Music License for Motion Picture Theatres

AGREEMENT, made at New York, N.Y. on *(Date Will Be Entered by BMI Upon Execution)* _____ between BROADCAST MUSIC, INC. (hereinafter BMI), a State of Delaware 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 thereafter as LICENSEE:

ENTER LEGAL NAME _____

Name of Corporation, Partnership or Individual Owner

ENTER TRADE NAME _____

(Doing business under the name of)

CHECK APPROPRIATE BOX AND COMPLETE

☐ **Corporation** _____ (State of Incorporation)

☐ **Partnership** (Enter names of partners) _____ _____ _____

☐ **Individual Owner** (indicate residence address below under Mailing Address)

ADDRESS			**MAILING ADDRESS**		
Street Name			*Street Name*		
City	*State*	*Zip*	*City*	*State*	*Zip*
Telephone No.	*Contact Name*		*Telephone No.*	*Contact Name*	
Title			*Title*		

1. DEFINITIONS

(a) "Recorded background music" shall mean performances of recorded music, whether vocal or instrumental, designed to be used as an unobtrusive accompaniment to routine activities, including, but not limited to, work, conversation, dining and relaxation, as long as such music is not intended to accompany dancing or any other form of entertainment.

2. BMI GRANT

BMI hereby grants to LICENSEE, by means of recorded background music only, a non-exclusive license to perform, present or cause the performance at the licensed premises only all musical works of which BMI shall have the right to grant public performance licenses during the Term hereof. This license shall be limited to performances of music at the theatres either by the playing of records, pre-recorded tapes, or other mechanical devices or via the reception of broadcast audio transmissions on receiving apparatus and amplifications thereof for public performance, and such performances may be amplified only through loudspeakers located at the theatres. Said license shall be restricted to performance 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. 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) Performances of music during the course of live stage presentations at the theatres.

(d) This license does not authorize performances of music by means of a coin-operated phonorecord player (jukebox).

(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. TERM OF AGREEMENT

The initial Term of this Agreement shall begin on the first day of _____ and end on the last day of _____ and shall continue thereafter 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.

4. TERMINATION OF AGREEMENT BY LICENSEE

If LICENSEE shall cease to operate all of the licensed premises during the Term hereof, whether by reason of the sale or lease of the premises 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 the 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 date. The fees 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 number of screens then owned or operated by LICENSEE times the appropriate Class 1 (A or B) fee indicated on the LICENSE FEE SCHEDULE.

5. REPORT REQUIREMENTS

(a) At the same time that LICENSEE pays its license fee hereunder for the second and subsequent contract years, LICENSEE shall submit a completely revised Theatre Complex Schedule, listing by name and address all of LICENSEE's theatre complexes embrace by this Agreement as of the end of the previous contract year, indicating the number of screens and the seating or automobile capacity at each. For purposes of calculating the correct license fee payment, all additions and deletions of screens shall be deemed to be effective on the first day of the contract year following the contract year in which they occurred, and each annual payment shall reflect those additions and deletions which occurred during the previous contract year. The license granted hereunder shall be deemed to extend to each addition to the Theatre Complex Schedule provided for herein as of the day on which recorded music is first performed at such location, as long as payment for and reporting of that location is made as required herein.

(b) In the event that LICENSEE fails to submit an updated Theatre Complex Schedule pursuant to Paragraph 5(a) and BMI subsequently is made aware of a current change of Class for any complex or of any unreported additional screens, BMI shall have the option, in lieu of its right of cancellation pursuant to Paragraph 9, 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 as if LICENSEE had reported such changes or additions. LICENSEE shall have thirty (30) days from the date of BMI's notice to submit the missing schedule. If such schedule is not received by BMI by the end of said 30-day period, LICENSEE agrees to waive its right to submit such past due schedule thereafter and authorizes BMI to deem the adjusted fee as being accurate.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

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 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 notices 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 hereinabove 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. 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.

14. 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.

15. FEES

(a) LICENSEE agrees to pay BMI an annual fee based upon the LICENSE FEE SCHEDULE on page 3 hereof. The first year's fee shall be payable in full upon the signing of this Agreement.

(b) The amount of the per screen license fee(s) for the second and subsequent contract years of this Agreement shall be an adjustment of the first year's per screen fee(s) based upon the report requirements of Paragraph 5 and the percentage increase or decrease in the United States Consumer Price Index (National, All Items) between September 2018 and September of the year preceding the anniversary date of this Agreement. BMI will advise LICENSEE in writing of the amount of each new fee. The total of all fees shall be paid in full no later than ten (10) days following the beginning of each contract year.

