Music License for Adult Entertainment Establishments

1. DEFINITIONS

(a) **LICENSEE** shall mean the entity identified on Page 4 herein that owns and/or operates the Licensed Premises.

(b) **Licensed Premises** shall mean the Adult Entertainment Establishment which is owned or operated by LICENSEE and which is identified on Page 4 herein, or, in the event of multiple locations, the Adult Entertainment Establishments identified on Schedule A which shall be attached hereto by LICENSEE.

(c) **Adult Entertainment Establishment** shall mean an establishment that provides adult entertainment such as, but not limited to, striptease, erotic, nude or semi-nude performances, and includes, but is not limited to, burlesque houses, gentlemen's clubs, strip clubs, go-go bars and similar establishments.

(d) **Jukebox** is a machine or device that (i) is employed solely for the performance of non-dramatic musical works by means of records, compact discs, mp3 files or other digital audio or video means upon being activated by insertion of coins, currency, tokens, or other monetary units or their equivalent; (ii) is located in an establishment making no direct or indirect charge for admission at the time of performance; (iii) is accompanied by a list which is comprised of the titles of all of the musical works available for performance on it, and is affixed to or otherwise appears on the phonorecord player, or is posted in the establishment in a prominent position where it can be readily examined by the public at the time of performance; and (iv) affords a choice of works available for performance and permits the choice to be made by the patrons of the establishment in which it is located at the time of performance (as distinguished from the establishment's employees or performers).

(e) **Outside Ticket Services** shall mean third-party services, such as, but not limited to, Ticketmaster, Ticketweb and Ticketron which distribute tickets to the public for events at the Licensed Premises.

(f) **Occupancy** shall mean the total maximum allowable occupancy loads/capacities for the entire premises of the Licensed Premises calculated under adopted building/fire codes, which shall not be limited to the number of available seats. If no such regulations are in effect in the applicable jurisdiction, then maximum occupancy shall be calculated as one (1) person for every twenty (20) square feet of the total Licensed Premises.

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; or (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, other than by means of a music-on-hold telephone system operated by LICENSEE at the Licensed Premises.

(b) This license does not authorize live concert performances at the Licensed Premises when tickets for such live concert performances can be purchased from or through Outside Ticket Services.

(c) This license does not authorize performances occurring outside the Licensed Premises, including, but not limited to, conventions, trade shows and third-party events.

(d) This license does not authorize performances at the Licensed Premises by means of a Jukebox that is licensed by the Jukebox License Office ("JLO") or via another BMI license. For the avoidance of doubt, neither the JLO license nor such other BMI license would authorize performances by means of a Jukebox that is activated by dancers or by LICENSEE's employees. In the event of Jukebox activation by LICENSEE's dancers or employees, this Adult Entertainment Establishment license would be necessary to authorize such performances.

(e) 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.

3. LATE PAYMENT CHARGE

BMI may impose a late payment charge of one and one-half percent (1½%) per month or the maximum rate permitted by law, whichever is less, 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. BMI shall impose a $25.00 service charge for each unpaid check, draft or other means of payment LICENSEE submits to BMI.

4. 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.

5. 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.

6. 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.

7. FEES

(a) In consideration of the license granted herein, LICENSEE agrees to pay BMI an Annual License Fee which is based on the Occupancy of Licensed Premises and is calculated as set forth in the License Fee Schedule below. In the event, that LICENSEE operates multiple Licensed Premises, LICENSEE shall submit to BMI annually a Schedule A, as described in Paragraph 1(b) which lists the address of each Licensed Premises and the Occupancy of each.

2018 – 2019 LICENSE FEE SCHEDULE

Fee Per Occupant	Minimum Annual License Fee
$12.60	**$967**

_____ X **$12.60** = _____

Occupancy ***(as defined in Paragraph 1[f])*** — ***Total Annual Fee*** ***(If less than $967, enter $967)***

If Occupancy cannot be established by local building/fire codes, use formula below:

_____ ÷ **20** = _____

Total Square Footage ***(entire Licensed Premises)*** — ***Occupancy*** ***(as defined in Paragraph 1[f])***

(b) LICENSEE shall pay the Annual License Fee for the initial Contract Year upon execution of this Agreement. The license fee payment for subsequent Contract Years shall be due no later than thirty (30) days after the anniversary date of this Agreement.

