

# LICENSE AGREEMENT- RETAIL STORES LIVE AND MECHANICAL MUSIC AUDIO AND AUDIO-VISUAL USES

**Agreement** between American Society of Composers, Authors and Publishers

("SOCIETY"), located at 2 Music Square West, Nashville, TN 37203

and

\_\_\_\_\_  
\_\_\_\_\_  
("LICENSEE"), located at

\_\_\_\_\_  
\_\_\_\_\_  
as follows:

## 1. Grant and Term of License

(a) SOCIETY grants and LICENSEE accepts for a term commencing \_\_\_\_\_, and continuing thereafter for additional terms of one year each unless terminated as hereinafter provided, a license to perform publicly by means of live musicians or "mechanical music" (as hereinafter defined), and not otherwise, at each of the locations specified in Schedule "A", annexed hereto and made a part hereof, as said Schedule may be amended as hereinafter provided ("the premises"), and not elsewhere, non-dramatic renditions of the separate musical compositions now or hereafter during the term hereof in the repertory of SOCIETY, and of which SOCIETY shall have the right to license such performing rights. As used in this agreement, the term "mechanical music" shall mean music performed by: i) the reception of radio broadcasts and further transmission of those broadcasts over a loudspeaker or system of loudspeakers; ii) the use of LICENSEE'S (as distinguished from a background music service's) audio records or audio tapes by means of LICENSEE'S audio-only record or tape player; or iii) non-live audio-visual uses of music (such as the use of a large-screen projection television or video tapes).

(b) Either party may, on or before thirty days prior to the end of the initial term or any renewal term, give notice of termination to the other. If such notice is given the agreement shall terminate on the last day of such initial or renewal term.

(c) This agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors, assigns and subsidiaries, but no assignment shall relieve the parties hereto of their respective obligations hereunder as to performances rendered, acts done and obligations incurred prior to the effective date of the assignment.

## 2. Limitations on License

(a) This license is not assignable or transferable by operation of law or otherwise, except as provided in Paragraph "1(c)" hereof, and is limited to the LICENSEE and to the premises.

(b) This license does not authorize the broadcasting, telecasting or transmission by wire or otherwise, of renditions of musical compositions in SOCIETY'S repertory to persons outside of the premises.

(c) This license does not authorize any performance by means of a coin-operated phonorecord player (jukebox) otherwise covered by the statutory license provisions of 17 U.S.C. § 116.

(d) 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" (as hereinafter defined) in its entirety;
- (ii) performance of one or more musical compositions from a "dramatico-musical work" (as hereinafter defined) 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 representation;
- (iv) performance of a concert version of a "dramatico-musical work" (as hereinafter defined).

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

### **3. License Fee and Reports**

(a) In consideration of the license granted herein, LICENSEE agrees to pay to SOCIETY the applicable license fee set forth in the rate schedule annexed hereto and made a part hereof, payable quarterly in advance on January 1, April 1, July 1 and October 1 of each year.

(b) LICENSEE shall furnish a report to SOCIETY on January 1, April 1, July 1 and October 1 of each year, indicating whether each location specified in Schedule "A" performed music during the previous quarter by means of live or mechanical music, and if by mechanical music, whether such performances are by audio means, audio-visual means, or both, and indicating any additions or deletions of locations at which music has been performed during the previous quarter, including the month in which the addition or deletion occurred, and whether such locations perform by means of live or mechanical music, and if by mechanical music, whether such performances are by audio means, audio-visual means, or both. Schedule "A" shall thereafter be deemed amended to include or exclude such premises. Such report shall also indicate the total number of premises licensed and the total license fees due for said quarter. In the case of license fees specified as annual license fees in the annexed rate schedule, said total fees shall be adjusted on the following monthly pro rata basis for locations which have been added or deleted during the previous quarter: if the location being added or deleted used music for half a month or more, license fees shall be paid for the full month; if for less than half a month, no license fees shall be due for that month. If said total fees are greater than the amount paid in advance for said quarter, LICENSEE shall submit payment of the difference with the report; if less, SOCIETY shall issue a credit applicable to the next quarter's advance payment.

(c) As of the date of execution of this agreement, said license fee totals «OPPORTUNITY\_TOTAL\_RATE» Dollars annually, based on the number of locations, and the type of music use for each set forth in Schedule "A".

(d) If LICENSEE discontinues the performance of music at all of the premises, LICENSEE or SOCIETY may terminate this agreement upon thirty days prior notice, the termination to be effective at the end of such thirty day period. In the event of such termination, SOCIETY shall refund to LICENSEE a pro rata share of any unearned license fees paid in advance. For purposes of this agreement, a discontinuance of music shall be one in effect for no less than thirty days.

(e) In the event that LICENSEE'S payment of fees under this Agreement causes SOCIETY to incur a liability to pay a gross receipts, sales, use, business use, or other tax which is based on the amount of SOCIETY'S receipts from LICENSEE, the number of licensees of SOCIETY, or any similar measure of SOCIETY'S activities, and (i) SOCIETY has taken reasonable steps to be exempted or excused from paying such tax; and (ii) SOCIETY is permitted by law to pass through such tax to its licensees, LICENSEE shall pay to SOCIETY the full amount of such tax.

