BMI® Music Performance Agreement

LOCAL GOVERNMENTAL ENTITIES

LGE

LI-07/12-LGE

1. DEFINITIONS

(a) **LICENSEE** shall include the named entity and any of its constituent bodies, departments, agencies or leagues.

(b) **Premises** means buildings, hospitals, airports, zoos, museums, athletic facilities, and recreational facilities, including, but not limited to, community centers, parks, swimming pools, and skating rinks owned and/or operated by LICENSEE and any site which has been engaged by LICENSEE for use by LICENSEE.

(c) **Recorded Music** means music which is performed at the Premises by means other than by live musicians who are performing at the Premises, including, but not limited to (1) compact disc, audio record or audio tape players (but not including "jukeboxes"); (2) videotape, videodisc or DVD players; (3) music performed as an accompaniment to karaoke; (4) the reception and communication at the premises of radio or television transmissions which originate outside the Premises, and which are not exempt under the Copyright Law; or (5) a music-on-hold telephone system operated by LICENSEE at the Premises.

(d) **Live Entertainment** means music that is performed at the Premises by musicians, singers and/or other performers.

(e) **BMI Repertoire** means all copyrighted musical compositions written and/or published by BMI affiliates or members of BMI-affiliated foreign performing rights societies, including compositions written or published during the Term of this Agreement and of which BMI has the right to license non-dramatic public performances.

(f) **Events and Functions** means any activity conducted, sponsored, or presented by or under the auspices of LICENSEE. Except as set forth in Paragraph 2 (d) below, "Events" and "Functions" shall include, but are not limited to, aerobics and exercise classes, athletic events, dances and other social events, concerts, festivals, arts and crafts fairs, and parades held under the auspices of, or sponsored or promoted by, LICENSEE on the Premises.

(g) **Special Events** means musical events, concerts, shows, pageants, sporting events, festivals, competitions, and other events of limited duration presented by LICENSEE for which the "Gross Revenue" (as defined in Schedule B) of such Special Event exceeds $25,000.

2. BMI GRANT

(a) BMI grants and LICENSEE accepts a non-exclusive license to perform, present or cause the live and/or recorded public performance on the "Premises" and at "Events" and "Functions", and not elsewhere or otherwise, non-dramatic renditions of the separate musical compositions in the "BMI Repertoire". The performances licensed under this Agreement may be by means of "Live Entertainment" or "Recorded Music".

(b) This license does not authorize (1) the broadcasting, telecasting or transmission or retransmission by wire, Internet, website or otherwise, of renditions of musical compositions in BMI's Repertoire to persons outside of the Premises, other than by means of a music-on-hold telephone system operated by LICENSEE at the Premises; and (2) performances by means of background music (such as *Muzak*) or other services delivered to the Premises. Nothing in this Paragraph shall be deemed to limit LICENSEE's right to transmit renditions of musical compositions in the BMI Repertoire to those who attend Events or Functions on the Premises by means of teleconferencing, videoconferencing or similar technology.

(c) This license is limited to non-dramatic performances, and does not authorize any dramatic performances. For purposes of this Agreement, a dramatic performance shall include, but not be limited to, the following: (1) performance of a "dramatico-musical work" (as hereinafter defined) in its entirety; (2) performance of one or more musical compositions from a "dramatico-musical work" (as hereinafter defined) accompanied by dialogue, pantomime, dance, stage action, or visual representation of the work from which the music is taken; (3) performance of one or more musical compositions as part of a story or plot, whether accompanied or unaccompanied by dialogue, pantomime, dance, stage action, or visual representation; and (4) performance of a concert version of a "dramatico-musical work" (as hereinafter defined). The term "dramatico-musical work" as used in the Agreement, shall include, but not be limited to, a musical comedy, opera, play with music, revue, or ballet.

(d) This license does not authorize performances: (1) at any convention, exposition, trade show, conference, congress, industrial show or similar activity presented by LICENSEE or on the Premises unless it is presented or sponsored solely by and under the auspices of LICENSEE, is presented entirely on LICENSEE's Premises, and is not open to the general public; (2) by or at colleges and universities; (3) at any professional sports events or game played on the Premises; (4) at any permanently situated theme or amusement park owned or operated by LICENSEE; (5) by any symphony or community orchestra; and (6) by means of a coin operated jukebox.

3. REVIEW OF STATEMENTS AND / OR ACCOUNTINGS

(a) BMI shall have the right to require such reasonable data necessary in order to ascertain the Annual License Fee.

(b) BMI shall have the right, 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. BMI shall consider all data and information coming to its attention as a result of any such examination of books and records as completely confidential.

(c) BMI shall have the right to adjust LICENSEE's Annual License Fee based upon the most recently available revised population figures provided by the U. S. Census Department.

4. LATE PAYMENT AND SERVICE CHARGES
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 payment is due on any payment that is received by BMI more than thirty (30) days after the due date. BMI may impose a $25.00 service charge for each unpaid check, draft or other means of payment LICENSEE submits to BMI.

