

MUSICAL WORKS LICENSE AGREEMENT FOR HOTELS AND MOTELS

This ASCAP MUSICAL WORKS LICENSE AGREEMENT FOR HOTELS AND MOTELS (the “**License Agreement**”) is made and entered into as of _____ (the “**Effective Date**”), by and between the AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (“**ASCAP**”), a voluntary membership association organized under the laws of the State of New York with offices at 250 West 57th Street, New York, NY 10107, and _____, a Individual Owner Corporation Partnership LLC Other _____ organized under the laws of _____, with an address at _____. (“**Licensee**”) (ASCAP and Licensee are each referred to herein as a “**Party**” and, collectively, the “**Parties**”).

Article 1. Definitions.

1.1. “**Affiliate**” means an entity, directly or indirectly, controlled by, controlling of, or under common control with a Party, either now or in the future, and their respective successors and assigns. An entity shall be deemed to have control of another entity when it possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other entity, whether through the ownership of voting securities, by contract or otherwise.

1.2. “**Annual Report**” has the meaning ascribed in Section 4.2(b).

1.3. “**ASCAP Consent Decree**” means the Second Amended Final Judgment, dated June 11, 2001, entered in United States v. ASCAP, Civ. Action No. 41-1395 (DJC).

1.4. “**ASCAP Indemnitee**” has the meaning ascribed in Section 9.2.

1.5. “**ASCAP Member**” means any individual or entity that has entered into a membership agreement with ASCAP.

1.6. “**ASCAP Repertory**” means all copyrighted Musical Works (a) written and/or published, in whole or in part, by ASCAP Members or by the members of any FPRO, including Musical Works written and/or published during the Term and (b) for which ASCAP controls, whether as of the Effective Date or thereafter, the non-dramatic public performance rights in the Territory, but solely to the extent such rights are or may during the Term be vested in or assigned to ASCAP by ASCAP Members or by the applicable FPRO or other rights holder(s).

1.7. “**ASCAP Terms of Use**” means the terms and conditions relating to the access to and use of the ASCAP Website and certain applications made available thereon, as set forth at www.ASCAP.com/about/legal-terms.

1.8. “**ASCAP Website**” shall mean www.ascap.com, including any sub-domains thereof.

1.9. “**Co-Owned Work**” means a Musical Work for which the rights and interests to license non-dramatic public performances are controlled by, vested in and/or assigned to ASCAP, on the one hand, and any third-party rightsholder other than the party assigning rights to ASCAP, on the other hand.

1.10. “**CPA**” has the meaning ascribed in Section 4.7(a).

1.11. “**Fees**” has the meaning ascribed in Section 4.1(a).

1.12. “**Foreign Performing Rights Organization**” or “**FPRO**” means any entity incorporated or otherwise legally organized outside of the United States with which ASCAP has a written and binding agreement appointing ASCAP as an agent authorized to license and/or administer Musical Works owned or controlled by such entity to third parties on a non-exclusive basis within the Territory.

1.13. “**Initial Term**” has the meaning ascribed in Section 7.1.

1.14. “**Initial Term Report**” has the meaning ascribed in Section 4.2(a).

- 1.15. “**Initial Term Estimated Live Entertainment Activity Fee**” has the meaning ascribed in Section 4.2(a).
- 1.16. “**Interim Fees**” has the meaning ascribed in Article 5.
- 1.17. “**Interim License**” has the meaning ascribed in Article 5.
- 1.18. “**Interim License Period**” has the meaning ascribed in Article 5.
- 1.19. “**Licensee Indemnitee**” has the meaning ascribed in Section 9.1(a).
- 1.20. “**Live Entertainment Activity**” means any activity at the Premises (a) that features live musicians, singers or other performing artists of music (including, but not limited to, DJs and karaoke hosts) and (b) in which a non-dramatic public performance of Musical Works takes place, whether or not such public performance is rendered live or through recorded means.
- 1.21. “**Live Entertainment Activity Fee**” has the meaning ascribed in Section 4.2(a).
- 1.22. “**Live Entertainment Expenditures**” means, for any applicable period of time, the aggregate monetary amounts paid by or on behalf and at the express written direction of, Licensee or any of its Affiliates in accordance with Licensee’s or its Affiliate’s (as applicable) accounting practices maintained in the ordinary course of such entity’s business operations to third parties in connection with Live Entertainment Activity including, but not limited to, the fees, compensation and/or value of any goods, services or other consideration paid to any persons whose services are especially and exclusively engaged for the presentation of any such Live Entertainment Activity. The Parties acknowledge and agree that fees, compensation and/or value of any goods, services or other consideration paid to any person who is especially and exclusively engaged for the presentation of Live Entertainment Activity shall be deemed Live Entertainment Expenditures notwithstanding the fact that such person also provides to Licensee incidental services unrelated to such Live Entertainment Activity. For purposes of this License Agreement, Live Entertainment Expenditures shall not include (a) the fees, compensation and value of any goods, services or other consideration paid to a performing artist that is not itself engaging in the public performance of Musical Works and/or any activity that is synchronized to the public performance of Musical Works (e.g., comedian, speaker, lecturer, actor(s) in a play, etc.), (b) amounts paid or payable by Licensee or any of its Affiliates in connection with the provision of any employee benefits (e.g. pension, insurance, etc.) to any person who is especially and exclusively engaged for the presentation of Live Entertainment Activity, and (c) amounts paid to performing rights organizations for the public performance of musical works.
- 1.23. “**Lodging Room**” means any private guest sleeping room in a Premise that is intended for regular overnight occupancy by members of the public for a fee.
- 1.24. “**Music Uses**” means (a) Live Entertainment Activity and (b) Recorded Music Activity, individually or collectively as the context may require, that is not Third-Party Licensable Activity.
- 1.25. “**Musical Work**” means any copyrightable musical composition, including any lyrics or words written to be used with such composition.
- 1.26. “**Operating Policy**” means the applicable Music Use and other information related to the Premise(s) including, without limitation, number of Lodging Rooms and Live Entertainment Expenditures reported by Licensee to ASCAP, as applicable, in connection with any applicable Annual Report.
- 1.27. “**Premises**” means the hotel, motel or other commercial lodging establishment in the Territory, and its immediately surrounding vicinity (e.g., outdoor patios, decks, pools, etc.), owned, operated and/or managed by Licensee or its Affiliates and identified in **Schedule A** attached hereto, which is hereby incorporated into this License Agreement by this reference. Hotels, motels or other commercial lodging establishments owned, operated and/or managed by Licensee or its Affiliates that are not identified in **Schedule A** are not covered by or subject to this License Agreement.
- 1.28. “**Rate Schedule**” has the meaning ascribed in Section 4.1(a).
- 1.29. “**Recorded Music Activity**” means any activity at the Premises in which a non-dramatic public performance of Musical Works may take place, whether in common areas (including gyms and spas) or Lodging Rooms, by mechanical,

electronic and/or digital means, including, but not limited to: (a) tapes, records, compact discs and other digital audio formats; (b) videocassette, DVD, and other digital audiovisual formats; (c) reception and access of radio and/or television (including cable, satellite and any other form of linear or on-demand audiovisual programming) broadcasts or transmissions, irrespective of the place or origin, method, format, and/or protocols of transmission and delivery; and (d) a music-on-hold telephone system operated by Licensee at or for the Premises.

