

## **BROADCASTER AGREEMENT FOR ORGANIZATIONS, GROUPS, BUSINESSES (Private Label Radio)**

**Nanocosm, Inc. d/b/a Live365.com**, 1291 E. Hillsdale Blvd., #225, Foster City, California 94404, USA (**Live365**); and Broadcaster identified below (**Broadcaster**).

Live365 operates the Internet radio service Live365.com. Broadcaster wishes to use Live365's service to transmit audio via the Internet. Live365 and Broadcaster agree as follows:

- 1. Services.** Live365 provides Services for Broadcaster's transmission of Broadcaster's Content over the Internet via streaming audio through Live365.com as defined in the PLR Order Form attached hereto and made a part hereof. "Broadcaster's Content" means but is not limited to all archived materials and uploaded materials, whether audio, text or graphic, live, looped or archived broadcasts, and any other radio programs transmitted by Broadcaster through Live365.com. Live365 reserves the right to modify the Services.
- 2. Fees and Payment.** Broadcaster shall pay Live365: (a) the Set Up Fee, upon signing; and (b) monthly Fees, at least five days before the commencement of each month. Live365 reserves the right to increase the Fees on the provision of 30 days' written notice to the Broadcaster; if Broadcaster disagrees with such increase, Broadcaster may discontinue the service. Live365 reserves the right to charge Broadcaster for credit or debit card charges, where applicable. Broadcaster is responsible for payment of all taxes, duties or levies imposed, other than Live365's income taxes. If the Fees are not paid within 10 days of the due date, Live365 may elect to charge interest on outstanding Fees at the rate of 1.5% per month or the maximum amount allowed by law, and may terminate the service. Broadcaster must provide notice of billing discrepancies within 30 days after receipt of invoice, Broadcaster shall be deemed to have accepted the amounts due and releases Live365 from any liability and claims of loss resulting from any error or discrepancy.
- 3. Trademark License.** Live365 grants Broadcaster a non-exclusive, non-transferable, royalty-free, worldwide license to use and display Live365's Marks for the purpose of advertising and promotion of Broadcaster's Content. Broadcaster grants Live365 a non-exclusive, non-transferable, royalty free, worldwide licence, to use Broadcaster's Marks (including, if applicable, Broadcaster's radio call signs) in Live365's directory listing of Internet radio broadcasters and anywhere else on or in connection with the Live365.com, or in connection with advertising and promotion of Live365. Neither Party shall take any action that would impair, denigrate, convey ownership in or damage the other Party's rights in their respective Marks or other proprietary products or services.
- 4. Software License.** Live365 grants Broadcaster a non-exclusive and non-transferable license to use the Software for the sole purpose of enabling Broadcaster to use the Services. Broadcaster shall not decompile, reverse engineer, disassemble, tamper or otherwise reduce the Software to human readable form nor permit any third party to do so, and agrees that all rights in the Software remain with Live365.com. Broadcaster undertakes to use its best endeavors to protect and keep confidential the Software.
- 5. Compliance.** Broadcaster shall at all times comply with all applicable laws, rules and regulations and Live365's policies (as amended from time to time), including, without limitation: (a) the User's Agreement (in the event of any conflict between the provisions of the User's Agreement and this Agreement, the provisions of this Agreement prevail); (b) the Terms of Use and Privacy Policy; (c) applicable data protection laws, rules and regulations in any applicable jurisdiction; and (d) codes of practice, including without limitation the Internet Industry Association Code of Conduct.
- 6. Broadcaster's Undertakings.** Broadcaster undertakes to comply with the technical and other requirements made by Live365 for the performance of the Services; and to inform Live365 immediately upon receipt of notice from any third party alleging that the Broadcaster's Content or any part of it: (i) infringes any third party copyright, trademark, trade secret or any publicity, privacy or patent right or other similar personal or proprietary rights; and (ii) is in breach of any of the terms of the User Agreement, Terms of Use or the Privacy Policy.
- 7. Broadcaster's Warranties.** Broadcaster represents and warrants that: (a) Broadcaster is not an individual / natural person; (b) Live365's receipt, storage, use, transmission or retransmission of the Broadcaster's Content or any part of

