

ASCAP

2004 Radio Station License Agreement

AGREEMENT made between American Society of Composers, Authors and Publishers (“ASCAP”) and

Call Letters and Band _____ Freq. _____ FCC Community of License _____
(city) (state)

(Legal Name of LICENSEE)

Please Check Appropriate Box and Complete

- A corporation organized under the laws of the State of _____
- A limited liability company organized under the laws of the State of _____
- A partnership consisting of _____
- An individual residing at _____

(“LICENSEE”) licensing the Radio Broadcasting station (“Station”) currently receiving mail at:

(Street Address or P.O. Box)

(City) (State) (Zip Code) (Telephone Number)

Location of Station: Check box if same as above.

(Street Address)

(City) (State) (Zip Code)

email address: _____

with the Radio Station Web Site URL: http:// _____

telephone number: _____

fax number: _____

1. Term.

The term of this Agreement commences as of January 1, 2001, and ends on December 31, 2009, unless earlier terminated as hereinafter provided.

2. Definitions.

A. **“ASCAP Repertory”** shall mean musical works for 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 ASCAP 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 ASCAP members during the license term are included for the full balance of the term.

B. **“Background For An Announcement”** shall mean mood, atmosphere or thematic music performed as background to an otherwise non-musical commercial, public service or station promotional announcement not exceeding sixty (60) seconds in length.

C. **“Feature Performance”** shall mean any performance that is either a principal focus of audience attention, such as a song or other musical composition, whether performed “live” or by means of a recording; or other musical subject matter on a radio program that is not a performance as a theme or signature, bridge, cue or background music, Jingle, or in conjunction with an advertising, promotional or public service announcement or logo.

D. **“Incidental Use”** shall mean any use of music other than a feature performance, including: music used as a theme or signature; bridge, cue or background music; Background Music For An Announcement; a Jingle; public domain music in arrangements controlled by ASCAP on which ASCAP pays no royalties; and music which is used only incidentally to the broadcast of a news event or sports event.

E. **“Interim Radio Station Licenses”** shall mean the 1996 ASCAP Local Station Blanket Radio License and the 1996 ASCAP Local Station Per Program Radio License.

F. **“Jingle”** shall mean a commercial, promotional or public service announcement containing musical material (with or without lyrics) originally written for commercial, promotional or public service announcements, or a musical work originally written for other purposes with the lyrics changed for commercial, promotional or public service announcement purposes, not exceeding sixty (60) seconds in length and used with the permission of the ASCAP writer or publisher member in interest.

G. **“Local Management Agreement”** shall mean any agreement under which any other entity becomes a Local Manager in regard to Station.

H. **“Local Manager”** shall mean any entity not under common ownership or control of LICENSEE which is authorized to resell 10% or more of Station’s air time and (1) simulcasts or sells announcements on Station in combination with a radio station owned or operated by the entity, which station has entered into an ASCAP Radio Station License Agreement; or (2) has assumed, contractually or otherwise, responsibility for the management of Station.

I. **“Music Format Station”** is any station that makes some feature use of ASCAP music in more than 90 of its fifteen-minute weighted program periods in any given week.

J. **“Non-Music Format Station”** is any station that makes some feature use of ASCAP music in 90 or fewer of its fifteen-minute weighted program periods in any given week.

K. **“Program Period”** shall mean a one hour period of broadcasting for calendar year 2004 and a fifteen (15) minute period of broadcasting commencing on the hour and at fifteen (15), thirty (30), and forty-five (45) minutes past the hour without regard to whether such period contains one or more programs or announcements for calendar years 2005 through 2009.

L. **“Radio Broadcasting”** shall mean audio “over-the-air” in all of its forms, excluding: (1) transmission or retransmission of an over-the-air broadcast signal on the Internet and (2) FCC-licensed commercial low power audio broadcasting, with similar technical characteristics and requirements as currently defined in 47 C.F.R. Section 73.801, et seq. Radio Broadcasting shall include simultaneous transmission of an FCC-licensed digital broadcast signal identical in content to the Radio Station Signal licensed hereunder.

