

# LICENSE AGREEMENT – BANKS AND OTHER FINANCIAL INSTITUTIONS (MECHANICAL MUSIC - AUDIO AND AUDIO-VISUAL USES)



between American Society of Composers, Authors and Publishers ("SOCIETY"), located at  
2 Music Square West, Nashville, TN 37203

and \_\_\_\_\_

with its subsidiaries and affiliates ("LICENSEE"), located at \_\_\_\_\_

as follows:

## 1. Definitions

As used in this Agreement, the following terms are defined as follows:

(a) Mechanical Music shall mean and include the reception of radio broadcasts and further transmission of those broadcasts over a loudspeaker or system of loudspeakers; the use of LICENSEE'S or a third party's audio records, discs, tapes by means of LICENSEE'S or such third party's audio-only record, disc or tape players, or satellite transmission facilities; or non-live audio-visual uses of music (such as the use of a large-screen projection television, multiple television sets, video or laser discs, or video tapes), including all such uses transmitted via Internet, Intranet and other interconnected computer networks used solely to facilitate the performances licensed under this Agreement.

(b) Premises licensed under this Agreement shall include all of LICENSEE's owned or leased corporate facilities. This includes, but is not limited to, limited-service branches and full service branches to which the general public has access, and stand-alone automated teller machines that play music in the manner described in Paragraph 1(a) above;

(c) Stand Alone Automated Teller Machines (ATM's) shall include solely those machines owned or leased and operated on Licensee's Premises that include mechanical music as defined above in 1(a).

(d) Full Service Branch shall be a physical location owned or leased and operated by the Licensee that conducts and is open for business to the public at least five days a week and maintains normal business hours; and

(e) The ASCAP Repertory means and includes all musical works for which ASCAP has the right to license non-dramatic public performance now or hereafter during the term of this Agreement. All compositions written and copyrighted by ASCAP and in the repertory on the date this Agreement is executed are included for the full term and any additional term of this Agreement. Compositions written or copyrighted by ASCAP members hereafter are included for the full license term and any additional term of this Agreement. For the full license term and any additional license term of this Agreement, the ASCAP Repertory shall be deemed to be no less than all of the works set forth in the ASCAP online database of musical compositions known as "ASCAP Clearance Express," accessible at the ASCAP Internet Web site, [www.ascap.com/ace](http://www.ascap.com/ace).

## 2. Grant and Term of License

(a) SOCIETY grants and LICENSEE accepts for a term of one (1) year commencing \_\_\_\_\_, and continuing thereafter for additional terms of one (1) year unless terminated as hereinafter provided, a license to perform publicly by means of "mechanical music" (as herein defined), and not otherwise, at each of the locations listed in Schedule "A", annexed hereto and made a part hereof, as said Schedule may be amended as hereinafter provided, except as provided in Paragraph 3(c) below ("the Premises"), and not elsewhere, non-dramatic renditions of the separate musical compositions now or hereafter during the term hereof in the ASCAP Repertory of SOCIETY.

(b) Either party may, on or before thirty (30) days prior to the end of the initial term or any additional 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 additional term, except as provided in Paragraph 4(d).

(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.

### **3. Limitations on License**

- (a) This license is not assignable or transferable by operation of law or otherwise, except as provided in Paragraph "2(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 other than by means of music-on-hold.
- (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, opera, play with music, revue, or ballet.

