



http://www.bmi.com

LIVE365 MICROCASTER WEB SITE MUSIC PERFORMANCE AGREEMENT

MICRO-06

AGREEMENT, made on _____, 200____, by and between BROADCAST MUSIC, INC. ("BMI"), a New York corporation with its principal offices at 320 West 57th Street, New York, New York 10019 and _____ ("LICENSEE"), a _____ (State) (check one) _____ corporation
 _____ partnership
 _____ limited liability company
 _____ individual d/b/a _____
 with its principal offices at _____, for the public performance of BMI music on the LICENSEE's Web Site located at http://_____ (the "Agreement").

WHEREAS, LICENSEE uses Live365, Inc.'s stream hosting services exclusively to stream its DMCA-complaint (i.e. eligible for a statutory license for the public performance of sound recordings by means of digital audio transmissions under section 114(d)(2) of the U.S. Copyright Act) radio-style programming ("Programming") over the Internet from its Web Site located at the URL above; and

WHEREAS, LICENSEE's Programming is available to a maximum of 25 simultaneous listeners, LICENSEE generates no more than \$500.00 in Gross Revenue per month from the Web Site, and LICENSEE's main offices and the majority of its employees are located in the U.S. Territory; and

WHEREAS, LICENSEE desires a license from BMI to cover the public performance of BMI music in its Programming in and as part of its Web Site.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. **TERM:** This Agreement begins on _____ (date on or after January 1, 2006 on which Programming is first made available from the Web Site), continues through the end of December of the then current year, and automatically renews on a calendar year-to-year basis thereafter until it is terminated ("Term").
2. **DEFINITIONS:** As used in this Agreement, the following terms have the following meanings:
 - A. "Gross Revenue" means all revenue generated in connection with the Web Site.
 - B. "New Media Territories List" shall mean the list of territories and performing right licensing organizations on the schedule posted in the weblicensing section of BMI's web site (located at <http://www.bmi.com/>) and designated as such (a copy of which is attached hereto). Please note that BMI may add and delete territories and performing right organizations on this schedule at any time and without notice.
 - C. "Territory" means the U.S. Territory and those territories listed on the New Media Territories List.
 - D. "U.S. Territory" shall mean the United States, its commonwealths, territories, and possessions.
 - E. "Web Site" shall mean LICENSEE's Internet domain comprising a series of interrelated web pages currently registered with a domain name registration service and located at the URL identified above.
3. **GRANT OF RIGHTS:**
 - A. BMI hereby grants LICENSEE a non-exclusive license to perform publicly over the Internet within the Territory (subject to sub-paragraph 3(b) below) during the Term all musical works, the right to grant public performing right licenses of which BMI owns or controls during the Term. This Agreement includes only public performances of musical works by transmission over the Internet, and only where such transmissions are accessed from a Web Page on the Web Site; it does not cover any transmissions accessed from a Web Page on a third party web site. Public performances outside of the Territory may be subject to appropriate separate licensing. This Agreement does not include dramatic rights or the right



to perform dramatico-musical works in whole or in substantial part. This Agreement also does not license public performances in any commercial establishments, including, but not limited to, where all or a portion of the music available on the Web Site is used as a commercial music service (as that term is customarily understood in the industry); such performances of BMI music shall be subject to appropriate separate licensing.

B. The territorial scope of the grant of rights with respect to any musical works which are affiliated with BMI through a non-U.S. performing right licensing organization not listed on the New Media Territories List is limited to public performances in the U.S. Territory. Public performances of such musical works outside of the U.S. Territory may be subject to appropriate separate licensing.

C. This license does not cover any transmission which is not part of the Web Site, and does not authorize LICENSEE to grant to others (including, but not limited to, third party web sites, online services, cable television system operators and open video systems) any license or right to perform publicly or cause to be performed by any means, method or process whatsoever, any of the musical compositions licensed hereunder. BMI and LICENSEE expressly agree that this Agreement does not cover those instances where all or a portion of the Web Site is made available from a third party web site or included on a tier of services by a third party for additional revenue; such uses shall be subject to appropriate separate licensing.

