# Interim Music License for Promoter/Presenter

WHEREAS, BMI has been negotiating with concert promoters over the reasonable fees, terms and conditions of a BMI promoter/presenter license which will authorize the public performance of BMI affiliated musical works at musical attractions for the period commencing July 1, 2018 (the "2018 Promoter/Presenters Agreement"); and

WHEREAS, upon the conclusion of those negotiations, BMI intends to quote new final blanket license fees and terms to LICENSEE and all other venues and promoter/presenters for the period commencing July 1, 2018; and

WHEREAS, LICENSEE and BMI desire to enter into this Interim Music License Agreement pending the finalization of such terms and conditions;

NOW THEREFORE, by signing below LICENSEE and BMI agree as follows:

**1. DEFINITIONS**

(a) **LICENSEE** shall mean the entity identified on Page 4 herein that presents an Attraction at a Venue.

(b) **Venue** shall include, but not be limited to, a concert hall, stadium, auditorium, civic center, coliseum, theatre, amphitheater, museum, library, stage, restaurant/nightclubs or similar facility, whether enclosed or not, where an Attraction may be presented, located within the United States of America, its territories and possessions.

(c) **Attractions** shall mean concerts, variety shows (excluding circuses), pageants and other similar spectator events (including events sponsored by charitable organizations or for charitable purposes) that include music, whether or not music is the principal type of entertainment.

(d) **Seating Capacity** shall mean the total number of seats permanently affixed in the Venue where the Attraction is presented plus any temporary seats added within the Venue for a particular Attraction. If the total number of seats available for the Attraction shall be less than that of the permanent Seating Capacity of the Venue, "Seating Capacity" shall mean the total number of seats available for the particular Attraction. If a Venue does not have permanent seating, "Seating Capacity" shall mean the total number of persons attending a particular Attraction. If a Venue has lawn seating, then "Seating Capacity" shall mean the total number of seats permanently affixed in the Venue, in addition to total lawn Seating Capacity as determined by the local Fire Marshall.

(e) **Gross Ticket Revenues** shall mean the total monies received, directly or indirectly, by LICENSEE or their authorized representatives from all ticket sales per Attraction. The term "Gross Ticket Revenues" shall not include: 1) federal, state and/or local taxes; 2) building/facility charge per ticket sold; 3) ticketing agent/service charge placed on each ticket sold; or 4) facility parking fees. Should the artist/performing act(s) choose to donate a portion of their fees from each ticket sale to a particular charity, then the appropriate deduction may be taken from the "Gross Ticket Revenues"; provided however, that BMI be given copies of said artist/performing act(s) agreement(s) stipulating such with the exact amount of the charitable donation per ticket sold.

(f) **Benefit Event** shall mean a public entertainment performance or social event held to raise funds for a specific person or cause in which all proceeds less direct expenses are donated to charity.

**2. BMI GRANT**

(a) BMI hereby grants to LICENSEE, for the Term of this Agreement, a non-exclusive license solely to perform, present or cause the performance of, as part of Attractions in Venues, **including recorded music** performed in conjunction with Attractions before, after or during the intermissions thereof, all the musical works as to which BMI shall have the right to grant public performance licenses during the Term. Such license shall be restricted to performance of music in the manner described herein, and is granted in consideration of 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: (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 context which may constitute an exercise of the "grand rights" therein; or (ii) the right to simultaneously broadcast, telecast, cablecast, or otherwise transmit (including by the Internet or on-line service) the performances licensed hereunder to persons outside of the Venue in which they originate; (iii) performances of music by means of a coin-operated phonorecord player (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. REVIEW OF STATEMENTS/ACCOUNTINGS**

(a) BMI shall have the right to verify such data or information that is required to be furnished by LICENSEE pursuant to Paragraph 9, by reference to a reliable, published, third-party industry source (e.g., Pollstar) and by BMI's authorized representatives, at any time during customary business hours, and upon thirty (30) days advance written notice, examining those portions of LICENSEE's books and records of account to such extent as may be necessary to verify any and all statements and/or accountings made hereunder. BMI shall consider all data and information coming to its attention as the result of any such examination of LICENSEE's books and records confidential.

(b) In the event that BMI discovers an inaccuracy in any information reported by LICENSEE pursuant to Paragraph 9, either through an examination of LICENSEE's books and records, or otherwise, and as a result it is revealed that LICENSEE underpaid license fees to BMI, and the correct license fee is not paid to BMI within thirty (30) days of BMI's notice to LICENSEE of the inaccuracy or underpayment, then LICENSEE shall pay a late payment charge on the additional license fees due as a result of the examination(s) of one and one-half percent (1½%) per month, or the maximum rate permitted by law, whichever is less, from the date(s) the license fees should have been paid pursuant to this Agreement.

