# Music License for Digital Video Jukebox

**1. DEFINITIONS**

(a) **Attract Mode** shall mean the occasional performance of Works on a free promotional basis, intended to attract consumers' attention to the presence of the Digital Video Jukebox, during periods of time when no patrons have recently inserted money in the Digital Video Jukebox.

(b) **Distribution System** shall mean the system by which LICENSEE electronically transmits Sound Recordings to Digital Video Jukeboxes 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 Video Jukeboxes in Digital Video Jukebox Establishments.

(c) **Digital Video Jukebox** shall mean each and every _____ (*Company Name*) Digital Video Jukebox operating within the Territory which (1) employs a medium upon which digital videos and phonorecords are stored and played, including, but not limited to, a hard drive for the storage of videos, phonorecords or recorded musical compositions, whether or not downloads, streams or other transmissions of musical works are made to, from or by the device; (2) in response to insertion of coins, currency, tokens, or other monetary units or their equivalent, including but not limited to credit cards and debit cards (or in response to free play instructions, for instance, when the Digital Video Jukebox is in so-called Attract Mode (as defined herein)) makes non-dramatic performances of musical works (by means of Sound Recordings transmitted by downloads to remote Digital Video Jukeboxes) which are selected from the works available on such Digital Video Jukebox by the patrons of the Digital Video Jukebox Establishment in which it is located (or, with respect to free play in Attract Mode programmed or randomized other than by patrons); and (3) does not generate advertising revenue for LICENSEE or anyone else.

(d) **Digital Video Jukebox Establishment** shall mean the establishment in which LICENSEE's Digital Video Jukebox is placed for operation which makes no direct or indirect charge for admission.

(e) **Play** shall mean each paid (or free play while in Attract Mode) public performance of a Sound Recording by a Digital Video Jukebox.

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

(g) **Term** shall begin on the first day of _____ and end on the last day of June _____, and shall continue on an annual basis thereafter; provided, however, that either party may terminate the Agreement at the end of any contract year with thirty (30) days' prior written notice.

(h) **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.

(i) **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 to Digital Video Jukeboxes via LICENSEE's Distribution System any or all of the Works. BMI further grants to LICENSEE's Digital Video Jukebox Establishments a license to publicly perform in such Digital Video Jukebox Establishments only (construed as including adjoining areas such as a deck or patio) and by means of LICENSEE's Digital Video Jukebox only any or all of the Works. Nothing herein may be expressly or impliedly understood to grant to LICENSEE's Digital Video Jukebox Establishment a license to perform any Work other than through LICENSEE's Digital Video Jukebox; or to use LICENSEE's Digital Video Jukebox as a background, foreground, commercial or any type of subscription music service.

**3. BREACH OR DEFAULT/WAIVER**

In the event LICENSEE breaches or defaults in its payment and/or reporting obligations under this Agreement, BMI shall have the right to cancel this Agreement as follows: If LICENSEE's account remains delinquent for thirty (30) days beyond the payment or report due date, BMI may notify LICENSEE of the breach. After notification of the breach, LICENSEE shall have thirty (30) days to cure the breach. If LICENSEE cures the breach or default within such thirty (30) day period, BMI's right to cancel the Agreement will terminate upon the date of such cure. If LICENSEE fails to cure a delinquent account within the thirty (30) day cure period, BMI shall have the right to cancel this Agreement by written notice to LICENSEE.

**4. 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 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 costs, expenses, and attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

**5. LICENSE FEES AND PAYMENTS**

(a) For each contract year of the Term, LICENSEE shall pay an annual license fee to BMI for each Digital Video Jukebox in operation in a Digital Video Jukebox Establishment. The annual license fee payable for a given year shall be calculated on a monthly basis and paid quarterly, on or before the forty-fifth (45th) day after the end of each calendar quarter. The monthly license fee shall be computed by determining the monthly rate per box (the annual rate divided by 12) and applying that rate for each month to the total number of Digital Video Jukeboxes that were in operation in a Digital Video Jukebox Establishment for any period of time during or as of the end of the preceding month.

(b) The annual license fee for the contract year commencing July 1, 2018 is $139.00 per Digital Video Jukebox.

(c) The annual license fee for the contract year commencing July 1, 2019, and for each subsequent contract year, will 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 Digital Video Jukebox that was in operation in a Digital Video Jukebox Establishment at any time during that calendar quarter:

  (i) Digital Video Jukebox serial or other identification number, and whether the box is connected to the Distribution System;

  (ii) for any newly-licensed Digital Video Jukebox, the date on which the Digital Video Jukebox was placed in operation in a Digital Video Jukebox Establishment; and

  (iii) for any Digital Video Jukebox that was inactivated, the date of inactivation; and

  (iv) the total number of Digital Video Jukeboxes licensed hereunder.

(b) LICENSEE shall display by electronic means on the touchscreen of each Digital Video Jukebox licensed hereunder or in a similar place that is easily visible to the public (i) a notice that the Digital Video Jukebox is licensed by BMI; and (ii) the serial or other identification number of the Digital Video Jukebox. Such notice shall be visible both when the Digital Video Jukebox is performing music and when it is not.

(c) If LICENSEE agrees to provide to any other U.S. performing rights organization information on the names and locations of the premises where the Digital Video Jukeboxes are located, LICENSEE shall provide the same information to BMI.

(d) LICENSEE shall provide to BMI, in electronic form, quarterly music use reports which shall contain information concerning the performance of all musical compositions. Such information shall identify each musical composition by title, composer/writer, publisher, artist, record label, any unique identifier, to the extent available to LICENSEE (e.g. ISWC, ISAN), and specify the number of Plays with respect to each musical composition among all Digital Video Jukeboxes. Such information shall also identify those musical compositions for which a direct license with the copyright owner for public performances otherwise licensed hereunder exists.

