

## ASCAP LICENSE AGREEMENT

This ASCAP LICENSE AGREEMENT ("License Agreement") is made and entered into as of the effective date set forth on the Key Terms and Fee Schedule annexed hereto as Schedule A (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 the party identified on Schedule A ("Licensee") (ASCAP and Licensee are each referred to herein as a "Party" and collectively referred to as the "Parties"). Capitalized terms not otherwise defined herein shall have the meaning ascribed them in the terms and conditions relating to the access to and use of the ASCAP website as set forth at [www.ASCAP.com/about/legal-terms](http://www.ASCAP.com/about/legal-terms) (the "ASCAP Terms of Use"). To the extent a conflict exists between the ASCAP Terms of Use and this License Agreement, this License Agreement shall govern.

### Article 1. Definitions.

- 1.1. "ASCAP Member" means any individual or entity that has entered into a membership agreement with ASCAP.
- 1.2. "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).
- 1.3. "Authorized Medium" means the transmission of data solely using the public Internet and mobile wireless communications and data networks. For purposes of this License Agreement, "Authorized Medium" shall not mean any other technical, communications or transmission protocols or platforms now known or hereafter devised, discovered or developed including, without limitation, any television (including cable and satellite), and satellite or terrestrial radio.
- 1.4. "Authorized User" means any end user of the Licensed Service that agrees to be bound by the Licensee Terms of Use (as hereafter defined).
- 1.5. "Content" means digital files, materials or content containing Musical Work(s) (which in each case may contain metadata, graphics, editorial or other information).
- 1.6. "Contract Year" means a 365-day (or 366 days in the event of a leap year) period during the Term measured from the Effective Date or any anniversary thereof.
- 1.7. "Fee Payment Date" means the date(s) identified on Schedule A on which Fees are due and payable by Licensee to ASCAP.
- 1.8. "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.
- 1.9. "Licensed Service" means the digital service owned, controlled and operated by Licensee and identified on Schedule A that makes available Content to Authorized Users via the Authorized Medium solely via the Licensee Platform.
- 1.10. "Licensee Platform" means (a) the Internet website owned, operated and controlled by Licensee and identified on Schedule A, together with any subdomains thereof and/or (b) the software application, player, client, package or bundle identified on Schedule A (i.e., the 'App'), together with all enhancements, modifications, improvements, replacements, updates or upgrades to such application, player, client, package or bundle and instances, copies and derivative works thereof, that is (i) owned, operated and controlled by Licensee and (ii) made available by Licensee or on behalf of Licensee by a third party using an application programming interface, software development kit, plugin, firmware or any other technology provided or otherwise certified or approved by Licensee, in each case, which is provided to Authorized Users for the sole purpose of enabling Authorized Users to access and use the Licensed Service and receive transmissions of Content via the Licensed Service in the Territory.
- 1.11. "Musical Work" means any copyrightable musical composition, including any lyrics or words written to be used with such composition.
- 1.12. "Rate Schedule" means the factors, parameters and criteria used by ASCAP to determine the fees, charges, rates and other amounts payable to ASCAP for the Licensed Rights, all as set forth on Schedule B, which may be amended from time to time in ASCAP's discretion.
- 1.13. "Service Thresholds" means the revenue and session thresholds set forth on Schedule A.

1.14. "Territory" means the United States of America, its territories, dependencies and possessions and the Commonwealth of Puerto Rico.

1.15. "User Account" means the online user profile and payment account accessed by Licensee via www.ascap.com.

