Music
Performance
Agreement

# Music-On-Hold Service

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Account #

**LI-11/17-36M**

AGREEMENT made at New York, NY on _____ between BROADCAST MUSIC, INC. (BMI), a New York corporation with its principal place of business at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030 and _____, a State of _____ corporation and their respective subsidiaries ("LICENSEES"), with their principal place of business at_____

**ENTER LEGAL NAME** _____
*Name of corporation, Partnership or Individual Owner*

**ENTER TRADE NAME** _____
*(Doing business under the name of)*

**CHECK APPROPRIATE BOX AND COMPLETE**

☐ **Corporation** _____ (State of Incorporation)

☐ **Partnership** (Enter names of partners) _____ _____ _____

☐ **Individual Owner** (Indicate residence below under Mailing Address)

| **BUSINESS ADDRESS** | | | **MAILING ADDRESS** | | |
|---|---|---|---|---|---|
| | | | | | |
| *Street Name* | | | *Street Name* | | |
| *City* | *State* | *Zip* | *City* | *State* | *Zip* |
| *Telephone No.* | *Contact Name* | | *Telephone No.* | *Contact Name* | |
| *Title* | | | *Title* | | |

1. The term of this agreement shall be the period of one (1) year beginning on _____ and ending on _____ and shall continue thereafter for additional periods of one year each unless cancelled by either party as of the end of the initial term or any subsequent term upon thirty (30) days advance written notice to the other party. Each one-year period during the initial term or any additional term is hereafter referred to as a "contract year."

2. As used in this agreement, the following words shall have the following respective meanings:

(a) "Music-on-hold": a telephonic transmission service whereby music is performed for telephone callers while they are being held on the line;

(b) "Music-on-hold service": a business operation which provides audio tapes to its customers for music-on-hold use;

(c) "Custom audio production": audio music programming produced (whether via the provision of tapes, telephonic delivery or other means) for a particular music-on-hold service customer according to specifications and which may include advertising messages and information in addition to music;

(d) "Gross revenues": all consideration (in money or in any other form including, but not limited to, trade and barter arrangements) due to LICENSEES from any source in connection with the providing of custom audio productions to its music-on-hold customers. It is understood and agreed that "gross

revenues" shall not include the consideration received by LICENSEES solely for hardware, non-musical productions, or for custom audio productions created for a client who supplies LICENSEES with music to be used in conjunction with its own advertising or promotional messages, where the performance rights to that music have been obtained by the client prior to its being supplied to LICENSEES, non-musical productions.

3. (a) LICENSEES warrant and represent that they operate a music-on-hold service which provides custom audio productions to business and industry. In consideration of the payment of the license fees described in Paragraph 4, BMI hereby grants to LICENSEES a non-exclusive license to cause and permit its customers to perform over telephone lines at locations where LICENSEES' custom audio productions are received all of the musical works of which BMI shall have the right to grant public performance licenses during the term. In no event shall this license extend to performances of music other than on telephones calling a location where LICENSEES' custom audio productions are received.

(b) 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 other context which may constitute an exercise of the "grand rights" therein; or (ii) the right to broadcast, telecast, cablecast or otherwise transmit (other than via music-on-hold) the performances licensed hereunder to persons outside of the licensed premises; or (iii) the authorization of performances of music by means of a coin-operated phonorecord player (jukebox). 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.

4. (a) LICENSEES agree to pay BMI for the license granted herein an annual license fee equal to a percentage of LICENSEES' gross revenues [as defined in Paragraph 1(d) above] during each contract year of this agreement. The percentage upon which the annual license fee is calculated shall be 3% for 1994 and 3.5% for 1995 and any subsequent years of this agreement. Each annual fee shall be an estimated fee based upon LICENSEES' gross revenues during the preceding contract year. LICENSEES shall append to this agreement a statement, certified by an officer or auditor of LICENSEES, attesting to such revenues for the twelve-month period immediately preceding the initial term of this agreement, and calculating the estimated license fee for the initial contract year. Not later than _____ and each _____ thereafter during the term, LICENSEES shall submit such a certified statement for the previous contract year. The license fee calculated on said figures shall then become both the actual fee for the previous contract year and the estimated fee for the then-current contract year.