D. This Agreement grants only public performing rights in musical works and does not grant any reproduction, distribution, or any other intellectual property right(s) in such musical works, or any digital performance, reproduction, distribution, or any other intellectual property right(s) in any sound recordings, to any person or entity, including those that may receive and/or download or otherwise store the transmission of the musical works licensed hereunder.

4. LICENSE FEES:

A. In consideration of the license granted in this Agreement, LICENSEE will pay License Fees to BMI for 2006 in monthly installments of \$10.00 for each month of the Term. LICENSEE agrees to pay such License Fees to Live365, Inc., which will remit payment to BMI on LICENSEE's behalf. In the event that BMI does not receive a monthly installment on or before the last day of the month immediately following the month for which such payment should have been made, BMI may, in addition to any other remedies it may have available to it, cancel this Agreement retroactive to the end of the last calendar month for which a monthly installment was received.

B. For each year of the Term after 2006, the License Fee will be adjusted to reflect the percentage change in the United States Consumer Price Index (All Urban Consumers, All Items) between October of the preceding year and October of the next preceding year, rounded to the nearest dollar amount.

5. STATEMENT(S) OF ACCOUNT: On or before January 30 of each year of the Term, LICENSEE shall provide BMI with an electronic statement of account certifying that, with respect to the previous calendar year: (i) LICENSEE used Live365, Inc.'s stream hosting services exclusively to make its Programming available from its Web Site; (ii) LICENSEE's Programming was not available to more than 25 simultaneous listeners at any time; and (iii) LICENSEE did not generate more than \$500.00 in Gross Revenue during any month. In the event that BMI does not receive an annual statement of account by January 30, BMI may, in addition to any other remedies it may have available to it, cancel this Agreement retroactive to the end of the last calendar year. If, at any point during any calendar year of the Agreement, LICENSEE is unable to make all of the representations in (i), (ii) and (iii) above, LICENSEE will immediately notify BMI and this Agreement will be canceled effective at the end of the last day on which LICENSEE was able to make such representations.

6. AUDIT: BMI has the right to require that LICENSEE provide BMI with data or information sufficient to ascertain the License Fee due under this Agreement. BMI (and its duly authorized representatives) may, at BMI's expense and during customary business hours, on at least 10 days prior written notice, examine LICENSEE's books and records of account relating to any and all statements, accountings and reports required under this Agreement in order to verify their accuracy and/or determine LICENSEE's eligibility for this Agreement.

7. MUSIC USE REPORTS: LICENSEE will work with Live365, Inc. to ensure that Live365, Inc. can provide BMI with detailed music use reports identifying all of the musical works in LICENSEE's Programming by song title, performing artist, and the number of times each such musical work was performed.

8. INDEMNIFICATION: So long as LICENSEE is not in default or arrears in payment under this Agreement, BMI shall indemnify, save and hold harmless and defend LICENSEE and its officers and employees from and against any and all claims, demands and suits alleging copyright infringement that may be made or brought against them or any of them with respect to the public performance within the Territory of any musical works licensed hereunder. BMI's obligations under this paragraph, however, are limited to those claims, demands or suits that are made or brought within the U.S. Territory, and only with respect to those works that are BMI-affiliated works at the time LICENSEE performed them. This indemnity also shall not apply to transmissions of any musical work by LICENSEE after written request from BMI that LICENSEE refrain from performance of such work. 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; provided, however, that LICENSEE may retain counsel on its behalf and at its own expense and participate in the defense of such claim, demand or suit.

9. WARRANTY; RESERVATION OF RIGHTS: This Agreement is experimental in nature. BMI hereby expressly reserves its right to re-evaluate the appropriateness of the fees and terms herein, including, but not limited to, the reasonable value of a license that covers transmissions beyond the U.S. Territory, for periods following the Term.

