Music License for Live Music Attractions

1. DEFINITIONS

(a) **LICENSEE** shall mean the entity identified on Page 4 herein that promotes a Music Attraction at a Venue, and each of its parent, affiliate, related or subsidiary entities. To promote a Music Attraction is to enter into an agreement with the artist(s) performing at the Venue.

(b) **Venue** shall include, but not be limited to, a concert hall, stadium, auditorium, civic center, coliseum, theatre, amphitheater, hotel/casino, restaurant/nightclub, stage, park, campgrounds or fairgrounds where a Music Attraction may be held, whether enclosed or not, where a Music Attraction is promoted by LICENSEE, located within the United States of America, its territories and possessions.

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

(d) **Music Festivals** shall mean any Music Attractions lasting more than one consecutive day, not to exceed fourteen (14) days duration, that features multiple musical acts/headliners which may vary from day to day.

(e) **Paid Admission Music Attractions** shall mean live concerts, festivals and events where tickets are sold for admission occurring at a Venue where music is one of the principal types of entertainment.

(f) **Free to Attend Music Attractions** shall mean any live concerts, festivals and events where no admission, or charge of any kind is required to attend occurring at a Venue where music is one of the principal types of entertainment.

(g) **Gross Revenues** shall mean: (1) the total receipts from all primary market ticket sales for each Music Attraction, including the total monies paid or payable for admission to the Music Attraction irrespective of whether such monies are received by LICENSEE or a third party with a contractual relationship with LICENSEE; (2) the total monies received by LICENSEE from platforms engaging in secondary market ticket sales, irrespective of whether LICENSEE owns the platform; (3) the total revenues received for service charges, administration or handling charges by any ticket broker (e.g. Ticketmaster) with which LICENSEE has a contractual relationship; (4) the total revenues received by LICENSEE or any third party with which LICENSEE has a contractual relationship for the sale of VIP packages and box suites for a Music Attraction; (5) revenues received by LICENSEE from sponsorships and other forms of advertising the Music Attraction; and (6) any revenues received by LICENSEE from sales of merchandise, concessions, and parking at the Venue. Gross Revenues shall not include state and local taxes on tickets sold. If LICENSEE co-promotes a Music Attraction with one or more additional entities, Gross Revenues shall mean the revenues of all such co-promoters of the Music Attraction.

(h) **Entertainment Expenses** shall mean the total costs expended by LICENSEE as compensation for artists appearing at the Music Attraction. Entertainment Expenses shall include monies expended 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 Expenses" shall not include "Fixed Costs" not required by the particular entertainer, such as normal stage props and equipment that are not specially required for the entertainer.

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 Music Attractions in Venues, **including recorded music** performed in conjunction with Music 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 performances 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.

(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. In no event shall this agreement authorize the use of BMI music at political rallies, conventions, parades or other political or campaign events.

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 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.

4. 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.

5. 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) 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.

6. LICENSE FEES

(a) LICENSEE agrees to pay BMI a license fee for each performance of a Music Attraction that LICENSEE promotes during the term as follows:

(b) **Paid Admission Music Attractions** - License fees for Music Attractions ***with*** paid admission shall be calculated at the rate of one and fifteen hundredths percent (1.15%) of Gross Revenues for the Music Attraction pursuant to **Schedule A** of the License Fee Schedule**.**

(c) **Free to Attend Music Attractions** - License fees for Music Attractions ***with no*** paid admission shall be calculated at the rate of one and one-half percent (1.5%) of Entertainment Expenses pursuant to **Schedule B** of the License Fee Schedule.

(d) In no event shall LICENSEE'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 $240.00. 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 a Music Attraction is believed to be comprised entirely of musical compositions for which BMI does 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 Music 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 Music 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 Music Attraction pursuant to paragraph 6(a) of this Agreement.

(f) **LICENSE FEE SCHEDULE**

Schedule A **Paid Admission Music Attractions**
1.15% of Gross Revenues

Schedule B **Free to Attend Music Attractions**
1.5 % of Entertainment Expenses

2018 Minimum Annual Fee
$240.00

7. REPORTING OF ATTRACTIONS / PAYMENT

During each Contract Year of this Agreement, LICENSEE estimates that it will present:

CHECK APPROPRIATE BOX

☐ **One Music Attraction per year** in the month of _____.

☐ **Two or More Music Attractions per year**.