1.30. “**Recorded Music Activity Fee**” has the meaning ascribed in Section 4.2(a).

1.31. “**Renewal Term**” has the meaning ascribed in Section 7.1.

1.32. “**State Disclosure Statements**” has the meaning ascribed in Section 2.4.

1.33. “**Term**” has the meaning ascribed in Section 7.1.

1.34. “**Territory**” means the United States of America, its territories, dependencies and possessions and the Commonwealth of Puerto Rico.

1.35. “**Third-Party Licensable Activity**” means any Live Entertainment Activity and/or Recorded Music Activity that is: (a) produced, presented, promoted, managed, operated, conducted and/or controlled, in whole or in part, by a third party in connection with any conference, congress, convention, exposition, industrial show, institute, meeting, seminar, teleconference, trade show or other business presentation; (b) occurring in any portion, area or subdivision of the Premises that is being operated by or predominantly under the control of a third party pursuant to a lease, license or other agreement with Licensee or, if applicable, the owner of the Premises (if other than the Licensee), or the representative, agent or affiliate of such person or entity, and in which such applicable third party owns, controls and/or operates, regardless of duration, a commercial establishment including, but not limited to, a restaurant, bar, retail store, shopping mall, spa or fitness club, or other similar establishment; and/or (c) made by means of any jukebox, background music service, and/or any service delivered to the Premises by digital means or otherwise (excluding telephone-on-hold), with respect to which such right of public performance in connection therewith is otherwise licensed or licensable through the Jukebox License Office or by ASCAP. For the avoidance of doubt, for purposes of this License Agreement, an activity or event, or series thereof, for which Licensee or its Affiliate acts solely (y) as the agent in a “buy/sell” transaction or (z) primarily to provide booking or ticket/admission sales services shall be deemed a “Third-Party Licensable Activity.”

1.36. “**User Account**” means the online user profile and payment account that may be accessed by Licensee or an agent thereof via the ASCAP Website.

Article 2. Licensed Rights.

2.1. Grant of Rights. Subject to the terms and conditions of this License Agreement, ASCAP hereby grants to Licensee, and Licensee hereby accepts, a non-exclusive, non-transferable, non-assignable, non-sublicensable right and license, solely during the Term, to make non-dramatic public performances of Musical Works in the ASCAP Repertory (or any part thereof) solely at the Premises and solely in connection with one or more Music Uses. For the avoidance of doubt, the license set forth in this Section 2.1 grants to Licensee the right to publicly perform Musical Works in the ASCAP Repertory in connection with all Live Entertainment Activity and Recorded Music Activity at or within the Premises that is not Third-Party Licensable Activity.

2.2. License Limited to Non-Dramatic Performances. The Licensed Rights are limited to non-dramatic performances of the Musical Works in the ASCAP Repertory. This License Agreement does not authorize the dramatic performances of any Musical Work in the ASCAP Repertory, nor does it authorize the public performance of any opera, operetta, musical comedy, play with music, revue, ballet or like production or performance, in whole or in part; provided, however that this license does authorize the public performance of Musical Works embodied on albums constituting the audio soundtracks of operas, operettas, musical comedies, plays or like productions, and non-dramatic performances of the Musical Works in the ASCAP Repertory prior to, following or during any intermission of any of the foregoing events identified in this Section 2.2.

2.3. Reservation of Rights. Except for the rights and licenses granted to Licensee pursuant to this License Agreement and subject to the applicable obligations and restrictions set forth herein, nothing shall be construed to restrict, impair,

encumber, alter, deprive or adversely affect the ASCAP Repertory or any of ASCAP's rights or interests therein or any other ASCAP intellectual property, brands, information, content, processes, methodologies, products, goods, services, materials or rights, tangible or intangible.

2.4. State Disclosure Statutes and Related Information. **Schedule D** hereto sets forth certain disclosures, notices, rights and other information that may apply to Licensee depending upon, among other things, the state, territory and/or the location of the Premises ("**State Disclosure Statements**"). In the event of any conflict between the terms and conditions of this License Agreement and the terms and conditions of the State Disclosure Statement, the terms and conditions of the State Disclosure Statement shall control to the extent necessary to resolve any such conflict.

Article 3. Restrictions and Conditions.

3.1. No Right to Sublicense or Redistribute. In no event shall Licensee sublicense, transfer, convey or assign this License Agreement and/or the rights granted to Licensee herein or otherwise license to others, including any Affiliate of Licensee, the right to perform publicly or redistribute in any way any Musical Work in the ASCAP Repertory. Nothing in this License Agreement shall be deemed to grant to any party other than Licensee any right to perform publicly by any means, method or process whatsoever any Musical Work in the ASCAP Repertory licensed pursuant to this License Agreement, including any transmission, retransmission or further transmission of any such Musical Works.

3.2. No Right to Reproduce, Copy or Distribute. Nothing in this License Agreement shall be construed to grant to Licensee, or any third party, any right to reproduce, copy or distribute by any means, method or process whatsoever, any Musical Works (or any part thereof) that are included in the ASCAP Repertory licensed under this License Agreement.

3.3. No Sound Recording Rights. Nothing in this License Agreement shall be construed to grant to Licensee, or to authorize Licensee to grant to any of its Affiliates or any third party, the right to reproduce, copy, distribute or perform publicly by any means, method or process whatsoever, any sound recording embodying any Musical Works (or any part thereof) that are included in the ASCAP Repertory licensed under this License Agreement.

3.4. License Limited to the Premises. Except as otherwise provided for in this License Agreement, nothing in this License Agreement shall be construed to grant to Licensee, or to authorize Licensee to grant to any of its Affiliates or any third party, the right to perform publicly the ASCAP Repertory (or any part thereof) to persons beyond the Premises by any means, methodology or technology, including broadcasting, telecasting or transmission by wire, cable, electronic means or any internet-connected websites, software applications, systems, platforms, devices, products and/or services or any other means or methodology, other than by means of a music-on-hold telephone system operated by or on behalf of Licensee at or for the Premises, without the prior written consent of, or valid license from, ASCAP in each instance.

Article 4. Fees; Reports; Payments.

4.1. Fees; Rate Schedules for Subsequent Calendar Years; Discounts.

(a) Annual Fees. In consideration of the rights granted in this License Agreement, for each calendar year during the Term, Licensee shall pay, solely for the Premises identified in **Schedule A**, an amount calculated by applying the Operating Policy for each Premise to a rate schedule provided by ASCAP (the "**Rate Schedule**"), with the rates applicable as of the Effective Date being those set forth in **Schedule B** attached hereto. For Recorded Music Activity, Licensee shall pay ASCAP the sum of an amount calculated by applying the number of Lodging Rooms for each Premise to the applicable fee set forth in Table B-1 of **Schedule B** (such amount the "**Recorded Music Activity Fee**"). For Live Entertainment Activity, Licensee shall pay ASCAP the Rate set forth on Table B-2 of **Schedule B** corresponding to the sum of Live Entertainment Expenditures for all of the Premises identified in **Schedule A** (such amount the "**Live Entertainment Activity Fee**" and, together with the Recorded Music Activity Fee, the "**Fees**"). The Fees due for each calendar year of the Term shall be calculated separately pursuant to Section I and Section II of **Schedule B**, to the extent applicable.

