

INTERIM LOCAL STATION PER PROGRAM RADIO LICENSE

AGREEMENT made between AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (“We”, “Us” or “ASCAP”) and

(“You” or “Licensee”) as follows:

1. **Term of License.** This license covers the interim license period commencing _____, 200__ and continuing until terminated as provided in subsection (2) of this paragraph, subject to the following terms and conditions:

- (1) This interim license is subject to retroactive adjustment to the commencement date of this agreement on the basis of the terms and conditions arrived at for the term beginning January 1, 2001 (i) by negotiation between ASCAP and the Radio Music License Committee (“the Committee”) or (ii) by court determination of reasonable fees in the pending proceeding brought by the Committee under the Amended Final Judgment in *United States v. ASCAP, Application of Hicks Broadcasting of Indiana, LLC, et al.*
- (2) This agreement may only be terminated by substitution of agreements that are either negotiated by ASCAP and the Committee or that embody fees determined by the Court to be reasonable for similarly situated stations for the period commencing January 1, 2001. In addition, ASCAP shall have the right to terminate the license granted by this agreement in accordance with the provisions of Paragraph 11. below, and either ASCAP or Licensee shall have the right to terminate the agreement in accordance with Paragraph 15. below.
- (3) At the conclusion of the negotiations or Court proceedings described above, ASCAP shall offer and Licensee shall accept the new license agreements when they are made available to stations represented by the Committee, and on the same terms and conditions as apply to stations represented by the Committee.
- (4) Licensee acknowledges that it has voluntarily chosen not to be formally represented by the Committee in negotiations or in any proceeding the Committee may bring, or to make its own application under the Amended Final Judgment entered in *United States v. ASCAP*. Licensee hereby waives its right to make an application to ASCAP or to the Court under the Amended Final Judgment for the license period beginning on the commencement date of this agreement and ending as agreed upon by ASCAP and the Committee or determined by the Court, for terms and conditions other than those arrived at by ASCAP’s negotiations with the Committee or determined by the Court.

2. **Licensed Radio Station.** The radio station licensed by this agreement is:

Call Letters _____
Frequency _____
City of License _____

All references to “you”, “your”, “the Station”, or “your station” include any company, firm or corporation that you own or that is under the same or substantially the same ownership, management or control as the Station. “Independent” refers to any firm or corporation that is not under the same or substantially the same ownership, management or control as the Station.

3. **Grant.** This license grants you the right to perform publicly by radio broadcasting on *local radio programs* from your radio station or from any other place non-dramatic performances of the separate musical compositions in the ASCAP *repertory*.

4. **Limitations on License.** This agreement does not: license the performance of any dramatic-musical works, such as operas, operettas, musical comedies or plays, in whole or in part; grant you any other rights in the musical compositions licensed under this agreement; authorize you to grant to others any performance or other rights in any of the musical compositions licensed under this agreement; extend to the receiver of any of your radio broadcasts, or to any place at which the performances licensed by this agreement originate if other than at the station.

5. **Definitions.** When used in this agreement the defined words and phrases appear in italics and have the following meanings:

A. ASCAP “Repertory” means all musical compositions which ASCAP has the right to license for public performance now or hereafter during the term of this agreement. All compositions written and copyrighted by our members and in the repertory on the date this agreement is executed are included for the full term of this agreement. Compositions written or copyrighted by our members during the license term are included for the full balance of the term.

B. "Local radio program" means any program broadcast from the Station other than a network radio program or a program for which all of the music in the ASCAP *repertory* contained in the program has been licensed for performance by the station either by ASCAP or the ASCAP members in interest. A particular period of radio broadcasting will be considered one program if, with respect to the period, any two of the following questions may be answered in the affirmative:

- (1) Is the period referred to by substantially the same title throughout?
- (2) Is the dominant personality the same substantially throughout?
- (3) Is the period presented to the public as a single show notwithstanding that it may have different parts?
- (4) Is the format substantially constant throughout?

For the purposes of this agreement, programs furnished by networks not licensed by ASCAP are deemed to be "local radio programs".

