

January ....., 2002

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\_\_\_\_\_  
\_\_\_\_\_  
p/k/a "Artist"  
\_\_\_\_\_  
\_\_\_\_\_

Gentlepersons:

You and we have decided to enter into an agreement for your exclusive services as a recording artist. Our agreement is as follows:

1. You Will Deliver Up to Three LPs. You will record and deliver one LP reasonably promptly after signing this agreement. We will have two options to request you to record and deliver an LP. Each such option will be exercised, if at all, by written notice to you within one year after your delivery of the prior LP. You will deliver each option LP reasonably promptly after our option exercise.

2. The Term Will End When We Don't Exercise an Option. If we fail to exercise an option granted us in paragraph 1 above, the term of this agreement will end on the last day on which we could have exercised that option. If we exercise all our options, the term will end nine months after you deliver the last option LP. Also, if you do not deliver an LP to us in any two year period, we will have the right to terminate the term of this agreement by notice to you, subject to your right to cure under paragraph 12 below.

[or, use instead the no option alternative below]

2. The Term Starts Now and Continues Until It Ends. The date one year after your delivery to us of a particular LP is the "Option Date." We may notify you in writing (the "Termination Notice") of the end of the term; the term will end on the later of the Option Date or the date of our such notice. If we have not exercised our option prior to the Option Date, you may, if we have not already sent you the Termination Notice, notify us in writing that the term will end thirty days after your notice. If we do not exercise our option prior to the end of such thirty day period, the term will end. If we exercise all our options, the term will end nine months after you deliver the last option LP. Also, if you do not deliver an LP to us in any two year period, we will have the right to terminate the term of this agreement by notice to you, subject to your right to cure under paragraph 12 below.

3. We Will Have The Right To Approve Recording Budgets. You and we will mutually select the producer of the masters to be embodied on each LP. We will pay recording costs for each LP, up to the amount of a budget approved by us; we will approve any reasonable budget less than \$75,000. You will use good faith efforts to make commercially satisfactory masters. Delivery of a master will occur only when you deliver to us, in compliance with this agreement, the master and all clearances, artwork and other materials which we need to release the master without any third party claims.

4. We Own the Masters and Your Recording Services. The rights granted to us under this agreement are for the entire world. During the term, you will render your services as recording and music video artists exclusively to us. We own all rights in the masters or any other recordings made by you during the term, together with the performances on those recordings and the copyrights in the recordings. We also own any artwork (and the underlying copyrights) used in the packaging or exploitation of your records. For the purposes of this paragraph, you are our employee for hire. If, for any reason, you are not considered our

employee for hire, you hereby assign to us all copyrights in the masters and any other recordings for the life of such copyrights. Any grant to us of copyrights includes any extensions and renewals of those copyrights.

5. We Have the Exclusive Right to Exploit the Masters. We have the exclusive right to exploit and license or assign for exploitation the masters or any derivatives of the masters. Except as provided in Exhibit B, we can exploit them in any manner in records or any other medium or field of use, in the form delivered or otherwise. You agree not to participate in the re-recording of any composition embodied in a master before two years after the end of the term. We also have the exclusive right to use your professional, group or individual name(s), likeness(es), servicemarks or trademarks (your "Name") in connection with our exploitation of the masters or otherwise for promotional purposes in our business. You will have the right to approve your photographs and biographies and any album artwork.

6. We Will Pay You Royalties As Provided in Exhibit A. With respect to the sale of records embodying the masters, we will pay you royalties as provided in Exhibit A. The royalties payable to you include royalties to any producers or other persons entitled to royalties in connection with the masters.

7. We Have the Right To Recover Recoupable Costs From Your Royalties. We will have the right to recoup from any royalties payable to you all recording costs, advances and other recoupable costs. Recording costs include producer advances and fees, tape costs, studio costs, session fees, mastering costs, equipment rental, travel costs and other costs incurred in connection with the recording of the masters. In general, recoupable costs include any monies paid by us to you or on your behalf other than royalties, and specifically include the costs of album and other record artwork, and independent promotion, marketing and publicity in connection with your records.

8. Controlled Compositions Are Licensed To Us At A Reduced Rate. All compositions embodied in a master which are written or owned, in whole or in part, by you or any entity owned or controlled by you are referred to as "Controlled Compositions." You hereby license to us for the United States any Controlled Composition for a mechanical royalty equal to 75% of the "Statutory Rate," i.e., the minimum per-selection mechanical royalty rate under the United States Copyright Act as of the date you first deliver to us a master embodying such Controlled Composition. The maximum mechanical royalty on each LP will be 7.5 multiplied by the Statutory Rate; anything above this maximum will be deducted from mechanical royalties otherwise payable to you. Mechanical royalties will only be payable on 85% of records sold by us.

9. We Will Account To You Twice a Year. We will render statements and pay royalties due you under this agreement as of June 30 and December 31 of each year. The statements will be sent to you no later than ninety days after the end of the applicable accounting period. We will have the right to maintain reasonable reserves against returns and other adjustments. You will have the right to examine our books and records concerning a particular royalty statement only once, and only during the four year period after the rendering of the statement.