(b) Annual Rate Schedules. ASCAP shall provide Licensee with the Rate Schedule applicable to each Renewal Term prior to the commencement of such Renewal Term, provided that in no event shall the rates set forth on such Rate Schedule for any Renewal Term exceed the corresponding rates set forth in the then-current Rate Schedule by an amount greater

than the increase in the Consumer Price Index-All Urban Consumers (CPI-U) during the 12-month period concluding in October of the then-current calendar year.

(c) Discount to Annual Fees. For each calendar year during the Term, if the number of Premises identified in Schedule A is: (i) greater than 10 and less than 100, a discount of 3% shall be applied to the Fees due for such calendar year and (ii) greater than 99, a discount of 5% shall be applied to the Fees due for such calendar year.

4.2. Reports.

(a) Upon execution of this License Agreement, Licensee shall submit to ASCAP a report setting forth the following information substantially in the form set forth on Schedule C-1 (such report, the “Initial Term Report”): (i) number of Lodging Rooms for each Premise; (ii) an estimate of Live Entertainment Expenditures for each Premise for the period commencing on the Effective Date and continuing through the last day of the calendar year of the Effective Date, if applicable; (iii) the Recorded Music Activity Fee for each Premise, pro rated for the period commencing on the Effective Date and continuing through the last day of the calendar year of the Effective Date; and (iv) the Rate set forth set forth on Table B-2 of Schedule B corresponding to the foregoing estimates of Live Entertainment Expenditures (the “Initial Term Estimated Live Entertainment Activity Fee”).

(b) Thereafter, on or before February 15 of each subsequent calendar year during the Term, Licensee shall submit a report setting forth the following information in the form substantially set forth on Schedule C-2 (each such report, an “Annual Report”): (i) number of Lodging Rooms for each Premise; (ii) the actual Live Entertainment Expenditures for each Premise for the preceding calendar year, if applicable; (iii) the Recorded Music Fee for each Premise for the current calendar year; (iv) any adjustments to the Recorded Music Fee for each Premise for the immediately previous calendar year due to a discontinuance of music pursuant to Section 7.5(a); and (v) the Live Entertainment Activity Fee for the preceding calendar year (*i.e.*, the Rate set forth on Table B-2 of Schedule B corresponding to the actual Live Entertainment Expenditures for the preceding calendar year) to serve as an estimated Live Entertainment Activity Fee for the applicable year. Licensee may identify multiple Premises in a consolidated spreadsheet in fulfillment of its obligation to complete either or both Schedule A and any Annual Report, identifying the required information by row or column for each Premise.

(c) The Initial Term Report and All Annual Reports shall be (i) accompanied by a certification executed by a duly authorized representative of Licensee or the party submitting such Annual Report on Licensee’s behalf, including the operator of any Premise identified in Schedule A, stating that the information set forth in such Annual Report (or estimation thereof as applicable) is true and correct to the best of the authorized representative’s knowledge after reasonable due diligence and that the Operating Policy and other information reported are in compliance with the terms and conditions hereof, and (ii) submitted via Licensee’s portal on ASCAP’s website unless otherwise approved by ASCAP for such other means of delivery, such approval not to be unreasonably withheld, conditioned or delayed. ASCAP acknowledges and agrees that a separate Annual Report may be submitted for each Premise, and each Annual Report will be limited to the Premise(s) for which such Annual Report is submitted.

4.3. Payments.

(a) Following execution of this License Agreement and ASCAP’s receipt of the Initial Term Report, ASCAP shall promptly issue an invoice to Licensee for each Premise identified in Schedule A using the information contained in the Initial Term Report setting forth (i) the Recorded Music Activity Fee due pursuant to the Initial Term Report. and (ii) the Initial Term Estimated Live Entertainment Activity Fee. Licensee will remit payment to ASCAP in accordance with such invoice within 30 days of Licensee’s receipt thereof.

(b) Thereafter on or before February 15 of each subsequent calendar year during the Term, Licensee shall deliver to ASCAP a Schedule A identifying each Premise for which Licensee seeks a License and an Annual Report for each such Premise. Following ASCAP’s receipt of such Annual Report, ASCAP shall promptly issue an invoice to Licensee for each Premise identified in Schedule A setting forth (i) the Recorded Music Activity Fee due pursuant to the applicable Annual Report, pro rated in the event of a Premise being operated by Licensee for less than an entire calendar year and any applicable credits to the immediately previous calendar year Recorded Music Activity Fee due to a discontinuance of music pursuant to Section 7.5(a) and (ii) the Live Entertainment Activity Fee for the preceding calendar year, which shall serve as estimated Live Entertainment Activity Fees for the applicable subsequent calendar year. Additionally, in the event that an Annual Report or any information submitted to ASCAP for any applicable calendar year indicates that the amounts paid by Licensee during such year are less than

the Fees due for such year (e.g., as a result of the Live Entertainment Activity Fee for the preceding calendar year being greater than the Live Entertainment Activity Fee for the calendar year immediately preceding such year (or greater than the Initial Term Estimated Live Entertainment Activity Fee if such immediately preceding year was the Initial Term)), the invoice shall set forth the difference as additional amounts due, and in the event that an Annual Report for any applicable calendar year indicates that the amounts paid by Licensee during such year are greater than the Fees due for such year (e.g., as a result of the Live Entertainment Activity Fee for the preceding calendar year being less than the Live Entertainment Activity Fee for the calendar year immediately preceding such year (or less than the Initial Term Estimated Live Entertainment Activity Fee if such immediately preceding year was the Initial Term)), the invoice shall set forth the amount of such overpayment and ASCAP shall credit the overpayment amount to Licensee's account. Licensee shall remit payment to ASCAP within 30 days of Licensee's receipt of such invoice. The payment of any Fees will be subject to the adjustment protocols set forth in Schedule B, if applicable. In the event that a Licensee has any credit on account with ASCAP at such time as Licensee is no longer operating any Premise subject to this License Agreement, then ASCAP shall refund to Licensee the amount of such credit within 30 days of ASCAP's receipt of written notice from Licensee that it is no longer operating any such Premise.

(c) ASCAP will apply any and all discounts or credits due Licensee pursuant to the terms of this Agreement, including, but not limited to, Sections 4.1(c), Table B-2, Discounts to Fees, or otherwise, and reflect such discounts or credits on any invoice issued to Licensee.

4.4. Licensee Operating Policy and Fees. Licensee acknowledges that the Fees shall be calculated, subject to Section 4.1(c), in accordance with the applicable Rate Schedule as applied to the Operating Policy for such Premise(s) as of the date of submission of such Operating Policy.

4.5. Late Payments. If payment of any Fee is not made by or for Licensee with respect to any Premise within 45 days of the date on which it was due under this License Agreement, ASCAP may charge Licensee a late payment charge solely for such Premise (but not any other Premise(s) identified in Schedule A) equal to one and one-half percent (1.5%) per month, or the maximum rate permitted by New York law, whichever is less, of the Fees due, calculated from the date such Fees were due, excluding any amounts in good faith dispute. Any late payment charges shall be paid by Licensee within 30 days of receipt of an invoice therefor.