## **Article 2. Authority and Binding Effect.**

2.1. AUTHORITY; AUTHORIZATION. BY ENTERING INTO THIS LICENSE AGREEMENT ON BEHALF OF LICENSEE, YOU (AS THE INDIVIDUAL ENTERING INTO AND AGREEING TO THIS LICENSE AGREEMENT) HEREBY REPRESENT AND WARRANT THAT (A) YOU HAVE THE FULL RIGHT, POWER AND AUTHORITY TO ENTER INTO THIS LICENSE AGREEMENT ON BEHALF OF LICENSEE AND TO CREATE A LEGAL, VALID AND BINDING OBLIGATION ON LICENSEE ENFORCEABLE AGAINST LICENSEE IN ACCORDANCE WITH THE TERMS AND CONDITIONS HEREOF; (B) ALL CORPORATE, ORGANIZATIONAL AND OTHER PROCEEDINGS REQUIRED TO BE TAKEN BY LICENSEE TO AUTHORIZE YOUR AGREEMENT TO, AND PERFORMANCE UNDER, THIS LICENSE AGREEMENT HAVE BEEN TAKEN AND ALL NECESSARY AUTHORIZATIONS, PERMITS, CONSENTS AND APPROVALS REQUIRED HAVE BEEN OBTAINED; AND (C) YOUR ENTERING INTO THIS LICENSE AGREEMENT ON BEHALF OF LICENSEE DOES NOT AND SHALL NOT VIOLATE ANY APPLICABLE LAW, RULE OR REGULATION OR REQUIRE ANY ADDITIONAL CONSENT OR OTHER ACTION BY ANY OTHER PERSON OR ENTITY. YOU FURTHER ACKNOWLEDGE AND AGREE THAT THIS LICENSE AGREEMENT SHALL BE, JOINTLY AND SEVERALLY, BINDING UPON AND ENFORCEABLE AGAINST YOU AND LICENSEE FOR ALL PURPOSES HEREUNDER.

2.2. ELECTRONIC SIGNATURE AND CONTRACTS. ASCAP PROVIDES ITS LICENSEES WITH THE ABILITY TO ENTER INTO AGREEMENTS AND TO PURCHASE LICENSES AND OTHER SERVICES ELECTRONICALLY. BOTH YOU (AS THE INDIVIDUAL ENTERING INTO AND AGREEING TO THIS LICENSE AGREEMENT ON BEHALF OF LICENSEE) AND LICENSEE HEREBY ACKNOWLEDGE AND AGREE THAT ELECTRONIC SUBMISSIONS CONSTITUTE BOTH LICENSEE'S AND YOUR AGREEMENT AND INTENT TO BE BOUND BY SUCH AGREEMENTS AND TO PROMPTLY PAY FOR ALL FEES AND OTHER APPLICABLE AMOUNTS PAYABLE. SUCH AGREEMENT AND INTENT TO BE BOUND BY ELECTRONIC SUBMISSIONS APPLIES TO ALL RECORDS RELATING TO (A) ALL TRANSACTIONS ENTERED INTO BY YOU OR LICENSEE IN CONNECTION WITH ASCAP, INCLUDING IN CONNECTION WITH THIS LICENSE AGREEMENT, AND (B) OTHER COMMUNICATIONS ASCAP PROVIDES TO YOU ELECTRONICALLY (WHETHER BY POSTING ON ASCAP'S INTERNET PLATFORMS OR OTHERWISE), INCLUDING (TO THE FULL EXTENT ALLOWED BY LAW) NOTICES, DISCLOSURES, POLICIES, CONTRACTS, AMENDMENTS, PRICES CHANGES AND OTHERWISE, AND BOTH YOU AND LICENSEE AGREE THAT SUCH ELECTRONIC RECORDS AND COMMUNICATIONS SATISFY ANY LEGAL REQUIREMENT THAT SAME BE IN WRITING. ACCORDINGLY, YOU AND LICENSEE SHOULD MAINTAIN COPIES OF ELECTRONIC COMMUNICATIONS BY PRINTING A PAPER COPY OR SAVING AN ELECTRONIC COPY.

## **Article 3. License Grant.**

3.1. Scope of License. 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 contained in the ASCAP Repertory in the Territory solely via the Authorized Medium on and through the Licensed Service for Authorized Users' personal use ("Licensed Rights").

3.2. Limitations on Licensee Rights. Nothing in this License Agreement shall be construed to authorize Licensee to perform publicly the ASCAP Repertory (or any part thereof) in connection with or via any websites, software applications, systems, platforms, devices, products and/or services other than the Licensed Service as specifically permitted herein without the prior consent or license from ASCAP, which may be withheld in ASCAP's sole discretion, whether or not any such software applications, systems, platforms, products, devices or services are owned, operated, distributed, maintained and/or managed by or on behalf of Licensee or any of its affiliates. Further, this License Agreement does not authorize Licensee to make the ASCAP Repertory (or any part thereof) available on any websites, software applications, systems, platforms, products or services owned, controlled or operated by any third party for which Licensee solely provides hosting, content delivery or other distribution services.