10. TERMINATING THE AGREEMENT:

A. LICENSEE can request to terminate the Agreement at the end of December of 2006, or at the end of December of any year after 2006, by notifying BMI in writing at least sixty (60) days before the requested date of termination. Additionally, if LICENSEE permanently discontinues its use of music on the Web Site (as opposed to temporarily disabling the Web Site and/or the music on the Web Site), LICENSEE can request to terminate this Agreement at any time during the Term by notifying BMI in writing. The Agreement will be terminated at the end of the last day of the month during which LICENSEE notified BMI so long as all reports and payments due under the Agreement through that date have been made.

B. BMI may terminate this Agreement at the end of December of any year of the Term by notifying LICENSEE in writing at least sixty (60) days before the effective date of termination. Additionally, if BMI terminates its agreements with all other customers in LICENSEE's class and category, BMI can terminate this Agreement at any time during the Term by notifying LICENSEE in writing at least sixty (60) days before the effective date of termination.

11. ARBITRATION: All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement (except for matters within the jurisdiction of the BMI rate court) shall be submitted to arbitration in the City, County, and State of New York under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators 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 costs, expenses, and attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

12. WITHDRAWAL OF WORKS: BMI reserves the right at its discretion to withdraw from the license granted by this Agreement any musical work as to which 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.

13. NOTICE: All notices and other communications under this Agreement shall be in writing; statement requests and other correspondence between the parties relating to reporting under the Agreement can be sent electronically. Printed notices and other communications are deemed given upon mailing when sent by ordinary first-class U.S. mail to the party intended, at its mailing address as stated herein (or any other address that a party may designate in writing). Electronic report requests and other correspondence relating to reporting under the Agreement are deemed given upon sending when sent by electronic mail to the address designated (or any other address that a party may designate in writing).

14. MISCELLANEOUS:

A. LICENSEE cannot assign this Agreement to any other person or entity without BMI's prior written consent.

B. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE will provide BMI with the title and the writer/composer of each musical composition requested to be identified.

C. BMI will make reasonable efforts to be exempted or excused from paying state or local taxes on the License Fees received pursuant to this Agreement. In the event that BMI is not excused from paying such taxes, however, and BMI is permitted by law to pass through such tax to LICENSEE, LICENSEE will pay BMI the full amount of such tax when LICENSEE submits its License Fee payment(s).

D. BMI treats the financial and music usage information ("Information") that LICENSEE provides under this Agreement (or that BMI obtains through an audit) as confidential. LICENSEE's Information is made available to BMI agents and employees who need to know such information in order to administer this Agreement. LICENSEE's Information may also be made available to BMI-represented songwriters, composers, music publishers, as well as foreign rights organizations, but only to show the royalties generated from LICENSEE's use of their works (i.e., song X was played Y times and earned \$Z in royalties). BMI will not otherwise disclose LICENSEE's Information unless required to do so by law or legal process. BMI may, however, use the information in LICENSEE's music use reports and the music use reports from other customers to compile aggregate market data, and may disclose such aggregate market data publicly so long as BMI does not specifically identify LICENSEE's information as coming from LICENSEE.

E. This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof. This Agreement cannot be waived, added to or modified orally and no waiver, addition or modification shall be valid unless in writing and signed by the parties. This Agreement, its validity, construction, and effect, shall be governed by the laws of the State of New York. The fact that any provisions 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.

BROADCAST MUSIC, INC.

PLEASE COMPLETE THE FOLLOWING:

By: _____
(Signature)

(Print Name of Signer)

(Title of Signer)

LICENSEE's main offices are located in the U.S. Territory
YES _____ NO _____

Please return signed agreement together with minimum fee to :

BMI
ATTN: Web Site Licensing
10 Music Square East
Nashville, TN 37203-4399

(LICENSEE)
By: _____
(Signature)

(Print Name of Signer)

(Title of Signer)

NEW MEDIA TERRITORIES LIST

Last Updated: 1/2006

COUNTRY

ORGANIZATION