4.6. No Refunds or Credits; Value of License. Except as otherwise set forth in this License Agreement or expressly agreed by ASCAP, all Fees are final and nonrefundable. The Fees are based upon the total value solely attributable to the interests in and to the Musical Works included in the ASCAP Repertory that are owned and/or controlled by ASCAP Members and specifically exclude the value of any rights and interests in such Musical Works that are owned and/or controlled by any other third-party rights holder, including Broadcast Music, Inc., SESAC Inc. and Global Music Rights. Licensee agrees that Licensee: (a) shall not solely rely upon the license granted in Section 2.1 of this Agreement to provide Licensee with all of the rights and interests necessary to publicly perform any of the Co-Owned Works at the Premises in connection with any of the Music Uses during the Term; and (b) is solely responsible for all applicable third-party rights holders' royalties, license fees, clearance costs and any other fees, costs and expenses necessary for Licensee to publicly perform the Co-Owned Works.

4.7. Audit.

(a) During the Term, and for a period of three (3) years thereafter: (i) Licensee or the operators of Premises identified in Schedule A, shall maintain and keep complete and accurate records in accordance with generally accepted accounting principles consistently applied and sufficient to verify compliance with the obligations hereunder with respect to each Premise; and (ii) ASCAP shall have the right, upon 60 days' prior written notice, at its expense and no more than once per calendar year during the Term, to examine and complete an audit of Licensee's books and records for one or more Premises, at any time during customary business hours, in order to verify any statements of Licensee's Operating Policy and any other information provided by Licensee, only to such extent as may be necessary to verify any statements or reports required under this License Agreement. Any such audit shall be conducted by either an independent, certified public accounting firm with a professional ethical obligation of confidentiality, not currently auditing Licensee on behalf of any other third party, and not compensated on a contingency fee basis, pursuant to a nonuse and nondisclosure agreement, or qualified ASCAP personnel, who confirm their ethical obligations of confidentiality and adherence to the highest standards of professionalism, honesty and integrity, such determination to be made in ASCAP's sole discretion. In the event ASCAP determines to conduct the audit via ASCAP personnel, the principal lead shall be a licensed Certified Public Accountant ("CPA"), and ASCAP shall designate a member of its Business & Legal Affairs group to serve as liaison between Licensee and ASCAP in connection with any issues

that may arise in the conduct of such audit. 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 License Agreement shall be limited to the three (3) calendar years before the year in which the audit is commenced. 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 (3) years.

(c) In the event any such audit shows Licensee to have underpaid the Fees for such Premise(s) by an amount equal to or less than 5%, Licensee shall pay a finance charge solely on the additional Fees due of one and one-half percent (1.5%) per month, or the maximum rate permitted by New York law, whichever is less, from the date(s) ASCAP demands payment of such amount, and, if the underpayment is more than five percent (5%) of the total amount due for the period in question, then Licensee shall pay a finance charge on the additional Fees due of one and one-half percent (1.5%) per month, or the maximum rate permitted by law, whichever is less, from the date(s) the additional Fees were due. If the underpayment is fifteen percent (15%) or more of the total amount due for the period in question, then Licensee shall also reimburse ASCAP for ASCAP's reasonable, out-of-pocket costs and expenses actually incurred for the audit by the CPA.

(d) Licensee shall have no liability to ASCAP for any underpayment or non-payment of Fees for any Premise subject to audit pursuant to this Article 4 for any period when such Premise was not owned or operated by Licensee unless Licensee has agreed in writing with the prior owner or operator of such Premise to assume such liability.

Article 5. Termination of Interim License.

The Parties acknowledge that (a) the Parties entered into an interim license letter agreement (the "**Interim License**") for the period commencing as of the effective date of the Interim License (e.g., January 1, 2019) and continuing through and including the date immediately preceding the Effective Date of this Agreement (the "**Interim License Period**"), (b) upon receipt by ASCAP of fees for the Interim License Period, paid in accordance with the terms and conditions of the Interim License (the "**Interim Fees**"), the Interim License shall be deemed terminated as of the Effective Date, and (c) each Party's right to apply to the United States District Court for the Southern District of New York pursuant to the ASCAP Consent Decree for a determination of a reasonable fee for use of the ASCAP Repertory during the Interim License Period shall be deemed waived.

Article 6. Services Made Available Via the ASCAP Website.

6.1. **Licensee's User Account.** ASCAP may provide Licensee with the ability to access certain services relating to this License Agreement on the ASCAP Website via Licensee's User Account, e.g., provision of reports, payment of Fees, notice relating to any changes relating to Licensee or Licensee's Operating Policy. Licensee agrees that any use of such services made available by ASCAP on the ASCAP Website, including, without limitation, via Licensee's User Account, shall be subject to the ASCAP Terms of Use as of the date Licensee agreed to be bound by such ASCAP Terms of Use and further, that the use of services relating to the payment of Fees through the ASCAP Website and Licensee's User Account are subject to this Article 6. Notwithstanding any provision of the ASCAP Terms of Use, in the event of a conflict between the ASCAP Terms of Use and this License Agreement, the terms and conditions of this License Agreement shall control to the extent necessary to resolve any such conflict and in no event may the ASCAP Terms of Use impose any additional liabilities or obligations, including, but not limited to, reporting or payment obligations on Licensee other than those set forth in this License Agreement.

6.2. **Recurring/Automatic Billing Services on the ASCAP Website via Licensee's User Account.**

(a) If Licensee has selected or enrolled in ASCAP's Autopay feature that may be made available on the ASCAP Website, via Licensee's User Account, then unless and until Licensee cancels or disables the Autopay feature in Licensee's account profile available at www.ascap.com/mylicense or by calling ASCAP at the telephone number provided Licensee for that purpose, Licensee acknowledges and agrees that ASCAP may automatically charge Licensee on each Fee payment date (or in the event any Fee payment date is not a business day, the first business day thereafter) the applicable Fees for the continued right to exploit the rights granted in Section 2.1 hereof and Licensee hereby agrees that such Fees may be billed via the payment card that Licensee has provided to ASCAP and associated with Licensee's User Account. The Fees charged will be the same as those charged on the immediately preceding Fee payment date (or, in the event of the first Fee payment date after the Effective Date, the amount calculated pursuant to Section 4.2(a)), unless subject to increase or decrease as permitted and

described in this License Agreement. ASCAP will provide any credit due Licensee pursuant to Section 4.3 for a prior calendar year and reported to ASCAP by March 10th of the current calendar year (or the first business day thereafter if March 10th falls on a weekend) prior to the application of any Autopay feature for the present calendar year.

(b) ASCAP will notify Licensee in advance of each Fee payment date and the amount that will be charged to Licensee's payment card account and Licensee is solely responsible for ensuring that Licensee's user profile and payment card account information is accurate, complete, and up to date. Licensee acknowledges and understands that the authorization to use the Autopay feature to pay the Fees on an automatic, recurring basis is entirely optional and not required to maintain Licensee's account or license with ASCAP. However, if ASCAP is not able to secure payment of the applicable Fees from Licensee's or operator's designated credit, charge or debit card payment account for the payments required, due to, but not limited to, inaccurate information, expired card account or insufficient or uncollected funds in the debit account provided by Licensee, ASCAP may discontinue processing the recurring charges and cancel Licensee's enrollment in the Autopay feature. Cancelling or disabling the Autopay feature for any reason shall not and does not relieve Licensee of the obligation to make required Fee or other payments under this License Agreement nor result in a termination of this License.

