# Music License for Music On Hold

**1. BMI GRANT**

(a) BMI hereby grants to LICENSEE a non-exclusive license to cause and permit at the licensed premises 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 performances of music in the manner described herein 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. The license granted to LICENSEE pursuant to this Paragraph hereof shall extend to performances of recorded music by means of "music-on-hold" (as that term is commonly understood) through LICENSEE's telephone system at the licensed premises and shall authorize LICENSEE to transmit such performances to persons connected to the licensed premises by telephone. In no event shall this license extend to any performances of music audible other than on a telephone or to a service that provides music-on hold to subscribers. This license also shall not be applicable to more than one premises.

(b) This license does not include: (a) 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; or (b) the right to broadcast, telecast, cablecast or otherwise transmit the performances licensed hereunder to persons outside of the licensed premises; or (c) the authorization of performances of music by means of a coin-operated phonorecord player (jukebox) as defined in the Copyright Law.

(c) 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.

**2. 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 will, upon reasonable request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. 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.

**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. 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.

**5. REVIEW OF STATEMENTS/ACCOUNTINGS**

BMI shall have the right upon reasonable notice to LICENSEE, by its authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify the statements made hereunder or under any previous Agreement with BMI. BMI shall consider all data and information coming to its attention as the result of any such examination as confidential.

**6. FEES**

LICENSEE warrants and represents that, as of the date of this Agreement, LICENSEE provides music-on-hold on the licensed premises through a telephone system using _____ telephone trunk lines, and accordingly on the License Fee Schedule below falls within Class _____. LICENSEE agrees to pay to BMI for the license granted herein the sum of $_____, constitutes the fee for the first contract year of this Agreement (the "first year's fee") for such Class and shall be payable at the time of the signing of this Agreement. The fee for each subsequent contract year shall be in the respective amounts determined in accordance with this Paragraph, subject to any adjustment pursuant to Paragraph 7, and shall be paid no later than ten (10) days following the beginning of each such contract year. 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 2017 and September of the year preceding the anniversary date of this Agreement, rounded to the nearest dollar. BMI will advise LICENSEE in writing of the amount of each new fee.

## 2018 LICENSE FEE SCHEDULE PER LOCATION

(FILL IN APPLICABLE CLASS AND FEE IN PARAGRAPH 6 ABOVE)

| NUMBER OF TRUNK LINES USED TO PROVIDE MUSIC-ON-HOLD | CLASS | FIRST YEAR'S FEE | NUMBER OF TRUNK LINES USED TO PROVIDE MUSIC-ON-HOLD | CLASS | FIRST YEAR'S FEE |
|---|---|---|---|---|---|
| Under 10 | 1 | $259 | 75 - 124 | 5 | $1,128 |
| 10 - 29 | 2 | $451 | 125 - 199 | 6 | $1,348 |
| 30 - 49 | 3 | $674 | 200 - 349 | 7 | $1,665 |
| 50 - 74 | 4 | $904 | 350 and Over | 8 | $2,043 |

**7. REPORTING**

(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 number of telephone trunk lines used to provide music-on-hold during the previous contract year on the licensed premises. If any such report causes the licensed premises to fall into a Class other than that for which LICENSEE is then currently paying BMI license fees, BMI shall adjust LICENSEE's fee pursuant to Paragraph 6 and 7 to reflect the new Class in which LICENSEE belongs, effective with the contract year following such change of Class.

(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 the 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 Paragraph 7 (a) and BMI subsequently is made aware of a current change of class, BMI shall have the option, in lieu of its right of cancellation pursuant to Paragraph 3, 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 7 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 as being accurate. If Paragraph 9 of this Agreement shall become applicable, 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 Class 1 fee indicated on the License Fee Schedule.

**8. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one-half percent (1 ½%) 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.

**9. TERMINATION OF AGREEMENT BY LICENSEE**

If, during the Term hereof, 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, however, that LICENSEE shall, within ten (10) days thereafter, give written notice of such termination to BMI, setting forth the effective date thereof and name of the new owner or operator of the premises, as the case may be, and that LICENSEE shall pay to BMI all fees due hereunder until said effective date.

**10. 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.

**11. 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 under its then prevailing rules; the arbitrator(s) to be selected as follows: Each of the parties hereto 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 attorney's fees of arbitration, which shall be borne by the unsuccessful party.

**12. NOTICES**

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed duly given when sent by ordinary first-class U.S. mail (unless it is stated elsewhere in this Agreement that a notice is to be sent certified mail) to the party for whom it is intended at its mailing address herein stated, or any other address which either party hereto may from time to time designate for such a purpose. 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.

**13. 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

**14. TERM OF AGREEMENT**

The Term of this Agreement shall begin on the first day of (*month/year*) _____ and end on the last day of (*month/year*) _____ and shall continue thereafter unless canceled 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 written 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*.**

| **LEGAL NAME** | **LICENSED ADDRESS** |
|---|---|
| *(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 Address)* | **MAILING ADDRESS** **(if different from Licensed Address)** |
| ☐ 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** | **42** | **LI-2017/NOV** |
|---|---|---|
| | | **EFFECTIVE DATE January 2018** |
| **ACCOUNT NO.** | **COID** | |

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