# Music License for Digital Jukeboxes

## 1. DEFINITIONS

(a) **"Attract Mode"** shall mean the occasional performance of Works, or portions of Works, on a free, promotional basis, intended solely to attract consumers' attention to the presence of the Digital Jukebox.

(b) **"Contract Year"** shall mean the twelve (12) month period commencing July 1st and ending the following June 30th.

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

(d) **"Digital Jukebox"** shall mean each of LICENSEE's Digital Jukeboxes operating within the Territory which (1) employs a medium upon which digital phonorecords are stored and played, including, but not limited to, a hard drive for the storage of phonorecords or recorded musical compositions; (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 Jukebox is in Attract Mode (as defined herein)) makes non-dramatic performances of musical works which are selected from the works available on such digital jukebox by the patrons of the Digital Jukebox Establishment in which it is located (or, with respect to free play in Attract Mode programmed or randomized other than by patrons); (3) allows the Digital Jukebox to play background music as programmed by LICENSEE for each Digital Jukebox, pursuant to a subscription fee paid by each individual Digital Jukebox Establishment, which may request different genres of music; and (4) permits advertising to be displayed on the Digital Jukebox, but not in any way to suggest that any artist or any song is endorsing or is endorsed by any advertiser. As used in this Agreement "operating" shall mean a digital jukebox which has generated revenue within the last sixty (60) days.

(e) **"Digital Jukebox Establishment"** shall mean the establishment in which LICENSEE's Digital Jukebox is placed for operation which makes no direct or Indirect Charge for Admission, and does not utilize the Digital Jukebox as an accompaniment to live entertainment (i.e. including, but not limited to, adult dancers).

(f) **"Indirect Charge for Admission"** shall mean any expectation on the part of the Digital Jukebox Establishment that payment must be made by a patron to remain within the Digital Jukebox Establishment, or any portion of the establishment, including, but not limited to, an admission fee, cover charge, minimum purchase requirement, mandatory tipping, or ticket purchased from any source whatsoever.

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

(h) **"Sound Recording"** shall mean a sound recording embodying a musical composition.

(i) **"Term"** shall begin on the first day of July 1, 2008 and end on the last day of June 30, 2014, and shall continue on an annual basis thereafter; provided, however, that either party may terminate the Agreement at the end of any contract year beginning in 2014 with thirty (30) days' prior written notice.

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

(k) **"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 non-exclusive license to transmit to Digital Jukeboxes via LICENSEE's Distribution System any or all of the Works. BMI further grants to LICENSEE's Digital Jukebox Establishments a license to publicly perform in such Digital Jukebox Establishments only (construed as including adjoining areas such as a deck or patio) and by means of LICENSEE's Digital Jukebox only any or all of the Works. Nothing herein may be expressly or impliedly understood to grant to LICENSEE's Digital Jukebox Establishment a license to perform any Work other than through LICENSEE's Digital Jukebox. The license granted herein expressly excludes performances of a Digital Jukebox as an accompaniment to live entertainment (i.e. adult dancers).

## 3. 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.

## 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 the American Arbitration Association in the City, County and State of New York for arbitration under its then prevailing 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.

## 5. LATE PAYMENT CHARGE

BMI may impose a late payment charge of one percent (1%) per month from the date any payment is due hereunder on any payment that is received by BMI more than five (5) business days after the due date.

## 6. LICENSE FEES AND PAYMENT

(a) LICENSEE shall pay to BMI an annual per Digital Jukebox license fee for each Contract Year of the Term. License fees shall be paid quarterly, and shall be calculated on a monthly basis by determining the monthly fee per Digital Jukebox (i.e. the annual per Digital Jukebox fee divided by 12) and applying that rate for each month to the total number of Digital Jukeboxes that were in operation for any period of time during the applicable month, prorated over a thirty (30) day month for the first month.

(b) LICENSEE shall pay quarterly license fees, calculated monthly as outlined in Paragraph 6(a) above, forty-five (45) days after the end of each calendar quarter.