(c) Licensee may disable the Autopay automatic billing feature for any Premise at any time, by modifying its Payment Preferences in the Licensee User Account profile at www.ascap.com/mylicense or by calling ASCAP at the telephone number provided to Licensee for that purpose.

(d) FOR THE AVOIDANCE OF DOUBT, ASCAP MAY CONTINUE TO BILL LICENSEE'S PAYMENT CARD ACCOUNT, THE APPLICABLE FEES EACH AND EVERY FEE PAYMENT DATE OF THIS LICENSE AGREEMENT UNTIL LICENSEE DIRECTS ASCAP TO STOP AS PROVIDED ABOVE; PROVIDED, HOWEVER, THAT ASCAP SHALL HAVE NO OBLIGATION TO AUTOMATICALLY BILL LICENSEE FOR THE APPLICABLE FEES VIA RECURRING OR AUTOMATIC BILLING, AND LICENSEE SHALL BE REQUIRED TO PAY ALL AMOUNTS DUE BY THE REQUIRED DATES. IN THE EVENT THAT ASCAP IS UNABLE TO OBTAIN THE REQUIRED FEES, ASCAP RESERVES THE RIGHT TO TERMINATE THIS LICENSE AGREEMENT BY PROVIDING AT LEAST 30 DAYS' WRITTEN NOTICE TO LICENSEE; PROVIDED, HOWEVER, THAT SUCH TERMINATION SHALL NOT BE EFFECTIVE IF LICENSEE'S BREACH HAS BEEN CURED PRIOR TO THE EXPIRATION OF SUCH 30-DAY PERIOD. IN THE EVENT OF SUCH TERMINATION, ASCAP SHALL REFUND TO LICENSEE ANY UNEARNED LICENSE FEES PAID IN ADVANCE.

6.3. Taxes. Licensee shall be responsible for any taxes and/or levies imposed on any transactions conducted by it and any applicable taxes or levies may be added to the amount charged for the applicable transaction. Applicable taxes may include sales tax, use tax and other applicable taxes, which may be based on various factors, including the bill-to address location of the Premise(s) and tax rates in effect at the time a transaction is completed. Further, in the event that Licensee's payment of Fees under this License Agreement causes ASCAP to incur any liability to pay a gross receipts, sales, use, business use or other tax that is based on the amount of ASCAP's receipts from Licensee, the number of licensees of ASCAP, or any similar measure of ASCAP's activities, Licensee agrees to pay to ASCAP the full amount of such tax, provided that ASCAP is permitted by law to pass through such tax to its licensees. No tax exemptions are permitted for transactions made on www.ASCAP.com.

Article 7. Term and Termination.

7.1. Term. This License Agreement shall commence on the Effective Date and shall continue thereafter until the last day of the calendar year of the Effective Date, unless earlier terminated in accordance with the terms and conditions set forth herein (the "**Initial Term**"). Thereafter, this License Agreement shall automatically renew for additional, successive one-year periods (each, a "**Renewal Term**," and together with the Initial Term, the "**Term**"), unless either Party provides the other with written notice of termination at least 30 days prior to the expiration of the Initial Term (or any Renewal Term, as applicable) or unless earlier terminated in accordance with the terms and conditions herein.

7.2. Termination for Breach. If there is any breach of any provision of this License Agreement by one Party, then the other Party may (reserving cumulatively all other remedies and rights pursuant to this License Agreement and in law and in equity) terminate this License Agreement, in whole or in part, by providing at least 30 days' notice to the breaching Party; provided, however, that such termination shall not be effective if such breach has been cured prior to the expiration of such 30-day period. In the event of such termination by ASCAP, ASCAP shall refund to Licensee any unearned Fees paid in advance. Notwithstanding the preceding sentence, in the event of a material breach of this License Agreement solely with respect to one or more Premise(s), ASCAP shall be entitled to exercise its right of termination pursuant to this Section 7.2 solely with respect

to such Premise(s) and the Agreement will remain in full force and effect with respect to all other Premises identified in Schedule A.

7.3. Termination for Insolvency. ASCAP may immediately terminate this License Agreement in the event that Licensee: (a) admits in writing its inability to pay its debts as they become due, fails to satisfy any enforceable, final and material judgment against it, or otherwise ceases operations of its business in the ordinary course; (b) is adjudicated bankrupt or becomes insolvent; (c) winds up or liquidates its business voluntarily or otherwise; (d) applies for, consents to or suffers the appointment of, or the taking of possession of by, a receiver, custodian, assignee, trustee, liquidator or similar fiduciary of itself or of all or any substantial portion of its assets; (e) makes a general assignment for the benefit of creditors other than in the ordinary course of financing its ongoing operations; (f) commences a voluntary case under any state or federal bankruptcy laws (as now or hereafter in effect); (g) files a petition seeking to take advantage of any other law providing for the relief of debtors; (h) acquiesces to, or fails to have dismissed, within 30 days, any petition filed against it in any involuntary case pursuant to such bankruptcy laws; or (i) takes any action for the purpose of effecting any of the foregoing. In the event of such termination, ASCAP shall refund to Licensee any unearned license fees paid in advance.

7.4. Termination for Interference in ASCAP's Operations. ASCAP shall have the right to terminate this License Agreement upon 30 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. In the event of any termination by ASCAP pursuant to this Section 7.4, Licensee will be deemed to have submitted a license request to ASCAP pursuant to the ASCAP Consent Decree as of the effective date of such termination, the effect of which will ensure no lapse in license coverage by Licensee with respect to Musical Works in the ASCAP Repertory.

7.5. Discontinuance of Music; Cessation of Operation of Premises

(a) Discontinuance of Music Activity.

- (i) If Licensee discontinues Recorded Music Activity at any Premise and later resumes Recorded Music Activity at such Premise during any calendar year of this Agreement, the Recorded Music Activity Fee for that Premise for that year shall be adjusted pro-rata based on the number of months in that year in which Recorded Music Activity was provided at such Premise. Licensee shall notify ASCAP of any such discontinuance or resumption of Recorded Music Activity for a given calendar year and shall provide a report showing all the information necessary to determine the applicable adjustment to the Recorded Music Activity Fee for that year to be made in the subsequent year pursuant to Section 4.3(b).
- (ii) If Licensee discontinues the use of Live Entertainment Activity at a Premise and later resumes Live Entertainment Activity at such Premise during any calendar year of this Agreement, the Live Entertainment Activity Fee for that Premise for that year shall take into account any applicable reduction of Live Entertainment Expenditures at the Premise for that year.
- (iii) For purposes of this License Agreement, a discontinuance shall be one in effect for no less than 30 consecutive days in a calendar year.