C. "Program subject to fee" means any *local radio program* which uses any of the compositions in the ASCAP *repertory*, except any program making only *incidental use* as defined in subdivision "H" of this paragraph of compositions in the *repertory*.

If a *local radio program* exceeds one hour in duration, the "program subject to fee" will be deemed to mean any clock hour (that is, any sixty minute period beginning on the hour) within the program which uses any of the compositions in the ASCAP *repertory* other than as an *incidental use*. If within that clock hour there is a period of radio broadcasting to which the definition of *local radio program* would apply (for example, a fifteen minute news program within a four hour entertainment program) and which does not use any of the compositions in the ASCAP *repertory* other than as an *incidental use*, that period will be excluded from the *program subject to fee* if it is five minutes or longer, or three minutes or longer if it is a "public service announcement" as defined in note 4 of Section 73.112 of the Federal Communications Commission Rules and Regulations in effect on January 1, 1978.

D. "Network radio program" means a program broadcast simultaneously or by so-called "delayed" or "repeat" broadcasts (sometimes known as "rebroadcasts") over two or more affiliated stations.

E. "Affiliated station" means any radio broadcasting station in the United States which regularly broadcasts network radio programs of a radio network or which appears on the radio rate card of the network and is interconnected with the network by wire or any other means. A station will only be deemed to be an affiliated station so long as it regularly broadcasts such programs or appears on such rate cards. All radio broadcasting stations in the United States which are owned and operated by a network and which broadcast the network's radio programs are deemed to be affiliated stations for the purpose of this agreement, whether or not they appear on the network's radio rate cards.

F. "Time Broker" means any independent person, firm or corporation that engages in *time brokerage*.

G. "Time Brokerage" means any arrangement between a station and a *time broker* that:

- (1) authorizes the resale by the *time broker* of the radio broadcasting facilities of the station;
- (2) permits the *time broker* to provide programs for 10% or more of the time the station is on the air; and
- (3) provides for the sale by the *time broker* of all or substantially all announcements within the brokered time.

H. "Incidental use" means use in any of the following ways: as commercial jingles (not to exceed 60 seconds in duration), bridge or background music, themes or signatures, arrangements of works in the public domain, or incidental to the broadcast of a public or sports event.

I. "Net Promotional Revenue" means all cash payments that you receive from third parties for the direct or indirect promotion of their businesses via the broadcast facilities of the station other than paid programs or commercial announcements (such as, but not limited to, Bridal or Craft Shows, Direct Mailings, Special Sponsored Events or Publications, produced and promoted by the station) less those out-of-the-ordinary costs, such as booth rentals, printing and mailing expenses, and cost of goods sold, that would not have otherwise been incurred without the promotional activity. Deductible costs may not exceed the cash payments received.

J. "Gross Revenue" means all:

- (1) cash payments made by or on behalf of:
 - a. sponsors or donors for the use of the radio broadcasting facilities of the Station, and

b. *time brokers* who each provide programs for less than 10% of the time a station is on the air or recognized independent companies engaged in arrangements with radio or television stations generally for the resale of the radio broadcasting facilities of the Station; and

(2) *net promotional revenue*.

Such payments shall include all payments made directly to, or as authorized by, you, your employees, representatives, agents or any other person acting on your behalf. Such payments shall not include payments made to independent third parties, such as networks or program suppliers, or non-cash payments such as payments in goods or services commonly referred to as “trades” or “barter”.

K. “Adjusted Gross Revenue” means *gross revenue* less:

(1) any sums received from networks licensed by ASCAP with respect to network radio programs: this deduction does not apply to that portion of the sums received from a licensed network attributable to announcements in a network program not broadcast by the Station, or to announcements furnished by the network not related to network programs;

(2) advertising agency commission not to exceed 15% actually allowed to an independent advertising agency;

(3) any sums received from your political local radio programs and announcements, net of agency commissions;

(4) bad debts actually written off and discounts allowed or rebates paid;

(5) rate card discounts, cash, quantity and/or frequency actually allowed; and

(6) any sums received with respect to a program for which all of the music in the ASCAP *repertory* contained in the program has been licensed for performance by the station either by ASCAP or the ASCAP members in interest.

