



## TERMS & CONDITIONS

### 1. ADDITIONAL INFORMATION

Monthly prices include performance fees for the Melody -provided program(s) to ASCAP and BMI. In addition, Subscriber shall pay all federal, state, and municipal taxes, excises and other imposts, 3rd party vendor compliance company fees, now and hereafter, required to be collected by Melody.

### 2. TERM

This agreement shall remain in effect for an initial term of (60) months from the installation date (or order date if no installation) and shall be automatically renewed for subsequent twelve (12) month terms unless terminated at the end of any term by either party by providing written notice to the other party by certified mail at least ninety (90) days prior to the expiration of the initial or any subsequent term.

### 3. USE OF SERVICES

Subscriber shall not transmit the Services or permit the transmission of the Services by others or amplify the Services so as to be audible outside the Premises. Subscriber shall not dub, record, re-record, transcribe, or re-transcribe the Services in any manner or by any means or method. Subscriber understands that recordings included in the Services may be copyrighted works. Subscriber shall not use the Services (i) to displace a live orchestra; (ii) as an accompaniment to dancing, skating, aerobics or other similar forms of physical activity or entertainment, or (iii) in those areas for which an admission fee is charged in any premises.

### 4. PROVISION OF EQUIPMENT

Subscriber hereby grants to Melody (subject to any necessary government or third-party approvals) the right to install all necessary equipment for receiving the Services. Subscriber shall be solely responsible for obtaining any governmental or third-party approvals for the installation of such equipment, and for all costs associated therewith. Subscriber shall not, directly or indirectly, sell, mortgage, pledge, or otherwise dispose of or encumber any Melody-owned equipment. Subscriber shall adequately insure Melody-owned equipment against damage or loss and present evidence of such insurance to Melody upon request, and shall, upon expiration or earlier termination of this Agreement, promptly return to Melody all such equipment in good condition (or pay the full replacement value thereof).

### 5. WARRANTY

Equipment provided by Melody ("Equipment") and installation workmanship will be maintained for a period of 90 days from the date of installation (or ordering) at no additional charge to Subscriber. All maintenance shall be exclusively limited to that resulting from ordinary and proper use of the equipment. Maintenance of equipment not specifically required to be performed by Melody shall be the responsibility of Subscriber. Thereafter, or in the event of maintenance during the first 90 days that does not result from ordinary and proper use, Subscriber shall pay Melody's usual and customary repair charges. Melody's obligations under this paragraph are in lieu of all other warranties, express or implied relating to the equipment, including implied warranties, of merchantability and fitness for a particular purpose. Except for Melody's maintenance obligations as set forth herein, Subscriber shall indemnify Melody and hold it harmless from and against any and all losses, claims, and expenses relating to the equipment provided hereunder to Subscriber, including without limitation losses caused by accidental fire, theft, or misuse of the equipment. Subscriber shall provide adequate electrical outlets and power for the equipment and, if required, all necessary conduit.

### 6. OTHER CHARGES AND FEES

Subscriber shall pay Melody the incremental cost of any increase in copyright fees charged by ASCAP, BMI or other similar entities beyond what is charged as of the date hereof (whether as a result of commercial announcements for which consideration is received, or otherwise), and any sales, use, excise, or other taxes or governmental charges (except income taxes) arising under this Agreement.

Unless otherwise specified, all charges and fees due are payable monthly in advance of the billing term of this Agreement. Late payments of fees and charges due hereunder are subject to interest charges not to exceed the maximum rate permitted by law.

Melody reserves the right to increase the monthly Service charge to Subscriber, such increase not to exceed ten percent in a one-year period. Subscriber shall pay a standard fee for each requested change in music programming. Subscriber shall be responsible for obtaining any necessary permits associated with the provision of the Services to Subscriber.

Installation charge is premised upon the work being performed during normal business hours (Monday through Friday 8:30 a.m.–4:30 p.m.). If Subscriber requires installation to be performed at other times, Subscriber shall pay, upon receipt of invoice therefor, any direct overtime expense incurred. If it is necessary to utilize any form of conduit to effect installation of equipment, Subscriber agrees that it will provide and install any such conduit at its own expense, or authorize Melody to provide in addition to the installation charge specified herein.

Subscriber shall pay a standard re-connect/disconnect fee for each re-connection of the Services following a cancellation due to non-payment or for any other reason, and for each subsequent disconnection.

### 7. PROTECTION PLAN

Melody will replace the Equipment without charge (excluding freight charges for shipment from Melody to Subscriber and labor charges for Premise visits) in exchange for Subscriber's return of the defective Equipment at Melody's expense. Subscriber agrees to utilize Melody's service support center to trouble-shoot equipment and to self-install replacement Equipment or service charges will apply. Protection Plan does not cover repair or replacement of Equipment caused by the negligent or willful acts of Subscriber, its employees, agents or business invitees, theft, vandalism, water (or other liquids), fire, lightning, wind, snow or other acts of God. Equipment must be connected to a twenty-four (24) hour power supply and protected from power surges or all costs of replacement will be the responsibility of Subscriber.

## **8. INTERRUPTION OF SERVICE**

Melody shall not be liable for any failure or interruption of Service due to acts of God, strikes, power failures, emergencies, mechanical failure, Subscriber network or internet failure, governmental action, action or inaction by the Subscriber, its employees, agents, invitees or any other cause beyond Melody's control. For any failure or interruption other than those set forth above that is in excess of twenty-four (24) hours and that is brought to Melody's attention in writing within forty-eight (48) hours after the commencement of such failure or termination, the time of interruption of service beyond twenty-four (24) hours shall be credited on a prorated basis based on the monthly fee to the next bill of Subscriber. Said credit shall be the sole and exclusive remedy of Subscriber with respect to any interruption or failure of the Services. Melody shall not be liable for any incidental or consequential damages whatsoever. If the Services are provided by means of other vendors' systems, and such system becomes unavailable, Melody may provide the Services via an alternative delivery system.

## **9. SALE OR CHANGE OF SUBSCRIBER'S BUSINESS**

Sale, transfer, closure or change in location of Subscriber's business by the Subscriber herein designated shall not reduce, eliminate or otherwise affect its obligation under this Agreement. This Agreement is fully assignable by Melody.

## **10. REMEDIES UPON SUBSCRIBER DEFAULT**

Default in payment or violation of any Terms & Conditions by Subscriber shall cause the entire contract balance, including past due amounts, to become immediately due and payable to Melody as liquidated damages. If Melody is required to bring legal action to enforce the terms of this Agreement, all such legal fees and related costs incurred in connection with such action shall be borne by the Subscriber.

Exclusive venue for any legal action brought under, or related to, this Agreement shall be in state court in Miami-Dade County, Florida and Subscriber consents to jurisdiction there. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to principles of conflicts of law.

## **11. GENERAL**

These Terms & Conditions, combined with the submitted information on Signup Form, constitute the sole and entire agreement between Melody and Subscriber ("Agreement"). No modification shall be valid unless made in writing and signed by each party. The Terms & Conditions are severable; if any clause or provision shall be held invalid or unenforceable, in whole or in part, then such invalidity shall attach only to such clause or provision, or part thereof, and shall not affect any other clause or provision. Melody shall have the right to modify or terminate these Services in the event that any license agreement applicable to Melody's provision of the Services (including those with ASCAP or BMI) is modified or terminated. The person authorizing this order on behalf of Subscriber represents or warrants that he or she has the power and authority to order these Services on behalf of Subscriber.