3.3. 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.

3.4. Reservation of Rights. Except for the limited 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.

## **Article 4. Additional Terms and Conditions.**

4.1. Schedules to License Agreement. Schedule A and Schedule B set forth certain terms and conditions, including, without limitation, the Service Thresholds, applicable Fees, additional definitions, and other business and legal terms applicable to Licensee's license of the right to publicly perform the ASCAP Repertory. In the event of any conflict between the terms and conditions of this License Agreement and Schedule A and/or Schedule B, the terms and conditions of this License Agreement shall control to the extent necessary to resolve any such conflict.

4.2. Eligibility Requirements. Licensee acknowledges that the Fees and scope of the Licensed Rights herein were determined by ASCAP, in whole or in part, based on the factors, functionality and other information provided by Licensee with respect to the Licensed Service, including, without limitation, Licensee's description of the Licensed Service and the Service Thresholds, as set forth on Schedule A (the "Eligibility Requirements"). Licensee shall promptly provide ASCAP with written notice of any change in the Eligibility Requirements and shall, at such time, furnish to ASCAP all requested information and certify that all information so provided is true and correct. In the event of any change to the Eligibility Requirements, ASCAP reserves the right to make adjustments to the Fees as required, upon notice to Licensee. Upon any change in the Eligibility Requirements resulting in an increase in the applicable Fees, Licensee agrees to pay ASCAP the increased Fees, effective as of the initial date of such change, whether or not written notice of such change has been provided pursuant to the terms and conditions hereof.

## **Article 5. Restrictions and Conditions.**

5.1. 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 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 (a) construed to authorize Licensee to grant to any venue including, but not limited to, bars, restaurants, taverns, hotels, retail establishments, and other similar businesses or establishments, any right to perform publicly any of the ASCAP Repertory licensed under this License Agreement or (b) 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 of those Musical Works, by any means, method or process whatsoever, including, but not limited to, any websites, software applications, systems, platforms, devices, products or services owned or controlled by such third party.

5.2. 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.

5.3. 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.

5.4. Compliance with Licensee Terms of Use. Prior to the access to or use of the Licensed Service by any Authorized User, Licensee shall ensure that such Authorized User agrees to be bound by Licensee's terms and conditions relating to the access to and use of the Licensed Service (the "Licensee Terms of Use") whether tacitly through their access to and use of the Licensed Service or by affirmatively manifesting their intent to be bound by the same. The Licensee Terms of Use shall, at a minimum contain terms and conditions that govern the permitted use of Content on and through the Licensed Service including, but not limited to, the ASCAP Repertory, which shall be consistent with the rights granted and restrictions set forth in this License Agreement with respect thereto. Licensee shall use all commercially reasonable efforts to ensure that each Authorized User complies with the Licensee Terms of Use and shall promptly take appropriate action against any Authorized User who violates the Licensee Terms of Use, which may include terminating or restricting such Authorized User's right to access or use the Licensed Service or initiating legal action. Notwithstanding the foregoing, ASCAP reserves all of its rights and remedies under law and equity against any party, whether or not an Authorized User, who is connected to any activity that infringes any of ASCAP's rights in and to the ASCAP Repertory.

5.5. Hosting and Authentication. Licensee shall ensure that at all times during the Term (a) the Licensed Service and the public performance of Musical Works in the ASCAP Repertory in connection therewith shall be controlled, operated, hosted and served solely by Licensee and (b) all access to and use of the Licensed Service by Authorized Users shall, at all times, be authenticated and verified solely by Licensee.

5.6. Stand-Alone Offering. Except as otherwise expressly provided for herein or specifically approved by ASCAP on a case-by-case basis, in its sole discretion, Licensee shall at all times sell, market, promote, distribute, transmit or otherwise make available the Licensed Service as a stand-alone service and shall not sell, market, promote, distribute, transmit or otherwise make available the Licensed Service (or any part thereof), directly or indirectly, as part of a bundled package or offering with other products and/or services.