M. **“Radio Station Signal”** shall mean Station’s FCC-licensed over-the-air radio broadcast transmission.

N. **“Radio Station Web Site”** shall mean LICENSEE’s Internet computer service comprising a series of interrelated web pages which is registered with a domain name registration service and which LICENSEE makes available over the Internet.

O. **“U.S. Territory”** shall mean the United States, its Commonwealth, territories and possessions.

3. **ASCAP Grant of Rights and Limitations.**

A. ASCAP grants LICENSEE a non-exclusive license to perform publicly in the U.S. Territory, by Radio Broadcasting on Station, non-dramatic performances of all musical works in the ASCAP Repertory during the Term.

B. ASCAP grants to LICENSEE for the term a non-exclusive license to publicly perform all musical works in the ASCAP Repertory during the Term by simultaneously streaming the Radio Station Signal over the Internet in the U.S. Territory from the Radio Station Web Site without alteration (except for advertising). LICENSEE shall promptly notify ASCAP in writing upon making its Radio Signal available on its Radio Station Web Site, and upon discontinuing such service.

C. This Agreement does not: license the performance of any dramatico-musical works, such as operas, operettas, musical comedies or plays, in whole or in part; or grant LICENSEE any other rights in the musical compositions licensed under this Agreement.

D. The performances licensed hereunder may originate at any place, whether or not such place is licensed to perform publicly the musical works licensed hereunder, and regardless of the manner, means or methods of such origination. Nothing in this Agreement shall be deemed to authorize LICENSEE to grant to others any performance or other rights in any of the musical compositions licensed under this Agreement, or to extend to the receiver of LICENSEE’s Radio Station Signal, or to any place at which the performances licensed by this Agreement originate if other than at Station.

E. Nothing herein shall be construed as authorizing LICENSEE to grant to others, including but not limited to any cable system, satellite carrier (including MMDS or similar wireless services), online services or ISP the right to retransmit to the public or perform publicly by any means, method or process whatsoever, any of the musical compositions licensed hereunder, or as authorizing any receiver of any radio broadcast to perform publicly or reproduce the same by any means, method or process whatsoever.

F. This Agreement licenses the transmission of the Radio Station Signal by streaming over the Internet *only* where such transmission is accessed from a page on the Radio Station Web Site and received by means of a personal computer or other device capable of receiving such transmissions. This Agreement does not cover the transmission of the

Radio Station Signal by streaming over the Internet where such transmission is accessed directly (as opposed to through a hyperlink to the Station's Web Site) from a page on a third party web site, or any uses of music on the Radio Station Web Site other than as part of the Radio Station Signal. Such other uses shall be subject to appropriate separate licensing.

G. This Agreement does not cover Internet transmissions of the Radio Station Signal where a fee is charged for the right to access such transmissions, or extend to Internet uses of the Radio Station Signal where the Radio Station Web Site is packaged or included on a tier of services for additional consideration, or where Radio Station Signal is offered for resale as a pay or premium audio service either independently or with other web sites or otherwise used by any third party as background audio. Such uses shall be subject to appropriate separate licensing.

4. License Fee; Minimum Fee; Taxes.

A. LICENSEE agrees to pay fees annually to ASCAP hereunder in accordance with the agreement between ASCAP and the Radio Music License Committee ("RMLC") that is attached as Exhibit A to this Agreement, the terms of which are incorporated herein by reference (the "ASCAP/RMLC Agreement"). LICENSEE specifically agrees that LICENSEE will pay its share of the industry-wide fees for each year from 2004 through 2009 allocated to Station by the RMLC under that agreement and in accordance with Exhibit B attached hereto.

