# Music License for Racing Events

**1. DEFINITIONS**

(a) **"LICENSEE"** shall mean the entity identified on Page 4 herein that owns and/or operates the Licensed Premises.

(b) **"Licensed Premises"** shall mean the location identified on Page 4 herein, or in the event of multiple locations, each location identified in Schedule A attached hereto which is owned and operated by LICENSEE and which hosts Racing Events, inclusive of parking lots, and surrounding owned property, not specifically excluded in Paragraph 2(f) herein.

(c) **"Attendee(s)"** shall mean any person who enters the Licensed Premises, whether or not any admission charge, registration fee, membership fee, or other payment is required to be made in connection with the entrance, but shall not include employees working at the Licensed Premises, including, but not limited to, personnel, administrative staff, service contractors, medical professionals, temporary personnel, credentialed members of the press, performers or musicians.

(d) **"Racing Event"** shall mean vehicle racing, including automobile, stock car, hot rod, truck, tractor or any other conveyance, horse racing, including thoroughbred, harness and quarter horse, or dog racing.

(e) **"Racing Day"** shall mean each program or card for which either separate admission is charged or separate entry is required of any attendee, (e.g., an afternoon program and evening program on the same calendar day are considered two racing days). A Racing Event may consist of multiple Racing Days.

**2. BMI GRANT**

BMI hereby grants to LICENSEE for the Term of this Agreement a non-exclusive license to perform or cause the public performance of all musical works of which BMI shall have the right to grant public performance licenses during the Term. This license does not include:

(a) 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;

(b) the right to broadcast, telecast, cablecast or other electronic transmission, including via satellite, the Internet or on-line service, the performances licensed hereunder to persons outside of the Licensed Premises;

(c) performances by means of a coin-operated phonorecord player Jukebox as formerly defined in the Copyright Law (17 U.S.C. §116);

(d) performances in or as part of a concert, musical attraction or other activity or event for which a separate admission fee or similar charge is made to attend; or

(e) performances by any coin-operated digital music service that does not qualify as a Jukebox.

(f) This license shall not extend to any hotel, motel, restaurant, casino or similar facility situated within the area of the Licensed Premises, whether or not such facility is owned or operated by LICENSEE.

**3. FEES**

LICENSEE agrees to pay BMI an annual license fee for each Contract Year based on the total number of Attendees at Racing Events as follows:

**2018 LICENSE FEE SCHEDULE**

| **Annual Attendance** | | | **Attendance Fee Rate** (Fee Per Thousand Attendees) |
|---|---|---|---|
| 500 | to | 15,000 | $231.40 minimum fee |
| 15,001 | to | 50,000 | $ 15.50 per thousand |
| 50,001 | to | 150,000 | $ 13.60 per thousand |
| 150,001 | to | 500,000 | $ 11.60 per thousand |
| 500,001 | to | 1,000,000 | $ 9.60 per thousand |
| 1,000,001 | and more | | $ 8.50 per thousand |

***Minimum Annual Fee is $231.40***

_____ **X Applicable Rate =** **$** _____

*(Attendees)* (from Schedule above) *(Annual Fee)*

(a) In no event shall the Annual License Fee for the Licensed Premises, for any Contract Year, be less than the Minimum Annual License Fee for the applicable year. The Minimum Annual License Fee for the 2018 Contract Year is $231.40 and shall be adjusted in subsequent Contract Years by the CPI-U, as explained in subsection (b), and shall be rounded to the nearest ten cents.

(b) The Attendance Fee Rate for each Contract Year after 2018 shall be calculated by an adjustment of the previous Contract Year Attendance Fee Rate based upon the percentage increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding September and the next preceding September, rounded to the nearest ten cents. BMI will advise LICENSEE in writing of the adjusted Attendance Fee Rate as part of its annual billing process.

(c) LICENSEE shall pay an estimated license fee for each Contract Year based on the actual number of Attendees for the twelve (12) month period immediately preceding the Contract Year. In the event that LICENSEE did not present any Racing Events in the preceding twelve (12) month period, then LICENSEE shall pay the Minimum Annual Fee as an estimated license fee.

(d) LICENSEE shall pay estimated license fees for each Contract Year as calculated pursuant to Paragraph 3(c) above, on or before the 15th day following the anniversary date of each Contract Year.

**4. REPORTING AND LICENSE FEE PAYMENTS OF RACING DAYS**

For each Contract Year, on or before the 15th day following the anniversary date, LICENSEE shall furnish BMI (on forms provided by BMI) with a report setting forth;

(i) each Racing Event held during the preceding Contract Year;
(ii) the total number of Attendees for each Racing Event and;
(iii) the total number of Attendees for all Racing Events held during the previous Contract Year.

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 this Paragraph 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. CUSTOMER OUTREACH**

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

**8. 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 an extent as may be necessary to verify the statements made hereunder. BMI shall consider all data and information coming to its attention as the result of any such examination as confidential.

**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 operate Licensed Premises due to a sale of the premises or otherwise, or in the event that LICENSEE discontinues the use of music at the Licensed Premises, LICENSEE shall notify BMI and may terminate the Agreement effective at the end of the current Contract Year, in accordance with Paragraph 20 herein. If LICENSEE, at any time during the Term, fails to qualify as a Licensed Premises, pursuant to the requirements set forth in Paragraph 1(b), this Agreement shall terminate and LICENSEE will be responsible for licensing any music use under the appropriate BMI music license.

**14. WITHDRAWAL OF MUSICAL 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 OF AGREEMENT**

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

AGREEMENT, made at New York, N.Y. on *(Date Will Be Entered by BMI Upon Execution)* _____ 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" or "you"):

| **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** **RACE1** **LI-2017/NOV** |
| ***In order to receive a copy of your executed Agreement, please provide the email address of the Signatory** | **Effective Date: JANUARY 2018** |
| | **ACCOUNT NO.** **COID** |

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