

LICENSE AGREEMENT - HOTELS AND MOTELS

Agreement between American Society of Composers, Authors and Publishers ("ASCAP"), an unincorporated New York membership association, located at 2 Music Square West, Nashville, TN 37203 and

("LICENSEE"), located at

as follows:

1. Grant and Term of License

(a) ASCAP grants and LICENSEE accepts a license to perform publicly at or in any part or section of the hotel or motel known as

and not elsewhere (the "premises"), non-dramatic renditions of the separate musical compositions in the "ASCAP Repertory." The performances licensed under this Agreement may be by means of live entertainment, "mechanical music," or "jukeboxes." The license fee for the first calendar year of this Agreement is estimated at _____, based on the applicable Rate Schedules attached to and made a part of this Agreement.

(b) This license shall be for a term commencing _____ and ending December 31, 2018 (the "initial term") and continuing thereafter for additional renewal terms of five years each. Either party may, on or before ninety days prior to the end of the initial term or any renewal term, give notice of termination to the other. If notice is given, the Agreement shall terminate on the last day of the initial or renewal term in which the notice is given.

(c) For purposes of this Agreement:

(i) "ASCAP repertory" means all copyrighted musical compositions written or published by ASCAP members or members of affiliated foreign performing rights societies, including compositions written or published during the term of this Agreement, and of which ASCAP has the right to license non-dramatic public performances.

(ii) "Mechanical Music" means music which is performed at the premises by means other than by live musicians who are performing at the premises, including, but not limited to (A) compact disc, audio record or audio tape players (but not including "jukeboxes"), (B) videotape, videodisc or DVD players; (C) performances in public rooms or guests' private rooms at the premises by means of pay or cable television, pay-per-view programming or any similar means or method (whether transmitted by satellite or otherwise to the premises); (D) the reception and communication at the premises of radio or television transmissions which originate outside the premise; and which are not exempt under the Copyright Law; or (E) a music-on-hold telephone system operated by LICENSEE at the premises.

(iii) "Live Music" means music which is performed at the premises by musicians, singers or other performers.

(iv) "Jukebox" means a machine or device that:

- (A) is employed solely for the non-dramatic performance of musical works by means of phonorecords, compact discs or any similar medium, and which is activated by insertion of coins, currency, tokens, or other monetary units or their equivalent;
- (B) is located on premises making no direct or indirect charge for admission;
- (C) is accompanied by a list of the titles of all musical works available for performance on the jukebox, affixed to the jukebox or posted on the premises in a prominent position where it can be readily examined by the public;
- (D) affords a choice of works available for performance and permits the choice to be made by the patrons or guests of LICENSEE who are present on the premises in which it is located; and
- (E) for which neither a license from the Jukebox License Office nor a license from ASCAP other than this license is in effect.

"Jukebox" does not include devices commonly known as "video-jukeboxes," or any other audio-visual devices.

(v) "Annual Expenditure for All Entertainment at the Premises" ("Annual Expenditures") means all payments made (whether in money or in any other form) by LICENSEE for all entertainment at the premises, including, but not limited to such payments made to any disc jockey, video jockey or Karaoke host, but excluding:

- (A) Any such payments made to comedians, and
- (B) Any service in connection with entertainment rendered by the regularly employed staff of LICENSEE, but including the compensation paid to any persons whose services are especially and exclusively engaged for the presentation of any such entertainment; provided, that where any arrangement either by contract or otherwise between LICENSEE and any entity or person presenting entertainment at the premises, which arrangement or contract shall provide that as the consideration or any part thereof, any accommodations or services are to be made available for its, his or her use, then in such case, the extent of such accommodations or services shall be clearly defined and the reasonable value thereof regarded as an expenditure by LICENSEE for such entertainment and reported to ASCAP as expended during each calendar year in which such entertainment is presented, provided that if LICENSEE and ASCAP fail to agree as to the reasonable value of such accommodations or services the same shall be fixed at a sum equal to one-half of the prevailing rate charged to the guests of the premises for such accommodations or services.
- (C) Any expenditures by LICENSEE in connection with a production incorporating performances of dramatico-musical works as defined in paragraph 2.(c) below, including expenditures for rights acquisition and payments to performers and technicians, provided that (i) the performance of all musical compositions in the production is dramatic; and (ii) LICENSEE provides ASCAP upon request a copy of any agreements between LICENSEE and the owners of dramatic rights of the works in the production establishing that LICENSEE has obtained authorization for dramatic performance.