L. “Weighted Hours” means the total number of hours of *local radio programs* during a reporting period in each of the following time periods multiplied by the applicable weight set forth below:

	Time Period	Applicable Weight
Weekdays:	Midnight to 6:00 A.M.	.25
	6:00 A.M. to 10:00 A.M.	1.00
	10:00 A.M. to 3:00 P.M.	.50
	3:00 P.M. to 7:00 P.M.	.75
	7:00 P.M. to Midnight	.50
Weekends:	Saturdays and Sundays	.25

M. “Revenue per Weighted Hour” means the *adjusted gross revenue* for a full calendar year divided by the total number of *weighted hours* in the year.

N. “Revenue Subject to Fee” means *revenue per weighted hour* multiplied by the total number of *weighted hours of programs subject to fee*.

6. Right to Restrict.

A. Our members may restrict the radio broadcasting of their compositions up to a maximum of 500 at any given time, only for the purpose of preventing harmful effect upon other interests under the copyrights of such works; provided, however, that (1) limited licenses will be granted upon application to us entirely free of additional charge if the copyright owners are unable to show reasonable hazards to their major interests likely to result from such radio broadcasting; (2) the right to restrict any composition will not be exercised for the purpose of permitting the fixing or regulating of fees for the recording or transcribing of the composition; (3) in no case will any charges, “free plugs”, or other consideration be required for permission to perform a restricted composition; and (4) in no event will any composition be restricted after its initial radio broadcast for the purpose of confining further radio broadcasts to a particular artist, station, network or program.

B. We may also in good faith restrict the radio broadcasting of any composition, over and above the number specified in the previous paragraph, only as to which any suit has been brought or threatened on a claim that the composition infringes a composition not contained in the ASCAP *repertory* or on a claim that we do not have the right to license the public performance of the composition by radio broadcasting.

7. License Fee.

A. You agree to pay us for each year during the term of this agreement the total of the following fees:

(1) **Base Fee.** a. .24 % of *adjusted gross revenue* except for 1996 and 1997 for *grandfathered* stations as set forth below.

b. A “grandfathered” station is a station that had per program license agreements with ASCAP for the period ending December 31, 1990 and for the full period January 1, 1991 through December 31, 1995, and paid the “base fee” pursuant to Paragraph 4A(1)a. of the 1991-1995 agreement. The base fee for 1996 for a *grandfathered* station is the total of (i) one-third of the fee calculated at .24% of *adjusted gross revenue*, and (ii) two-thirds of the fee calculated in accordance with Paragraph 4A(1)a. of the 1991-1995 per program license. The base fee for 1997 for a *grandfathered* station is the total of (i) two-thirds of the fee calculated at .24% of *adjusted gross revenue* and (ii) one-third of the fee calculated in accordance with Paragraph 4A(1)a. of the 1991-1995 per program license.

(2) **Additional Fee.** a. 4.22% of *revenue subject to fee* for the first 10% of the Station’s weighted hours up to 400 *weighted hours*; and

b. 2.135% of *revenue subject to fee* for all additional *weighted hours*.

B. In the event that your payment of fees under this agreement causes us to incur a liability to pay a gross receipts, sales, use, business use, or other tax which is based on the amount of our receipts from you, and (1) we have taken reasonable steps to be exempted or excused from paying such tax; and (2) we are permitted by law to pass through such tax to our licensees, you will pay us the full amount of such tax.

8. **Music Reports.** A. You will furnish us on or before the 20th day of each month for the preceding month, on forms which we will supply free of charge, statements setting forth:

(1) the computation of *weighted hours*;

(2) a summary of all *local radio programs* which contained any musical content other than solely *incidental uses* (“programs with music”), showing as to each program: (a) the title of the program; (b) the time of broadcast; (c) the date of broadcast; and (d) whether the program contained performances of musical compositions in the *ASCAP repertory*.

