# Interim Music License for Festivals / Special Events

WHEREAS, BMI has been negotiating with concert promoters over the reasonable license fees, terms and conditions of a BMI festivals/special events license which will authorized the public performance of BMI affiliated musical works at Festivals and Events for the period commencing July 1, 2018 (the "2018 Festival/Special Events 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 festivals/special events 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 license fees, terms and conditions;

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

**1. DEFINITIONS**

(a) "**Benefit Event(s)"** 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.

(b) **"Direct Expenses"** shall include, but is not limited to, normal stage props and equipment unless the entity or person rendering or presenting entertainment services specifically requires specialized stage props and equipment.

(c) "**Entertainment Costs**" shall mean the total monies expended for a Festival or Special Event by LICENSEE or LICENSEE's authorized representatives for main and supporting artists and/or acts, and all monies paid (including the cost of room, board and transportation) to performers, supporting musicians, booking agents, and agents of the performers. The term "Entertainment Costs" shall not include "Direct Expenses".

(d) "**Facility"** shall include, but not be limited to, a concert hall, stadium, auditorium, civic center, coliseum, theatre, amphitheater, museum, library, stage, restaurants/nightclubs or similar venues whether enclosed or not, where a Festival or Special Event may be presented, located within the United States of America, its territories and possessions.

(e) "**Festival(s)"** shall mean any musical event(s) lasting more than one consecutive day, not to exceed fourteen (14) days duration, that features multiple musical acts/headliners which vary from day to day and for which one ticket is available for all days (regardless of whether daily passes can be purchased). Festival(s) in this Agreement ***do not extend to concert series or like performances.***

(f) **"Gross Ticket Revenues"** shall mean the total monies received, directly or indirectly, by LICENSEE or their authorized representatives from all ticket sales per musical event or Festival. 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 for a specific musical event or Festival 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.

(g) "**Special Event(s)"** shall mean any musical event(s) which shall include 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.

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

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 Festival(s), Benefit Event(s) or Special Event(s), all the musical works as to which BMI shall have the right to grant public performance licenses during the Term hereof. This grant shall extend to performances of live or recorded music performed in conjunction with the musical event before, after or during the intermission. Such license shall be restricted to the 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; (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 Facility in which they originate; or (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. **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 public performance of any copyrighted works licensed under this Agreement. This indemnity shall be limited to 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.

4. **BREACH OR DEFAULT/WAIVER**

Upon any breach or default of the terms and conditions of this Agreement, BMI has 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. 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 will 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.

5. **INTERIM LICENSE FEES**

(a) LICENSEE agrees to pay BMI an interim license fee for each performance of a Festival/Special Event, for which there is paid admission, computed on the basis set forth in **Schedule A** of this Agreement; LICENSEE agrees to pay BMI an interim license fee for each performance of a Festival/Special Event, which is free to attendees, computed on the basis set forth in **Schedule B**; or, in the case of a Benefit Event, LICENSEE agrees to pay BMI an interim license fee for each performance computed on the basis set forth in **Schedule C** of this Agreement.

**SCHEDULE A**

| **INTERIM LICENSE FEE SCHEDULE FOR EACH FESTIVAL OR SPECIAL EVENT *WITH PAID ADMISSION*** | |
|---|---|
| **Attendance** | **Interim License Fee** |
| 0 – 9,999 | 0.4% of gross ticket revenue (or $243*, whichever is higher) |
| 10,000 or More | 0.3% of gross ticket revenue (or $243*, whichever is higher) |

**SCHEDULE B**

| **INTERIM LICENSE FEE SCHEDULE FOR EACH FESTIVAL OR SPECIAL EVENT WHICH IS *FREE TO ATTENDEES*** |
|---|
| The Interim License Fee Rate for Festivals or Special Events which are free to attendees (no ticket cost) shall be one and one half percent (1½%) of LICENSEE's Total Entertainment Costs *for each Festival or Special Event* or $243.00* *for each Festival or Special Event*, whichever is higher. |

**SCHEDULE C**

| **INTERIM LICENSE FEE SCHEDULE FOR BENEFIT EVENT** | | | | | | | |
|---|---|---|---|---|---|---|---|
| **Seating Capacity** | | | **Fee Per Benefit Event** | **Seating Capacity** | | | **Fee Per Benefit Event** |
| 0 | to | 250 | $18.00 | 7,501 | to | 10,000 | $157.00 |
| 251 | to | 750 | $21.00 | 10,001 | to | 15,000 | $238.00 |
| 751 | to | 1,500 | $35.00 | 15,001 | to | 20,000 | $327.00 |
| 1,501 | to | 2,500 | $57.00 | 20,001 | to | 25,000 | $394.00 |
| 2,501 | to | 5,000 | $85.00 | 25,001 | to | 40,000 | $433.00 |
| 5,001 | to | 7,500 | $112.00 | 40,001 | or | over | $600.00 |

*** $243 minimum fee for contract year 2018 shall be CPI adjusted annually pursuant to Paragraph 5(c)**

(b) The minimum interim license fees billed and payable for:
   (i) Schedule A Festival/Special Event for which there is *Paid Admission*: minimum interim license fees shall be $243 per Festival/Special Event for contract year 2018 and shall be CPI adjusted annually pursuant to Paragraph 5(c) for each subsequent contract year.
   (ii) Schedule B Festival/Special Event which is *Free To Attendees*: minimum interim license fees shall be $243 per Festival/Special Event for contract year 2018 and shall be CPI adjusted annually pursuant to Paragraph 5(c) for each subsequent contract year.
   (iii) Schedule C Benefit Event: minimum interim license fees shall be $243 for contract year 2018 and shall be CPI adjusted annually pursuant to Paragraph 5(c) for each subsequent contract year, or total Schedule C fees, whichever is higher.