(c) If LICENSEE does not otherwise owe BMI any fees under this or any other BMI agreement, LICENSEE shall receive a 5% discount for any Contract Year in which LICENSEE's Annual License Fee is paid in full and in a timely manner in accordance with subparagraph (b) above (the "Timely Pay Discount"). LICENSEE shall receive an additional 5% discount for the initial Contract Year if LICENSEE completes the licensing process online and pays the Annual License Fee online at www.bmi.com (the "Online Payment Discount"). The 5% Online Payment Discount shall continue for each subsequent Contract Year for which LICENSEE pays its Annual License Fee online.

(d) For each subsequent Contract Year, the Fee Per Occupant and the Minimum Annual License Fee shall be an adjustment of the previous Contract Year rates based upon any percentage increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding February and the next preceding February. The Fee Per Occupant shall be rounded to the nearest five cents, and the Minimum Annual License Fee shall be rounded to the nearest dollar. BMI will advise LICENSEE in writing of the adjusted Per Occupant Fee and Minimum Annual License Fee as part of its annual billing process.

(e) In no event shall the Licensed Premise's Annual License Fee for any Contract Year be less than the Minimum Annual License Fee for that Contract Year. The Minimum Annual License Fee for the 2018–2019 Contract Year is $967 and shall be adjusted in subsequent Contract Years by the CPI-U, as explained in subsection (d) above.

(f) Occupancy is subject to adjustment prospectively under this Agreement by either LICENSEE or BMI. LICENSEE may notify BMI of a change in Occupancy at any time during the Term by calling a Customer Relations Executive at 1-800-925-8451 to notify BMI of a change in Occupancy, and the change will be reflected in LICENSEE's next billing by BMI; however, doing so will not preserve LICENSEE's right to dispute BMI billings unless LICENSEE sends BMI timely notice of an Occupancy change in writing along with appropriate documentation issued by local building/fire authority substantiating such change. Billings adjusted by BMI hereunder

will include a *pro rata* credit for any unearned license fees paid in advance. LICENSEE also agrees that any changes made to Occupancy hereunder shall constitute a true and accurate representation prospectively from the date of the change. Any changes in Occupancy are subject to verification by any and all reasonable means which may include, but shall not be limited to, independent contacts by BMI representatives with LICENSEE's business establishment, use of public records, advertisements and third party observations. From time to time BMI may review Occupancy. If BMI thereafter believes that LICENSEE is not paying proper license fees because the Occupancy would result in higher license fees, BMI will notify LICENSEE by mail. If LICENSEE agrees to BMI's assessment of Occupancy, the change will be reflected in the next billing. If LICENSEE disputes BMI's revised Occupancy, LICENSEE must notify BMI within thirty (30) days of the notification by BMI. If within ninety (90) days of such notification by BMI, LICENSEE does not respond or LICENSEE and BMI cannot agree upon an appropriate Occupancy, either party may commence an arbitration proceeding pursuant to Paragraph 6 to resolve the dispute over the amount of license fees. Such right shall be in addition to any and all other remedies BMI may have under the Agreement, including the right to cancel this Agreement.

8. SALE OF LICENSED PREMISES OR CLOSING OF BUSINESS

In the event that LICENSEE sells the Licensed Premises or closes the business during the Term of this Agreement, and LICENSEE sends BMI written notice by certified mail, by generally recognized same-day or overnight delivery service with receipt signature required, or via email to licensing@bmi.com within thirty (30) days of the sale or closing, BMI will adjust LICENSEE's fees *pro rata* from the date of sale or closing, and will refund to LICENSEE any unearned licensed fees paid hereunder. Any *pro rata* credit adjustment made hereunder shall not reduce LICENSEE's Annual License Fee below the Minimum Annual License Fee applicable under the Agreement.

9. 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.

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. 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.

12. OKLAHOMA RATE CHANGE NOTICE

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

13. 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.

14. CUSTOMER OUTREACH

LICENSEE agrees to accept from time to time pre-recorded telephone messages from BMI that may contain information regarding your account.

15. NOTICES

Unless otherwise stated herein, 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 designate to BMI in writing.

16. 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.

17. 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, 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** **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** / **ACL1** / **LI-2018/MAY**
***In order to receive a copy of your executed Agreement, please provide the email address of the Signatory**	**EFFECTIVE: August 2018**
	ACCOUNT NO. / **COID**

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