(d) This Agreement shall be binding upon the parties hereto and their respective successors and assigns, but no assignment shall be made without the prior written approval of ASCAP and no such assignment shall relieve the parties of their respective obligations under this Agreement as to performances rendered, acts done and obligations incurred prior to the effective date of the assignment.

2. Limitations on License

- (a) This license does not authorize the broadcasting, telecasting or transmission by wire or otherwise, of renditions of musical compositions in ASCAP's repertory to persons outside of the premises, other than by means of a music-on-hold telephone system operated by LICENSEE at the premises. This license is limited to LICENSEE and the premises.
- (b) This license does not authorize any performance by means of any jukebox for which a license from the Jukebox License Office or a license from ASCAP other than this license is in effect.
- (c) This license is limited to non-dramatic performances, and does not authorize any dramatic performances. For purposes of this Agreement, a dramatic performance shall include, but not be limited to, the following:
 - (i) performance of a "dramatico-musical work" in its entirety;
 - (ii) performance of one or more musical compositions from a "dramatico-musical work" accompanied by dialogue, pantomime, dance, stage action, or visual representation of the work from which the music is taken;
 - (iii) performance of one or more musical compositions as part of a story or plot, whether accompanied or unaccompanied by dialogue, pantomime, dance, stage action, or visual presentation;
 - (iv) performance of a concert version of a "dramatico-musical work".

The term "dramatico-musical work" as used in this Agreement, shall include, but not be limited to, a musical comedy, opera, play with music, revue, or ballet.

- (d) This license does not authorize performances at the premises by means of (i) background music services which are licensed by ASCAP; or (ii) any other services delivered by digital means or otherwise which are licensed by ASCAP.
- (e) This license does not authorize performances as part of a conference, congress, convention, exposition, industrial show, institute, meeting, seminar, teleconference, trade show or any other business presentation at the premises.

3. Right to Restrict Performances

ASCAP reserves the right at any time to withdraw from its repertory and this license any musical work as to which any suit has been brought or threatened on a claim that the composition infringes a composition not in ASCAP's repertory, or on a claim ASCAP does not have the right to license the performing right in that composition.

4. License Fees

In consideration of the license granted herein, LICENSEE agrees to pay ASCAP the applicable license fees set forth in the Rate Schedule attached to and made a part of this Agreement.

5. Reports and Payments

(a) Upon the execution of this Agreement, LICENSEE shall submit to ASCAP a report showing all the information necessary to estimate LICENSEE's annual license fee for the first contract year of this Agreement.

(b) On or before January 20 of each subsequent year during the term of this Agreement, LICENSEE shall submit to ASCAP a report showing all the information necessary to determine LICENSEE's annual license fee for the preceding calendar year. If the report shows additional license fees due for the previous calendar year, the payment shall be due within 30 days of the date of an invoice from ASCAP. If the report shows an overpayment of license fees for the previous calendar year, LICENSEE shall receive a credit in that amount, applicable to its next payment(s) of license fees. ASCAP shall provide to LICENSEE report forms free of charge.

(c) Upon the execution of this Agreement and on or before January 1, May 1 and September 1 of each year of this Agreement, LICENSEE shall pay to ASCAP one-third of the annual license fee payable under this Agreement for that calendar year, as estimated, based on the annual license fee for the previous calendar year, and subject to adjustment as provided by subparagraph 5.(b).

(d) If LICENSEE (i) is not delinquent and does not otherwise owe ASCAP any fees or reports under this or any other license Agreement, and (ii) provides documentation that it is a member of the American Hotel & Motel Association, the license fee for the year 2000 and subsequent years shall be reduced by 1%.

(e) LICENSEE shall pay ASCAP a \$25 service charge for each unpaid check, draft or other form of instrument submitted by LICENSEE to ASCAP.

(f) LICENSEE shall pay a finance charge of 1.5% per month from the due date, or the maximum amount permitted by law, whichever is less, on any required payment that it is not made within forty-five days of the date it should have been paid under this Agreement.

6. Discontinuance of Music; Resumption of Music

(a) If LICENSEE discontinues the performance of mechanical or jukebox music or discontinues and later resumes the performance of mechanical or jukebox music during any year of this Agreement, the license fee for that year shall be adjusted pro-rata based on the number of months in that year in which mechanical and/or jukebox music is performed.