B. For each month during the Term hereof commencing January 1, 2004, LICENSEE shall, on or before the first day of the following month, pay to ASCAP a sum equal to one twelfth of the annual fee payable by LICENSEE to ASCAP hereunder for that year as determined by the RMLC pursuant to the allocation formula in the ASCAP/RMLC Agreement.

C. For all periods through December 31, 2003, if Station was licensed under an Interim ASCAP Radio Station License, the license fees due and payable, and all the additional terms and conditions that shall be applicable hereunder for such periods, shall be as provided in the ASCAP/RMLC Agreement and LICENSEE shall submit its Annual Statement (or Annual Financial Report) for Station for 2003. The Interim Radio Station Licenses are incorporated by reference for all licensees whose licenses commenced prior to the date of execution of this Agreement. The terms and conditions of the Interim Radio Station Licenses will be available at www.ASCAP.com/licensing/radio or www.radiomlc.com.

D. For the period commencing January 1, 2005, if LICENSEE elects a program period license, then LICENSEE must provide the music use reports required by paragraph 10 below.

E. In the event that the payment of any license fee to ASCAP by LICENSEE pursuant to this Agreement causes ASCAP to become liable to pay any state or local tax which is based upon the license fees received by ASCAP from licensees, the LICENSEE agrees to pay ASCAP the full amount of such tax together with LICENSEE's fee payment(s) as invoiced by ASCAP, within normal payment terms; provided, however, that ASCAP is permitted by law to pass through such tax to LICENSEE; and provided further that LICENSEE and ASCAP will cooperate in making reasonable efforts to be exempt or excused from the tax.

F. ASCAP may impose a late payment charge of 1% per month from the date the payment was due on any monthly payment that is received by ASCAP after the date payment was due and ASCAP may further assess LICENSEE for the full amount of out-of-pocket costs (exclusive of attorneys' fees) incurred by ASCAP in connection with collecting such amounts.

5. License Breach.

In the event that LICENSEE shall fail to make payment or submit any report under this Agreement, when and as due, ASCAP may give LICENSEE thirty (30) days notice in writing to cure such breach or default. In the event that such

breach or default has not been cured within thirty (30) days of said notice, ASCAP may promptly terminate this License. The right to terminate shall be in addition to any and all other remedies which ASCAP may have in law or equity.

6. Blanket/Program Period Changes.

A. If LICENSEE is operating on a blanket basis as set forth in this Agreement, LICENSEE may, as of the first day of January or July during any calendar year commencing January 1, 2005, upon not less than sixty (60) days' prior written notice to ASCAP using the form attached as Exhibit C, a copy of which is to be provided to RMLC by LICENSEE, elect to be licensed on a program period basis as set forth in this Agreement, provided that Station has changed from a Music Format Station to a Non-Music Format Station and LICENSEE is current in all blanket fees and reports required hereunder as of the effective date of LICENSEE's election.

B. If LICENSEE is operating on a program period basis as set forth in this Agreement, LICENSEE must provide ASCAP with not less than sixty (60) days' prior written notice to ASCAP, a copy of which is to be provided to RMLC by LICENSEE, of Station's change from a Non-Music Format Station to a Music Format Station and LICENSEE shall be deemed to have elected to be licensed hereunder on a blanket basis as of the next ensuing January 1 or July 1 following the date of such notice.

C. If LICENSEE is operating on a program period basis as set forth in this Agreement, LICENSEE may, as of the first day of January or July, during any calendar year commencing January 1, 2005, upon not less than sixty (60) days' prior written notice to ASCAP, using the form attached as Exhibit C, a copy of which is to be provided to RMLC by LICENSEE, elect to be licensed on a blanket basis as set forth in this Agreement, provided that LICENSEE is current in all program period fees and reports due hereunder.

