# Music License for Fitness Clubs

**1. DEFINITIONS**

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

(b) **Member** shall mean each paying customer with a membership to Licensed Premises.

(c) **Group Fitness Classes** shall mean any fitness class held at Licensed Premises for groups of participants, including, but not limited to, classes in aerobics, hip-hop, kick boxing, spinning, and other similar group exercise classes.

(d) **Recorded Music** shall mean the performance of background music, foreground music, or as part of audio-visual presentations, by mechanical or electronic means, including, but not limited to, CDs, DVDs, digital audio files (e.g., MP3, WAV), records and tapes.

(e) **Live Music** shall mean music performed by musicians, singers or other entertainers actually present and performing at the Licensed Premises. For purposes of this Agreement, Live Music shall specifically exclude any music performed by musicians, singers or other entertainers present at Licensed Premises for which a separate fee is charged to hear the performers.

(f) **Ambient Music** shall mean, for purposes of this Agreement, Recorded Music or Live Music, whether vocal or instrumental, used as an accompaniment to: (i) non-class fitness training, including, but not limited to, individual/non-class weight-lifting and individual/non-class use of exercise equipment, and (ii) conversation and relaxation. Ambient Music does not include music used in Group Fitness Classes.

(g) **TV and Radio** shall mean, for purposes of this Agreement, commercial broadcast television and radio.

**2. BMI GRANT**

(a) BMI hereby grants to LICENSEE a non-exclusive license to perform, present, or cause the public performance at the Licensed Premises of all musical works of which BMI shall have the right to grant public performance licenses during the Term. 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, cablecast, telecast or otherwise transmit (including by the Internet or on-line service) the performances licensed hereunder to persons outside of Licensed Premises; (iii) performances of music by means of a coin-operated phonorecord player (jukebox); or (iv) performances of music in commercial music services or commercial music video services at the Licensed Premises that are not part of Group Fitness Classes.

(b) BMI reserves the right 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. 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.

**6. 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.

**7. TERMINATION OF AGREEMENT BY LICENSEE**

If LICENSEE shall permanently cease to operate the Licensed Premises, whether by reason of sale or lease thereof or otherwise, this Agreement and LICENSEE's obligation to BMI shall thereupon terminate, provided that: (i) LICENSEE shall, within ten (10) days of cessation of operation, give written notice of such termination to BMI, setting forth the effective date thereof and the name of the new owner or operator of the premises, and (ii) LICENSEE shall pay to BMI all license fees due hereunder until the effective date of cessation of operation. The license fee due BMI by LICENSEE through the effective date of termination shall be a proration of the license fee for the Contract Year of termination, but in no event shall the license fee be prorated to an amount less than the minimum annual fee, outlined in Paragraph 9(c) herein.

**8. 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 for arbitration under its then prevailing arbitration 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.

**9. FEES**

For each Contract Year during the Term of this Agreement, LICENSEE agrees to pay to BMI a license fee pursuant to the License Fee Schedule. LICENSEE warrants and represents that during the twelve-month period preceding the initial Term of this Agreement (or if Licensed Premises was not in operation during that full twelve-month period, LICENSEE shall make a good-faith estimate for the first Contract Year of this Agreement) LICENSEE's music use policy, highest number of Total Members and license fee are as follows:

## 2018-2019 LICENSE FEE SCHEDULE

**For clarification, refer to Sub-paragraph 9(a) below**

| **Category (choose only one)** | | **Music Use** | **Member Fee (per member)** |
|---|---|---|---|
| ☐ | A | Group Fitness Classes | $0.294 |
| ☐ | B | Ambient Music | $0.205 |
| ☐ | C | TV and/or Radio *Only* | $0.127 |

| _____ | _____ | X | _____ | = | $_____ |
|---|---|---|---|---|---|
| **(Category)** | **(Total Members)** | | **(Member Fee)** | | **(Total Annual License Fee*)** |

***Pursuant to Sub-paragraph 9(c), the total annual license fee per Licensed Premises shall not be less than $328, shall not be greater than $2,237 and should be rounded to the nearest penny.**

**NOTE: If Licensed Premises music use falls under more than one category, the higher per Member Fee shall apply.**

(a) **(i) Group Fitness Classes** – If LICENSEE offers Group Fitness Classes at Licensed Premises which utilize Recorded Music or Live Music, either exclusively or in addition to performances of Ambient Music and/or performances of TV and/or Radio, LICENSEE shall pay a license fee for each Member pursuant to Category A of the License Fee Schedule.