(b) If LICENSEE discontinues the use of live music or discontinues and later resumes the performance of live music during any year of this Agreement, the license fee for that year shall be adjusted on the basis of Annual Expenditures for All Entertainment at the premises for that year.

(c) If LICENSEE discontinues the performance of all music at the premises, ASCAP or LICENSEE may terminate this Agreement on thirty days notice, such termination to become effective at the end of the 30-day period. LICENSEE shall pay any remaining license fees due within 30 days of invoice.

(d) LICENSEE shall notify ASCAP of any discontinuance or resumption of music and shall provide a report showing all the information necessary to determine the applicable fees for that year.

(e) For purposes of this Agreement a discontinuance shall be one in effect for no less than 30 days.

7. Cessation of Operation of the Premises

If LICENSEE ceases to operate the premises, LICENSEE shall give immediate written notice to ASCAP stating the manner of cessation and the license granted by this Agreement and the obligation of LICENSEE to pay future license fees to ASCAP shall terminate as of the effective date of cessation. LICENSEE shall continue to be liable to ASCAP for any license fees due, including the pro-rata amount of the then current calendar year's license fees.

8. Audit

(a) ASCAP shall have the right to require such reasonable data or information relating to the Annual Expenditures, as may be necessary to ascertain the Annual Expenditures as provided by this Agreement. ASCAP shall have the further right, by its duly authorized representatives, at any time during customary business hours, to examine LICENSEE's books and records of account only to such extent as may be necessary to verify any statements or reports required under this Agreement. ASCAP shall consider all data and information coming to its attention as the result of any such examination as completely and entirely confidential.

(b) The period for which ASCAP may audit under this Agreement shall be limited to the three calendar years before the year in which the audit is made. However, if an audit is postponed at LICENSEE's request, ASCAP shall have the right to audit for the calendar year in which ASCAP first notified LICENSEE of its intention to audit and the preceding three calendar years.

(c) If the audit reveals a deficiency, then the audit may cover the preceding three calendar years. This limitation shall not apply if LICENSEE fails or refuses after written notice from ASCAP to produce the books and records necessary to verify any report or statement of account required under this Agreement.

(d) Nothing shall restrict ASCAP's right to audit under the immediately preceding license agreement, for all periods covered by that agreement subject to the limitations contained in paragraph 8.(b).

(e) If any audit shows LICENSEE to have underpaid the license fees due ASCAP by 5% or more, LICENSEE shall pay a finance charge on the license fees shown due of 1 1/2% per month, or the maximum rate permitted by law, whichever is less, from the date(s) the license fees were due.

(f) If any audit shows LICENSEE to have underpaid the license fees due ASCAP by less than 5%, LICENSEE shall pay a finance charge on the license fees shown due of 1 1/2% per month, or the maximum rate permitted by law, whichever is less, from the date ASCAP demands payment of such amount.

9. Breach or Default

Upon any breach or default by LICENSEE of any term or condition herein contained, ASCAP may terminate this license by giving LICENSEE thirty days notice to cure such breach or default, and in the event that such breach or default has not been cured within said thirty days, this license shall terminate on the expiration of such thirty day period without further notice from ASCAP. In the event of such termination, ASCAP shall refund to LICENSEE any unearned license fees paid in advance.

10. Interference in Operations

ASCAP shall have the right to terminate this license upon thirty days written notice if there is any major interference with, or substantial increase in the cost of, ASCAP's operations as the result of any law in the state, territory, dependency, possession or political subdivision in which LICENSEE is located which is applicable to the licensing of performing rights, provided that ASCAP also terminates the agreements of all other similarly situated licensees of ASCAP. ASCAP shall refund to LICENSEE any unearned license fees paid in advance.

11. Notices

ASCAP or LICENSEE may give any notice required by this Agreement by sending it by United States Mail, by generally recognized same-day or overnight delivery service or by electronic transmission (i.e., facsimile or email or similar transmission, provided that a copy of such electronically transmitted notice is also sent by mail). Each party agrees to notify the other of any change of address.

12. Applicable Law

The meaning of the provisions of this Agreement shall be construed in accordance with the laws of the State of New York without regard to the principles of conflict of laws.

IN WITNESS WHEREOF, this Agreement has been duly executed by ASCAP and LICENSEE, this _____ day of _____, _____.

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

By _____

LICENSEE _____

By _____

TITLE _____

(Fill in capacity in which signed: (a) If corporation, state corporate office held; (b) If partnership, write word "partner" under signature of signing partner; (c) If individual owner, write "individual owner" under signature.)