# Music License for Funeral Homes

**1. DEFINITIONS**

(a) **Licensed Premises** shall mean LICENSEE's funeral home location identified on Page 4 herein, or, in the event of multiple locations, LICENSEE's funeral home locations identified on Schedule A attached hereto.

(b) **LICENSEE** shall mean the individual or entity described herein that owns and/or operates the "Licensed Premises".

(c) **Recorded Music** shall mean the performance of music by mechanical or electronic devices for background, foreground, or as part of audio-visual presentations, which include, but are not limited to, records, tapes, CDs, digital audio files (e.g., MP3, WAV), broadcasts, satellite signals and/or cablecasts.

(d) **Live Music** shall mean the music performed by musicians, singers or other performers actually present and performing at the Licensed Premises.

**2. BMI GRANT**

(a) BMI hereby grants to LICENSEE a non-exclusive license to publicly perform or allow to be publicly performed at the Licensed Premises all of the musical works of which BMI shall have the right to grant public performance licenses during the Term of this Agreement. 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, telecast, cablecast, or otherwise transmit (including by the Internet or on-line service) the performances licensed hereunder to persons outside of the Licensed Premises, except to the extent that music on telephone hold lines originating at a Licensed Premises is audible at remote locations on telephone lines as part of "music-on-hold"; (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.

**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 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.

**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 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.

**5. 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 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. DISCONTINUANCE OF MUSIC**

In the event that LICENSEE discontinues the use of all music at Licensed Premises or ceases to operate the Licensed Premises during the Term and so notifies BMI in writing, within thirty (30) days after receipt of such notice a pro rata adjustment shall be made by BMI to license fees due BMI for such Licensed Premises for that Contract Year. In no event shall the annual license fee due BMI be prorated to a fee less than the minimum annual license fee outlined in Paragraph 10. LICENSEE will not be obligated to make future payments to BMI for the discontinued music (provided all previously due license fees have been paid) unless LICENSEE resumes the use of music. LICENSEE will send written notice of any resumption of music to BMI within thirty (30) days thereof. If discontinuance and resumption occur in the same Contract Year, license fees shall be payable as if discontinuance never occurred and LICENSEE's estimated fee immediately prior to discontinuance shall be reinstated.

**8. 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 the American Arbitration Association in the City, County and State of New York, for arbitration under its then prevailing arbitration rules. The arbitrator(s) are 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 the costs, expenses and attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

**9. REVIEW OF BOOKS AND RECORDS**

BMI will 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 payments and/or reports made hereunder or under any prior agreement with BMI, if applicable. BMI, in its sole discretion, will determine whether an examination shall be made. 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.

**10. FEES**

(a) LICENSEE agrees to pay to BMI for each Contract Year a license fee for each Licensed Location. The license fee per Licensed Location for the 2018 Contract Year shall be $336.00. License fees for the 2018 Contract Year shall be due upon the signing of the Agreement.

(b) For Contract Year 2018, in the event of a discontinuance of music as outlined in Paragraph 7 herein, the annual license fee shall not be prorated to an amount less than the minimum annual license fee which is $152.77.

(c) For each subsequent Contract Year the per Licensed Location license fee shall be 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. For each subsequent Contract Year, LICENSEE will receive an invoice notifying LICENSEE of the annual license fee for each subsequent Contract Year. License fees for such subsequent Contract Year shall be due no later than twenty (20) days after each anniversary date of this Agreement.

**11. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one-half percent ($1^1/_2$%) 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.

**12. 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.

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

**15. NOTICES**
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 advise BMI in writing.

**16. MISCELLANEOUS**
This Agreement constitutes 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 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.

## 17. TERM OF AGREEMENT

The initial Term of this annual Agreement shall begin on the first day of _____ and end on the last day of _____ and continue for additional periods of one (1) year each, unless canceled by either party at the end of any period, upon thirty (30) days advance written notice. Each one (1) year period is a "Contract Year."

## 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)* | *(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** | **FNL1** | **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**