7. Indemnification.

ASCAP will indemnify, save and hold harmless and defend LICENSEE, its advertisers, and their advertising agencies, and LICENSEE's and their officers, employees and artists, from and against all claims, demands and suits that may be made or brought against LICENSEE or them with respect to the performance under this Agreement of any compositions in the ASCAP Repertory that are written or copyrighted by ASCAP members. LICENSEE must give ASCAP immediate notice of any such claim, demand or suit and immediately deliver to ASCAP all papers pertaining thereto. ASCAP will have full charge of the defense of any such claim, demand or suit and LICENSEE agrees to cooperate fully with ASCAP in such defense. LICENSEE may, however, engage its own counsel at its own expense who may participate in the defense of any such action. At LICENSEE's request, ASCAP will cooperate with and assist LICENSEE, its advertisers and their advertising agencies and LICENSEE's 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 7 does not apply to performances of any works that may be restricted under Paragraph 12 of this Agreement.

8. Local Management Agreement.

A. In the event LICENSEE enters into a Local Management Agreement as defined in Paragraph 2.G. hereof, within thirty (30) days of such agreement (1) LICENSEE shall provide ASCAP with a copy of such agreement and (2) Local Manager shall execute this Agreement in the signature space provided below. By signing this Agreement Local Manager becomes a party to this License Agreement and shall assume, with LICENSEE, all of the rights and obligations set forth in this Agreement for the full period the Local Management Agreement is in effect.

B. In the event LICENSEE becomes a Local Manager by entering into a Local Management Agreement with another station, LICENSEE shall notify ASCAP within thirty (30) days of entering into the agreement.

C. In the event that LICENSEE and/or Local Manager do not provide to ASCAP, on a timely basis, the documentation required by Paragraph 8.A., this License Agreement may be terminated by ASCAP on ten (10) days written notice.

D. In the event that the Local Management Agreement provided to ASCAP terminates prior to its stated termination date, LICENSEE and Local Manager shall immediately notify ASCAP of such termination.

9. Assignment.

This Agreement shall enure to the benefit of and shall be binding upon the parties and their respective successors and assigns, but no assignment shall relieve the parties of their respective obligations under this Agreement.

10. Music Use Reports.

A. **All Stations.** LICENSEE, upon written request from ASCAP made on not less than one (1) week's notice specifying the period to be covered, agrees to furnish to ASCAP (at ASCAP's request electronically via a secure web site) a report of LICENSEE's performances by Station of all musical works, indicating the compositions performed by title, writer/composer and artist, or by such other convenient method as may be designated by ASCAP but such report need not be furnished for more than one (1) week of each year of the Term.

B. Program Period Stations.

(1) For the calendar years 2005 through 2009, LICENSEE agrees to furnish to ASCAP and the RMLC on thirty (30) days' written notice a full, true, complete and accurate report, on forms furnished by ASCAP (at ASCAP's request electronically), for one week per calendar quarter (Quarterly Music Reports), that shall indicate, with respect to all programming during the week, regardless of origin, that have any Feature Performance, the following: (a) the full title of each feature Performance; (b) the date and time of performance; and (c) the name(s) of the writer(s)/composer(s) and/or recording artist(s). ASCAP, or a representative of ASCAP, shall advise LICENSEE which week per quarter this will be done. The Quarterly Music Report shall be submitted with respect to all Program Periods, even if there was no Feature Performance (in which case only the requested identifying information need be completed along with the statement "No Music Used"), but shall not be required to include the information set forth in this subparagraph for music in programming from a radio network licensed as a network by ASCAP, music in political programming and music in Program Periods which LICENSEE concedes contain ASCAP music. Every Program Period which contains a Feature Performance shall be listed on the report, even if the music falls into one of the exempt categories enumerated herein. In those cases, however, the category of exemption shall be indicated on the report form, listing the name of the network in the case of a network program.