10. You and We Will Mutually Decide on Videos. If you and we agree, you will perform in videos incorporating your masters. The producer, director, budget and master for the video will be mutually selected by you and us. Fifty percent of the costs of any video will be recoupable from your record royalties. We will own all videos and the copyrights in the videos, but we will not exploit videos for other than promotional purposes without your consent. With respect to such promotional uses, you will provide us with free synchronization and mechanical licenses for any Controlled Compositions.

11. You and We Are Free To Enter Into This Agreement. You and we both warrant and represent that we are free to enter into, to make the grants made under and to perform the terms of this agreement. You further warrant and represent that the recordings, compositions or other materials provided by you are free

of any claims by any person or entity (including the producer of the masters) and will not violate or infringe upon the rights of any person or entity. 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.

12. You and We 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. Further, we will not have the right to terminate this agreement for your failure to deliver an LP during the two year period required by paragraph 2 above unless we give you notice of our intent to terminate at any time after the end of the two year period, and you do not deliver us the LP within ninety days after our notice. All notices under this agreement will be in writing and sent to the applicable address on page 1 above, unless a party notifies the other party of a change in address.

13. Our Rights Under This Agreement Extend To All Members of the Band. Your obligations under this agreement apply individually and collectively to each one of you. You agree to notify us if one of you decides to leave the group (a “Leaving Member”). In this event, we will have the following rights and will notify you within thirty days after your notice if we decide to exercise one or more of them (our failure to notify you means that we decided not to exercise any of these rights):

a. We have the right to terminate the term of this contract.

b. We have the right to acquire the exclusive recording services of the Leaving Member for the number of LPs remaining under paragraph 1 above, and otherwise on the terms and conditions of this agreement.

14. We Have the Right to Administer Your Publishing. During the term and for six months afterwards, we or our designee have the right to administer exclusively the Controlled Compositions throughout the world. We agree to collect any monies derived from and specifically attributable to the Controlled Compositions administered by us, and deduct a fee of 15% of gross receipts collected by us (i.e., net of subpublishers and other collection agents), except that the fee will be 30% with respect to the publisher’s share of public performance income. We will, at our regular times for accounting, remit to you the remainder of such gross receipts, after deducting our actual out-of-pocket costs of administration.

[or use the following paragraph instead]

14. We Have the First Right to Acquire Your Publishing. If you decide to make a publishing agreement with respect to, in whole or in part, any Controlled Compositions, you will notify us thereof (a “Publishing Deal”). We will have the right of first negotiation in connection therewith for a period of thirty days. In the event that the parties are unable to agree on the material terms of a Publishing Deal, we will nonetheless have the right to match the terms of any bona fide Publishing Deal into which you wish to enter with a third party. We will exercise such right within thirty days after you notify us in writing of any such Publishing Deal.

15. [optional] We Have the Right to Use Your Name in Websites. We have the exclusive right to use your Name for websites relating to your activities in the music industry. We also have the right to use your Name in URLs and to control any URLs which incorporate your Name. You have the right to approve the content of websites pertaining primarily to you; you will not unreasonably withhold your approval.

16. Every Contract Needs Some Legalistic Definitions. As used in this agreement, the following



## EXHIBIT A

### Royalties

A-1. Your royalty rate will be as follows:

- (a) On records sold in the United States:
  - (i) Ten percent (10%) for LPs.
  - (ii) Nine percent (9%) for records other than LPs.
- (b)
  - (i) On records sold in Canada, the royalty rate will be eighty percent (80%) of the United States rate.
  - (ii) On records sold outside the United States and Canada, the royalty rate will be fifty percent (50%) of the United States rate.
- (c) Your royalty with respect to a particular record will be determined by multiplying your royalty rate with respect to such record by the SRLP of such record.
- (d) Notwithstanding the foregoing:
  - (i)
    - (A) On records sold through a direct mail or mail order distribution method (including, without limitation, through “record clubs”) or through any combination of the foregoing, the royalty rate will be fifty percent (50%) of the net receipts from the sale of those records.
    - (B) On records sold through retail stores outside the United States in connection with bona-fide, specific special radio or television advertisements (sometimes referred to as “key outlet marketing”) (“Key Outlet Campaign”) whether alone or in combination with any direct mail or mail order distribution method, the royalty rate will be one half ( $\frac{1}{2}$ ) of the otherwise applicable royalty rate for sales occurring during the semiannual accounting period immediately preceding the semiannual accounting period in which the Key Outlet Campaign commences, all semi-annual accounting periods in which the Key Outlet Campaign is running, and the semi-annual accounting period immediately following the semi-annual accounting period in which the Key Outlet Campaign ends. In no event, however, will your royalty in respect of those sales exceed an amount equal to fifty percent (50%) of our net receipts from the sale of those records.
  - (ii) On mid-price records the royalty rate will be two-thirds ( $\frac{2}{3}$ ) of the otherwise applicable royalty rate, and on budget records the royalty rate will be one-half ( $\frac{1}{2}$ ) of the otherwise applicable royalty rate.
  - (iii) On records sold to the United States Government, its subdivisions, departments or

agencies (including records sold for resale through military facilities) or to educational institutions or libraries, the royalty rate will be one-half (½) of the otherwise applicable royalty rate.