5.7. Geo-Filtering. Licensee shall use address and/or credit card verification systems (which systems may include, without limitation, geo-filtering and/or time-zone filtering technology, reverse IP address look-up, etc.) intended to verify that Authorized Users accessing the ASCAP Repertory through the Licensed Service are in fact located within, and/or have a billing address in, the Territory.

## **Article 6. Payment Requirements and Terms.**

6.1. Payment of Fees. In consideration of the rights granted in this License Agreement, for each Contract Year during the Term, Licensee shall pay the amounts determined by applying Licensee's Service Thresholds to the Rate Schedule applicable at the commencement of the Contract Year (the "Fees"). The Fees for the first Contract Year of the Term are set forth on Schedule A. ASCAP shall provide Licensee with the Rate Schedule applicable to each subsequent calendar year prior to the commencement of such calendar year, provided that in the event the fees and charges set forth on such Rate Schedule exceed the corresponding fees and charges 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 twelve-month period concluding in the October of the then-current calendar year, ASCAP shall provide Licensee with such Rate Schedule at least 45 days prior to the commencement of the applicable calendar year. Subject to the terms and conditions of this License Agreement and the ASCAP Terms of Use, Licensee shall pay to ASCAP the Fees, or any applicable portion thereof payable pursuant to the Payment Plan set forth on the Key Terms/Fee Schedule (an "Installment Payment") (including all applicable taxes and levies as described below) on the Fee Payment Date(s) as set forth on Schedule A using the payment method associated with Licensee's User Account (the "Payment Preferences"). If payment is not promptly received by ASCAP, Licensee agrees to promptly pay all amounts due upon demand by ASCAP, together with a late payment charge equal to one and one half percent (1.5%) per month, or the maximum rate permitted by law, whichever is less, calculated from the date such payments were due.

6.2. Autopay; Recurring/Automatic Billing. If Licensee has selected or enrolled in ASCAP's Autopay feature, then unless and until Licensee cancels or disables the Autopay feature in Licensee's account profile available at [www.ascap.com/mylicense](http://www.ascap.com/mylicense), Licensee acknowledges and agrees that ASCAP may automatically charge Licensee no more than 30 days in advance of each Fee Payment Date the applicable Fees for the continued right to use the Licensed Rights and Licensee hereby agrees to pay such Fees which 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, the same as those set forth on Schedule A), unless subject to increase as permitted and described in this License Agreement.

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. You (as the individual entering into and agreeing to this License Agreement) acknowledge and understand that your 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 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 Agreement.

Licensee may disable the Autopay automatic billing feature at any time, by modifying its Payment Preferences in the Licensee User Account profile at [www.ascap.com/mylicense](http://www.ascap.com/mylicense).

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 IMMEDIATELY TERMINATE THIS LICENSE AGREEMENT, WITHOUT NOTICE OR OTHER OBLIGATION OR LIABILITY TO LICENSEE OR ANY THIRD PARTY.

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 and tax rates in effect at the time Licensee's 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 which 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](http://www.ASCAP.com).

6.4. No Refunds or Credits. Except as otherwise expressly agreed by ASCAP, all Fees are final and nonrefundable and ASCAP shall in no event provide any refunds, reimbursements or credits of any kind for any reason, including in connection with any early termination of this License Agreement, partial or unused services or Licensed Rights, or any other product or service, in whole or in part. The Fees are based upon the total value attributable solely 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 neither ASCAP nor any ASCAP Member shall be required to account to any third-party rights holder in any Musical Work in the ASCAP Repertory for the rights granted to Licensee, and as between ASCAP and Licensee, Licensee shall be responsible for any such accounting.

6.5. **Audit.** During the Term, and for a period of three years thereafter: (a) Licensee shall maintain and keep complete and accurate records in accordance with generally accepted accounting principles consistently applied and sufficient to verify compliance with Licensee's obligations hereunder; and (b) ASCAP shall have the right, by its authorized representatives and/or third party designees, at any time during customary business hours, and upon 30 days written notice, to examine the books and records of account of Licensee to verify the Eligibility Requirements and any other information provided by Licensee. In the event any such audit shows Licensee to have underpaid the Fees, 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, and, if the underpayment is five percent (5%) or more of the total amount due for the period in question, then Licensee shall also reimburse ASCAP for ASCAP's reasonable costs actually incurred as a result of the audit.