**4. LATE PAYMENT CHARGE**

BMI may impose a late payment charge of one and one-half percent (1½%) 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.

**5. 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.

**6. 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.

**7. 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.

**8. INTERIM LICENSE FEES**

(a) LICENSEE agrees to pay BMI an interim license fee for each performance of an Attraction that LICENSEE promotes during the Term, except where another person, entity or Venue is responsible for paying the license fee for that performance. Such interim license fee shall be computed on the basis set forth in the Interim License Fee Schedule of this Agreement. This license shall be deemed to be an application to BMI for a license under Section XIV of the BMI consent decree. LICENSEE agrees to be bound by all of the terms and conditions in this License on an interim fee basis for the period commencing July 1, 2018 (the "Interim License Period"), continuing on a month to month basis until the final license fees and terms are determined either by negotiations or as may be determined by the BMI rate court in a proceeding to determine reasonable BMI final blanket license fees for venues and promoter/presenters for this period. LICENSEE's interim quarterly and annual license fees shall be adjusted retroactively to July 1, 2018 at such time as final fees and terms are determined.

(b) Once final fees are determined, LICENSEE shall be obligated to pay BMI any additional monies owed BMI as a result of such retroactive adjustment of rates or fees if such rates are higher than the interim fees, and BMI shall be obligated to credit LICENSEE's account any monies owed LICENSEE as a result of such retroactive adjustment of rates or fees in the event the rates are lower than the interim rate.

(c) License fees for Attractions ***with*** paid admission shall be calculated pursuant to Schedule A of the Interim License Fee Schedule. License fees for Attractions ***with no*** paid admission (i.e., free to guests) or Benefit Events shall be calculated pursuant to Schedule B of the Interim License Fee Schedule. License fees outlined in Schedule B for subsequent Contract Years will be adjusted by the Consumer Price Index, as described in subparagraph 8(c) hereunder.

(d) In no event shall an Attraction's annual license fee for any Contract Year be less than the Minimum Annual Fee for the applicable year. The Minimum Annual Fee for the 2018 Contract Year is $240. The Minimum Annual Fee for subsequent Contract Years shall be an adjustment of the previous Contract Year rates based upon any percentage increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding July and the next preceding July, and shall be rounded to the nearest dollar.

(e) When an Attraction is believed to be comprised entirely of musical compositions for which BMI shall not have the right to grant public performance licenses, LICENSEE may, at its option, submit a schedule, including writer and publisher information, for all those musical compositions performed at said Attraction, *including opening acts and recorded music, if any*, and in those instances in the opinion of BMI, where all of the musical compositions performed at said Attraction are ones to which BMI does not have the right to grant public performance licenses, no fee shall be due and payable to BMI. In the event no schedule is submitted to BMI, LICENSEE must pay the applicable fee for said Attraction pursuant to Schedule A (or in the case of a Benefit Event or no charge Attraction, Schedule B) of this Agreement.

## INTERIM LICENSE FEE SCHEDULE

| SCHEDULE A<br>EVENTS WITH PAID ADMISSION | | | |
|---|---|---|---|
| **Seating Capacity** | | | **% of Gross Ticket Revenue** |
| 0 | to | 2,500 | 0.80% |
| 2,501 | to | 3,500 | 0.60% |
| 3,501 | to | 5,000 | 0.40% |
| 5,001 | to | 9,999 | 0.30% |
| 10,000 | and | Over | 0.15% |

| SCHEDULE B<br>FREE OR BENEFIT EVENTS | | | |
|---|---|---|---|
| **Seating Capacity** | | | **Fee Per Benefit Event With No Charge** |
| 0 | to | 250 | $16.00 |
| 251 | to | 750 | $19.00 |
| 751 | to | 1,500 | $32.00 |
| 1,501 | to | 2,500 | $52.00 |
| 2,501 | to | 5,000 | $75.00 |
| 5,001 | to | 7,500 | $102.00 |
| 7,501 | to | 9,999 | $143.00 |
| 10,000 | to | 15,000 | $216.00 |
| 15,001 | to | 20,000 | $295.00 |
| 20,001 | to | 25,000 | $360.00 |
| 25,001 | to | 40,000 | $392.00 |
| 40,001 | and | Over | $545.00 |