(b) Cessation of Operation of the Premises or Performances. Licensee has the right to terminate this License Agreement with respect to any Premise, upon written notice to ASCAP, if Licensee: (i) ceases to operate the Premise; or (ii) ceases the public performance of all music at the Premise for a period of 30 consecutive days. The obligation of Licensee to pay future Fees to ASCAP shall terminate as of the effective date of termination, and any pre-paid Fees for such period shall be refunded or credited to Licensee. Licensee shall continue to be liable for any Fees due, including the pro-rata amount of the then-current calendar year's Fees.

7.6. Effect of Termination. Upon any termination or expiration of this License Agreement for any reason, all rights and licenses granted by ASCAP to Licensee herein shall immediately terminate.

Article 8. Representations and Warranties.

8.1. Mutual Representations and Warranties. Each Party represents and warrants to the other Party that: (a) it has the full corporate right, power and authority to enter into this License Agreement and to perform the acts required of it pursuant to this License Agreement; (b) the execution of this License Agreement and performance of its obligations pursuant to this License Agreement do not and shall not violate any other agreement to which it is a party; (c) this License Agreement constitutes the legal, valid and binding obligation of such Party when executed and delivered; and (d) any and all activities it undertakes in connection with this License Agreement shall be performed in compliance with all applicable laws, rules and regulations.

8.2. The Parties' Additional Representations and Warranties. Licensee represents, warrants and covenants that Licensee shall use commercially reasonable efforts to notify each third party that produces, promotes, sponsors, operates and/or controls any Third-Party Licensable Activity at the Premise(s) that the license granted in this License Agreement does not extend to or otherwise authorize the public performance of Musical Works in the ASCAP Repertory that may be made in the course of such Third-Party Licensable Activity. ASCAP represents, warrants and covenants that ASCAP will look solely to the provider of any Third-Party Licensable Activity, and not Licensee, for the payment of license fees for the public performance of Musical Works in the ASCAP Repertory during the course of such Third-Party Licensable Activity.

8.3. Acknowledgment of Scope of ASCAP Repertory. The Parties acknowledge that it is the Parties' intention that this License Agreement be deemed a "license in effect" and, therefore, the scope of the ASCAP Repertory shall not be materially diminished during the Term as a result of a resignation from ASCAP by an ASCAP music publisher member and/or withdrawal from ASCAP's authority of the right to continue to license to Licensee, as part of the ASCAP Repertory, the non-dramatic public performance of Musical Works controlled by such former ASCAP music publisher member. Any material diminution of the ASCAP Repertory during the Term as a result of any such resignation or withdrawal shall not constitute a breach of this License Agreement by ASCAP and Licensee's sole and exclusive remedy and as ASCAP's sole and exclusive obligation therefor shall be such remedies and obligations set forth in Section 9.1(b).

Article 9. Indemnification; Limitation of Liability.

9.1. ASCAP Indemnification.

(a) ASCAP agrees to defend and handle at its own cost and expense any claim, demand or action against Licensee, its Affiliates and/or its or their officers, directors, employees, representatives, and agents (each an "**Licensee Indemnitee**") based upon or in connection with any claim, demand or action by a third party arising out of any actual or alleged breach of ASCAP's representations, warranties and covenants contained in this License Agreement. ASCAP agrees to indemnify and hold the Licensee Indemnitees harmless from and against any and all liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) associated with any such claim, demand or action.

(b) Notwithstanding and without limiting the foregoing, ASCAP shall indemnify, defend, and hold the Licensee Indemnitees harmless from and against any claim, demand or action arising during the Term that is asserted against any Licensee Indemnitee by (i) any third party with respect to the non-dramatic public performance of any Musical Works in the ASCAP Repertory during the Term for any Music Uses in the Premises as specifically permitted under this License Agreement, but specifically excluding claims, demands or actions subject to Section 9.2 hereof or (ii) a former ASCAP member alleging copyright infringement of, or any other claim, demand or action related to, any of such former ASCAP member's Musical Works as a result of such former ASCAP member's resignation from ASCAP and alleged withdrawal from ASCAP's authority of the right to continue to license the non-dramatic public performance of such Musical Works to Licensee as part of the ASCAP Repertory as contemplated under this License Agreement. With respect to claims, demands or actions described in subsection (ii) above, Licensee's sole and exclusive remedy and as ASCAP's sole and exclusive obligation therefor, shall be ASCAP's obligation to indemnify, defend, and hold the Licensee Indemnitees harmless from and against any and all liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) associated with any such claim, demand or action. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, ASCAP'S TOTAL LIABILITY PURSUANT TO THIS SECTION 9.1(b) (EXCLUSIVE OF COSTS ASSOCIATED WITH DEFENSE OF LITIGATION) SHALL NOT EXCEED THE SUM OF THE MAXIMUM AMOUNT OF DAMAGES AND ANY ATTORNEYS' FEES AND

COSTS RECOVERED OR RECOVERABLE BY SUCH FORMER ASCAP MUSIC MEMBER PURSUANT TO SECTIONS 504(a) - (c) AND 505 OF THE U.S. COPYRIGHT ACT.

(c) ASCAP shall have the right to conduct the defense of any claims, demands or actions for which it is obligated to indemnify Licensee Indemnitees pursuant to Section 9.1(a) and Section 9.1(b) and all negotiations for the settlement or compromise of such claims, demands or actions; provided, however, that (i) no settlement or compromise affecting the financial or legal obligations of any Licensee Indemnitee shall be entered into or agreed to without the applicable Licensee Indemnitee's prior approval and unless such settlement contains an unconditional release by the claimant or the plaintiff of the Licensee Indemnitee, its officers, directors, employees, representatives and agents from all liability in respect of such claim, demand or action and (ii) each Licensee Indemnitee has the right to participate, at its own expense, in the defense and/or settlement of any such claim, demand or action in order to protect its own interests.

9.2. Licensee Indemnification. Licensee agrees to defend and handle at its own cost and expense any claim or action brought by a third party against ASCAP, its affiliates and the ASCAP Members, and each of their respective officers, directors, employees, representatives and agents (each an "ASCAP Indemnitee") based upon or arising from: (a) any actual or alleged breach of Licensee's representations, warranties, and covenants contained in this License Agreement; or (b) the Premises, but specifically excluding any claim or action caused by or arising from Licensee's use of the ASCAP Repertory at or for such Premise(s) as specifically permitted pursuant to this License Agreement. Licensee agrees to indemnify and hold the ASCAP Indemnitees harmless from and against any and all liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) based upon or arising from any such claim or action described in the preceding sentence. Licensee shall have the right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise; provided, however, that: (d) no settlement or compromise affecting the financial or legal obligations of any ASCAP Indemnitee shall be entered into or agreed to without the applicable ASCAP Indemnitee's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed, and unless such settlement contains an unconditional release by the claimant or the plaintiff of the ASCAP Indemnitee, its officers, directors, employees, representatives and agents from all liability in respect of such claim or action; and (e) each ASCAP Indemnitee has the right to participate, at its own expense, in the defense and/or settlement of any such claim or action in order to protect its own interests.