#### **Article 7. Term and Termination.**

7.1. **Term.** This License Agreement shall commence on the Effective Date set forth on Schedule A and shall continue thereafter for a period of five years, 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 five-year periods (each, a "Renewal 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) (the Initial Term and each Renewal Term shall be collectively referred to herein as the "Term").

7.2. **Termination by Licensee.** In the event that the fees and charges set forth on a Rate Schedule for any applicable calendar year exceed the corresponding fees and charges set forth in the then-current Rate Schedule by ten or more percent, Licensee may terminate this License Agreement effective as of the end of the then-current Contract Year by providing notice to ASCAP at least 30 days before the end of the then-current Contract Year. In addition, subject to and without limiting the terms and conditions of Section 6.4, Licensee may immediately terminate this License Agreement upon notice to ASCAP in the event that Licensee discontinues the public performance of all music via the Licensed Service for a period of no less than 30 consecutive days.

7.3. **Termination for Breach.** If Licensee breaches any provision, term or condition of this License Agreement, ASCAP may (reserving cumulatively all other remedies and rights pursuant to this License Agreement and in law and in equity) immediately terminate this License Agreement, in whole or in part, by providing at least 30 days' 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.

7.4. **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.

7.5. **Termination for Change of Control.** ASCAP may terminate this License Agreement, in whole or in part, immediately upon notice to Licensee in the event Licensee undergoes a change in control where control is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of Licensee's assets are acquired, by any entity, or company is merged with or into another entity to form a new entity. Licensee shall notify ASCAP of a change of control immediately upon any such change of control. In the event that ASCAP terminates this License Agreement solely pursuant to this Section 7.5, as of the effective date of such termination, Licensee shall be deemed to have applied to ASCAP for a license, pursuant to Section IX of the Second Amended Final Judgment entered in *United States v. ASCAP* to perform publicly in the Territory, the Musical Works in the ASCAP Repertory via the Licensed Service.

7.6. **Effect of Termination.** Except as otherwise set forth in Section 7.5, 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.**

Licensee represents, warrants and covenants that: (a) all information provided by it in connection with this License Agreement, including the Eligibility Requirements, is true and correct and (b) during the Initial Term and each Renewal Term, if any, Licensee does not reasonably expect the Licensed Service to exceed the Service Thresholds set forth on Schedule A.



**Article 9. Indemnification; Limitation of Liability.**

9.1. Indemnification. Licensee agrees to defend and handle at its own cost and expense any claim or action 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 in connection with (a) any actual or alleged breach of Licensee's representations, warranties and covenants contained in this License Agreement and (b) the Licensed Service, but specifically excluding any claim or action caused by or based upon Licensee's use of the ASCAP Repertory 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) associated with any such claim or action. 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 (i) that 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 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 (ii) 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.

9.2. DISCLAIMER. THE MUSICAL WORKS IN THE ASCAP REPERTORY AND ALL OTHER PRODUCTS, SERVICES AND RIGHTS PROVIDED OR OTHERWISE MADE AVAILABLE BY OR ON BEHALF OF ASCAP ARE BEING PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT GUARANTEE, REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING AS TO THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, SATISFACTORY QUALITY, QUIET ENJOYMENT, OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, AND ASCAP HEREBY EXPRESSLY DISCLAIMS ALL SUCH REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, OR ORAL OR WRITTEN, INCLUDING THAT LICENSEE'S EXPLOITATION OF ANY MUSICAL WORKS OR ANY OTHER INTELLECTUAL PROPERTY RIGHTS WILL NOT VIOLATE ANY INTELLECTUAL PROPERTY RIGHT OR OTHER PROPRIETARY RIGHT OWNED OR CONTROLLED BY ANY THIRD PARTY.