(a) Upon signing this Agreement, LICENSEE shall pay at least the Minimum Annual Fee, plus any additional amounts immediately due as initially reported. For **One Music Attraction per year** LICENSEE shall submit an estimated report for the period beginning on the first day of the Term and the license fee payable in full pursuant to said report upon execution of this Agreement.

(b) LICENSEE shall submit reports and payments to BMI electronically via a secure web site indicating all Music Attractions promoted by LICENSEE as follows:

(c) **One Music Attraction per year** - LICENSEE shall report and make payment to BMI no later than thirty (30) days following the occurrence of the Music Attraction.

(d) **Two or More Music Attractions per year** - LICENSEE shall report and make payments quarterly. Such reports shall be due within thirty (30) days following the end of the quarter (i.e. by April 30, July 30, October 30 and January 30).

(e) Transferring liability for a promoted Music Attraction to any entity not licensed separately with BMI on a Music Performance Agreement is not permitted.

(f) LICENSEE shall deliver to BMI upon submission of reports, copies of set lists or programs licensed hereunder, including lists of the musical works presented by the headliner and opening act(s) in LICENSEE's Music Attractions when available. 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. For Music Festivals LICENSEE shall report the set lists of all headliners each day of the festival.

(g) Should LICENSEE fail to report within thirty (30) days after the specified date, then BMI may apply estimated billings to the account for that calendar reporting period, based on the prior year's figures or 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, and LICENSEE shall have thirty (30) days after such written notice by BMI to submit the report. In no event shall BMI's estimation of fees due from LICENSEE relieve LICENSEE from its contractual obligation to report all Music Attractions and related Gross Revenues for the reporting period. Any differences between the estimated fee and the actual reported fee shall be payable by LICENSEE when the report is submitted. If BMI's estimated 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.

8. LATE PAYMENT CHARGE

BMI may impose a late payment charge of one and one-half percent (1.5%) per month from the date any payment is due hereunder on any payment that is received by BMI more than thirty (30) days after the due date.

9. RIGHT TO AUDIT

BMI shall have the right to audit LICENSEE's books and records of account once per calendar year covered by this License Agreement in order to verify the music performances promoted or co-promoted by LICENSEE. Any such audit will be conducted at LICENSEE's premise on reasonable prior notice at a mutually agreed time during regular business hours. LICENSEE will maintain its books and records of account, including settlement sheets, until the earlier of six (6) years after the performance to which they relate or two (2) years after the termination of this License Agreement. LICENSEE will make available its records within thirty (30) days of written notice of audit from BMI. If the audit reveals an underpayment, LICENSEE shall promptly pay such underpayment. In addition, if BMI's audit reveals an underpayment of more than ten percent (10%) of license fees due for a particular Music Attraction, LICENSEE shall be responsible for the costs of BMI's audit. In the event an overpayment is detected by the audit, LICENSEE shall receive a credit to its account. 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.

10. TERMINATION OF AGREEMENT BY LICENSEE

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

11. 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.

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.

17. CUSTOMER OUTREACH

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

18. TERM OF AGREEMENT

The initial Term of this Agreement shall begin on the first day of (*month/year*) _____ and end on the last day of December _____ and shall continue thereafter for additional Terms of one (1) 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.

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 Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.)	*(Street Address)*
TRADE NAME	*(City)* *(State)* *(Zip)*
(Doing business under the name of)	*(Phone)* *(Phone 2)*
PLEASE COMPLETE LEGAL INFORMATION BELOW	*(Contact Name)* *(Title)*
Legal Structure _____ *(Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other)*	*(Email Address)* *(Web Address)*
State of Incorporation _____ Federal Tax ID No. _____	**MAILING ADDRESS** **(if different from Licensed Premises)**
Partners' Names *(If Partnership)* 1. _____ 2. _____ 3. _____	*(Street Address)*
IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW	*(City)* *(State)* *(Zip)*
Local, State, or Federal _____	*(Contact Name)* *(Title)*
Municipality Name _____ (City/State)	*(Contact Phone)* *(Contact Phone 2)*
	(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.	
Signature	
Print Name / Title	
Signatory Email Address *(if different from above)*	**FOR BMI USE ONLY** / **LIVE-RT1.15** / **LI-2019/JUL**
Please Sign & Return this Entire License Agreement & Payment to: BMI, Licensing Dept 10 Music Square E., Nashville, TN 37203 Or Online at www.bmi.com/licensing	**Customer Number**