(c) The minimum fee for each contract year after 2018 will be adjusted in accordance with the increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding July and the next preceding July, rounded to the nearest dollar.

(d) When a musical event 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 musical event, *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 musical event 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 musical event pursuant to Schedule A or Schedule B, or in the case of a Benefit Event, LICENSEE must pay the applicable fee for said musical event pursuant to Schedule C of this Agreement.

(e) For each contract year after 2009 to which this Agreement extends, the license fees outlined in Schedule C shall be adjusted in accordance with the increase in the Consumer Price Index – All Urban Consumers (CPI-U) between the preceding July and the next preceding July, rounded to the nearest dollar.

6. **REPORTING OF FESTIVALS OR SPECIAL EVENTS/PAYMENT**

(a) At the time that LICENSEE makes payment to BMI pursuant to this Agreement, LICENSEE shall furnish BMI, with a report on forms available from BMI, signed by an officer or auditor or otherwise authorized signatory of LICENSEE, covering performances of musical events occurring during the applicable reporting period. Such report shall include the date(s) of the Festival, Special Event or Benefit Event, name of each Festival, Special Event or Benefit Event, Facility name (including address, city and state) where the musical event took place, and;
   (i) In the case of a Festival or Special Event With Paid Admission (Schedule A), such statement shall include the attendance and Gross Ticket Revenue (as defined in Paragraph 1(f) herein) for each Festival of Special Event.
   (ii) In the case of a Festival or Special Event Which is Free to Attendees (no ticket cost) (Schedule B), such statement shall include the Total Entertainment Costs (as defined in Paragraph 1(c) herein) for each such Festival or Special Event.
   (iii) In the case of a Benefit Event (Schedule C), such statement shall include the Seating Capacity (as defined in Paragraph 1(h) herein) of the venue and the designated benefactor of such Benefit Event.

(b) A statement shall be furnished to BMI by LICENSEE for each reporting period during the Term of the Agreement, regardless of whether or not any performances occurred during that period. LICENSEE's report shall also include performances of musical events where another person, entity or venue is responsible for paying the license fee on behalf of LICENSEE.

(c) During each contract year of this Agreement, LICENSEE estimates that it will present:

| **CHECK APPROPRIATE BOX** | ☐ One Festival, Special Event or Benefit Event per year (herein called "**Class 1 Presenter**") or<br>☐ Two or More Festivals, Special Events or Benefit Events per year (herein called "**Class 2 Presenter**") |
|---|---|

(d) If LICENSEE is a **Class 1 Presenter**, LICENSEE shall submit its first report for the period beginning on the first day of this Agreement and ending December 31st of same year. The first report shall be estimated for period beginning on the first day of this Agreement. The license fee payable pursuant to said report shall be payable in full upon execution of this Agreement by LICENSEE. For all calendar years following the period of this first report, LICENSEE shall submit its report and make payment to BMI no later than twenty (20) days following the occurrence of the Festival or Special Event. 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 the prior year's figures for such LICENSEE. Any difference between the actual and estimated fee shall be payable at that time. If LICENSEE overestimated its first period's fee, then LICENSEE's account shall be credited with the difference.

(e) If LICENSEE is a **Class 2 Presenter**, LICENSEE shall report and pay quarterly. The first report shall be estimated for the period beginning on the first day of this Agreement and ending March 31st, June 30th, September 30th or December 31st, whichever comes first in same year. The license fee payable pursuant to the first estimated report shall be payable upon execution of this Agreement by LICENSEE. Within twenty (20) days after the end of the first estimated report period, LICENSEE shall submit its report setting forth the Festival(s) or Special Event(s) which actually were presented during that period. Any difference between the actual and estimated fee shall be payable at that time. If LICENSEE overestimated its first period's fee, LICENSEE's account shall be credited with the difference. For all subsequent 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 Festival(s) or Special Event(s) presented 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 the prior quarter's figures for such LICENSEE.

## 7. EXAMINATION OF BOOKS AND RECORDS

(a) BMI shall have the right to verify such data or information that is required to be furnished by LICENSEE pursuant to Paragraph 6, 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 BMI discovers an inaccuracy in any information reported by LICENSEE pursuant to Paragraph 6, either through an examination of LICENSEE, 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. If such payment is still not received within ninety (90) days of BMI's notice to LICENSEE of the inaccuracy or underpayment, then the license granted by this Agreement shall be terminated by BMI immediately.

## 8. 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 month after the due date.

## 9. ARBITRATION

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement, not subject to 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) are 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 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.

## 10. 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 that of 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.

## 11. CANCELLATION BY LICENSEE

If LICENSEE permanently ceases to present Festival(s), Special Event(s) or Benefit 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.

## 12. 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 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 advise BMI in writing.

## 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. MISCELLANEOUS

This Agreement is 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 will be valid unless in writing and signed by the parties. This Agreement is executed by the duly

authorized representative of BMI and LICENSEE. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, will be governed by the substantive laws of the State of New York. 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

16. **TERM OF AGREEMENT**

The Initial Term of this Agreement shall begin on _____ and shall continue thereafter 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, N.Y. 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)* | **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)* | |
| ***In order to receive a copy of your executed Agreement, please provide the email address of the Signatory.** | |

| **FOR BMI USE ONLY** | | **FSE1** | **LI-2018/JULY** |
|---|---|---|---|
| | | | **EFFECTIVE: January 2018** |
| **ACCOUNT NO.** | **COID** | | **INTERIM** |

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