(c) For the Contract Year July 1, 2008 through June 30, 2009, the annual per Digital Jukebox license fee shall be $47.00. For each Contract Year thereafter, in the event that LICENSEE's average revenue per Digital Jukebox increased over the average revenue per Digital Jukebox in the immediately preceding year, the annual per Digital Jukebox license fee shall be the prior Contract Year's per Digital Jukebox license fee as increased by the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding August and the next preceding August, rounded to the nearest penny. For any Contract Year in which the average revenue per Digital Jukebox did not increase over that of the immediately preceding Contract Year, the annual per Digital Jukebox license fee for the Contract Year shall be unchanged from the annual per Digital Jukebox license fee of the immediately preceding contract year.

## 7. 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 Jukebox in a Digital Jukebox Establishment at any time during that calendar quarter:
   - (i) Digital Jukebox serial or other identification number, and whether the box is connected to the Distribution System;
   - (ii) for any newly-licensed Digital Jukebox, the date on which the Digital Jukebox was placed in operation in a Digital Jukebox Establishment; and
   - (iii) the total number of Digital Jukeboxes in operation hereunder; and
   - (iv) the average coin revenue per Digital Jukebox, which shall be provided on a Contract Year basis, not quarterly.

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

(c) If LICENSEE agrees to provide to any other U.S. musical composition performing rights organization information on the names and locations of the premises where the Digital 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 works. Such information shall identify each musical work 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 work among all Digital Jukeboxes. Such information shall also identify those musical works for which a direct license with the copyright owner for public performances otherwise licensed hereunder exists. This information shall be used solely to determine distributions to members of BMI.

(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.

## 8. REVIEW OF STATEMENTS AND/OR ACCOUNTINGS

BMI shall have the right, once with respect to each year of the Term, by its authorized representatives, at any time during customary business hours, and upon reasonable notice, in writing to LICENSEE of not less than thirty (30) business days, to examine, through its Audit Department, only those portions of LICENSEE's books and records of account only to such extent as may be necessary to verify any and all statements and/or accountings made hereunder for the immediately preceding two (2) year period. 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. No period shall be examined more than once.

## 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. NON-PRECEDENTIAL NATURE OF AGREEMENT

BMI and LICENSEE agree that the terms of 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 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. 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, other than income 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. EXPERIMENTAL NATURE OF AGREEMENT

The parties acknowledge that this Agreement is entered into on a non-prejudicial and experimental basis. The parties have entered into this Agreement expressly without prejudice to their positions regarding what constitutes a reasonable fee for the license granted herein. Further, the parties inclusion of advertising on Digital Jukeboxes without application of a separate fee on LICENSEE'S advertising revenues is non-prejudicial and is offered in consideration of the nominal advertising fees generated by LICENSEE'S Digital Jukeboxes. The parties' execution of this Agreement is without prejudice to their right to negotiate a different form of agreement for any period of time beyond the Term of this Agreement and is not binding on their respective positions in any such negotiations.

## 14. CONFIDENTIALITY

(a) The parties hereto acknowledge that pursuant to the reporting obligations outlined in Paragraph 7 of this Agreement, or otherwise in connection with this Agreement, LICENSEE will provide to BMI confidential proprietary information. BMI agrees that it shall not publish or otherwise disseminate or disclose any confidential information provided by LICENSEE under this Agreement without the express written permission of LICENSEE, except in the case of disclosure to (i) BMI's owners, officers, employees and directors, (ii) BMI's 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 BMI is required by law or otherwise deem it prudent to make such disclosure. In the case of any permitted disclosure under this Paragraph, 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-paragraph (iii) herein.

(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'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 payment 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.

## 15. 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 6 and 7 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 Licensing

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

AGREEMENT, made at New York, N.Y. on *(Date will be entered upon execution)* _____ between BROADCAST MUSIC, INC. (herein BMI), a New York corporation with its 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.

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

| **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)* | **FOR BMI USE ONLY** **DJB2** **LI-2012/JAN** |
| ***In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.** | **ACCOUNT NO.** **COID** **EFFECTIVE: January** |

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

® BMI and the music stand symbol are registered trademarks of Broadcast Music, Inc.