises all of the musical works of which BMI controls the rights to grant public performance licenses during the Term. This license does not include 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." This license also does not convey the right to publicly perform BMI musical works (a) by broadcast, telecast, cablecast or other electronic transmission (including by satellite, the Internet or on-line service) of the performances to persons outside the Licensed Premises; (b) by public performances requiring advance or hard ticket purchases pursuant to Paragraph 10(g); (c) by means of any coin-operated phonorecord player as defined in the Copyright Act ("Jukebox") where a Jukebox License Office agreement has been obtained for such Jukebox; (d) by any BMI-licensed background music service; and (e) by any coin-operated digital music service that does not qualify as a Jukebox. BMI may withdraw from the works licensed hereunder any musical work as to which any legal action has been instituted or claim made that BMI does not have the right to license public performances of that work.

**2. CHANGES TO YOUR MUSIC POLICY**

(a) Except as provided for herein, you may change your Music Policy upon which fees are assessed under this Agreement prospectively at any time during the Term on 30 days' prior notice to BMI, provided that your current policy has been in effect for at least 30 consecutive calendar days. You may change your fee no more than three times in any Contract Year. You may call your Customer Relations Executive at 1-800-925-8451 to notify BMI of a change in your Music Policy, and the change will be reflected in your next billing by BMI; however, doing so will not preserve your right to dispute BMI billings unless you send BMI timely notice of your 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. You also agree that you will notify BMI of any changes in the music use at the Licensed Premises that would make your representation of Music Policy under Paragraph 11(e) no longer accurate, and that any changes you make to your Music Policy hereunder shall constitute a true and accurate representation of your music usage from the date of the change onward. 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 your business establishment, use of public records, advertisements and third party observations.

(b) BMI may from time to time review your Music Policy (including any changes made to your policy) and make inquiries in person or by phone as to its accuracy. If BMI thereafter believes that you are 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 than is reflected in your current Music Policy, BMI will notify you by mail. If you agree to BMI's assessment of your Music Policy, the change will be reflected on your next billing. If you dispute BMI's assessment of your policy, 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 7 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. You may not change your Music Policy under subparagraph (a) above if your fee is subject to dispute hereunder.

(c) In the event that you temporarily discontinue the use of all music (see Definitions) and you send written notice of this to BMI by certified mail within 30 days of the discontinuance, BMI will adjust your fees pro rata from the date of discontinuance. If such notice is received more than 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 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. In the event of such discontinuance, this license Agreement shall continue in effect, except that no minimum or other fee shall be payable during the period of discontinuance. You agree to notify BMI promptly when you resume the use of music at the Licensed Premises and your Music Policy in effect at the time of discontinuance will continue to be applicable until you notify BMI of a change. BMI reserves its right under subparagraph (b) hereof to review your Music Policy and take appropriate steps in the event that BMI believes that you have resumed the use of music under this Agreement.

**3. LATE PAYMENT AND SERVICE CHARGES**

BMI shall impose a late payment charge of one and one-half percent (1½%) per month or the maximum rate permitted by law, whichever is less, from the date any payment is due on any payment that is received by BMI more than thirty (30) days after the due date. BMI shall impose a $25.00 service charge for each unpaid check, draft or other means of payment you submit to BMI.

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

So long as you are not in default or arrears in payment under this Agreement, BMI agrees to indemnify, save harmless and defend you, your officers and employees, from and against any and all claims, demands or suits alleging copyright infringement that may be made or brought against them or any of them with respect to the public performance of any musical works which are licensed by BMI under this Agreement at the time of public performance. You agree to give BMI immediate notice of any such claim, demand or suit, to deliver to BMI any papers pertaining hereto, and to cooperate with BMI with respect thereto, and BMI shall have full charge of the defense of any such claim, demand or suit.

**5. SALE OF LICENSED PREMISES OR CLOSING OF BUSINESS**

In the event that you sell the Licensed Premises or close the business during the Term of this Agreement and you send BMI written notice by certified mail or via the BMI.com licensing website 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. Your credit adjustment hereunder shall not reduce your Annual Fee due BMI below the Annual Minimum Fee applicable under the Agreement.

**6. BREACH OR DEFAULT/WAIVER**

Upon any breach or default of the terms and conditions of this Agreement, BMI has the right to cancel this Agreement. The right to cancel is in addition to any and all other remedies which BMI may have.

**7. ARBITRATION**

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement, except for matters within the jurisdiction of the BMI Rate Court, 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) shall 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 the costs, expenses and attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

**8. 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. Any such notice sent to you shall be to the attention of the person signing this Agreement on your behalf or such other person as you may advise BMI in writing.

