Music License for Video Music Service

1. DEFINITIONS

(a) **LICENSEE** is the entity identified on Page 4 which is engaged in the business of operating a subscription Video Music Service which it offers to subscribers pursuant to written agreements, and such subscribers operate individual places of entertainment, resort, residential common public areas, business, industry and/or others which are not under LICENSEE's direct or indirect ownership or control.

(b) **Video Music Service** shall mean and be limited to non-dramatic performances of recorded music as part of music videos provided by LICENSEE on video tape, DVD or like medium to premises either by terrestrial delivery of such video tapes or by closed circuit satellite transmission.

(c) **Music Video** shall mean a video tape, DVD or like medium produced by LICENSEE or according to LICENSEE's specifications and which may include advertising messages and information in addition to music ("advertisements").

(d) **Serviced Premises** shall mean a premise which subscribes to LICENSEE's Video Music Service, either directly or indirectly. Serviced Premises shall not under any circumstances include:

(i) any premises where food and/or drink is provided and which is not self-service or which serves alcoholic beverages (including wine or beer);
(ii) any premises to which a direct or indirect admission fee is charged; or
(iii) any premises where the Video Music Service is offered as an accompaniment to dancing, aerobics or other similar physical exercise or entertainment.

2. BMI GRANT

(a) BMI hereby grants to LICENSEE a non-exclusive license to perform publicly and to cause or permit to be performed publicly, by means of LICENSEE's Video Music Services at one or more Serviced Premises, all the separate musical compositions of which BMI shall, during the Term hereof, own or control the right to grant public performance licenses. LICENSEE's performances shall be audible only within the Serviced Premises supplied by LICENSEE. In no event shall this license extend to any other type of performances whatsoever or to any cable television system or cable radio system or to transmission by any radio or television station to a place other than on LICENSEE's Serviced Premises. Nothing contained herein shall be interpreted or construed as the consent of BMI to the performance of any musical composition except to LICENSEE's Serviced Premises. BMI shall not collect or demand separate license fees from LICENSEE's Serviced Premises for the providing by LICENSEE of Video Music Services which are licensed hereunder.

(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, and the proprietors of the Serviced Premises supplied by LICENSEE, 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. Such indemnity shall not apply to performances at the Serviced Premises of LICENSEE after LICENSEE's receipt of written request by BMI (which request shall be made at the earliest practicable time) that the Serviced Premises refrain from such 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, either against it or against any Serviced Premises supplied by it, to deliver to BMI any papers pertaining thereto, and to cooperate and to make a good-faith effort to cause the Serviced Premises to cooperate with respect thereto, and BMI shall have full charge of the defense of any such claim, demand or suit. LICENSEE, however, shall have the right to engage counsel, at its own expense, who may participate in the defense of any such action or proceeding and with whom counsel for BMI shall cooperate.

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. 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.

6. DISCONTINUANCE

In the event that LICENSEE ceases to provide its Video Music Service to a Serviced Premises for which it had been paying BMI a license fee hereunder, LICENSEE shall use its best efforts to promptly remove any of LICENSEE's program content materials to prevent unauthorized public performances of BMI-licensed music through use of LICENSEE's Video Music Service by said premises thereafter.

7. 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.

8. FEES

(a) Subject to subparagraphs (b) and (c) below, LICENSEE agrees to pay BMI an annual license fee for each Serviced Premise(s) which receives Music Videos (with or without advertising) as follows: (i) for calendar year 2019, an annual license fee of $96.30 per Serviced Premises; (ii) for each calendar year commencing 2020, the annual license fee per Serviced Premise(s) shall be the prior year's per Serviced Premise(s) fee adjusted for the percentage increase in the United States Consumer Price Index (Urban, All Items) between the preceding July and the July prior thereto.

(b) Notwithstanding anything to the contrary in subparagraph (a) above, LICENSEE's annual license fee for 2019 shall not be less than the sum of $4,333.26. For each subsequent calendar year commencing 2020, the annual minimum license fee shall be adjusted by the CPI, as described in subparagraph (a)(ii) above.

(c) LICENSEE shall attach to this Agreement a list of locations identifying the legal name, trade name and address of each premises using the Video Music Service, whether or not the premises is a Serviced Premises. LICENSEE shall specify for each such premises the following:

(i) the Video Music Service is with or without advertisements;
(ii) food and/or drink is provided and, if so, which are not self-service or which serve alcoholic beverages (including wine or beer);
(iii) a direct or indirect admission fee is charged; or
(iv) the Video Music Service is offered as an accompaniment to dancing, aerobics or other similar physical exercise or entertainment.

