Music License for Passenger Train(s)

1. DEFINITIONS

(a) **"Music Programming"** shall mean the audio-only music content offered by LICENSEE which is delivered by satellite, pre-recorded tapes or other forms of recordation capable of audio performance for use only while Serviced Passenger Train(s) are en route, while passengers are boarding and disembarking from Serviced Passenger Train(s) or while passengers are seated when Serviced Passenger Train(s) are stationary.

(b) **"Audio-Visual Programming"** shall mean the audio-visual content offered by LICENSEE which is delivered by satellite, pre-recorded tapes or other forms of recordation capable of audio-visual performance for use only while Serviced Passenger Train(s) are en route, while passengers are boarding and disembarking from Serviced Passenger Train(s) or while passengers are seated when Serviced Passenger Train(s) are stationary.

(c) **"Serviced Passenger Train(s)"** shall mean each of passenger train company's passenger train(s) or other type of train utilizing Music Programming and/or Audio Visual Programming.

(d) **"Seating Capacity"** of a Passenger Train(s) shall mean the total number of passenger seats available for sale.

2. BMI GRANT

(a) BMI hereby grants to LICENSEE for the Term of this Agreement a non-exclusive license to perform publicly in Serviced Passenger Train(s) as part of its Music Programming and/or Audio-Visual Programming all of the musical works for which BMI controls the right to grant public performance licenses during the Term (the "Works"). This license extends to Music Programming and/or Audio-Visual Programming utilized by LICENSEE while Serviced Passenger Train(s) are en route and while passengers are boarding and disembarking from Serviced Passenger Train(s) or are seated when Serviced Passenger Train(s) are stationary. This license shall only apply to domestic routes in the United States, its territories and possessions, and to international routes originating or terminating in the United States, its territories and possessions, to the extent that BMI may have the right to license such performances outside of the United States.

(b) Notwithstanding anything to the contrary contained herein, this license shall not include or extend to: (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) performances associated with advertising or commercial announcements of any kind or nature, except only announcements relating to the passenger train transportation and related services of LICENSEE and to the companies whose recordings are utilized in the music service; (iii) performances of the Works within any terminal buildings. This license shall extend only to the right of public performance (in the manner provided herein) of the Works and shall not be construed as authorizing LICENSEE to mechanically reproduce such Works by any method or means now or hereafter known.

(c) BMI reserves the right to withdraw from the license granted hereunder any 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. FEES

(a) LICENSEE agrees to pay BMI for each Serviced Passenger Train(s) for each month of the Term hereof the applicable license fee(s) computed as follows:

MONTHLY LICENSE FEE SCHEDULE PER SERVICED PASSENGER TRAIN(S)

CATEGORY A		**CATEGORY B**		**CATEGORY C**	
Music Programming		**Audio-Visual Programming (paid in addition to Category A)**		**Music Programming Boarding or Disembarking Only**	
Seats	**Fee**	**Seats**	**Fee**	**Seats**	**Fee**
100 or less	$36.68	100 or less	$5.67	100 or less	$ 9.17
101-200	$51.91	101-200	$8.82	101-200	$12.00
201-300	$72.11	201-300	$10.55	201-300	$18.04
300+	$98.86	300+	$13.34	300+	$27.18

(i) For each Serviced Passenger Train(s) that utilizes Music Programming, LICENSEE shall pay a monthly license fee as set forth in Category A on the License Fee Schedule above.

(ii) For each Serviced Passenger Train(s) that utilizes Audio-Visual Programming in addition to Music Programming, LICENSEE shall pay a monthly license fee as set forth in Category B, in addition to the fees set forth in Category A in the License Fee Schedule above.

(iii) For each Serviced Passenger Train(s) that utilizes Music Programming during boarding or disembarking **only**, LICENSEE shall pay a monthly license fee as set forth in Category C on the License Fee Schedule above.

(b) Subject to Subparagraph 5 (a) and (d) and Paragraph 6, LICENSEE agrees to pay to BMI for each month of the Term an estimated license fee as an advance of the actual fee. Such monthly estimated license fee shall be based upon LICENSEE's prior month's number of Serviced Passenger Train(s). The first license fee payment shall be made upon the signing of this Agreement. Each payment thereafter shall be made no later than twenty (20) days after the first day of the month for which the fee is due.

(c) BMI and LICENSEE acknowledge and agree that no fees will be due for any Serviced Passenger Train(s) during any period exceeding one (1) month during which such Serviced Passenger Train(s) are not in revenue service (e.g. while such Serviced Passenger Train(s) are being repaired or serviced).

(d) For each subsequent Contract Year of this Agreement, the license fees outlined in the License Fee Schedule in Paragraph 5(a) shall be adjusted in accordance with the increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding July and the next preceding July.

6. REPORTING

(a) At the same time as the license fee payments required by Paragraph 5 hereof are due, LICENSEE shall submit to BMI a monthly report, on report forms to be provided by BMI, certified either by an officer or by the auditor of LICENSEE, calculating the license fees due. The report form may also contain any other information regarding the subject matter of this Agreement which BMI reasonably requires.

(b) If, after processing the monthly report, the actual license fee due BMI is less than the estimated license fee already paid for such month, BMI will credit the difference to the account of LICENSEE.

(c) If, after processing the monthly report, the actual license fee due BMI is greater than the estimated license fee already paid for such month, LICENSEE will pay the difference between the actual and estimated license fee within thirty (30) days of receipt of BMI's adjusted statement.

7. MUSIC REPORTS

At the same time that each report required by Paragraph 6 hereof is due, LICENSEE agrees to provide BMI with (a) a report (electronically, if possible) of all Works utilized in the Music Programming and Audio-Visual Programming during the month reported, setting forth the title and, to the extent known or reasonably available to LICENSEE, the writer(s) and publisher(s) of each such composition, and (b) a copy of the music program(s) utilized by LICENSEE for the month covered by such report.

8. 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.

9. 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 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. OKLAHOMA RATE CHANGE NOTICE

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

16. 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.

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 Term of this Agreement is for a period of three (3) years beginning on the first day of (*month/year*) _____ and ending on the last day of (*month/year*) _____, and shall be extended for additional periods of one (1) year each, unless canceled by either party as of the initial Contract Year or any additional Contract Year upon not less than sixty (60) days notice prior to the end of any such Contract Year. A "Contract Year" shall mean each consecutive twelve-month period beginning with the first month of the Agreement.

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	**PTR1**	**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