**9. MISCELLANEOUS**

This Agreement is the entire understanding between the parties, will not be binding until signed by both parties, and 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 you. Your rights are not assignable. 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.

**10. DEFINITIONS**

(a) **Licensed Premises**: The eating or drinking establishment listed on Page 4 or on an attached exhibit.

(b) **Music Policy**: Any single or combined use of the items defined in 10(c) - (j) and including Jukebox Fee (Box 9) by you at the Licensed Premises during a Contract Year.

***Refer to Boxes 1-7 in the Fee Calculation on Page 3.***

(c) **Live Music-Multiple Singers/Instrumentalists**: Music performed by more than one musician, singer or other entertainer actually present and performing at the Licensed Premises. **(Box 1)**

(d) **Live Music-Single Singer/Instrumentalist**: Music performed by one musician, singer or other entertainer actually present and performing at the Licensed Premises. **(Box 1)**

(e) **Recorded Music**: 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. **(Box 2)**

(f) **Enhanced Recorded Music**: Use of video tapes, DVDs and other projected visual images as an accompaniment/enhancement to recorded music performances (Karaoke). Enhanced Recorded Music does not include performances delivered by commercial broadcast, cablecast or satellite delivered television programming. **(Box 2)**

(g) **Admission Charge/Cover Charge**: Payment 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 Performance Agreement. **(Box 3)**

(h) **Dancing**: Allowing patrons, 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. **(Box 4)**

(i) **Television and/or Radio Only (*unless exempt from the U.S. Copyright Law*)**: 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 10(e) and 10(f) is performed and paid for under this Agreement. **(Box 5)**

(j) **Occupancy**: The total of maximum allowable occupancy loads/capacities for the entire premises of the Licensed Premises 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. Further, Occupancy is a component of the LICENSEE's Music Policy, which is subject to adjustment per the Agreement. **(Box 7)**

(k) **Seasonal/Occasional Use**: The total aggregate use of music described herein at 10(c) - (j) in an establishment open less than twelve (12) months in any one year, or total aggregate music use as described herein, which occurs four (4) times or less in any one year will require that you contact BMI for their Seasonal/Occasional Use Fee Calculation license.

(l) **Chain Operation**: Seven (7) or more licensable locations, that are commonly owned and operated by you, and that books, records and accounts for each are centrally maintained by you, will require that you contact BMI for its Chain Restaurant License.

(m) **Jukebox**: A coin-operated phonerecord playing device which is licensable by the JLO (Jukebox License Office) pursuant to a Jukebox Licensing Agreement.

**11. FEES**

(a) You agree to pay to BMI an Annual Fee as determined by your Music Policy.

(i) The Annual Fee payment for the initial Contract Year is due in full upon signing of this Agreement. The Annual Fee payment for subsequent Contract Years shall be due no later than 30 days after the anniversary date of this Agreement.

(ii) BMI shall discount the Annual Fee by 10% in any Contract Year if (A) you pay the Annual Fee in full and in a timely manner for such Contract Year in accordance with subparagraph (i) above; and (B) you do not otherwise owe BMI any fees under this or any prior BMI agreement.

(iii) Upon request, BMI will allow you to pay the Annual Fee on a semi-annual or quarterly basis, provided that your account is current. Semi-annual and quarterly payments are due no later than 30 days following 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 90th day after such payment is due, your ability to make semi-annual or quarterly payments shall immediately terminate for the remainder of this Agreement. In addition, the unpaid portion of the Annual Fee will be immediately due and payable.

(b) Your fee is adjusted each year by an adjustment to the Rate Per Year Per Occupant as defined in the Fee Calculation chart. The Rate Per Year Per Occupant adjustment for each Contract Year after 2018 shall be an adjustment of the 2018 rate based upon the percentage increase or decrease 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. BMI will advise you in writing of this adjustment as part of its annual billing process.

(c) In no event shall the Annual Fee (per Box 8 of the Fee Calculation chart) due for any Contract Year be less than the Annual Minimum Fee (not including a Jukebox Fee, if any). The Annual Minimum Fee shall be $370.00 for 2017 (not including a Jukebox Fee, if any). Thereafter, the Annual Minimum Fee shall be adjusted at the same rate as the Rate Per Year Per Occupant pursuant to subsection (b) of this Paragraph, with the exception that all increases shall be rounded to the nearest dollar.

(d) The Jukebox Fee shall also be adjusted at the same rate as the Rate Per Year Per Occupant pursuant to subsection (b) of this Paragraph, with the exception that all increases shall be rounded to the nearest dollar.

