# Music License for Endurance/Racing Events

## 1. DEFINITIONS

(a) **LICENSEE** shall mean the entity identified on Page 4 herein that presents an Event(s).

(b) **Endurance/Racing Event** ("Event") shall mean a physical event such as a running, biking, swimming, and/or walking race, and other similar events where entry fees are charged and the participation in the event is open to the general public that includes music, whether or not music is the principal type of entertainment which occurs within the United States of America, its territories and possessions. It shall include, but not be limited to: 5K and 10K events, half and full marathons and ultramarathons, cross country and long distance races, track and relay style events, trail running, obstacle courses, fun runs, color runs, cycling, duathlons, triathlons, ultra-triathlons, and Ironman events (including charitable event(s) sponsored by charitable organizations or for charitable purposes). Event(s) ***shall not*** include professional or collegiate track and field type events open to participants only through qualification or invitation, vehicle racing (automobile, stock car, hot rod, truck, tractor or any other conveyance), horse racing (thoroughbred, harness and quarter horse, or any other type of horse racing), or dog racing of any kind.

(c) **Benefit Event** shall mean an Endurance/Racing Event that includes a public entertainment performance or social gathering where the Event is held to raise funds for a specific charitable cause in which all proceeds less direct expenses are donated to charity.

(d) **Free Event** shall mean any non Benefit Event where no entry fees are charged to participants, resulting in no gross revenues.

(e) **Gross Revenues** shall mean the total monies received, directly or indirectly, by LICENSEE or its authorized representatives from all entry fees per Event. The term "Gross Revenues" shall not include: 1) federal, state and/or local taxes; 2) building/facility charge per entry fee sold; 3) ticketing agent/service charge placed on each entry fee sold; or 4) facility parking fees.

## 2. BMI GRANT

(a) BMI hereby grants to LICENSEE a non-exclusive license to perform, present or cause the live and/or recorded performance of all musical works to which BMI shall have the right to grant public performance licenses during the term hereof during Endurance/Racing Events, including Benefit Events. 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; or (ii) the right to broadcast, telecast or otherwise transmit, including via the Internet or on-line service, the performances licensed hereunder to persons outside of any premises in which or any area at which an Event(s) occurs; (iii) or performances of music in or as part of a concert, musical attraction or other musical activity or event for which a separate ticket price, admission fee, or similar charge is paid by the audience to attend.

(b) BMI may withdraw from the license your right to perform any musical work as to which a legal action has been brought or a claim made that BMI does not have the right to license the work or that the work infringes another work.

## 3. FEES

LICENSEE agrees to pay BMI as follows:

(a) For each Contract Year of this Agreement: a percentage of revenue fee for all Endurance/Racing Events held by LICENSEE based on total participation for any/all Event(s) that LICENSEE promoted for the twelve (12) month period. For the first Contract Year LICENSEE shall pay an estimated amount due at the beginning of the year and submit final reports and payments at year end. For subsequent years, the estimated fee shall be based on the final fee for the immediately preceding Contract Year. Such estimated and final license fees shall be computed on the basis set forth in the License Fee Schedule of this Agreement. These figures shall be adjusted at the end of each Contract Year based on a report of actual total participation for such Contract Year.

(b) License fees for Endurance/Racing Event(s) ***with*** paid entry fees for admission/participation shall be calculated pursuant to Schedule A of the License Fee Schedule based on combined total annual participants for all Events. License fees for Free or Benefit Events shall be calculated pursuant to Schedule B of the License Fee Schedule for each such Free or Benefit Event.

(c) License fees outlined in Schedule B and the Minimum Annual Fee for subsequent Contract Years will be adjusted by the Consumer Price Index, as described in subparagraph 3(d) hereunder.

(d) In no event shall an Event(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 2017 Contract Year, which includes agreements commencing between October 2017 and September 2018 is $245. The Minimum Annual Fee and the Fee Per Benefit Event in Schedule B 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 April and the next preceding April and shall be rounded to the nearest dollar.