it (“**Handling**”) shall not violate or infringe any third party intellectual property rights or any publicity or privacy right; (c) Live365’s use of Broadcaster’s Marks, and any updates and modifications of them, shall not violate or infringe any intellectual property rights or any publicity or privacy right; (d) Live365’s Handling of the Broadcaster’s Content or any part of it from the Live365.com or any other part of the service shall not breach any content standards requirements or codes promulgated by any relevant authority including all authorities to whom Broadcaster and Live365 may be subject and also including the Internet Industry Association Code of Conduct; (e) the Broadcaster’s Content will not contain or disclose processes or instructions which if implemented, might cause damage or injury to any person or property; (f) the Broadcaster’s Content which if unsuitable for minors, will be marked or clearly identified by warnings that the Broadcaster’s Content is unsuitable in accordance with current industry standards, content requirements or codes of practice promulgated by the relevant authority; (g) it has authority or has obtained any and all necessary approvals or licenses (compulsory or otherwise) for the storage, use, transmission and retransmission of the Broadcaster’s Content or any part of it over the Internet and that such authority, approval or license, if any, is current and in full force and effect; (h) the content of the Broadcaster’s Content or any part of it and to be transmitted through the Live365.com or otherwise made available to the public or any part thereof does not contain material that is defamatory, libelous, obscene or otherwise unlawful. For the avoidance of doubt, Live365 has no responsibility for the content of the Broadcaster’s Content and no obligation to review, edit or monitor the content; (i) no litigation is pending or threatened with respect to the Broadcaster’s Content or any part of it; (j) all service or product claims made by Broadcaster pursuant to or in connection with this Agreement shall be true and correct and fully substantiated in accordance with applicable government laws and regulations, and Broadcaster shall not perform any act (or fail to perform any act) in violation of any government law, statute, or regulation; (k) by its duly authorized representative, it has read and understood the content of Live365’s User Agreement, Terms of Use, and Privacy Policy; and (l) it shall at all times comply with the provisions of applicable laws, rules and regulations and with Live365’s policies, including without limitation Live365’s applicable User Agreement, Terms of Use, and Privacy Policy.

- 8. Limitation of Liability.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, LIVE365 PROVIDES THE SERVICES “AS IS,” WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND. LIVE365 EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL LIVE365 BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION LOSS OF REVENUE OR ANTICIPATED PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE, EVEN IF LIVE365 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT LIVE365’S LIABILITY FOR ACTS OF FRAUD OR FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE.
- 9. Disclaimer.** THIS SECTION CONTAINS THE ONLY WARRANTIES, EXPRESS OR IMPLIED, MADE BY LIVE365. ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE EXPRESSLY EXCLUDED AND DECLINED. LIVE365 DISCLAIMS ANY IMPLIED WARRANTIES, PROMISES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND / OR NON-INFRINGEMENT, WHETHER AS TO ANY SERVICES OR TOOLS RENDERED BY LIVE365 AND / OR THE TECHNOLOGY DEPLOYED IN CONNECTION THEREWITH. LIVE365 MAKES NO REPRESENTATION THAT THE OPERATION OF THE LIVE365.COM SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND LIVE365 WILL NOT BE LIABLE FOR THE CONSEQUENCES OF ANY INTERRUPTIONS OR ERRORS.
- 10. Indemnity.** Broadcaster hereby indemnifies and holds harmless, and agrees to defend against any third-party claim or action brought against Live365 or any of its parent, subsidiary or affiliated companies, its or their directors, officers, employees, licensees, agents, attorneys, assigns or independent contractors, from and against any and all claims, actions, losses, liabilities, damages, costs and expenses (including legal fees and costs) arising out of or in connection with any claim(s) that would constitute a breach of any warranty, representation, covenant or agreement made by the Broadcaster herein (**Indemnified Claims**). Live365 shall (at Broadcaster’s expense) be entitled to participate in the defense of any claim with its own counsel.