9.3. WAIVER. LICENSEE UNDERSTANDS AND AGREES THAT, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, ASCAP, ITS AFFILIATES AND MEMBERS, AND THE RESPECTIVE SUCCESSORS AND ASSIGNS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, LICENSORS, OPERATORS, SERVICE PROVIDERS, ADVERTISERS AND SUPPLIERS OF THE FOREGOING, SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE, OF ANY KIND, DIRECT OR INDIRECT, IN CONNECTION WITH OR ARISING OUT OF THIS LICENSE AGREEMENT AND/OR FROM USE OF THE ASCAP REPERTORY, REGARDLESS OF THE FORM OF ACTION OR THE BASIS OF THE CLAIM OR WHETHER OR NOT ASCAP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING COMPENSATORY, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE 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 on Schedule A, unless, by notice, a Party changes or supplements the addressee and addresses for giving notice; provided, however, that ASCAP shall 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. All notices shall be deemed given on the date personally delivered, when placed in the mail as specified above or when transmitted via email.

**Article 11. Arbitration.**

Any dispute arising out of or related to this License Agreement shall be subject to final binding arbitration between the Parties as provided herein. The arbitration shall be conducted pursuant to the JAMS Comprehensive Arbitration Rules and Procedures in effect at the time the request for arbitration is made (the "Arbitration Rules"), and in accordance with the Expedited Procedures in those Arbitration Rules, including Rules 16.1 and 16.2 of those Arbitration Rules, except as modified herein. The arbitration shall take place in New York, New York before a single neutral arbitrator (the "Arbitrator") selected in accordance with the Arbitration Rules. Each Party shall pay its own costs and expenses for the arbitration, with the cost of the Arbitrator to be divided equally between the Parties. Any award or decision in arbitration shall be final and binding upon the Parties and shall be enforceable by judgment of any court of competent jurisdiction. The Parties further agree to the exclusive jurisdiction of the state courts in New York, New York, for purposes of any pre-arbitral injunctive relief, including any application for a preliminary injunction or order compelling arbitration, and waive any objection to laying venue in any such action or proceeding in such courts, or that such courts are an inconvenient forum or do not have jurisdiction over such Party. Neither the Parties nor the arbitrators may publicly disclose the existence, content or results of any arbitration hereunder without the prior written consent of both Parties.

**Article 12. Miscellaneous.**

This License Agreement shall be binding upon and inure to the benefit of the Parties and their permitted successors and assigns, except that Licensee shall not be permitted to assign, convey, transfer or subcontract this License Agreement or any of its rights or obligations hereunder, in whole or in part, without ASCAP's prior written consent (which may be withheld in ASCAP's sole and absolute discretion) and any purported assignment without such consent

shall be void *ab initio* and of no force and effect. Each Party is an independent contractor and neither Party's personnel are 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. There are no third-party beneficiaries, actual or intended, pursuant to this License Agreement. This Agreement shall be governed by the law of the State of New York and you irrevocably submit to the jurisdiction of the courts of New York State, situated in the City, County and State of New York. Except as specifically set forth herein, all consents, request and approvals to be given under this Agreement shall be in writing and not be unreasonably withheld. If any provision of this Agreement is held to be invalid, the remaining provisions hereof shall remain in full force and effect. This Agreement constitutes the entire agreement between you and ASCAP and supersedes any prior agreements, written or oral with respect to the subject matter hereof. The provisions of Section 3.4, Section 6.4, Section 6.5, Section 7.6, Article 8, Article 9, Article 10, Article 11 and this Article 12 shall survive the cancellation, expiration or termination of this License Agreement.

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**SCHEDULE A**  
**KEY TERMS AND FEE SCHEDULE**

1. The Effective Date will be either the 1<sup>st</sup> or the 15<sup>th</sup> of the month in which the Licensee submits to ASCAP the License Agreement as follows: If the License Agreement is submitted by Licensee to ASCAP: (a) between the 1<sup>st</sup> and 14<sup>th</sup> day of any month, the Effective Date is the 1<sup>st</sup> day of such month; or (b) between the 15<sup>th</sup> and last day of any month, the Effective Date is the 15<sup>th</sup> day of such month.

