Music Performance Agreement

# Jai Alai

Account # _____

**15A**

**LI-2017/SEPT-15A**

AGREEMENT, made at New York, N.Y. on *(Date Will Be Entered By BMI Upon Execution)* _____ between BROADCAST MUSIC, INC. ("BMI"), a Delaware corporation with its principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 100007-0030 and the entity described below ("LICENSEE" or "you"):

**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** *(show residence address below under Mailing Address)*

| **PREMISES ADDRESS** | **MAILING ADDRESS** |
|---|---|
| | |
| *(Street Address)* | *(Street Address)* |
| *(City)* *(State)* *(Zip)* | *(City)* *(State)* *(Zip)* |
| *(Contact Name)* *(Title)* *(Telephone No.)* ( ) | *(Contact Name)* *(Title)* *(Telephone No.)* ( ) |

**1. DEFINITIONS**

Session: each program or card of jai alai games for which either separate admission is charged or separate entry is required of any patrons, e.g. an afternoon program and evening program on the same calendar day are considered two sessions.

**2. BMI GRANT**

BMI hereby grants to LICENSEE a non-exclusive license to perform, present or cause the performance at the licensed premises of all musical works of which BMI shall have the right to grant public performance licenses during the term hereof. Said license shall be restricted to performance of music in the manner described herein and is granted in consideration of the 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:

(a) 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; nor to performances as set forth in Paragraph 13 of this Agreement; or

(b) the right to broadcast, telecast, cablecast or otherwise transmit the performances licensed hereunder to persons outside of the licensed premises.

(c) This license does not authorize performances of music by means of a coin-operated phonorecord player (jukebox).

(d) This license shall not extend to any performances originating outside of the licensed premises, except that if LICENSEE is a subscriber to a commercial subscription music service which is licensed by BMI, then only this license shall authorize performances on the licensed premises of music which is provided to LICENSEE by such subscription music service.

**3. TERM OF AGREEMENT**

The term of this Agreement shall begin on January 1, _____ and end on December 31, _____ and shall continue thereafter unless cancelled by either party as of the end of said initial term or any subsequent one (1) year period (herein sometimes referred to as a "contract year" or "calendar year") upon thirty (30) days advance written notice to the other party. BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the Agreement 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.

**4. FEES**

(a) LICENSEE agrees to pay BMI, subject to the minimum fee, for each calendar year an estimated fee as an advance of the actual fee. The estimated fee shall then be adjusted in accordance with Paragraph 5. The first estimated annual fee due shall be payable upon the signing of the Agreement by LICENSEE. The resulting actual fee, subject to the minimum fee, shall be determined by multiplying the sessions by the rate in the License Fee Schedule for each applicable calendar year.

(b) The estimated fee for the second and subsequent calendar years shall be the actual fee for the previous calendar year and shall be due and payable in full by January 20th of each such year.

## STATEMENT OF JAI ALAI SESSIONS

*(To estimate fees (for the first calendar year) complete areas below)*

LICENSEE represents that during the calendar year preceding the initial term of this Agreement (or if LICENSEE did not operate during that full calendar year period, LICENSEE shall make a good-faith estimate for the first calendar year of this Agreement), LICENSEE conducted _____ number of jai alai sessions.

Accordingly, LICENSEE's estimated fee, from the License Fee Schedule below, is $ _____ which is due and payable in full upon the signing of this Agreement by LICENSEE.

## LICENSEE FEE SCHEDULE

| RATE PER JAI ALAI SESSION | MINIMUM ANNUAL FEE |
|---|---|
| $ 10.00 | $ 100.00 |

**5. REPORTING OF JAI ALAI SESSIONS**

(a) At the same time that LICENSEE pays its estimated license fee hereunder for the second and subsequent calendar years, LICENSEE shall submit a report, on BMI forms, certified by an officer or by the auditor of LICENSEE, setting forth for the previous calendar year the actual number of jai alai sessions.

(b) If the actual fee is greater than the license fee already paid by LICENSEE for the calendar year, LICENSEE agrees to pay BMI the difference, within (30) days of the mailing by BMI to LICENSEE of the adjusted statement of license fees.

(c) If the actual fee is less than the license fee already paid by LICENSEE to BMI for the calendar year, BMI agrees to credit the difference between the actual and estimated license fees to the account of LICENSEE, and if such adjustment occurs in the last calendar year of the Agreement, BMI shall refund said sum promptly.

**6. OFFER OF COMPARABLE AGREEMENT**

In the event that BMI, at any time during the term hereof, 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.

**7. 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 material licensed under this Agreement. Such indemnity shall be limited to the works which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. 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.

**8. WITHDRAWAL OF MUSICAL WORKS**

BMI reserves the right 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.

**9. 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 thirty (30) days after LICENSEE's receipt of written notice 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.

**10. REVIEW OF STATEMENTS / ACCOUNTINGS**
BMI shall have the right upon reasonable notice to LICENSEE, by its authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE to such an 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. ARBITRATION**
All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to arbitration in the City, County and State of New York under its then prevailing rules of the American Arbitration Association by an arbitrator or arbitrator(s) 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 attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

**12. NOTICES**
Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed given when sent by first-class U.S. 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, and when such notice is so mailed, it shall be deemed given upon the mailing thereof. Any such notice sent to BMI shall be to the attention of the General Licensing Department. Any such 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. ADDITIONAL EXCLUSIONS**
This license shall not extend to any hotel, motel, restaurant or similar facility situated within the area of the licensed premises, whether or not such facility is owned or operated by LICENSEE. This license also shall not at any time extend to performances of music at concerts or other musical attractions presented on any day with a jai alai session before or after the first or last game or on any days without a jai alai session.

**14. MISCELLANEOUS**
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 LICENSEE 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. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

**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.
(SIGN HERE - PLEASE INCLUDE PAYMENT)

Signature

Print Name / Title

**FOR ADMINISTRATIVE USE ONLY**
**TO BE COMPLETED BY BMI**
BROADCAST MUSIC, INC.

**FOR BMI USE ONLY**

**Account No.** **COID**