**(ii) Ambient Music** – If LICENSEE does not utilize music in connection with Group Fitness Classes at Licensed Premises, but uses Recorded Music or Live Music at the Licensed Premises as Ambient Music, either exclusively or in addition to performances of TV and/or Radio, LICENSEE shall pay a license fee for each Member pursuant to Category B of the License Fee Schedule.

**(iii) TV and/or Radio** – If the performance of music at Licensed Premises is limited to performances via television(s) and radio(s) and LICENSEE does not offer Group Fitness Classes and does not use Ambient Music, LICENSEE shall pay a license fee for each Member pursuant to Category C of the License Fee Schedule.

(b) The annual license fee for the first Contract Year, as calculated in Paragraph 9 herein, shall be payable upon the signing of this Agreement by LICENSEE.
(c) Regardless of the calculated license fee, there is a minimum annual license fee per Licensed Premises for the 2018-2019 Contract Year of $328 and a maximum annual license fee per Licensed Premises for the 2018-2019 Contract Year of $2,237.
(d) All license fees for Contract Years after the first Contract Year shall be an adjustment of the immediately preceding Contract Year's license fees based upon the percentage increase or decrease in the United States Consumer Price Index (All Urban Consumers—CPI-U) between the preceding September and the next preceding September. The per Member license fee for each Music Use Category, as identified in the License Fee Schedule, shall be rounded to the nearest tenth of a cent and the Minimum and Maximum annual license fees shall be rounded to the nearest dollar. BMI will advise LICENSEE in writing of the license fee rates for each subsequent Contract Year.
(e) License fee payments for subsequent Contract Years shall be based upon the highest number of Members at Licensed Premises at anytime during the preceding Contract Year and shall be paid to BMI no later than ten (10) days following the beginning of each such Contract Year.
(f) BMI shall discount the annual license fee by 5% in any Contract Year if: (i) the annual license fee is paid in full and in a timely manner for such Contract Year in accordance with Sub-paragraph 9(e) above and (ii) LICENSEE does not otherwise owe BMI any fees under this or any prior BMI agreement.

**10. REPORTING**

(a) At the same time that LICENSEE pays its license fee for the second and subsequent Contact Years, LICENSEE shall submit a report, on a form available from BMI, certified by LICENSEE or by the auditor of LICENSEE, indicating the highest number of Members, as well as the music uses at Licensed Premises, in the preceding Contract Year.
(b) In the event that LICENSEE fails to submit a report pursuant to Sub-paragraph 10 (a) and BMI subsequently is made aware of the change in music use at Licensed Premises such that a change in License Fee Category is appropriate, BMI shall have the option, in lieu of its right to cancel the Agreement, to notify LICENSEE in writing by certified mail of its knowledge of such change and to adjust LICENSEE's license fee for the then current Contract Year in accordance with this Paragraph as if LICENSEE had reported such change for the previous Contract Year. LICENSEE shall have thirty (30) days from the date of BMI's notice to submit the missing report. If such report is not received by BMI by the end of the said thirty (30) day period, LICENSEE agrees to waive its right to submit such past due reports thereafter and authorizes BMI to deem the adjusted fee accurate.

**11. REVIEW OF STATEMENTS AND/OR 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 any and all statements and reports rendered and accountings made hereunder or under any prior agreement with BMI. BMI shall consider all data and information coming to its attention as the result of any such examination of books and records as confidential.

**12. 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 (1) month after the due date.

**13. 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.

**14. OKLAHOMA RATE CHANGE NOTICE**

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

**15. 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.

**16. 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.

**17. 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.

**18. TERM OF AGREEMENT**

The initial 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 for additional Terms of one (1) year each unless cancelled 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 notice to the other party.

**AGREEMENT**

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

| **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 _____ *(State of Incorporation, if different from Licensed Premises)*<br>☐ LLP ☐ Partnership _____ *(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. _____<br>**GOVERNMENT ENTITIES**<br>**(if applicable, please check one)**<br>☐ Federal ☐ State _____ *(State)*<br>☐ Local _____ *(Municipality and State)* | *(Street Address)*<br>*(City)* *(State)* *(Zip)*<br>*(Telephone Number)* *(Fax Number)*<br>*(Contact Name)* *(Title)*<br>*(Email Address- if different from above)* |

| **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)* | **FOR BMI USE ONLY** **FIT1** **LI-2017/DEC** |
| *In order to receive a copy of your executed Agreement, please provide the email address of the Signatory | ACCOUNT NO. COID **EFFECTIVE: August 2018** |

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