# Music License for Health Care

## - Multiple Use License -

**1. DEFINITIONS**

(a) "**Licensed Premises"** shall mean all locations operated and owned or leased by LICENSEE or LICENSEE's subsidiaries which operate as health care facilities for the treatment of illness or provision of custodial care which have full-service professional staffs such as hospitals, nursing homes, ambulatory care centers, assisted care centers and clinics. In all cases, the term "Licensed Premises" shall specifically exclude (1) doctors, dentists or other professional offices not located within a health care facility, and (2) any location, other than Licensed Premises, which is used by LICENSEE for a trade show, convention or exposition.

(b) "**Subsidiary"** shall mean an entity wholly-owned by LICENSEE for which payment of license fees and reports are made by LICENSEE.

**2. BMI GRANT**

(a) BMI grants to LICENSEE a non-exclusive license to publicly perform or allow to be publicly performed at the Licensed Premises all musical works of which BMI shall have the right to grant public performance licenses during the Term of this Agreement. This grant of rights includes but is not limited to music performed: (i) in rehabilitation areas; (ii) in television and radio programming received by LICENSEE on the Licensed Premises; (iii) in audio-visual presentations; (iv) as recorded background music or live music; (v) over teleconferencing at the Licensed Premises; (vi) over telephones in the form of music-on-hold; or (vii) in-room music on demand, movies on demand or interactive games which the LICENSEE provides to patients or staff without charge to the patients or staff, and which is received in patient rooms, waiting rooms or staff lounges.

(b) This license does not include: (i) the right to present musical works in any way which may be a use of the "grand rights"; (ii) the right to broadcast, telecast, cablecast or otherwise transmit the performances 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 a jukebox; or (iv) any performance of music by interactive software or interactive games, for which there is a direct charge to the patient(s) or staff member(s), whether (1) delivered by media such as CD-ROM, CD-I, diskette or cartridge, (2) delivered by on-line service such as interactive cable, interactive TV, computer network, telephone or satellite, or (3) rendered by multimedia hardware such as computer or computer-driven handheld devices.

(c) BMI may withdraw from this license the right to perform any musical work as to which a legal action has been brought or a claim made that BMI does not have the right to license the work or that the work infringes another work.

**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 any of them with respect to the performance of any musical works licensed under this Agreement. Such indemnity shall be limited to the musical works which are licensed by BMI at the time of LICENSEE's performance. 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. 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.

**6. 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, General 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.

**7. 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.

**8. 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.

**9. FEES**

(a) LICENSEE agrees to pay BMI license fees for each contract year of this Agreement as follows:

(i) If LICENSEE operates a facility primarily for in-patient treatment, the license fee based upon the per bed fee outlined in Category 1 of the License Fee Schedule.

(ii) If LICENSEE operates a facility primarily providing ambulatory care at a freestanding facility, the per facility license fee outlined in Category 2 of the License Fee Schedule.

| **2018 – 2019 LICENSE FEE SCHEDULE** | |
|---|---|
| **Category 1**<br>**Annual Fee Per Bed** | **Category 2**<br>**Annual Fee Per Facility** |
| **$4.77** | **$489.00** |

(b) LICENSEE agrees to pay to BMI for each contract year an estimated license fee as an advance of the actual license fee.

(c) For the first contract year, LICENSEE estimates that:

For Category 1 LICENSEEs, the highest number of beds licensed hereunder will be _____ and the estimated license fee (# of beds x $4.77) will be _____.

For Category 2 LICENSEEs, the number of facilities licensed hereunder will be _____ and the estimated license fee (# of facilities x $489.00) will be _____.

The total estimated license fee for your in-patient treatment or ambulatory care, or both, will be _____.

The annual fee for the first contract year is due within thirty (30) days of LICENSEE's signing this Agreement.

(d) Notwithstanding Paragraph 9(b), there shall be a minimum annual license fee of $489.

(e) The estimated license fee for all subsequent contract years will be the actual fee for the previous contract year and will be due and payable no later than 30 days after the beginning of each contract year.

(f) The license fees outlined in the License Fee Schedule and the minimum annual license fee outlined in Paragraph 9(c) for subsequent contract years will 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, rounded to the nearest dollar.

**10. REPORTING**

(a) At the same time as the payments outlined in Paragraph 9 are due, LICENSEE agrees to furnish BMI (on forms available from BMI) with a report, certified either by an officer or auditor, setting forth any information regarding the subject matter of this Agreement which BMI may reasonably require, including, without limitation:

(i) the highest number of beds for the year reported, including Subsidiaries (if applicable).

(ii) the name and address of each Subsidiary for which a fee is paid, and the highest number of beds of that Subsidiary.

(iii) the name and address of each ambulatory care facility.

(b) If, after processing the annual report, the actual 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 LICENSEE of an adjusted statement.

(c) If, after processing the annual report, the actual fee is less than the license fee already paid by LICENSEE to BMI for the contract year, BMI agrees to credit the difference between the actual and estimated license fees to LICENSEE's account, and if such adjustment occurs in the last contract year of the Agreement, BMI shall refund said sum to LICENSEE promptly.

(d) In the event that LICENSEE utilizes an independent programming provider, or otherwise maintains or has access to music use information, LICENSEE shall provide quarterly music use reports concerning the musical works performed at each Licensed Premises. Such music use reports shall identify each musical composition performed by the title, artist, composer/writer, publisher and record label, if reasonably available.

**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.

## SCHEDULE A

**Name and address of each Subsidiary in-patient treatment facility or ambulatory care facility for which a fee is paid and highest number of beds at each in-patient treatment facility.**

| SUBSIDIARY IN-PATIENT TREATMENT FACILITY / OR AMBULATORY CARE FACILITY DBA | ADDRESS | CITY | STATE | ZIP | HIGHEST # OF BEDS FOR THE REPORT YEAR. |
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**TOTAL AMBULATORY CARE FACILITIES** [ ]

ENTER TOTAL HERE AND ON PAGE 2 IN SPACE PROVIDED

**TOTAL BEDS** [ ]

ENTER TOTAL HERE AND ON PAGE 2 IN SPACE PROVIDED

## 15. 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.

## 16. 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 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, NY 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** | **36H** | **LI-2017/NOV** |
|---|---|---|
| | | **EFFECTIVE: May 2018** |
| **ACCOUNT NO.** | **COID** | |

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