(3) For each *program with music* that is not reported as containing performances of musical compositions in the *ASCAP repertory*, a complete list of each musical composition performed in whole or in part during the program, showing as to each the full title, the name of the composer and author, and the name of the publisher. For performances by means of recordings, you will furnish the title, performing artist, record company and such other information as to composer, author and publisher in full as is shown on the label.

These requirements apply to all *local radio programs* without exception and regardless of the origination of the program.

B. If you comply in part with the requirements set out in this paragraph as to the complete identification of compositions but not sufficiently to identify the works, the presumption is that the programs contained musical compositions in the *ASCAP repertory* and license fees will be paid accordingly.

C. If you fail to report performances of musical compositions that are required to be reported by this agreement, we may impose penalties up to the following maximums.

The first time that there are unreported performances we will notify you of the occasion without penalty. If following this notice we find a second occasion of unreported performances you may be required to pay us up to \$500 plus one month’s per program charge. If following a second occasion notice there are further unreported performances you may be required to pay us up to \$500 plus twice the per program monthly charge.

However, if on any of these occasions we find that you reported less than half of the *weighted hours of programs subject to fee* that you should have in a monitoring period of not less than 5 hours, you may be required to pay us up to \$500 plus one month’s charge pursuant to the Local Station Blanket Radio License if it is the first occasion, \$500 plus twice the monthly blanket charge if it is the second occasion, and \$500 plus three times the monthly blanket charge if it is the third occasion. Also, if there is a third occasion, we have the right at any time thereafter upon thirty (30) days’ notice to switch you to the Local Station Blanket Radio License for the balance of the license term with no further right for you to switch back to the per program license.

All payments provided by this paragraph are due within thirty (30) days following notice from us of the unreported performances.

The failure to report performances on a timely basis may not be remedied by submission of any report of performances after a notice pursuant to this paragraph.

In assessing penalties as set forth above, we will consider, among other things:

1. The time elapsed between occasions.
2. The accuracy of your prior reports.

3. The number of compositions reported compared to the number unreported.
4. Whether the failure to report was due to explainable inadvertence or mistake.
5. Any other circumstances which in our discretion warrant mitigation of the maximum applicable penalty.

9. Reports and Payments.

A. Annual Reports. You will send us a report of the license fee due for each year of this agreement, by April 1st of the following year, by fully completing the annual Statement of Account form which we will supply free of charge. A copy of the annual Statement of Account form is annexed and made a part of this agreement.

B. Monthly Payments. For each month during the term of this agreement you will, on or before the first day of the following month, pay us the following:

(1) If the Station was licensed by us on a per program basis during the preceding calendar year, a sum equal to 1/12 of the license fee for the preceding calendar year (annualized for any reported period less than a year) adjusted in accordance with any increase in the Consumer Price Index (National, all items) between the preceding October and the next preceding October;

(2) If the Station was not licensed on a per program basis during the preceding year, an amount equal to 1/12 of the sum of the following: (a) the "Base Fee" of .24% of its *adjusted gross revenue* for the preceding year, plus (b) the "Additional Fee" determined in accordance with Paragraph 7.A.(2) of this agreement based on its *adjusted gross revenue* for the preceding year and a good faith estimate of the total annual *weighted hours of programs subject to fee* (which you will furnish to us upon execution of this agreement). Such amount shall be adjusted in accordance with any increase in the Consumer Price Index (National, all items) between the preceding October and the next preceding October. If the Station was not broadcasting during the preceding year, you will furnish a good faith estimate of its *adjusted gross revenue* for the first year of operation. *Adjusted gross revenue* reported for any period less than a year will be annualized.

If we do not receive the report required by Paragraph 9.A. for any calendar year when due, the monthly payments will be in the amount of the monthly payments due for the preceding year, plus 24%, and payments at that rate will continue until we receive the late report.

C. Annual Adjustments. If the monthly payments that you have made to us for a year pursuant to Paragraph 9.B. are less than the license fee for that year, you will pay us the additional amount due with the annual report. If the amount that you paid for that year exceeds the license fee due for the year we will apply the excess payment against your future monthly payments, or refund it to you upon your written request if it is greater than three monthly payments required by Paragraph 9.B.