(c) LICENSEE warrants and represents that, as of the date of this Agreement, it owns and/or operates all of the theatre complexes listed on the Theatre Complex Schedule herein and has accurately indicated the total seating or automobile capacity of each.

LICENSE FEE SCHEDULE

(FILL IN APPLICABLE CLASS AND FEE UNDER **FEE COMPUTATION**)

ENCLOSED THEATRE COMPLEX			DRIVE-IN THEATRE COMPLEX		
Class	Average Complex Seating Capacity Per Screen	First Year's Fee Per Screen	Class	Average Complex Seating Capacity Per Screen	First Year's Fee Per Screen
1A	Under 150	$32.97	1B	Under 150	$65.93
2A	150 - 299	$43.97	2B	150 - 299	$87.91
3A	300 - 599	$76.91	3B	300 - 449	$153.84
4A	600 - 899	$109.87	4B	450 - 599	$220.16
5A	900 & Over	$164.80	5B	600 & Over	$329.61

THERE SHALL BE A TOTAL MINIMUM FEE OF $164.80

FEE COMPUTATION

Using the totals from the THEATRE COMPLEX SCHEDULE (page 4) and the appropriate Class and Fee from the LICENSE FEE SCHEDULE (page 3) calculate the following:

	PER SCREEN			TOTALS	
	From THEATRE COMPLEX SCHEDULE	**From LICENSE FEE SCHEDULE**		**From THEATRE COMPLEX SCHEDULE**	**From FIRST YEAR'S FEE**
ALL ENCLOSED COMPLEXES	BOX A (average complex seating capacity)	CLASS / FEE $	X	(ENTER GRAND TOTAL ENCLOSED SCREENS NUMBER)	= $
				ADD	
ALL DRIVE-IN COMPLEXES	BOX B (average complex auto capacity)	CLASS / FEE $	X	(ENTER GRAND TOTAL DRIVE-IN SCREENS NUMBER)	= $
				TOTAL	

The **Total First Year's Fee** for both Enclosed and Drive-In Complexes is…… which shall be **payable in full upon the signing of this Agreement**.

DO NOT ENTER LESS THAN $164.80

TO BE COMPLETED BY LICENSEE

By signing this Agreement you agree that the foregoing is a true and accurate representation of your Music Policy.

I have read and have understood all of the terms and conditions herein and my signature below is evidence of this.

(SIGN HERE - PLEASE INCLUDE PAYMENT)

Signature

Print Name / Title

FOR ADMINISTRATIVE USE ONLY

TO BE COMPLETED BY BMI

BROADCAST MUSIC, INC.

FOR BMI USE ONLY		41	LI-2018/NOV
			EFFECTIVE: January 2019
Account No.	COID		

THEATRE COMPLEX SCHEDULE

		ENCLOSED COMPLEXES		DRIVE-IN COMPLEXES	
NAME OF COMPLEX	ADDRESS, CITY, STATE, OF COMPLEX	TOTAL SEATING CAPACITY EACH COMPLEX	TOTAL NO. OF SCREENS EACH COMPLEX	TOTAL AUTOMOBILE CAPACITY EACH COMPLEX	TOTAL NO. OF SCREENS EACH COMPLEX

Seating Capacity Total This Page	Enclosed Screens Total This Page	Auto Capacity Total This Page	Drive-In Screens Total This Page
Seating Capacity Total Other Pages	Enclosed Screens Total Other Pages	Auto Capacity Total Other Page	Drive-In Screens Total Other Page
Grand Total Seating Capacity	Grand Total Enclosed Screens	Grand Total Auto Capacity	Grand Total Drive-In Screens
DIVIDE THE NUMBER IN GRAND TOTAL SEATING CAPACITY BY THE NUMBER IN GRAND TOTAL ENCLOSED SCREENS AND ENTER BELOW:		DIVIDE THE NUMBER IN GRAND TOTAL AUTO CAPACITY BY THE NUMBER IN GRAND TOTAL DRIVE-IN SCREENS AND ENTER BELOW:	
AVERAGE COMPLEX SEATING CAPACITY		AVERAGE COMPLEX AUTO CAPACITY	
ALSO ENTER IN BOX "A" UNDER FEE COMPUTATION ON PAGE 3.		ALSO ENTER IN BOX "B" UNDER FEE COMPUTATION ON PAGE 3.	

TOTAL NUMBER OF COMPLEXES LISTED ON ALL PAGES

USE ADDITIONAL SHEETS IF MORE ROOM IS NEEDED BUT TOTAL ALL PAGES HERE ▸