(e) LICENSEE shall provide to BMI music use reports on or before the forty fifth ($45^{th}$) day following the end of each calendar quarter during the Term. LICENSEE agrees to use commercially reasonable efforts to use software which BMI may provide to LICENSEE to prepare and deliver such reports electronically, or such other commercially reasonable alternative method upon which the parties agree.

**7. LATE PAYMENT CHARGE**

LICENSEE shall pay a late payment charge of one percent (1%) per month from the date payment was due on any payment to BMI which is received by BMI more than five (5) business days after the due date.

**8. 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.

**9. REPRESENTATIONS / WARRANTIES / INDEMNIFICATION**

(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 indemnify, hold harmless and defend LICENSEE and its respective agents, heirs, parents, successors, and assigns (the "Indemnified Parties") from and against any and all claims, demands or suits (and liabilities, expenses and costs associated therewith, including, without limitation, except to the extent BMI elects to control the matter and supplies counsel of its choosing, the reasonable fees of counsel of the Indemnified Party's choosing) that may be made or brought against them or any of them with respect to the performances licensed hereunder. Such indemnity shall be limited to Works which are licensed by BMI to LICENSEE at the time of performance. LICENSEE agrees to give BMI prompt 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, at BMI's election, BMI shall have full charge of the defense of any such claims, demand or suit.

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

**10. WITHDRAWAL OF WORKS**

BMI reserves the right to withdraw from the license granted hereunder any Works as to which any legal action has been instituted or as to which a written claim has been made that BMI does not have the right at its discretion to license the performing rights in such Works or that such Works infringe a composition not in the BMI repertoire, provided that such withdrawal applies prospectively and applies equally to all other similarly situated licensees of BMI.

**11. INTENT OF PARTIES**

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 Video Jukeboxes for any period subsequent to this license period. The parties acknowledge that the annual license fee is not attributable to any specific number of Plays.

**12. CONFIDENTIALITY**

(a) This Agreement, and the terms thereof, may be disclosed only to (i) the parties' owners, officers, employees and directors, (ii) such of the parties' auditors, insurers, agents or representatives as are required by their job responsibilities to have such knowledge, or (iii) in the context of legal proceedings or government investigations, such other persons to whom the parties are required by law or otherwise deem it prudent to make such disclosure. BMI agrees that it shall not publish or otherwise disseminate or disclose any information provided by LICENSEE under this license, without the express written permission of LICENSEE. In the case of any permitted disclosure under this subparagraph, the disclosing party shall take all steps as are commercially reasonable, including, as appropriate, seeking to secure protective orders against public disclosure, to maintain the confidentiality of the disclosed information beyond the parties to whom it has been disclosed. The parties agree to give each other, to the extent feasible, not less than seven (7) days' advance notice (or such shorter notice as is feasible) of any intended disclosure pursuant to sub-sub-paragraph (iii). Notwithstanding the foregoing, the parties may publicly disclose, without limitation, the provisions of this Agreement with respect to license fee rates (but not amounts paid hereunder), term, scope, and possible adjustments thereto.

(b) All data and information coming to the attention of the BMI Audit Department as a result of any examination of LICENSEE's books and records shall be held completely confidential by the BMI Audit Department, except that if the results of its examination are that LICENSEE owes BMI additional license fees and LICENSEE does not pay any additional amount claimed to be due within ten (10) business days of receipt of a written notice of a claimed deficiency in its payments to BMI, then such data and information may be disclosed to BMI's attorneys and other persons at BMI as is necessary for the purpose of collecting fees owing or otherwise enforcing this Agreement.

**13. MISCELLANEOUS**

(a) No waiver by either party of full performance of this Agreement by the other in any one or more instances shall be deemed a waiver of the right to require full and complete performance of this Agreement or of the right to cancel this Agreement thereafter. Paragraphs 3 and 4 shall survive any termination of this Agreement.

(b) All notices and other communications between the parties hereto shall be in writing and deemed received (i) when delivered in person; (ii) when delivered by generally recognized same day or overnight delivery service; or (iii) five (5) days after deposited in the United States mails, postage prepaid, certified or registered mail, addressed to the other party at the address set forth below (or at such other address as such other party may supply by written notice):

BMI:

10 Music Square East
Nashville, TN 37203
Attn: Vice President General Licensing

with a separate copy to:
Senior Vice President and
General Counsel

LICENSEE:

(c) This Agreement contains the full and complete understanding between the parties with respect to the subject matter hereof, supersedes all prior agreements and understandings, whether written or oral, pertaining hereto, and cannot be modified except by a written instrument signed by each party hereto. No waiver of any term or condition of this Agreement shall be construed as a waiver of any other term or condition; nor shall any waiver of any default under this Agreement be construed as a waiver of any other default. The descriptive headings of the sections of this Agreement are for convenience only and do not constitute a part of this Agreement.

(d) This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts entered into and to be fully performed therein.

(e) With the prior approval of the non-assigning party (which shall not be unreasonably withheld), this Agreement is assignable or transferable by either party, but no assignment shall relieve the parties of their respective obligations as to performances rendered, acts done and obligations incurred prior to the effective date of the assignment. All provisions of this Agreement applicable to the parties shall apply as well to their predecessors, successors and assigns.

## 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** |
|---|---|
| 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)*** | **TO BE COMPLETED BY BMI** BROADCAST MUSIC INC. |
| Signature | |
| Print Name / Title | |
| Signatory Email Address* *(if different from above)* | **FOR BMI USE ONLY** / **DVJ1** / **LI-2017/NOV** |
| ***In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.** | **ACCOUNT NO.** / **COID** / **EFFECTIVE: January 2018** |

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