5. BMI COMMITMENT TO CUSTOMER / INDEMNITY
So long as LICENSEE is not in default or breach of this Agreement, BMI agrees to indemnify, save harmless, and defend LICENSEE and its officers, and employees, from and against any and all claims, demands, or suits that may be made or brought against them with respect to the performance of any musical works which is licensed under this Agreement at the time of performance. 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.

6. BREACH OR DEFAULT / WAIVER
Upon any breach or default of the terms and conditions contained herein, BMI shall have the right to cancel this Agreement if such breach or default continues for thirty (30) days after LICENSEE's receipt of written notice thereof. The right to cancel granted to BMI 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 deemed a waiver of the right to require full and complete performance of this Agreement thereafter or of the right to cancel this Agreement with the terms of this Paragraph.

7. CANCELLATION OF ENTIRE CATEGORY
BMI shall have the right to cancel the 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. ASSIGNMENT
This license is not assignable or transferable by operation of law or otherwise. This license does not authorize LICENSEE to grant to others any right to perform publicly in any manner any of the musical compositions licensed under this Agreement, nor does it authorize any public performances at any of the Premises in any manner except as expressly herein provided.

9. ARBITRATION
All disputes of any kind, nature, or description arising in connection with the terms and conditions of this Agreement, except for matters within 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) 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 not need 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.

10. NOTICES
Any notice 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 stated, or any other address which either party may designate. Any such notice sent to BMI shall be to the attention of the Vice President, General Licensing Department at 10 Music Square East, Nashville, TN 37203. Any such notice sent to LICENSEE shall be to the attention of the person signing the Agreement on LICENSEE's behalf or such person as LICENSEE may advise BMI in writing.

11. MISCELLANEOUS
The fact that any provisions are found by a court of competent jurisdiction to be void or unenforceable will not affect the validity or enforceability of any other provisions. This Agreement constitutes the entire understanding between the parties and cannot be waived or added to or modified orally and no waiver, addition and modification shall be valid unless in writing and signed by both parties.

12. FEES
(a) In consideration of the license granted herein, LICENSEE agrees to pay BMI a license fee which includes the total of the "Base License Fee" and any applicable "Special Events License Fees", all of which shall be calculated in accordance with the Rate Schedule on Page 3. For purposes of this Agreement,
   (i) "Base License Fee" means the annual fee due in accordance with Schedule A of the Rate Schedule and based on LICENSEE's population as established in the most recent published U.S. Census data. It does not include any fees due for Special Events.
   (ii) "Special Events License Fees" means the amount due in accordance with Schedule B of the Rate Schedule when Special Events are presented by or on behalf of LICENSEE. It does not include any Base License Fee due.
   (iii) LICENSEES who are legally organized as state municipal and/or county leagues or state associations of municipal and/or county attorneys shall be required to pay only the fee under the Schedule C of the Rate Schedule. Such leagues or associations are not subject to Schedule A or Schedule B of the Rate Schedule. Fees paid by such leagues or associations do not cover performances of the municipality, county, or other local government entity represented by the league or association. Schedule C fees are not applicable to municipal, county or other government entities.

2008 RATE SCHEDULE FOR LOCAL GOVERNMENTS

SCHEDULE A			
Check Population Range (√)	**LICENSEE's Population**	**Base License Fee**	**Enter Fee Based Upon Population**
☐	1 - 50,000	$294	
☐	50,001 - 75,000	$587	
☐	75,001 - 100,000	$705	
☐	100,001 - 125,000	$941	
☐	125,001 - 150,000	$1,176	
☐	150,001 - 200,000	$1,528	
☐	200,001 - 250,000	$1,880	
☐	250,001 - 300,000	$2,235	
☐	300,001 - 350,000	$2,587	
☐	350,001 - 400,000	$2,941	
☐	400,001 - 450,000	$3,293	
☐	450,001 - 500,000	$3,647	
☐	500,001 - plus	$4,469 plus $500 for every 100,000 population increment or portion thereof above 500,000 up to a maximum annual fee of $58,798	
	If 500,001 or more, enter population _____		
		SCHEDULE A FEE	**$**

SCHEDULE B Special Events Fee (to be reported 90 days after each event*, see Par. 13(d))	
The rate for Special Events shall be 1% of Gross Revenue.	
▪ "**Special Events**" means musical events, concerts, shows, pageants, sporting events, festivals, competitions, and other events of limited duration presented by LICENSEE for which the "Gross Revenue" of such Special Events exceeds $25,000.	
▪ "**Gross Revenue**" means all monies received by LICENSEE or on LICENSEE's behalf from the sale of tickets for each Special Event. If there are no monies from the sale of tickets, "Gross Revenue" shall mean contributions from the sponsors or other payments received by LICENSEE for each Special Event.	
SCHEDULE B FEE	***BMI will provide a report form to report your events****