D. Billing Basis. License fee reports will be made on a billing basis by all stations, except that any station may report on a cash basis if (1) its books have been kept on a cash basis and (2) it reported to us only on a cash basis and at no time on a billing basis during the entire term of its agreement with us ending February 28, 1977, and continuously thereafter. You will account for all billings made subsequent to the termination of this agreement with respect to radio broadcasts made during the term of the agreement as and when you make such billings.

E. Late Payments. If we do not receive any payment required under Paragraph 8.C, 9.B. or 9.C. before the first day of the month following the date when the payment was due, you will pay us a finance charge of 1½% per month from the date the payment was due.

F. Multiple Station Reports. You will submit a single license fee report for all stations that you own or act as a time broker for that are licensed on the per program basis and that simultaneously broadcast all programs during the time the stations are on the air concurrently.

G. Combination Sales. If the use of the broadcasting facilities of the station is sold in combination with any other stations that you own, operate or control that are licensed by us under a form of agreement other than this form of local station per program radio license, the combination revenue shall be allocated among the stations on a reasonable basis taking into account factors such as, but not limited to, separate sales by the stations for comparable facilities during the report period or the immediately preceding period, and/or the relative ratings of the stations during the report period.

10. Audits.

A. Right to Audit. We have the right by our duly authorized representatives, at any time during customary business hours, upon reasonable notice, to examine your books and records of account (including logs and all other records relating to the musical compositions performed on your *local radio programs*) only to the extent necessary to verify any report required by this agreement. We will consider all data and information coming to our attention as a result of any such examination of books and records as completely and entirely confidential.

B. Audit Period. The period for which we may audit is limited to the four calendar years reported preceding the year in which the audit is made. However, if you request a postponement, we have the right to audit for the period commencing with the fourth calendar year reported preceding the year in which we first notified you of our intention to

audit. This limitation does not apply if you fail or refuse after written notice from us to produce the books and records necessary to verify any report or statement of accounting pursuant to the agreement.

C. **Correction of Errors.** You may correct computational errors, or errors relating to deductions permitted under the agreement on your license fee reports for the four calendar years preceding the year in which the corrected reports are submitted.

D. **Audit Finance Charges.** If our audit discloses that you underpaid license fees due us:

(1) You will pay a finance charge on the additional license fees of 1½% per month from the date(s) the fees should have been paid pursuant to this agreement if the underpayment is 5% or more, but not less than \$1000.

(2) You will pay a finance charge on the additional license fees of 1½% per month beginning thirty (30) days after the date we bill the additional license fees to you if the underpayment is less than 5% or less than \$1000.

(3) You may dispute all or part of our audit claim. If you do, you must, within thirty (30) days from the date that we bill the additional fees, (i) advise us, in writing, of the basis for your dispute and (ii) pay us any fees indisputably owed together with any applicable finance charges. If there is a good faith dispute between us with respect to all or part of the additional fees that we have billed pursuant to this Paragraph, no finance charges will be billed with respect to the disputed fees for a period beginning on the date we billed the fees to you and ending sixty (60) days from the date that we respond to your written notification of the existence of a dispute.

(4) Finance charges computed in accordance with this Paragraph and pertaining to additional fees which you dispute in accordance with subparagraph (3) above will be adjusted pro-rata to the amount arrived at by you and us in resolution of the dispute.

11. **Breach or Default.** If you fail to perform any of the terms or conditions of this agreement relating to the reports, accountings or payments required to be made by you, we may give you thirty (30) days' notice in writing to cure your breach or default. If you do not do so within the thirty (30) days, we may then promptly terminate this license.

12. **Computer Readable Reports.** A. In lieu of the monthly statements provided in Paragraph 8 of this agreement, we have the option to require that the data called for on those statements be reported in computer readable form. We may exercise this option on the following basis:

(1) We will give you sixty (60) day's notice of our exercise of the option;

(2) We will provide you with software to enable you to enter the data required on PC diskettes or transmit the data electronically to us;

(3) We will, at our option, either furnish you with PC diskettes free of charge for entry of the required data or credit you for the cost of the diskettes.

