Independent Label Recording Agreement

This document is an independent label recording agreement between an independent record label and an artist. This agreement contains the following clauses: delivery, term, recording, artist advances, ownership, royalties, accounting, mechanical royalties and tour support. This document contains other clauses as well. This document in its draft form contains numerous of the standard clauses commonly used in these types of agreements; however, additional language may be added to allow for customization to ensure the specific terms of the parties' agreement are addressed. Use this form if entering a recording deal with an independent label or if one is an independent label signing an artist

**EXCLUSIVE RECORDING AGREEMENT**

The following shall constitute the material terms of an exclusive recording agreement (“Agreement”) made and entered into as of \_\_\_\_\_\_\_\_\_\_\_20\_\_\_\_ (“Agreement”) between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Company”) and \_\_\_\_\_\_\_\_\_\_\_\_ (“Artist”). The parties mutually agree as follows:

**I. DELIVERY**

1.1 Artist will deliver up to \_\_\_\_\_ (\_\_\_)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***[Instruction: Insert number]*** LPs. Artist will record and deliver to Company one LP featuring Artist’s performances, reasonably promptly following its completion on or before \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***[Instruction: Insert Date]*** . Company will have \_\_\_\_\_\_ (\_\_\_)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***[Instruction: Insert number if any]*** consecutive options, each to require Artist to record and deliver an additional LP. Each such option will be exercised, if at all, by written notice as provided in Article 2 below; each option period will commence (if at all) upon the later to occur of;

A. the date of Company’s option exercise, or

B. one year after delivery of the prior LP.

Artist will deliver each option LP reasonably promptly after Company’s option exercise, but in no event later than six months hence.

**II. TERM**

2.1 The term will end when company doesn’t exercise an option.

A. Company will exercise each option provided hereunder in writing within one year after the later of the following:

(i) the delivery of the immediately prior LP; or

(ii) one (1) year from the first commercial release of the prior LP.

B. Nonetheless, if Company fails to exercise an option, the term will continue until the earlier to occur of the following:

(i) the last day of the thirty (30) day period after Artist gives Company written notice of failure to exercise such option, but only if Company fails to exercise such option during such thirty (30) day period; or

(ii) the date of Company’s written notice to Artist that Company has terminated the term. If Company exercises all of its options, the term will end nine months after Artist delivers the last option LP. Also, if Artist does not deliver the first LP to Company by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***[Instruction: Insert Date]*** (or, in the case of any option LP, within two years after the delivery of the prior LP), Company will have the right to terminate the term of this Agreement by notice to Artist, subject to Artist’s right to cure under terms hereunder.

**III. RECORDING.**

3.1 Recording. Artist will use good faith efforts to make commercially satisfactory masters. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***[Instruction: Insert name of producer if known]*** is deemed approved as producer and is entitled to charge (as part of each LP’s budget as a Recording Cost) a production fee of $\_\_\_\_\_\_\_\_\_ per master produced and a studio fee of $\_\_\_\_\_\_\_\_ for each track produced in \_\_\_\_\_\_\_\_\_\_\_\_ studio. Company will pay recording costs for each LP, not to exceed the amounts listed on the following schedule (“Recording Costs”).

 LP Budget

 LP1 $

 LP2 $

**IV. ARTIST ADVANCES.**

4.1 Company shall pay Artist a living advance, one hundred percent (100%) recoupable from record royalties payable to Artist hereunder (“Artist Living Advance”):

A. For LP 1 the Artist Living Advance shall be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_), \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_) of which has been paid by Company to Artist prior to execution of this Agreement, receipt of which is hereby acknowledged by Artist. The balance of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_\_\_\_\_) shall be paid in increments of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_\_\_) beginning \_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***[Instruction: Insert Date]*** and ending with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***[Instruction: Insert Date]***.

B. Commencing upon delivery of option LP 2 under this agreement (if any), and continuing for \_\_\_\_\_\_\_ (\_\_\_\_) months thereafter, Company shall pay Artist an Artist Living Advance in the amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_) per month.