SCHEDULE C State Municipal and/or County Leagues or State Associations of Attorneys (to be completed if you are a State Municipal and/or County Leagues or State Associations of Attorneys)	
The annual license fee for LICENSEES who are legally organized as state municipal and/or county leagues, or state associations of municipal and/or county attorneys shall be **$294.00**. No Special Events fee applies to LICENSEES qualifying under this schedule.	
SCHEDULE C FEE	**$**

13. REPORTING

(a) Upon the execution of this Agreement, LICENSEE shall submit:
   (i) a report stating LICENSEE's population based on the most recent published U.S. Census data. The population set forth in the report shall be used to calculate the Base License Fee under this Agreement; and
   (ii) a report containing the information set forth in Paragraph 13 (d) below for all Special Events that were presented between the effective date of this Agreement and the execution of this Agreement.

(b) The Base License Fee for the first year of this Agreement and any license fees due for Special Events that were presented between the effective date of this Agreement and the execution of this Agreement shall be payable upon the execution of this Agreement.

(c) Base License Fees for subsequent years shall be due and payable within 30 days of the renewal date of this Agreement and shall be accompanied by a statement confirming whether any Special Events were presented during the previous calendar year.

(d) Ninety (90) days after the conclusion of each Special Event, LICENSEE shall submit to BMI payment for such Special Event and a report in printed or computer readable form stating:
   (i) the date presented;
   (ii) the name of the attraction(s) appearing;
   (iii) the "Gross Revenue" of the event (as defined above);
   (iv) the license fee due for each Special Event.

(e) If LICENSEE presents, sponsors or promotes a Special Event that is reportable under Rate Schedule B with another person or entity licensed under a BMI License Agreement, LICENSEE shall indicate the name, address, phone number and BMI account number of the other person(s) or entity(ies) and the party responsible for payment for such Special Event. If the other party is not licensed by BMI, LICENSEE shall pay the license fee due hereunder, notwithstanding any agreement to the contrary between LICENSEE and the other party.

(f) LICENSEE agrees to furnish to BMI, where available, copies of all programs of musical works performed, which are prepared for distribution to the audience or for the use or information of LICENSEE or any department thereof. The programs shall include all encores to the extent possible. LICENSEE shall be under no obligation to furnish programs when they have not been otherwise prepared.

14. RATE ADJUSTMENTS / LICENSE FEE FOR YEAR 2008 AND THEREAFTER

For each calendar year commencing 2009, all dollar figures set forth in Schedules A, B and C (except the $500 add-on for populations of 500,001 or more) shall be the license fee for the preceding calendar year, adjusted in accordance with the increase in the Consumer Price Index – All Urban Consumers (CPI-U)) between the preceding October and the next preceding October, rounded to the nearest dollar. Any additional license fees due resulting from the CPI adjustment shall be payable upon billing by BMI.

15. TERM OF AGREEMENT

This Agreement shall be for an initial Term of one (1) year, commencing _____ , which shall be considered the effective date of this Agreement, and continuing thereafter for additional terms of one (1) year each. Either party may give notice of termination to the other no later than thirty (30) days prior to the end of the initial or any renewal term. If such notice is given, the Agreement shall terminate on the last day of the Term in which notice is given.

AGREEMENT

AGREEMENT, made at New York, N.Y. on *(Date will be entered by BMI upon execution)* _____ between BROADCAST MUSIC, INC., a State of New York corporation with its principal offices at 320 West 57th Street, New York, N.Y. 10019 (hereinafter "BMI") and the legal or trade name described below and referred to thereafter as "LICENSEE" (the "Agreement"). This Agreement includes all of the terms and conditions set forth herein.

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

ENTER LEGAL NAME:

_____
(Name of Corporation, Partnership, or Individual Owner)

ENTER TRADE NAME:

_____
(Doing business under the name of)

CHECK APPROPRIATE BOX AND COMPLETE

☐ Individual Ownership

☐ LLC ☐ Corporation _____
(State of Incorporation, if different from Licensed Premises)

☐ LLP ☐ Partnership _____
(Enter names of partners)

☐ Other _____

Fed Tax ID # _____

LICENSED PREMISES

(Street Address) _____

(City) _____ *(State)* _____ *(Zip)* _____

(Telephone Number) _____ *(Fax Number)* _____

(Contact Name) _____ *(Title)* _____

(Email Address) _____ *(Web Address)* _____

MAILING ADDRESS
(If different from Licensed Premises)

(Street Address) _____

(City) _____ *(State)* _____ *(Zip)* _____

(Telephone Number) _____ *(Fax Number)* _____

(Contact Name) _____ *(Title)* _____

(Email Address) _____

TO BE COMPLETED BY AN AUTHORIZED REPRESENTATIVE OF LICENSEE

_____
Signature

_____
Print Name / Title

FOR ADMINISTRATIVE USE ONLY
TO BE COMPLETED BY BMI
BROADCAST MUSIC, INC.

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