9.3. Limitation of Liability. EXCEPT FOR (a) ASCAP'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 9.1(a) AND SECTION 9.1(b), (b) LICENSEE'S INDEMNIFICATION OBLIGATION SET FORTH IN SECTION 9.2, (c) ANY DAMAGES INCURRED BY ASCAP AS A RESULT OF LICENSEE'S BREACH OF ITS OBLIGATIONS SET FORTH IN ARTICLE 3, AND/OR (d) CLAIMS ARISING OUT OF A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES IN ANY MANNER IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION OR THE BASIS OF THE CLAIM OR WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Article 10. Notices.

All notices and other communications required or permitted pursuant to this License Agreement shall be in writing and transmitted via email to the applicable Party at the addresses set forth above, unless, by notice, a Party changes or supplements the addressee and addresses for giving notice; provided, however, that ASCAP shall (a) also have the right to provide notice and other communications to Licensee hereunder in writing that are delivered personally, mailed via certified mail, postage prepaid, or via a nationally recognized overnight courier and (b) any notification of breach of this License Agreement by Licensee shall simultaneously be delivered personally, mailed via certified mail, postage prepaid, or via a nationally recognized overnight courier sent to Licensee. All notices shall be deemed given on the date personally delivered, when placed in the mail as specified above or when transmitted via email. Notice shall be provided to each Operator Contact Person identified for a Premise identified in Schedule A. ASCAP shall provide a courtesy copy of any notice provided to Licensee or an Operator Contact Person pursuant to this Article 10 contemporaneously to any third-party notice contact identified by Licensee for a Premise identified in Schedule A (e.g., outside counsel) (email being sufficient for such notice), such contemporaneous notice not constituting notice to Licensee pursuant to this Article 10.

Article 11. Miscellaneous.

11.1. **Non-Precedential.** The terms and conditions set forth in this License Agreement apply for its Term only and are non-precedential and non-prejudicial and shall not be construed, deemed or serve as an admission by either Party with respect to any matter whatsoever or as a precedent in any manner or be deemed acceptable, in whole or in part, in any other agreements, negotiations or understandings, entered into by the Parties and/or any of either Party's respective Affiliates.

11.2. **Assignment.** Neither Party may assign, convey or otherwise transfer this License Agreement, or any of their respective rights or obligations hereunder, in whole or in part, to any other party without the other Party's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed; provided, however, that either Party may assign its rights and obligations pursuant to this License Agreement, in whole or in part, to an Affiliate or any successor entity(ies) resulting from a merger, acquisition or consolidation, spin-off, divestiture or otherwise succeeding to all or a substantial portion of the assets or business of the assigning Party. Any attempt to assign, convey or otherwise transfer this License Agreement that does not comply with the foregoing shall be void *ab initio*. This License Agreement shall inure 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 pursuant to this License Agreement as to performances transmitted, acts done and obligations incurred prior to the effective date of the purported assignment.

11.3. **Relationship; No Third-Party Beneficiaries.** Each Party is an independent contractor and each Party's personnel are not employees or agents of the other Party for federal, state or other tax purposes or any other purposes whatsoever. Personnel of one Party have no authority to make representations, commitments, bind or enter into contracts on behalf of or otherwise obligate the other Party in any manner whatsoever. Nothing in this License Agreement shall be construed or deemed to constitute, create, give effect to or otherwise recognize a joint venture, partnership, business entity of any kind, nor constitute one Party an agent of the other Party. Except for Licensee Indemnitees and ASCAP Indemnitees, there are no third-party beneficiaries, actual or intended, under this License Agreement.

11.4. **Counterparts and Interpretation.** This License Agreement may be executed in any number of counterparts and by PDF or facsimile signature, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Headings are for convenience only and are not to be considered in construing or interpreting this License Agreement. Each Party has participated substantially in the negotiation and drafting of this License Agreement and each Party agrees that any ambiguity herein should not be construed against either Party. Whenever required by the context, any gender shall include any other gender, the singular shall include the plural and the plural shall include the singular.

11.5. **Consents.** Except as specifically set forth in this License Agreement, all consents, requests and approvals to be given by either Party pursuant to this License Agreement shall (a) be in writing and (b) not be unreasonably withheld, conditioned or delayed. Each Party shall make only reasonable requests pursuant to this License Agreement.

11.6. **Amendment; Waiver; Severability.** Except as permitted pursuant to Article 7, this License Agreement may not be amended, modified or terminated except by a written instrument signed by both of the Parties. No failure or delay by either Party to exercise any right or enforce any obligation shall impair or be construed as a waiver or on-going waiver of that or any other right or power, unless made in writing and signed by both Parties. All remedies, rights, undertakings, and obligations contained in this License Agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, undertaking, or obligation of either Party. If any term, covenant or condition of this License Agreement is held invalid, illegal or unenforceable in any respect, such provision shall be replaced by an enforceable provision that most closely meets the commercial intent of the Parties, and such holding shall not affect any other provision of this License Agreement, which shall be and remain effective as though such invalid, illegal or unenforceable provision had not been contained herein.

11.7. **Governing Law.** This License Agreement shall be governed by and construed in accordance with the laws of the State of New York pertaining to contracts made and fully performed therein, without regard to choice of law rules.

11.8. **Independent Legal Advice.** Each of the Parties has received independent legal advice concerning both the nature of this License Agreement and their legal rights and obligations pursuant to this License Agreement. The Parties have

entered into this License Agreement voluntarily and of their own free will and accord without any threat of force or duress of any kind.

11.9. Survival. The provisions of Sections 2.3, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 7.6, and Articles, 9, 10, and 11 shall survive the cancellation, expiration or termination of this License Agreement.

11.10. Entire Agreement. This License Agreement, together with the Schedules hereto which are incorporated herein by this reference, constitutes the entire agreement between the Parties and supersedes any prior or inconsistent agreements, negotiations, representations and promises, written or oral with respect to the subject matter hereof. Neither Party has made any representations or promises to the other in connection with this License Agreement or its subject matter that are not expressly set forth in this License Agreement.

IN WITNESS WHEREOF, the Parties have executed this License Agreement as of the Effective Date.

**AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS**

By: _____

By: _____

Name: _____

Name: _____

[Type or Print]

[Type or Print]

Title: _____

Title: _____

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SCHEDULE A

PREMISES

For each Premise, Licensee to provide the following information:

- 1) Calendar year for which information provided
- 2) Operator name
- 3) Premises name
- 4) Premises street address
- 5) Premises city
- 6) Premises state
- 7) Premises zip code
- 8) Mailing address for contacting operator
- 9) Operator contact person name
- 10) Operator contact person phone number
- 11) Operator contact person email address
- 12) Name of third party (if any) for receipt of Notice
- 13) Email address of party identified in #12.

Premises may be listed on this form or in a spreadsheet or other document to be attached hereto.

***“Lodging Room”** means any private guest sleeping room in a Premise that is intended for regular overnight occupancy by members of the public for a fee.

SCHEDULE B
RATE SCHEDULE

Section I. Recorded Music Activity

Licensee’s liability for all public performances of Musical Works in the ASCAP Repertory licensed pursuant to this License Agreement for Recorded Music Activity at each Premise identified in **Schedule A** shall be the ASCAP Annual Fee amount set forth in Column (D) of Table B-1 corresponding to the number of Lodging Rooms at such Premise, subject to any applicable Credit Amounts.