**11. Discontinuance.** Live365 reserves the right to cease, discontinue, suspend or delete any Broadcaster's Content if, in Live365's sole opinion, the Broadcaster's Content is in breach of any part of this Agreement. If Live365 ceases, discontinues, suspends or deletes any Broadcaster's Content, Live365 shall provide Broadcaster with reasonable notice.

**12. Term; Termination.** This Agreement commences on the date on which Live365 has received a duly executed copy of this Agreement and, subject to Parties' rights of termination below, shall continue initially for a period of one year, provided, however, that (a) thereafter, the Term shall continue for successive one year periods unless either Party terminates, and (b) either Party may terminate this Agreement at any time by written notice to the other Party (which shall be deemed effective upon receipt) if the other Party materially breaches any of the terms, covenants, warranties, representations, indemnities or obligations under this Agreement. On termination or expiry of this Agreement for any reason, Live365 may cease transmission of the Broadcaster's Content and shall have the right to delete any and all of the Broadcaster's Content, data and other materials on its servers. Live365 shall have no obligation whatsoever to repay any amounts (including payments in advance) received from Broadcaster in respect of Services provided hereunder.

**13. Notices.** Any communication in connection with this Agreement shall be in writing and sent by fax or prepaid post (unless the address is changed by a notice), **To Live365:** at the address provided above, Attn: General Counsel. **To Broadcaster:** at the address set out below.

**14. General.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous communications. The Agreement may not be modified except by a written agreement signed by authorized representatives of Live365 and Broadcaster. If a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the remainder of the Agreement shall continue in full force and effect. Broadcaster may not assign this Agreement without Live365's prior written approval. No waiver of any breach shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provision, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving Party. No employer-employee relationship, partnership or joint venture is created hereunder. The Parties each agree to take all actions and execute all documents as may be necessary or desirable to carry out or implement and give full effect to the provisions and intent hereof. This Agreement and all matters arising under it shall be governed by the applicable laws of the USA, including U.S. intellectual property laws, and the laws of California applicable to contracts entered into and wholly to be performed therein, without regard to choice of law rules. The Parties consent to the exclusive jurisdiction of the federal and state courts of California.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement.

**BROADCASTER:**

**Organization Name :** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Organized Under Law of:** \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Name / Title:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**NANOCOSM, INC. / LIVE365.COM -- Signature:** \_\_\_\_\_

## **SERVICES and FEES (Subject to change)**

Live365 provides the Services at the Fees indicated on the Rate Card (see attached).

### **I. Broadcaster must enclose / return EACH of the following to Live365 before Broadcaster is authorized to broadcast on Live365:**

- this Agreement, duly completed and signed
- Payment -- Initial Fee (see Rate Card)
- Monthly Fees -- Payment Authorization for Credit Card charging monthly by Live365,  
**or**
- Monthly Fees – Check.

### **II. Broadcaster must ALSO enclose:**

- a Web-safe color scheme for a customized playlist window (for Premium Broadcasters only)
- .eps or other designated logo files formatted for Broadcaster's customized playlist window (if applicable; if this option is selected for Basic Broadcasters)

### **III. During the Term, Broadcaster shall also be responsible:**

- to transmit to Live365 at a speed designated by Live365 (an ISDN line or faster), for Simulcasts
- to upload and maintain sound files for Broadcaster's Content in accordance with Live365's specifications (as the same may change from time to time), for Easycasts
- to ensure that its website will launch Live365's playlist window (may be co-branded) whenever a user initiates a listening event
- to ensure that proper ID3 tagging is provided to Live365 with respect to each sound recording on each playlist
- to ensure that Broadcaster's website includes a "powered by Live365" logo in close proximity to the link(s) to Live365.com
- to regularly refresh Broadcaster's Content as may be required
- to arrange for any and all licensing that may be required from all relevant performing rights organizations if the broadcaster seeks to earn revenues from advertising incorporated into the broadcast(s).

**Initialed by Broadcaster:** \_\_\_\_\_