## LICENSE FEE SCHEDULE

| SCHEDULE A<br>EVENTS WITH PAID ENTRY FEES FOR ADMISSION | |
|---|---|
| **Annual Participation** | **% of Gross Revenue** |
| 0 to 9,999 | 0.30% |
| 10,000 and more | 0.23% |

| SCHEDULE B<br>FREE OR BENEFIT EVENTS | |
|---|---|
| **Number of Participants in Event** | **Fee Per Benefit Event*** |
| 0 to 250 | $19.00 |
| 251 to 750 | $22.00 |
| 751 to 1,500 | $35.00 |
| 1,501 to 2,500 | $58.00 |
| 2,501 to 5,000 | $86.00 |
| 5,001 to 7,500 | $113.00 |
| 7,501 to 9,999 | $158.00 |
| 10,000 to 15,000 | $240.00 |
| 15,001 to 20,000 | $328.00 |
| 20,001 to 25,000 | $396.00 |
| 25,001 to 40,000 | $435.00 |
| 40,001 and Over | $604.00 |

***The Minimum Annual Fee for the 2017 Contract Year is $245***

### 4. REPORTING OF EVENT(S)/PAYMENT

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 Event(s) which actually were presented during each period on an annual basis and shall pay all fees due.

(a) LICENSEE shall, in the first month of each contract year, furnish BMI (on forms provided by BMI) with a report setting forth:
   (i) each Event(s) held during the preceding Contract Year;
   (ii) the total number of participants and total amount of Gross Revenue at each Event; and
   (iii) the total number of participants and total amount of Gross Revenue for all Events held during the previous contract year

(b) For each Contract Year of the Agreement, reports and payments shall be due on the twentieth (20th) day following the end of each Contract Year for all Event(s) presented by LICENSEE during that Contract Year. Should LICENSEE fail to report to BMI within sixty (60) days after the Contract Year, then BMI's estimated billings to the account based on LICENSEE's prior year's corresponding annual figures shall apply. 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 Year. 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, than 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.

Upon cancellation of this Agreement, LICENSEE shall provide, within thirty (30) days of cancellation of this Agreement, a report setting forth the requirements of (i) to (iii) of Paragraph 4(a) for that cancellation year.

### 5. 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.

### 6. LATE PAYMENT CHARGE

BMI may impose a late payment charge of one and one half percent (1½%) per month from the date any payment or report was due on any payment that is received by BMI more than thirty (30) days after the due date.

### 7. EXAMINATION OF BOOKS AND RECORDS

BMI, upon giving reasonable notice to LICENSEE in writing, shall have the right to examine the books and records of account of LICENSEE which pertain solely to this Agreement and which may be necessary to verify any statements rendered and accountings made hereunder.

**8. CUSTOMER OUTREACH**
LICENSEE agrees to accept from time to time pre-recorded telephone messages from BMI that may contain information regarding LICENSEE's account.

**9. OKLAHOMA RATE CHANGE NOTICE**
BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

**10. 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.

**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 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. 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.

**13. TERMINATION OF AGREEMENT**
If LICENSEE shall permanently cease to present Event(s), 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.

**14. WITHDRAWAL OF WORKS**
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.

**15. 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.

**16. 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.

**17. 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.

**18. NOTICES**
Unless otherwise stated herein, all notices, if any, under this Agreement shall 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.

**19. 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 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.

**20. TERM**

The initial Term of this annual Agreement shall begin on the first day of (*month/year*) _____ and end on the last day of (*month/year*) _____ and shall continue thereafter 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.***

| **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)* | **FOR BMI USE ONLY** / **ENRAC1** / **LI-2017/JULY** |
| ***In order to receive a copy of your executed Agreement, please provide the email address of the Signatory** | **EFFECTIVE: October 2017** |
| **PLEASE RETURN THIS ENTIRE SIGNED LICENSE AGREEMENT TO: BMI, 10 MUSIC SQUARE E., NASHVILLE, TN 37203** | **ACCOUNT NO.** / **COID** |