### **4. License Fees 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 part hereof, within sixty (60) days of mailing of SOCIETY's invoice, which shall be payable either annually and invoiced in advance of January 1 of each year, based on (i) LICENSEE's estimate of the first year's fee under this Agreement; or (ii) the prior year's fee under this Agreement, whichever is applicable; or quarterly, based on LICENSEE's quarterly reports as provided for in subparagraph (b) below.
- (b) Except as provided in subparagraph (c) below, LICENSEE shall furnish a report to SOCIETY on or before January 31 of each year; or, at LICENSEE's option, within fifteen (15) days of the end of each calendar quarter, indicating any additions or deletions of Premises at which music has been performed during the previous year or calendar quarter, including the month in which the addition or deletion occurred, and 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 the preceding year or calendar quarter. Said total fees shall be adjusted on the following monthly pro rata basis for locations which have been added or deleted during the previous year or calendar 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 the previous year or calendar quarter, LICENSEE shall submit payment of the difference with the report; if less, SOCIETY shall issue a credit applicable to the next year or calendar quarter's advance payment as applicable. All reports submitted by LICENSEE to SOCIETY in compliance with the terms of this Agreement shall be treated as confidential by SOCIETY.
- (c) If LICENSEE reports and pays the maximum annual license fee as provided for in the rate schedule annexed hereto and made part hereof for any year, LICENSEE shall not be required to submit the report required by Paragraph 4(b) above for such year, and LICENSEE need not provide to SOCIETY the list of Premises referred to in Paragraph 4(b) above.
- (d) If LICENSEE discontinues the performance of music at all of the Premises, LICENSEE or SOCIETY may terminate this Agreement upon thirty (30) days prior notice, the termination to be effective at the end of such thirty (30) 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 (30) days.

### **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 (30) days notice to cure such breach or default, and in the event that such breach or default has not been cured within said thirty (30) days, ASCAP may then give notice of termination of this license effective thirty (30) days thereafter.

In the event of such termination, SOCIETY shall refund to LICENSEE any unearned license fees paid in advance within thirty (30) days.

## 6. Interference in Society's Operations

In the event of:

- (a) any major interference with the operation of SOCIETY in the state, territory, dependency, possession or political subdivision in which LICENSEE is located, by reason of any law or regulation of such state, territory, dependency, possession or political subdivision as a result of which SOCIETY cannot conduct business, 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 upon thirty (30) days prior written notice. In the event of such termination, SOCIETY shall refund any unearned license fees paid in advance within thirty (30) days.

## 7. Indemnification

SOCIETY will indemnify LICENSEE from any claim made against LICENSEE with respect to the non-dramatic performances licensed under this Agreement of any musical compositions in the ASCAP Repertory, and will have full charge of the defense against such claim. LICENSEE agrees to notify SOCIETY immediately of any such claim, furnish SOCIETY with all papers pertaining to it, and cooperate fully with SOCIETY in the defense of the claim. LICENSEE may, if it so chooses, engage its own counsel, at its own expense, who may participate in the defense of the claim. SOCIETY's liability under this paragraph is strictly limited to the amount of license fees actually paid by LICENSEE to SOCIETY under this Agreement for the calendar year(s) in which the performance(s) that are the subject of the claim occurred, but such limitation shall not apply to SOCIETY's attorneys' fees and costs incurred in defending against the claim.

## 8. Notices

All notices required or permitted hereunder shall be reasonable and given in writing by certified United States mail or recognized overnight delivery service with signature signifying receipt sent to either party at the address stated above. Each party agrees to inform the other of any change of address in writing.

## 9. Warranties

The parties to this Agreement each warrant and represent that they have all rights necessary to undertake the obligations provided for in this Agreement.

## 10. Modifications and Execution

Any modification to the terms of this Agreement must be made in writing and signed by both parties. This Agreement may be executed in any number of counterparts, by different parties on separate counterparts and by facsimile signature. Each counterpart or facsimile so executed shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.

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

AMERICAN SOCIETY OF COMPOSERS,  
AUTHORS AND PUBLISHERS

By: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

LICENSEE \_\_\_\_\_

By: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

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



## **2016 RATE SCHEDULE**

### **BANKS AND OTHER FINANCIAL INSTITUTIONS (MECHANICAL MUSIC - AUDIO AND AUDIO-VISUAL USES)**

Number of Locations	Fee Per Location
1 - 25	\$118.00
26 - 250	\$172.00
251 - 500	\$159.00
501 - 1,000	\$147.00
1,001 - 1,750	\$134.00
1,751 - 2,750	\$124.00
in excess of 2,750 locations	\$118.00

Maximum Fee \$353,574.00

### **Annual License Fee for Calendar Years 2017 and Thereafter**

The annual license fee set forth in this Rate Schedule will apply for the calendar year 2016.  
Rates for each subsequent calendar year will be adjusted in accordance with the increase or decrease in the Consumer Price Index, All Urban Consumers - (CPI-U) between the preceding October and the next preceding October .