

# PRIVATE CLUB LICENSE AGREEMENT

## 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 of one year, commencing \_\_\_\_\_, and continuing thereafter for additional terms of one year each unless terminated by either party as hereinafter provided, a license to perform publicly at \_\_\_\_\_

\_\_\_\_\_ ("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.

(b) This agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, 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.

(c) 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.

### 2. Limitations on License

(a) This license is not assignable or transferable by operation of law or otherwise, except as provided in Paragraph "1(b)" 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 performances on the premises which emanate from any point outside the premises or are transmitted by any means to the premises, including, but not-limited to, such means as background music services, pay television, cable television or wired music, excepting, however, performances by means of off-the-air reception of television broadcasts or radio broadcasts further transmitted on the premises by means of loudspeakers.

(d) 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.

(e) 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, choral work, opera, play with music, revue, or ballet.

### 3. License Fee

(a) In consideration of the license granted herein, LICENSEE agrees to pay SOCIETY the applicable license fee set forth in the rate schedule annexed hereto and made part hereof, based on "LICENSEE'S Operating Policy" (as hereinafter defined) for the previous calendar year, payable quarterly in advance on January 20, April 1, July 1 and October 1 of each year. The term "LICENSEE'S Operating Policy", as used in this agreement, shall be deemed to mean all of the factors which determine the license fee applicable to the premises under said rate schedule.

(b) LICENSEE warrants that the Statement of LICENSEE'S Operating Policy annexed hereto is true and correct.

(c) Said license fee totals «OPPORTUNITY\_TOTAL\_RATE» annually, based on the facts set forth in said Statement of Operating Policy.

(d) LICENSEE shall submit a current Statement of Operating Policy to SOCIETY by January 20 of each contract year. Each such Statement shall be accompanied by payment to SOCIETY of the license fees due over and above all amounts paid to SOCIETY for the preceding calendar year pursuant to Paragraph 3(a). If the amount paid by LICENSEE for the preceding calendar year exceeds the license fee due for that year, LICENSEE shall apply the excess payment against future quarterly payments.

#### **4. Society's Right to Audit**

SOCIETY shall have the right, by its duly authorized representatives, at any time during customary business hours, to examine LICENSEE'S books and records to such extent as may be necessary to verify any Statement of Operating Policy submitted by LICENSEE, or to determine the proper license fee to be paid hereunder. SOCIETY shall consider all information resulting from such examination as completely and entirely confidential.

#### **5. Breach or Default**

Upon any breach or default by LICENSEE of any term or condition herein contained, SOCIETY 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 SOCIETY. In the event of such termination, SOCIETY shall refund to LICENSEE any unearned license fees paid in advance.

#### **6. Interference in Society's Operations**

In the event of:

- (a) any major interference with the operations of SOCIETY in the state, territory, dependency, possession or political subdivision in which LICENSEE is located, by reason of any law of such state, territory, dependency, possession or political subdivision; or
- (b) any substantial increase in the cost to the SOCIETY of operating in such state, territory, dependency, possession or political subdivision, by reason of any law of such state, territory, dependency, possession or political subdivision, which is applicable to the licensing of performing rights, SOCIETY shall have the right to terminate this agreement forthwith by written notice.

#### **7. Notices**

All notices required or permitted hereunder shall be given in writing by certified United States mail sent to either party at the address stated above. Each party agrees to inform the other of any change of address.

IN WITNESS WHEREOF, this Agreement has been duly executed by SOCIETY and LICENSEE,  
this                      day of                      , 20   .

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.)



# PRIVATE CLUBS

## Rate Schedule

### SCHEDULE I: LIVE ENTERTAINMENT

For "live" entertainment, the sum to be paid by LICENSEE to SOCIETY for each contract year during the term of this agreement shall be the amount in the right-hand column below that corresponds to the "Annual Expenditure for all Entertainment at the Premises":

<u>Annual Expenditure for All Entertainment at the Premises</u>			<u>Annual Rate</u>
Less than	\$5,000.00		\$154
\$5,000.00	to	\$9,999.99	\$231
\$10,000.00	to	\$14,999.99	\$303
\$15,000.00	to	\$24,999.99	\$457
\$25,000.00	to	\$34,999.99	\$605
\$35,000.00	to	\$49,999.99	\$754
\$50,000.00	to	\$64,999.99	\$902
\$65,000.00	to	\$79,999.99	\$1,139
\$80,000.00	to	\$99,999.99	\$1,518
\$100,000.00	to	\$119,999.99	\$1,898
\$120,000.00	to	\$139,999.99	\$2,277
\$140,000.00	to	\$159,999.99	\$2,657
\$160,000.00	to	\$179,999.99	\$3,036
\$180,000.00	to	\$199,999.99	\$3,416
\$200,000.00	to	\$249,999.99	\$3,795
\$250,000.00	to	\$299,999.99	\$4,180
\$300,000.00	and over		\$4,554

The term "expenditure for all entertainment at the premises" as used in this agreement shall be deemed to include all payments made (whether in money or in any other form) by LICENSEE for all entertainment at the premises, excluding 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.

Where any arrangement either by contract or otherwise exists 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, certain or any accommodations or services are to be made available for its or his 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 SOCIETY as expended during each contract year in which such entertainment is presented, provided that if LICENSEE and SOCIETY shall 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 or patrons of the premises for such accommodations or services.

LICENSEE shall estimate its "Annual Expenditure for all Entertainment at the Premises" for the first contract year based on the pro rata expenditure for all entertainment at the premises for those periods during the previous year when LICENSEE offered music as part of its Operating Policy.

### SCHEDULE II: MECHANICAL MUSIC

<u>Number of Members</u>			<u>Annual Rate</u>
1	to	300	\$ 75
301	to	500	\$100
501	to	700	\$120
701	to	1,000	\$135
1,000	and over		\$150

\* If audio-visual performances of mechanical music (such as the use of a large-screen projection television) are given, use the applicable category and add 50%.