(e) **You agree that the Music Policy set forth herein is, and will continue to be, a true and accurate representation of your music use at the Licensed Premises, unless changed as provided in Changes to Your Music Policy section of this Agreement (Paragraph 2).**

# MUSIC POLICY / FEE CALCULATION

www.bmi.com/ede.occ1

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

**PLEASE NOTE:** We have included a column for **Occasional Music Use** for establishments with total aggregate music use that **occurs four (4) times or less** in any one year. Please check the **OCCASIONAL USE** box if applicable.
**FOR ALL OTHER USES OF MUSIC:** Please check off the **FULL USE** box. Enter the fee amount(s) on the appropriate line(s) to the right.

| Music Type | Frequency Per Week | FULL USE Rate Per Year Per Occupant | Check if Full Use ☑ | OCCASIONAL USE Rate Per Year Per Occupant | Check if Occasional Use ☑ | Enter Fee Calculation |
|---|---|---|---|---|---|---|
| **1. Live Music*** (*check **ALL** that apply*) | | | | | | |
| • Multiple Singers/Instrumentalist | 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 | ☐ | $1.51 | ☐ | |
| • 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 | ☐ | $1.11 | ☐ | |
| | | **Enter ONLY the highest amount checked above here.....➔** | | | | |
| **2. Enhanced Recorded Music*** (*check **ALL** that apply*) | | | | | | |
| ☐ 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 | ☐ | $1.07 | ☐ | |
| **Recorded Music*** (*check **ALL** that apply*) | | | | | | |
| ☐ iPod / MP3 / Other Digital Music ☐ Free-Play Jukebox | | $3.00 | ☐ | $0.99 | ☐ | |
| ☐ CDs / Tapes / Records ☐ DJ | | | | | | |
| | | **Enter ONLY the highest amount checked above here.....➔** | | | | |
| **3. Admission or Cover Charge*** (*at **any** time*) | | $1.90 | ☐ | $0.62 | ☐ | |
| **4. Dancing to Live or Recorded Music*** (*at **any** time*) | | $1.90 | ☐ | $0.62 | ☐ | |
| **5. Television and/or Radio*** *(skip this Section if you have checked **any** box in Section 2)* | | $1.30 | ☐ | $0.44 | ☐ | |
| **6. TOTAL RATE PER YEAR PER OCCUPANT *(Sum of Boxes 1- 5)*..... ➔** | | | | | | **$** |

**7. Occupancy***

- Total Premise Occupancy _____ *(If greater than 1,000 occupants, enter 1,000)*

**OR**

- **If Occupancy cannot be established by local building/fire codes, use formula below:**

Total Square Footage of Entire Premises _____ ÷ 20 = _____ Occupancy

*(Enter Occupancy)*

**8. ANNUAL FEE - FULL USE**
***(Multiply Line 6 by Line 7)***
If $370.00 or Less, Enter Annual Minimum Fee of $370.00..... ➔

**OR**

**ANNUAL FEE - OCCASIONAL USE ONLY**
***(Multiply Line 6 by Line 7)***
If $185.00 or Less, Enter Annual Minimum Fee of $185.00..... ➔

**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.*
*If the jukebox is already licensed under the JLO license, please enter Vendor name, address and phone no. below.*

Jukebox Fee = $370.00 ☐

Name/Company _____ JLO Cert # _____

Address _____ Phone _____

City _____ State _____ Zip _____

***Refer to Paragraph 10 (c-m) on Page 2***

**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*)..... ➔**

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

**13. 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.

**14. CUSTOMER OUTREACH**
LICENSEE agrees to accept from time to time pre-recorded telephone messages from BMI that may contain important information regarding your account.

**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 this Agreement shall continue for additional periods of one (1) year each, unless canceled by either party at the end of any period, upon 30 days advance written notice sent by certified mail, return receipt requested. Each one (1) year period, including the initial Term, is a "Contract Year."

## AGREEMENT

AGREEMENT, made at New York, N.Y. on *(Date will be entered by BMI upon execution)* _____ between BROADCAST MUSIC, INC. (herein "BMI"), a New York corporation with principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030, and the entity described below and referred to herein as "LICENSEE" or "you".

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

***Some state or national trade associations have discount agreements with BMI.***
***Contact your association to see if you qualify for one association discount only.***

| **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)*<br>***In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.** | **FOR BMI USE ONLY** — **EDE1** — **LI-2017/AUG**<br>**ACCOUNT NO.** — **COID** — **EFFECTIVE: October 2017** |

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