(2) Said report shall be due to ASCAP and the RMLC on or before 30 days after the week to which the report pertains. For the calendar years 2005 through 2009, in the event that LICENSEE shall fail to submit any Quarterly Music Report or fail to report performances of musical compositions as required by Paragraph 10.B(1), the following shall apply:

(a) *First Instance:* ASCAP shall advise LICENSEE in writing of same and will issue LICENSEE a warning.

(b) *Second and all Subsequent Instances:* ASCAP shall advise LICENSEE in writing of same and LICENSEE shall pay ASCAP \$500 + 5.75 times the Program Period fee for each of the three months following the month in which the report was due.

(c) LICENSEE's failure to report timely or correctly may not be cured by LICENSEE's submission of a late report for said period.

(3) For any quarter in which LICENSEE furnishes to ASCAP a complete electronic report of its feature Performance of musical works for 24 hours a day, for each day, pursuant to paragraph 10.A., LICENSEE will not be required to submit Quarterly Music Reports.

11. CONFIDENTIALITY

(a) ASCAP shall treat as confidential, and shall not disclose to any third party (other than its employees, directors and officers and agents, in their capacity as such, on a need-to-know basis, and other than that as set forth in subparagraph (b) below), any financial or other proprietary documents or information provided to ASCAP by LICENSEE in connection with this Agreement; provided, however, that if ASCAP is served with a subpoena or other legal notice compelling the production of any such proprietary documents or information, ASCAP shall be obligated to give prompt written notice to LICENSEE of such subpoena or other notice. LICENSEE shall inform ASCAP in writing within seven (7) days of receiving written notification of a subpoena or other legal notice of its intention to object to such production, in which event LICENSEE shall bear the burden of opposing such production. If the subpoena requires a response or compliance in fewer than fourteen (14) days, ASCAP will inform LICENSEE in writing within three (3) days of receiving the subpoena and LICENSEE must inform ASCAP of its intention to oppose the production no later than five (5) days before compliance is called for.

(b) ASCAP is hereby authorized to provide to RMLC such of LICENSEE's financial information, provided to ASCAP pursuant to this Agreement, as RMLC may request in connection with its representation of the local radio industry, unless LICENSEE notifies ASCAP in writing to the contrary. RMLC has agreed to treat as confidential any financial information provided to it by ASCAP pursuant to this Paragraph.

12. RIGHT TO RESTRICT

A. ASCAP's 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 interest under the copyrights of such works; provided, however, that (1) limited licenses will be granted upon application to ASCAP 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. ASCAP may also in good faith restrict the Radio Broadcasting of any composition, over and above the number specified in the preceding subparagraph, 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 ASCAP does not have the right to license the public performance of the composition by Radio Broadcasting.

13 MISCELLANEOUS

A. LICENSEE shall have the right to terminate this license on ten (10) days' written notice in the event of 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. ASCAP shall have the right to terminate this license on sixty (60) 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

C. 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, recognized overnight delivery service or fax (with a copy by first class U.S. mail or recognized overnight delivery service) to the party for whom it is intended, at its mailing 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 up on the mailing thereof. Any such notice sent to ASCAP shall be to the attention of the Broadcast Licensing Department – Radio Licensing. Any such notice sent to LICENSEE shall be to the attention of the person signing this Agreement on behalf of LICENSEE or to the General Manager or Business Manager of Station.

D. This Agreement (including documents incorporated by reference) constitutes the entire understanding between the parties, 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. This Agreement, its validity, construction and effect shall be governed by the laws of the State of New York without giving effect to its law of conflict of laws. The fact that any provisions herein are found to be void or unenforceable by a court of competent jurisdiction shall in no way affect the validity or enforceability of any other provisions. No waiver by ASCAP of full performance of this Agreement by LICENSEE in any one or more instances shall be deemed 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 Agreement.

IN WITNESS WHEREOF, this Agreement, made at New York, New York, has been duly executed by ASCAP and LICENSEE on _____.
(Month) (Day) (Year)

(NAME AND TITLE)
ASCAP

(NAME AND TITLE)
LICENSEE