- (iv) On multiple albums, the royalty rate will be the lesser of: (A) the otherwise applicable royalty rate and (B) the otherwise applicable royalty rate multiplied by a fraction, the numerator of which is the SRLP of the multiple album and the denominator of which is the product of the SRLP of a top-line single-disc record and the number of discs contained in the multiple album.
- (v) On masters licensed by us or our NRC Licensees to others for their manufacture and sale of records or for any other uses, your royalty shall be an amount equal to fifty percent (50%) of our net receipts from the sale of those records or from those other uses of the masters.

(e) Notwithstanding the foregoing:

- (i) No royalties or mechanical royalties will be payable on records furnished as free or bonus records to members, applicants, or other participants in any record club or other direct mail distribution method; on records distributed for promotional purposes to radio stations, television stations or networks, record reviewers, or other customary recipients of promotional records; on so-called “promotional sampler” records; on records sold as scrap or as “cut-outs”; or on records sold at less than fifty percent (50%) of their regular wholesale price to distributors, subdistributors, dealers, or others, whether or not the recipients thereof are affiliated with us. Furthermore, no royalties or mechanical royalties will be payable on records (whether or not intended for sale by the recipient) furnished on a no-charge or free basis (such as, but not limited to, records commonly described in the record industry as “free goods” or “freebies”), including those so furnished pursuant to a special sales program of limited duration (sometimes referred to below as a “Special Program”).
- (ii) Royalties on records sold at a discount to distributors, subdistributors, dealers, or others, whether or not affiliated with us (except for records sold at less than fifty percent (50%) of their regular wholesale price, for which no royalties are payable hereunder) will be reduced in the same proportion as the regular wholesale price of those records is reduced on those sales. The number of records equal to the percentage discount multiplied by the number of records sold at such discount will be deemed to be free goods.
- (iii) For purposes of computing royalties, there will be deducted from the SRLP (or other applicable price, if any, upon which royalties are calculated) of records hereunder an amount equal to fifteen percent (15%) for all records in the form of vinyl discs (except for vinyl-disc singles packaged in colorless sleeves and without any special elements, for which there will be no deduction from the SRLP under this subparagraph); twenty percent (20%) thereof for all other records in the form of analog cassette tapes; and twenty-five percent (25%) thereof for records in the form of digital records (including, without limitation, Compact Discs), and for all records in any other form now known or hereafter devised.

- (iv) The royalty payable to you hereunder on a record or other device embodying masters together with other master recordings will be computed by multiplying the otherwise applicable royalty rate by a fraction, the numerator of which is the number of selections contained on the masters embodied on that record or other device and the denominator of which is the total number of selections recorded in all royalty-bearing recordings (including the masters) embodied on that record or other device.
- (v) If there are other royalty-bearing artists performing on a particular master, your royalty rate will be the otherwise applicable royalty rate divided by the total number of royalty-bearing artists (including you).
- (vi) Your royalty rate with respect to Compact Discs will be seventy-five percent (75%) of the otherwise-applicable royalty rate.

A-2. As used in this agreement, the following words have the following meanings:

- (a) "Net receipts" are revenues received by us from any licensee (or credited to us) which are specifically attributable to the masters, less our direct, out-of-pocket costs in connection with the licensed use.
- (b) "Net sales" means gross sales less returns, credits and other adjustments.
- (c) "SRLP" means, for records sold in the United States, the suggested retail list price; for records sold outside the United States, "SRLP" means the retail-equivalent price on which our licensee bases our royalties or, if there is no such price, one hundred and twenty-five percent (125%) of the "wholesale price," i.e., the Posted Price to Dealers in the territory concerned; and for sales by means of direct transmission from us or our NRC Licensees to consumers (whether by wire, over-the-air or otherwise), eighty-five percent (85%) of the price received by us (net of taxes, commissions, fees or any other third party payments).
- (d) "Mid-price record" means, with respect to a particular configuration of record, a record bearing a SRLP in the country concerned in excess of sixty-six and two-thirds percent (66-2/3%) and less than eighty percent (80%) of the SRLP of the customary price for top-line records in that country.
- (e) "Budget record" means, with respect to a particular configuration of record, a record bearing a SRLP in the country concerned less than sixty-six and two-thirds percent (66-2/3%) of the SRLP of the customary price for top-line records in that country.
- (f) "Normal Retail Channels" or "NRC" are record or other retail stores which are normal and customary outlets for the sale of records to consumers.
- (g) "NRC Licensee" in a particular territory outside the United States means our licensee which distributes your records through normal retail channels in that territory.

Exhibit B

(Marketing Restrictions)

B-1. During the term, we will not exploit any masters in the United States in any of the following manners:

- a. As premiums.
- b. On mid-priced or budget record lines.
- c. In commercials or advertisements.
- d. Coupled with masters by other artists more than once per year, except with respect to Sampler records.

B-2. We will not release any recordings not delivered to us as masters.