***Minimum Annual Fee is $240***

**9. REPORTING OF ATTRACTIONS/PAYMENT**

(a) Upon signing this Agreement, LICENSEE shall pay at least the Minimum Annual Fee, plus any additional amounts immediately due as initially reported. LICENSEE shall submit reports and payments for those Attractions which actually were presented during each period on a quarterly basis and shall pay all fees due. For all quarterly periods, reports and payments shall be due on the twentieth (20th) day of January, April, July and October of each year of this Agreement for all Attractions presented by LICENSEE during the prior calendar quarter. Should LICENSEE fail to report and submit payments to BMI within thirty (30) days after the specified date, then BMI will apply estimated billings to the account based on either LICENSEE's prior year's corresponding quarter figures or reports from a reliable, published, third-party industry source (e.g., Pollstar), whichever is higher. BMI shall give written notice to LICENSEE of the estimated fee calculated. LICENSEE shall have thirty (30) days after such written notice by BMI to submit the report. If BMI does not receive the report from LICENSEE within those thirty (30) days, BMI and LICENSEE agree that BMI's Estimated License Fee shall then be established as the Actual License Fee for the period unreported by LICENSEE. BMI and LICENSEE further agree that such established Actual License Fee (subject to adjustment by audit) shall also become the Estimated License Fee for the following contract period. LICENSEE agrees to waive its right to file its report for any period in which BMI's Estimated License Fee becomes the Actual License Fee. Any differences between the estimated and the actual reported fee shall be payable by LICENSEE when the report is submitted. If BMI's Estimated License Fee is greater than the actual reported fee, then LICENSEE's account shall be credited with the difference, provided however that LICENSEE's Annual License Fee shall not fall below the Minimum Annual Fee.

(b) Upon payment of license fees to BMI, LICENSEE shall furnish to BMI a statement, on forms available from BMI, signed by an officer or auditor of LICENSEE, setting forth all performances of ***all*** Attractions occurring during the applicable calendar quarter in LICENSEE's Venue. Such statement shall include the name of each Attraction, the Seating Capacity for each Attraction, the dates of each Attraction, the number of performances each day and the Gross Ticket Revenues (as defined in Paragraph 1(e)) for a regularly scheduled performance of each Attraction. LICENSEE's statement shall also include performances of Attractions where another person, entity or Venue is responsible for paying the license fee. A statement shall be furnished to BMI by LICENSEE for each calendar quarter during the Term of the Agreement, regardless of whether or not any performances occurred during that calendar quarter.

(c) In the event that LICENSEE engages in the presentation of an Attraction in conjunction with, or sells or otherwise transfers the promotional responsibility of an Attraction to other persons or entities licensed separately by BMI under another BMI Music Performance Agreement, LICENSEE shall indicate on the statement required by subparagraph 9(b) hereof the names of all other persons, entities or Venues promoting or co-promoting, or otherwise responsible for, each Attraction and shall identify which party is responsible for payment of the BMI license fee for such Attraction. Transferring liability for promoted Attractions to anyone **but** a licensed promoter or co-promoter of the Attractions is not permitted. If the responsible promoter, co-promoter or person, entity, or Venue is not licensed by BMI under a BMI Music Performance Agreement, LICENSEE shall be deemed liable for payment of the fees due for such Attraction. In the event BMI receives a fee for an Attraction from both LICENSEE and one or more of its co-promoters or other promoter, or person, entity or Venue, the total of which exceeds the amount due, BMI shall refund or credit the excess proportionally among all promoters, co-promoters, persons, entities, or Venues who made payment.

(d) LICENSEE shall deliver to BMI for each calendar quarter, by the twentieth (20th) day following the end of the calendar quarter, copies of any programs or lists of the musical works presented by LICENSEE in its Attractions during such quarter. Programs prepared for audiences or for LICENSEE's own use are to be included, and shall include the presentation of encores to the extent possible. Nothing contained herein shall be deemed to require LICENSEE to deliver material not otherwise prepared.

**11. TERMINATIONS OF AGREEMENT BY LICENSEE**

If LICENSEE permanently ceases to present Attractions, this Agreement and LICENSEE's obligation to BMI shall thereupon terminate, provided that LICENSEE shall, within ten (10) days thereafter, give written notice of such termination to BMI, setting forth the effective date thereof and that LICENSEE shall submit all reports and pay to BMI all fees due hereunder until said effective date.

**12. 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.

**13. OKLAHOMA RATE CHANGE NOTICE**

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

**14. 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.

**15. 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 designate to BMI in writing.

**16. 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. CUSTOMER OUTREACH**

LICENSEE agrees to accept from time to time pre-recorded messages from BMI that may contain important information regarding your account.

**19. TERM OF AGREEMENT**
The initial Term of this Agreement shall begin on the first day of (*month/year*) _____and shall continue on a month-to-month basis, subject to the right of either party to this agreement to terminate the Interim License prospectively on thirty (30) days' prior written notice.

## 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, NY 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)* | |
| ☐ LLP ☐ Partnership _____ *(Enter names of partners)* | **MAILING ADDRESS** **(if different from Licensed Premises)** |
| ☐ 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** | | **PRM1** | **LI-2018/JULY** |
|---|---|---|---|
| | | | **EFFECTIVE: July 2018** |
| **ACCOUNT NO.** | **COID** | | **INTERIM** |

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