**V. OWNERSHIP.**

5.1 Company owns the masters and artist’s recording services. The rights granted to Company under this Agreement are for the universe. During the term, Artist will render Artist’s services as a recording and music video ***[if applicable]*** artist exclusively to Company. Company will own, in perpetuity, all rights in and to the Masters and/or any other recordings recorded by Artist during the term, together with the performances on those recordings and the copyrights in the recordings. Company also will own in perpetuity any artwork used in the packaging or exploitation of records derived from Masters. For the purposes of this paragraph, to the extent possible or required under the applicable laws, including without limitation, the U.S. Copyright Act, the results and proceeds of any and all services and materials (collectively, “Materials”) produced hereunder or the content or use thereof, shall be considered “works made for hire” for Company and, therefore, the Company shall be the author and copyright owner thereof for all purposes throughout the universe. The Company shall solely and exclusively own throughout the universe in perpetuity, including renewal and extension periods, if any, all rights of every kind and nature whether now or hereafter known or created in and in connection with such results, product, and proceeds including: (i) the copyright and all rights of copyright; (ii) all neighboring rights, trademarks and any and all other ownership and exploitation rights now or hereafter recognized in any territory, including all lending, fixation, reproduction, broadcasting, performance, distribution and all other rights of communication by any and all means, media, devices, processes and technology; and (iii) the rights to adapt, rearrange, and make changes in, deletions from, and additions to such results, product and proceeds, and to use all or any part thereof in new versions, adaptations, and other services, including remakes and sequels. If and to the extent that all or any of the provisions of the paragraph above do not operate to vest fully and effectively in the Company all or any of the rights set forth above, Artist, as beneficial owner, does hereby grant and assign to the Company all rights not so vested (and so far as may be appropriate by way of immediate assignment of future copyright) throughout the universe in perpetuity, including renewal and extension periods, if any, whether now or hereafter known or created, free from all restrictions and limitations.

5.2 Company has the exclusive right to exploit the masters.

A. Company has the exclusive right to exploit and license or assign for exploitation the Masters or any derivatives of the Masters in perpetuity. Company can exploit the Masters in any manner, in records or any other medium or field of use, in the form delivered or otherwise.

B. Company also has the exclusive right to use Artist’s professional name(s) and likeness in connection with our exploitation of the Masters. Artist will have the right to approve Artist’s photographs, biographies, any album artwork, and other creative imaging decisions, not to be unreasonably withheld.

C. Artist shall not, prior to the later of the following dates, perform for any person other than Company, for the purpose of making Records or Master Recordings, any selection which shall have been recorded hereunder: (a) the date five (5) years subsequent to the date on which that selection shall have been last delivered to Company in a Master, or (b) the date two (2) years subsequent to the expiration or termination of the Term. Artist shall not manufacture, distribute or otherwise exploit Master Recordings or Records embodying Artist’s performances, directly or by authorizing another person to do so, in violation of Company’s rights hereunder.

**VII.** **ROYALTIES.**

**7.1** As “all in” royalties (i.e. inclusive of royalties to the individual producer, you, and any other third parties to whom you may have royalty obligations), we shall pay you on USNRC Sales of LPs, royalties at the following rates based on the applicable Royalty Base Price of the applicable LP:

 Units: 0-500,000 500,000-1,000,000 over 1,000,000

LPs 1&2 15.0 15.5 16.0

7.2 As used herein, the “Basic Rate” for a particular LP means the rate in the schedule above applicable to the first USNRC sale of such LP.

A. Singles/EPs: Eleven percent (11%).

B. Canada: Eighty-five percent (80%) of the applicable Basic Rate.

C. United Kingdom, Germany and Japan: Seventy-five percent (75%) of the applicable Basic Rate.

D. Rest of World: Sixty percent (50%) of the applicable Basic Rate.

E. Master License: In respect of any Master license by us for (i) record club distribution; (ii) original soundtrack album or a compilation album sold through retail stores in conjunction with special radio or television advertisements; and (iii) all other types of use on a flat fee basis or a cent-rate or other royalty basis, your royalty shall be at the rate of fifty-percent (50%), based on the net flat fee or net royalty, as the case may be, received by us in respect of each such use.

7.3 The term “Royalty Base” means Company's or its affiliate/licensee’s published price to dealers (“p.p.d.”) applicable to the price series of the unit concerned, in the country of which the Record sale or other exploitation of a Master occurs, less discounts and less all excise, sales, purchase, value added, or similar taxes (included in the Royalty Base). Notwithstanding the foregoing, in respect of those configurations of Records or other exploitations for which Company or its affiliate/licensee does not assign a p.p.d., the Royalty Base shall be the gross revenue received by Company from the distribution, transmission and/or communication of such Record or the exploitation of such Master (whether received as the result of a sale or a license), and less all costs paid or incurred by Company in connection with the distribution, transmission and/or communication of such Record or such exploitation of such Master and the collection of such gross revenue, including but not limited to all royalties or other sums payable by Company to any Person, except for royalties or other sums payable to producers of those Masters (and/or other similar third party royalty participants), which h shall be borne solely by you.

