



# Music License for Community Theatres

## 1. DEFINITIONS

(a) **"Community Theatre Productions"** shall mean amateur theatrical productions (i) that are presented by LICENSEE, which is an entity exempt from federal taxation under 26 U.S.C. §501(c) or is a U.S. military base located in the United States or its territories and possessions; (ii) that do not utilize professional actors (other than on an occasional unpaid guest basis); (iii) at which food and beverages are not sold or provided, other than light refreshments sold or provided at counters (not through wait service) outside of the actual performance time; (iv) at which merchandise is not sold, other than souvenirs related to the production; (v) for which seating for performances is available only through box office or ticket sales; and (vi) which have limited runs of performances during a discrete season in a contract year. This license covers up to a maximum of fifty (50) total performances of Community Theatre Productions per contract year.

(b) **"Licensed Premises"** shall mean and be restricted to LICENSEE's main theatre and other theatres and production venues at which LICENSEE presents performances of Community Theatre Productions which are located in the United States or its territories and possessions.

(c) **"Music Attractions"** shall mean live concerts, music festivals and other similar events where music is one of the principal types of entertainment.

(d) **"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

(a) Subject to all of the terms and conditions hereof, BMI hereby grants to LICENSEE for the Term a non-exclusive license to perform or cause the performance of all musical works of which BMI shall have the right to grant public performance licenses at the time of performance, solely for attendees of performances of Community Theatre Productions at Licensed Premises immediately before, during intermissions of, and immediately after such performances of Community Theatre Productions. This license shall be limited to performances solely of recorded background music by the playing of compact discs, records, pre-recorded tapes, or other mechanical devices or via the reception of broadcast audio transmissions and amplification thereof, and such performances may be amplified only through loudspeakers located within the theatres. 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;
- (ii) the right to broadcast, telecast, or otherwise transmit the performances licensed hereunder to persons outside of the Licensed Premises in which the performances take place;
- (iii) any live performances of music, including Music Attractions and performances of music during the course of any live stage presentations at the Licensed Premises; or
- (iv) performances of music by means of a jukebox.

(b) 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. FEES

(a) LICENSEE agrees to pay BMI an annual license fee based upon the License Fee Schedule set forth in Paragraph 3(c). The first year's fee shall be payable in full upon the signing of this Agreement by LICENSEE.

(b) The annual license fees set forth in the License Fee Schedule shall be adjusted for each subsequent contract year after 2023 based on the percentage increase in the United States Consumer Price Index (Urban, All Items) between the preceding February and the next preceding February, rounded to the nearest dollar. BMI will provide LICENSEE with a License Fee Schedule which has been modified to reflect the CPI adjustment. License fees for subsequent calendar years shall be due no later than September 30.

(c) License Fee Schedule:

2023-24 License Fee Schedule		
Operating Budget for all Community Theatre Productions (rounded to nearest dollar)	Operating Budget range applicable to LICENSEE (check one):	License Fee
\$0-\$24,999	<input type="checkbox"/>	\$154.55
\$25,000-\$499,999	<input type="checkbox"/>	\$226.25
\$500,000+	<input type="checkbox"/>	\$325.81

Indicate the operating budget range applicable to LICENSEE by checking the appropriate box. LICENSEE shall pay the License Fee indicated next to the applicable operating budget range (as may be adjusted pursuant to Paragraph 3(b)).

#### **4. REPORT REQUIREMENTS**

At the same time that LICENSEE pays its license fee hereunder for the second and subsequent contract years, LICENSEE shall submit a report, on a form available from BMI, certified by LICENSEE or by the auditor of LICENSEE, indicating the operating budget range for such contract year.

#### **5. 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.

#### **6. 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.

#### **7. 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.

#### **8. INDEMNITY BY BMI**

Provided that LICENSEE is not in default or breach of this Agreement, 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 with respect to the performance of any musical works 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 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.