B. If, following our exercise of this option, you fail to report the required data in accordance with the requirements furnished by us, you will pay us a data entry charge of \$6.00 per page for each month that the data is reported on the monthly statements rather than electronically or on the diskettes.

13. **Time Brokerage Arrangements.** If you enter into a *time brokerage* arrangement, the license granted by this agreement will automatically terminate thirty (30) days after the commencement date of the *time brokerage* unless you have furnished us a complete copy of the *time brokerage* agreement and you and *time broker* have executed a letter to us in the form annexed and made a part of this agreement requesting amendment of the license agreement to add *time broker* as a party. When that letter has been fully executed by you, *time broker* and us, this agreement will be amended accordingly.

14. **Indemnity Clause.** We will indemnify, save and hold harmless and defend you, your advertisers and their advertising agencies, and your and their officers, employees and artists, from and against all claims, demands and suits that may be made or brought against you or them with respect to the performance under this agreement of any compositions in the ASCAP *repertory* which are written or copyrighted by our members. You will give us immediate notice of any such claim, demand or suit and immediately deliver to us all papers pertaining thereto. We will have full charge of the defense of any such claim, demand or suit and you agree to cooperate fully with us in such defense. You may however engage your own counsel at your own expense who may participate in the defense of any such action. At your request we will cooperate with and assist you, your advertisers and their advertising agencies and your and their officers, employees and artists in the defense of any action or proceeding brought against them or any of them with respect to the performance of any musical compositions contained in the ASCAP *repertory*, but not copyrighted or written by members of ASCAP. This Paragraph 14 does not apply to performances of any works that may be restricted under Paragraph 6 of this agreement.

15. **Rights of Termination.**

A. You have the right to terminate this license on seven (7) days' written notice in the event of the termination, suspension or any substantial alteration or variation of the terms and conditions of the governmental licenses covering the Station, or any major interference with the operations of the Station due to governmental measures or restrictions.

B. We have the right to terminate this license on thirty (30) days' notice if there is any major interference with, or substantial increase in the cost of, our operation as a result of any law of the state, territory, dependency, possession or political subdivision in which the Station is located which is applicable to the licensing of performing rights.

16. **Notices.** All notices required or permitted to be given by either of us to the other under this agreement will be duly and properly given if:

- A. mailed to the other party by registered or certified United States mail; or
- B. sent by electronic transmission (i.e., Mailgram, facsimile or similar transmission); or
- C. sent by generally recognized same-day or overnight delivery service;

addressed to the party at its usual place of business.

17. **Successors and Assignees.** This agreement will enure to the benefit of and be binding upon you and us and our respective successors and assignees, but no assignment will relieve either of us of our respective obligations under this agreement.

18. **Blanket License.** ASCAP's "interim local station blanket license" is being offered to you simultaneously with this agreement. In accepting this agreement, you acknowledge that you have a choice of entering into either this agreement or the interim blanket license with us; that you have the opportunity to negotiate for separate licenses with our individual members; and that you are voluntarily entering into this agreement with us. You may substitute the interim blanket agreement in place of this agreement by giving us written notice at least 10 days prior to the commencement of any month during the term of this agreement. In that event, effective with the commencement of that month, the interim blanket agreement will be in full force and effect between us.

19. **Applicable Law.** The fees set forth in this agreement have been approved by the United States District Court for the Southern District of New York as reasonable and non-discriminatory in accordance with the Amended Final Judgment in *United States v. ASCAP*. The meaning of the provisions of this agreement will be construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, this agreement has been duly executed by ASCAP and Licensee this _____ day of _____, 200____.

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

By _____

LICENSEE
_____ (Full corporate or other name of station owner)
By _____

(Fill in capacity in which signed)

- (a) If corporation, state corporate office held;
- (b) If partnership, write word "partner" under signature of signing partner
- (c) If individual owner, write "individual owner" under signature