TABLE B-1			
(A)	(B)	(C)	(D)
Class	Minimum Number of Lodging Rooms	Maximum Number of Lodging Rooms	ASCAP Annual Fee
V	1	100	\$550
W	101	300	\$700
X	301	500	\$900
Y	501	750	\$1,200
Z	751	Unlimited	\$1,540

If Licensee reduces occupancy of any Premise as a result of an act of nature, public health emergency, riots or other events outside of the control of Licensee by an amount equal to at least 10% of Lodging Rooms (defined below) in a Premise for more than 30 consecutive days during any calendar year of the Term, then Licensee will be entitled to a credit on Fees due for the next calendar year of the Term equal to the product resulting from the following formula (the “**Credit Amount**”):

$$\text{Credit Amount} = A \times B \times C$$

Where:

- A = the number of unique Lodging Rooms not made available for rental during the preceding calendar year;
- B = the number of consecutive 30-day periods the unique Lodging Rooms were not made available for rental during the preceding calendar year; and
- C = Monthly per room fee, calculated by dividing the ASCAP Annual Fee by 12 and dividing the result by the actual number of Lodging Rooms at the Premises.

Licensee shall maintain contemporaneous records indicating the removal of Lodging Rooms from availability for rental and the inability to rent a Lodging Room otherwise available for rental will not entitle Licensee to any credit on Fees.

Examples:

Example 1. If Licensee operates a hotel with 280 Lodging Rooms and due to a public health emergency Licensee is restricted from renting more than 50% of its Lodging Rooms for a period of exactly four (4) months, Licensee would be entitled to a credit for Fees due to ASCAP for the subsequent calendar year in an amount equal to the following:

$$140 \text{ (Lodging Rooms not available)} \times 4 \text{ (consecutive 30-day periods)} \times \$0.2083 = \underline{\underline{\$116.65}}$$

Example 2. If Licensee operates a hotel with 280 Lodging Rooms and due to a public health emergency Licensee is restricted from renting more than 50% of its Lodging Rooms for a period of exactly four (4) months and then, after re-opening at 100% capacity Licensee is forced to close the entire hotel for 2 months due to damage incurred as a result of a hurricane and flooding, Licensee would be entitled to a credit for Fees due to ASCAP for the subsequent calendar year in an amount equal to the following:

$$[140 \text{ (Lodging Rooms not available)} \times 4 \text{ (consecutive 30-day periods for the 140 Lodging Rooms not available)} \times \$0.2083] + [280 \text{ (Lodging Rooms not available)} \times 2 \text{ (consecutive 30-day periods)} \times \$0.2083] = \underline{\underline{\$233.30}}$$

Example 3. If Licensee operates a hotel with 50 Lodging Rooms and due to public health concerns the hotel is only 20% occupied for four (4) consecutive months but the Licensee has made all Lodging Rooms available for rental, Licensee would not be entitled to any credit on Fees due in a subsequent year.

Section II. Live Entertainment Activity

TABLE B-2

**LIVE ENTERTAINMENT ACTIVITY FEES
CALENDAR YEAR 2022**

Live Entertainment Expenditures	Rate
<10K	\$550
10,000 - 24,999	\$1,000
25,000 - 49,999	\$2,000
50,000 - 99,999	\$3,700
100,000 - 139,999	\$5,000
140,000 - 179,999	\$6,500
180,000 - 249,999	\$8,600
250,000 - 349,999	\$11,000
350,000 - 449,999	\$12,750
450,000 - 599,999	\$15,500
600,000 - 999,999	\$17,000
1,000,000 - 1,999,999	\$22,000
2,000,000 - 2,999,999	\$25,900
3,000,000 - 3,999,999	\$28,500
4,000,000 - 4,999,999	\$32,500
5,000,000+	0.6% of Live Entertainment Expenditures

DISCOUNTS TO FEES

If, at the time payment of Fees are due pursuant to this License Agreement, Licensee (i) is not in breach of any terms or conditions of this License Agreement or any other license agreement with ASCAP, and (ii) provides documentation that it is a current member in good standing of the American Hotel & Lodging Association, ASCAP shall provide a discount to the applicable Fees of 1%.



Schedule C-1

FORM OF INITIAL TERM REPORT

Account Number: _____ Hotel Name: _____

Initial Term Report Period From: _____ To: _____

AHLA member? Yes No If yes, please provide the membership number:

<<ASCAP_Policy_HotelMotel_AH_MA_Membership_Number>>

Recorded Music:

Number of Lodging Rooms: _____

Annual Estimated Recorded Music Activity Fee (From Schedule B, Section I, Table B-1):

Pro-rated (per dates above, if applicable):

Estimated Recorded Music Activity Fee:*

Live Music: (Please complete in full.)

Live Entertainment Expenditures

(Estimate from commencement date through the last date of calendar year):

Estimated Live Entertainment Activity Fee (From Schedule B, Section II, Table B-2)*:

“Live Entertainment Expenditures” means, for any applicable period of time, the aggregate monetary amounts paid by Licensee or any of its Affiliates in accordance with Licensee’s or its Affiliate’s (as applicable) accounting practices maintained in the ordinary course of such entity’s business operations to third parties in connection with Live Entertainment Activity including, but not limited to, the fees, compensation and/or value of any goods, services or other consideration paid to any persons whose services are especially and exclusively engaged for the presentation of any such Live Entertainment Activity. The Parties acknowledge and agree that fees, compensation and/or value of any goods, services or other consideration paid to any person who is especially and exclusively engaged for the presentation of Live Entertainment Activity shall be deemed Live Entertainment Expenditures notwithstanding the fact that such person also provides to Licensee incidental services unrelated to such Live Entertainment Activity. For purposes of this License Agreement, Live Entertainment Expenditures shall not include (a) the fees, compensation and value of any goods, services or other consideration paid to a performing artist that is not itself engaging in the public performance of Musical Works and/or any activity that is synchronized to the public performance of Musical Works (e.g., comedian, speaker, lecturer, actor(s) in a play, etc.), (b) amounts paid or payable by Licensee or any of its Affiliates in connection with the provision of any employee benefits (e.g. pension, insurance, etc.) to any person who is especially and exclusively engaged for the presentation of Live Entertainment Activity, and (c) amounts paid to performing rights organizations for the public performance of musical works.

Live Entertainment Expenditures **do not** include any expenditures in connection with a production incorporating performances of dramatico-musical works, including expenditures for rights acquisitions and payments to performers and technicians.

Total Estimated Initial Term Fee (Estimated Recorded Music Activity Fee + Initial Term Estimated Live Entertainment Activity Fee)*:

* Estimated Fees do not include certain adjustments that may be applicable. ASCAP will apply any and all discounts or credits due Licensee pursuant to the terms of the License Agreement, including, but not limited to, Sections 4.1(c), Table B-2, Discounts to Fees, or otherwise, and reflect such discounts or credits on any invoice issued to Licensee.

ASCAP to issue an invoice to Licensee based upon the above information.

I certify the above information is true and correct.

Signature: _____

Date: ___ / ___ / ___

Email: _____

E-FILING & E-PAYMENT: To file expenditure report(s) and/or make electronic payment:

www.ascap.com/mylicense

ASCAP Toll Free: 1-800-505-4052

Epayment Websites: www.ascap.com/mylicense or www.ascap.com