#### **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. 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. TERMINATION OF AGREEMENT BY LICENSEE**

If LICENSEE permanently ceases to present Community Theatre Productions during the Term hereof, this Agreement shall thereupon terminate; provided, however, that LICENSEE has, no later than ten (10) days after the effective date of termination, given written notice of such termination to BMI setting forth such effective date, and provided further that LICENSEE has paid to BMI all fees due hereunder until such effective date.

#### **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 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.

#### **13. 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 designated herein, 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 Vice President, Licensing, 10 Music Square East, Nashville, TN 37203. 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.

#### **14. OKLAHOMA RATE CHANGE NOTICE**

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

#### **15. 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.

#### **16. 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, without regard to choice of law rules. The fact that any provisions herein are found by a court of competent jurisdiction to

**AGREEMENT**

AGREEMENT, made at New York, N.Y. on *(Date will be entered by BMI)* \_\_\_\_\_ between BROADCAST MUSIC, INC. ("BMI"), a 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 ("LICENSEE").

<p align="center"><b><u>LEGAL NAME</u></b></p> <p align="center">American Association of Community Theatre</p> <p align="center"><small>(Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)</small></p> <p align="center"><b><u>TRADE NAME</u></b></p> <p align="center">AACT</p> <p align="center"><small>(Doing business under the name of)</small></p> <p align="center"><b><u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u></b></p> <p>Legal Structure <u>Corporation</u></p> <p align="center"><small>(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)</small></p> <p>State of Incorporation <u>IL</u> Federal Tax ID No. <u>47-0692296</u></p> <p>Partners' Names <small>(If Partnership)</small></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p align="center"><b><u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u></b></p> <p>Local, State, or Federal _____</p> <p>Municipality Name _____</p> <p align="center"><small>(City/State)</small></p>	<p align="center"><b><u>LICENSED PREMISES</u></b></p> <p><small>(Street Address)</small></p> <p align="center">3512 Brookview Dr</p> <p><small>(City) (State) (Zip)</small></p> <p align="center">Lexington KY 40517</p> <p><small>(Phone) (Phone 2)</small></p> <p align="center">817-732-3177</p> <p><small>(Contact Name) (Title)</small></p> <p align="center">Quiana Clark-Roland Executive Director</p> <p><small>(Email Address) (Web Address)</small></p> <p align="center">quiiana@aact.org www.aact.org</p> <p align="center"><b><u>MAILING ADDRESS</u></b></p> <p align="center"><small>(If different from Licensed Premises)</small></p> <p><small>(Street Address)</small></p> <p align="center">P.O. Box 13817</p> <p><small>(City) (State) (Zip)</small></p> <p align="center">Lexington KY 40583-3817</p> <p><small>(Contact Name) (Title)</small></p> <p><small>(Contact Phone) (Contact Phone 2)</small></p> <p><small>(Email Address – if different from above)</small></p>						
<p align="center"><b>TO BE COMPLETED BY LICENSEE</b></p> <p>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.</p> <p align="center"></p> <p align="center"><small>Signature</small></p> <p align="center">Quiana Clark-Roland/ Executive Director</p> <p align="center"><small>Print Name / Title</small></p> <p align="center">quiiana@aact.org</p> <p align="center"><small>Signatory Email Address</small></p>	<p align="center"><b>FOR ADMINISTRATIVE USE ONLY</b></p> <p align="center"><b>TO BE COMPLETED BY BMI</b></p> <p align="center">BROADCAST MUSIC INC.</p>						
<p align="center">Please Sign &amp; Return this <u>Entire</u> License Agreement &amp; Payment to:</p> <p align="center">BMI, Licensing Dept 10 Music Square E., Nashville, TN 37203 Or online at <a href="http://www.bmi.com/licensing">www.bmi.com/licensing</a></p>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td align="center" colspan="2"><b>FOR BMI USE ONLY</b></td> <td></td> </tr> <tr> <td align="center" colspan="3"><b>Customer Number</b></td> </tr> </table>	<b>FOR BMI USE ONLY</b>			<b>Customer Number</b>		
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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) January 2024 and end on December 31, 2024, and shall continue thereafter for additional terms of one 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, or as otherwise provided hereunder.