(b) At the same time that the certified statement is due, LICENSEES shall pay the first of four (4) quarterly installments of a) the estimated fee for the then-current contract year, plus b) any deficiency between the estimated fee and the actual fee for the previous contract year. The second through fourth installments shall be payable on the 4th month, the 7th month and the 10th month of each contract year, respectively. In the event that the actual fee is less than the estimated fee paid for the previous contract year, BMI shall credit LICENSEES with the difference, or, if the actual fee is for the last year of the term of this agreement, BMI shall refund the difference to LICENSEES.

5. At a frequency of no more than once every thirty (30) days during the term of this agreement, BMI may elect to provide LICENSEES with a written list of locations and/or entities who have advised BMI that the music performed on their premises is supplied by or through LICENSEES. Upon receipt of any such list, LICENSEES agree, within ten (10) days thereafter, to advise BMI in writing as to whether or

not each location and/or entity listed has, in fact, been supplied with music by or through LICENSEES and if so, the effective date thereof.

6. The granting and taking of this license and the terms thereof are deemed experimental and without prejudice to any position taken by either party in connection therewith following the expiration of this agreement.

7. In the event that BMI, at any time during the term hereof, shall, for the same class and category as that of LICENSEES, issue licenses granting rights similar to those in this agreement on a more favorable basis, BMI shall, for the balance of the term, offer LICENSEES a comparable agreement.

8. BMI agrees to indemnify, save harmless and defend LICENSEES, their 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 material licensed under this agreement. Such indemnity shall be limited to the works which are licensed by BMI at the time of LICENSEES' performances. BMI's Clearance Department will, upon request, advise LICENSEES whether particular musical works are available for performance as part of BMI's repertoire. LICENSEES agree 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.

9. 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 thirty (30) days after the date of BMI's written notice to LICENSEES' 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 LICENSEES 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.

10. BMI shall have the right upon reasonable notice to LICENSEES, by its authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEES to such extent as may be necessary to verify the statements made hereunder. BMI shall consider all data and information coming to its attention as the result of any such examination as confidential.

11. All disputes of any kind, nature or description arising in connection with the terms and conditions of this agreement shall be submitted to the American Arbitration Association in the City, County and State of New York under its then prevailing rules, the arbitrators to be selected as follows: Each of the parties hereto 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 attorney's fees of arbitration, which shall be borne by the unsuccessful party.

12. Any notice required or permitted to be given under this agreement shall be in writing and shall be deemed duly given when sent by ordinary first-class U.S. mail (unless it is stated elsewhere in this agreement that a notice is to be sent certified mail) to the party for whom it is intended at its address hereinabove stated, or any other address which either party hereto may from time to time designate for such purpose. Any such notice sent to BMI shall be to the attention of the Vice President of Licensing with a copy to the General Counsel. Any such notice sent to LICENSEES shall be to the attention of the person signing this agreement on behalf of LICENSEES or such other person as LICENSEES may advise BMI in writing.

13. BMI may impose a late payment charge of one and one-half percent (1 $^1/_2$%) per month from the date any payment is due on any payment that is received by BMI more than one month after the due date.

14. This agreement constitutes the entire understanding between the parties, shall not be binding until signed by both parties, and cannot be waived or added to or modified orally, and no waiver, addition or modification shall be valid unless in writing and signed by the parties. The rights of LICENSEES shall not be 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 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.

**TO BE COMPLETED BY LICENSEE**
**By signing this Agreement you agree that the foregoing is a true and accurate representation of your Music Policy.**

I have read and have understood all of the terms and conditions herein and my signature below is evidence of this.

_____
Signature

_____
Print Name / Title

**FOR ADMINISTRATIVE USE ONLY**
BROADCAST MUSIC, INC.

| FOR BMI USE ONLY | | |
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| **Account No.** | **COID** | |