7.4 All royalties will be paid on one hundred percent (100%) of “net sales”, i.e. gross sales less returns. No royalties shall be payable to you in respect of Masters or any Records: (i) given away for promotional purposes to disc jockeys, radio and television stations or networks or others; (ii) sold or distributed as a sales inducement or otherwise and invoiced on a “no charge” basis to independent distributors, subdistributors, dealers and others, including, without limitation, the conversion of actual discounts into “no charge” units (it being understood that Company will not reduce the Royalty Base by the amount of any such discounts that have been converted into “no charge” units); (iii) distributed as free and/or bonus records to members or other participants in a record club distribution plan or special markets plan; (iv) licensed, sold or distributed for airline, background use or other transportation use; (v) sold as cut-outs or scrapped; (vi) sold to anyone at prices or discounted prices less than inventory cost or at fifty percent (50%) or less of the highest posted wholesale price, including, without limitation, so-called “close-out” sales and sales made for the purpose of reducing excess stock; (vii) sold, distributed or licensed by Company or its licensees as “free,” “promotional,” “no charge” or “bonus” Records.

7.5 Company may elect from time to time to compute and pay you royalties hereunder on a royalty basis different than that provided herein, as long as such computation results in substantially the same net amount of royalties otherwise payable to you at that time.

**VIII.** **ACCOUNTINGS.**

8.1 With respect to record royalties, Company will account to Artist on a semiannual basis, ninety days after the end of June and December. For mechanical royalties, we will account quarterly. Artist will have two (2) years from date of receipt of an accounting statement to object to same and one (1) year thereafter to bring suit.

**IX.** **MECHANICAL ROYALTIES**.

9.1 (For each song written, owned or controlled, in whole or in part, by Artist (a “Controlled Composition”), we will pay (in the United States and Canada) a mechanical royalty on a particular Controlled Composition equal to one-hundred percent (100%) of the “Basic Mechanical Rate” (i.e. the applicable percentage [as set forth below] of the minimum statutory rate or CMRRA rate, as the case may be, in effect on the date of release of the LP in which such Controlled Composition is initially embodied).

9.2 The maximum mechanical royalty payable by us for any record shall be eleven (11) times the Basic Mechanical Rate. Any mechanical royalties paid by us in excess of these maximums may be deducted by us from any and all money due you hereunder.

**X.** **TOUR SUPPORT/ VIDEO/MARKETING & PROMOTION.**

 10.1 In the event Company approves Artist tour support, all monies expended for tour support, will be one hundred percent (100%) recoupable from record royalties payable to Artist hereunder.

10.2 In the event Company approves the production of a video, all monies expended by Company for video, if any, will be one hundred percent (100%) recoupable form all video royalties payable to Artist, and fifty percent (50%) recoupable from record royalties payable to Artist hereunder.

10.3 In the event that Company approves the expenditure of independent radio promotion fifty percent (50%) thereof shall be recoupable from Artist record royalties hereunder.

10.4 Company will make all reasonable efforts to keep Artist advised of the promotional and marketing plans for each LP.

**XI. ACCOUNTINGS.**

11.1 Company will insure the rendering of statements and payment of royalties due for mechanical royalties and third party royalties (if any) in a timely manner. Company will account to Artist and pay to Artist royalties due, if any, within ninety days after the semi-annual accounting period ending June 30 and December 31 of each year. Company will have the right to maintain reasonable reserves against returns and other adjustments as determined in part by a comparison of units shipped to retail versus units sold through to consumers as reported by SoundScan (or the then leading reporter of consumer sales). Artist will have the right to examine Company’s books and records concerning each particular royalty statement only once and only during the two year period after the rendering of that statement, and Artist will have one (1) year thereafter to raise objection or make claim.

**XII.** **PUBLISHING.**

12.1 To the extent that Artist is offered a publishing agreement (co-publishing, administration, etc.) with respect to compositions written by Artist, Artist shall promptly give us written notice of all of the material points thereof after which Company shall have ten (10) business days within which to match the terms of any such offer. If Company matches such offer, Artist shall then enter into an agreement with us upon such terms.

**XIII. GENERAL.**

13.1 Artist And Company Are Free To Enter Into This Agreement. Each party warrant and represents that it is free to enter into, to make the grants made under and to perform the terms of this Agreement. Artist further warrants and represents that the recordings, compositions and/or other materials provided by Artist are free of any and all claims by any person or entity (including Artist and the producer of the Masters) and will not violate or infringe upon the rights of any person or entity. In this regard, Artist’s delivery of any and all Masters constitutes Artist’s warranty, representation and agreement that Artist has the full right and authority to exploit and to permit Company to exploit at no cost to Company, any so-called “sample” (whether of a composition, performance or otherwise) embodied on such Master. A particular party to this Agreement (the “Indemnitor”) will indemnify the other party against any claims which are inconsistent with the Indemnitor’s warranties and representations under this Agreement.

13.2 Artist And Company Have The Right To Cure Any Breaches. A party (the “Breaching Party”) will only be in breach of this Agreement if the other party gives the Breaching Party notice of the breach and the Breaching Party does not cure the breach within thirty days after the date of the notice.