Effective Date of License Agreement: July 1, 2020

2. Expiration Date of the Initial Term: June 30, 2021

3. Licensee Name: Music Dreams USA

4. Licensee Address:

2014 Shady Pond Drive  
Clover, SC 29710

5. Licensed Service Name:

URL: [www.musicdreamsusa.com](http://www.musicdreamsusa.com)

Mobile App (if applicable):

6. Licensee Contact Information (to be used for communications and notice purposes):

Contact Name/Title: Russell Klug

Phone Number: 17046784365

Email: [info.musicdreamsusa@gmail.com](mailto:info.musicdreamsusa@gmail.com)

7. ASCAP Email Contact Information (for notice purposes): [weblicense@ascap.com](mailto:weblicense@ascap.com)

8. Service Thresholds: During each Contract Year during the Term, Licensee does not reasonably expect the Licensed Service to exceed the Service Thresholds selected below (check one box in each row):

<b>Service Revenue Thresholds:</b>	<input type="checkbox"/> Less than \$24,600	<input type="checkbox"/> \$24,601 -- \$49,200	<input type="checkbox"/> \$49,201 -- \$98,400
<b>Sessions Thresholds:</b>	<input type="checkbox"/> Less than 369,000	<input type="checkbox"/> 369,001 – 738,000	<input type="checkbox"/> 738,001 – 1,476,000

**NOTE:** Licensee shall promptly provide ASCAP with written notice if the Licensed Service generates Net Revenues and/or Sessions in excess of the Service Thresholds selected above.

9. Fee: \$ \_

10. Fee Payment Dates:

Annual Payment Plan: For the initial Contract Year during the Term, the Fee is due upon Licensee's electronic submission of this License Agreement in accordance with Article 2 of the License Agreement; for each subsequent Contract Year during the Term, each Fee is due on the first day of such Contract Year.

Monthly Payment Plan: One twelfth (1/12) of the Fees for any Contract Year of the Term is due on the first day of each month of the applicable Contract Year, provided, however, that for the first Contract Year of the Term, one twelfth (1/12) of the Fees for such Contract Year is due upon Licensee's electronic submission of this License Agreement in accordance with Article 2 of the License Agreement.





**SCHEDULE B**  
**RATE SCHEDULE**  
**2020 YEAR**

		SERVICE REVENUE THRESHOLDS		
		Less than \$24,600	\$24,601 -- \$49,200	\$49,201 -- \$98,400
SESSION THRESHOLDS	Less than 369,000	\$266	\$533	\$1066
	369,001 -- 738,000	\$334	\$667	\$1,333
	738,001 -- 1,476,000	\$401	\$799	\$1,499

**Additional Definitions:**

- "Advertising Inventory/Sponsorships" means any form of advertising units, sponsorships, promotions, integrated marketing campaigns now known or hereafter devised, including, but not limited to, audio-visual, audio, graphical, text, links or any other form of advertising units, no matter how displayed or distributed.
- "Service Revenue" means any and all amounts due and owing to Licensee from or on behalf of third parties (including, but not limited to, the reasonable value of all goods, services or other consideration provided by any third party to Licensee), in connection with the access to, operation and provision of the Licensed Service in the Territory, including, but not limited to, all amounts (a) derived from Advertising Inventory/Sponsorships, (b) due from or on behalf of Authorized Users to enable access to and use of the Licensed Service (or any portion thereof) in the Territory, such as Subscription fees, electronic sell-through fees, connect time charges, access fees, or any other form of consideration reducible to monetary amounts, whether one-time or recurring and (c) derived from integration, placement and/or positioning arrangements, associate or affiliate programs, bounty, e-commerce or other sales activities solely less (y) actual and verifiable third-party advertising agency commissions paid by Licensee (if any) and directly related to the sale and display of Advertising Inventory/Sponsorships on or in connection with the Licensed Service, such advertising agency commissions not to exceed ten percent (10%) of the amounts derived from Advertising Inventory/Sponsorships and (z) any applicable taxes..
- "Subscription" means an agreement by an Authorized User pursuant to which access to the Licensed Service (or any portion thereof) shall be made available solely in consideration of a payment by such Authorized User of a recurring fee and/or periodic access charge (*i.e.*, an incremental charge paid in addition to any fee or charge paid to obtain access to the Internet).
- "Session" means a single, continuous period of access to the Licensed Service by an Authorized User, regardless of the length of such period.