9. REPORTING

(a) LICENSEE shall submit to BMI a monthly report (on a form to be supplied by BMI) containing a list of all additions or deletions to its initial list in the same form and containing the same information as set forth in Paragraph 8(c) above. In addition, such monthly reports shall contain the dates on which the additions or deletions took place, the total number of Serviced Premises licensed during such month and the total fees due for such month.

(b) Serviced Premises shall be added to the monthly reports if such premises become serviced by LICENSEE on or after the first day of such month but before the sixteenth day of the month, and shall be deleted if LICENSEE ceases servicing the premises between the sixteenth day of the month and the last day of the month. The full fee shall be paid for those premises added to the report on or before the fifteenth day or cancelled before the sixteenth day.

(c) The monthly reports shall be submitted by the twentieth (20th) day of the month following the month for which the report is due, and LICENSEE shall pay, with each such monthly report, the license fee due for the month of the report.

(d) LICENSEE agrees to provide BMI, at the same time that it pays license fees pursuant to Paragraph 8 hereof, with reports of musical compositions as follows:

(i) At such time as LICENSEE makes its first payment pursuant to this Agreement, LICENSEE shall provide BMI with an initial list of all records and tapes which were available to its Serviced Premises during the previous month, indicating such recordings/tapes by name and/or number, whichever methods are used by LICENSEE to identify such recordings. With respect to each such record and tape, LICENSEE shall list each musical composition contained thereon, giving the title of the composition and the writer and publisher to the extent indicated on the source material (record, tape, sheet music, etc.) of such work. Further monthly reports required hereunder shall be in the form of updates to said initial list by listing any record or tape added since the last list supplied to BMI, with title, writer and publisher information, as well as an indication of any recordings on a previous list which have been modified (such as compositions added or deleted) or discontinued. In the event that BMI makes a written request therefore, LICENSEE agrees to provide BMI with a copy of one of the recordings/tapes which LICENSEE then supplies as part of its Video Music Service, but LICENSEE need not provide a recording/tape to BMI more than once per month. However, if at any time during the Term, LICENSEE offers to its Serviced Premises a recording/tape which contains a new format in the way music is used on the recording/tape or in the way the recording/tape is produced, then LICENSEE shall provide a copy such newly formatted recording/tape to BMI within thirty (30) days of the date it is first offered to a Serviced Premises. Also, LICENSEE shall provide BMI with the average number of Serviced Premises which were supplied with each record or tape during the previous quarter.

10. REVIEW OF STATEMENTS AND/OR ACCOUNTINGS

(a) BMI shall have the right by its authorized representatives, at any time during customary business hours and upon no less than thirty (30) days' advance written notice, to examine the books and records of account of LICENSEE to such extent as may be necessary to verify any and all statements rendered and accountings made hereunder. LICENSEE shall give BMI's auditor full access to all relevant records of LICENSEE, including names and addresses of, and any other pertinent information concerning, the subscribers of LICENSEE. BMI shall consider all data and information coming to its attention as the result of any such examination as confidential.

(b) BMI shall not audit more than once in any twelve (12) month period unless an audit reveals a deficiency of more than ten percent (10%) between the amount paid by LICENSEE and the amount actually found to be due BMI for the audited period, in which case BMI may conduct an additional audit during the said twelve-month period.

(c) If any audit conducted by BMI reveals a deficiency of more than ten percent (10%) between the amount paid by LICENSEE and the amount actually found to be due BMI for the audited period, LICENSEE shall pay, in addition to the sum additionally due, interest at the rate of one and one-half percent (1 1/2%) per month from the date the payment was due. If any such deficiency is more than twenty-five percent (25%), LICENSEE shall additionally pay a surcharge of fifteen percent (15%) of that total amount remaining due to BMI.

(d) All information provided to BMI by LICENSEE pursuant to Paragraphs 4 and 5 shall be deemed confidential and BMI shall not disclose such information to any third party. LICENSEE shall mark all such submissions "CONFIDENTIAL."

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. 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.

13. 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.

14. 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 to the party for whom it is intended, at its address hereinabove stated, or any other address which either party hereto may from time to time designate for such purpose, and when such notice is so mailed, it shall be deemed given upon the mailing thereof. Any such notice sent to BMI shall be to the person signing this Agreement on behalf of LICENSEE or such other person as LICENSEE may advise BMI in writing.

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. OKLAHOMA RATE CHANGE NOTICE

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

17. 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.

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

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)*	
***In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.**	

FOR BMI USE ONLY	**VMS1**	**LI-2018/SEPT**
		EFFECTIVE: January 2019
ACCOUNT NO.	**COID**	

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