13.3. Entire Agreement. This Agreement constitutes the entire agreement between the parties. Company’s waiver of the applicability of any provision of this agreement or of any default hereunder in a specific instance shall not affect Company’s rights thereafter to enforce such provision or to exercise any right.

13.4. Notices/Statements/Consents.

A. Notices/Statements/Consents shall be sent to the address provided hereunder, or any other addresses the parties designate by notice:

 to Company:

***[Instruction: include address, fax number and email address]***

to Artist:

***[Instruction: include address, fax number and email address]***

B. Notices shall be sent by certified (return receipt requested) or registered mail, fax, or email.

C. Statements (and payments if applicable) shall be sent by ordinary mail:

D. If Company requires Artist’s consent, it shall not be unreasonably withheld (unless expressly provided otherwise herein) and shall be deemed given unless Artist gives notice of non-consent within five (5) days after receipt of Company’s notice requesting consent.

13.5. Sideman. During the Term, Artist may perform as a background musician ("Sideman") accompanying a featured artist for the purpose of making recordings for others, provided:

A. Artist has then fulfilled all material obligations under this Agreement, and the engagement does not interfere with the continuing prompt performance of Artist’s obligations to Company.

B. Artist will not render a solo or "step-out" performance, and

C. Artist will not record any material which Artist has then recorded for Company.

D. Artist will not accept the sideman engagement unless the entity for whom the recordings are being made agrees in writing, for Company's benefit, that:

(i) The member of Artist's name may be used in a courtesy credit to Company on the liners used for such recording, in the same position as the credits accorded to other sidemen and in type identical in size, prominence and all other respects; and

(ii) With the exception of Section 13.5 D (i) neither Artist's name (or any similar name), nor any picture, portrait or likeness of Artist will be used in connection with such Recordings, including, without limitation, on the front covers of Album containers, on sleeves or labels used for Singles, or in videos, advertising, publicity or any other form of promotion or exploitation without the express written permission of Company.

E. Before Artist accepts the sideman engagement you will notify Company of the name of the Person for whom the recordings are being made and the record company which will have the right to distribute the Records.

13.6. Unique Services. Artist and Company agree that Artist’s services pursuant to this Agreement are of a special, unique, unusual, extraordinary and intellectual character giving them peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at law. Artist and Company expressly agree that Company shall be entitled to seek remedies, injunction and other equitable relief to prevent a breach of this Agreement by Artist, which relief shall be in addition to any other remedies which may be available to Company.

13.7 Law and Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Each of the parties in any suit, action or proceeding arising out of or relating to this Agreement, irrevocably (i) submits to the jurisdiction of the State Courts of the State of \_\_\_\_\_\_\_ and the United States District Court for the district of \_\_\_\_\_\_\_\_\_\_\_\_\_\_over any suit, action or proceeding arising out of or relating to this Agreement, (ii) waives to the fullest extent enforceable under applicable law any objection which it may now or hereafter have to the above venue of any such suit, action or proceeding and any claim that any such suit, action or proceeding brought in such Court has been brought in an inconvenient forum, (iii) waives to the fullest extent enforceable under applicable law any objection which it may now or hereafter have to the above mentioned Court having jurisdiction of the parties hereto and to the subject matter of this Agreement, and (iv) acknowledges that a final judgment in any such suit, action or proceeding brought in such Court, after all appropriate appeals, shall be conclusive and binding upon it. In any suit or arbitration regarding the Agreement, the prevailing party shall be entitled to reasonable attorneys’ fees and costs. In any suit or arbitration regarding the Agreement, the prevailing party shall be entitled to reasonable attorneys’ fees and costs.

13.8 To the extent that any provision hereof is deemed unenforceable, all remaining provisions of this Agreement shall not be affected thereby and shall remain in full force and effect.

13.9 Modification. No modification, supplement, or amendment to this Agreement may be made unless agreed to by the Parties in writing.

13.10 Assignment and Assigns. The Parties agree that this Agreement shall be binding upon each of its successors and assigns and that this Agreement may not be assigned to a third party, without the written consent of the Company.

13.11 Definitions. As used in this Agreement, the following terms will have the following meanings:

A. “Master” means a recording of sound, without or with visual images, which is used or useful in the recording, production or manufacture of records.

B. “Record” means all forms of reproductions, whether embodying sound alone or sound together with visual images, manufactured or distributed primarily for home use.

C. “LP” means an aggregation of masters at least 35 minutes in length, sold as a single package.

D. “delivery” of an LP [or master] means delivery to us of a fully mastered and mixed master tape of such LP [or master], together with all artwork, consents, clearances and other materials required by us to release such LP [or master]; unless Company notifies Artist differently, the date of delivery of a particular LP [or individual master] will be deemed to be the date of mastering of such LP [or master].

**AGREED and ACCEPTED:**

COMPANY: ARTIST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: SS#:

Its: