

BINDING LETTER OF AGREEMENT FOR PRODUCER WORK FOR HIRE SERVICES

DATE: , 2019

TO:
COMPANY:

FROM: ("Company", "we", or "us")

=====

Re: producing

MESSAGE: Dear :

This binding deal memo will confirm our discussions and understanding with regard to ____ () master recordings (individually and collectively, the "Master(s)") embodying the performances of _____, to be released by _____ ("Record Company") or otherwise. _____ ("you" or "your") hereby agree to furnish the services of _____ ("Producer"), who will provide services as "producer" (as such term is commonly understood) to us and/or Record Company with respect to the Masters. You will be solely responsible for all payments to Producer and you agree that you are solely responsible for all payments of all recording costs and other sums to all musicians, engineers, and all others who render services in connection with the Masters, and you and Producer each agree that neither Company nor Record Company will have any responsibility therefore. The term of this contract shall commence as of the date hereof and shall continue until such time as you shall have completed your services hereunder. You shall diligently, competently and to the best of your ability perform the services required to be performed by you hereunder.

- 1) **Recording Fund:** You have submitted a budget of \$____ per each Master with respect to your services in connection with the production of all Masters, inclusive of all recording costs and all producer fees and advances, if any. Such budget is attached hereto and approved. Any excess recording costs, regardless of source, must be pre-approved by us in writing or shall otherwise be your sole responsibility. Such budget shall be payable one-half after the full execution hereof and one-half upon the satisfactory delivery of the Master(s) to us or Record Company. (Notwithstanding any of the foregoing, any payments made pursuant to such budget by Record Company, including, but not limited to, payments to musicians or applicable unions, shall be deducted from the so-called "back-end payment due to you hereunder, if any.)

- 2) **Royalty:** Your royalty shall be equal to i) --% (wholesale, pro-rata as appropriate, with no escalations) with respect to standard exploitations of the Masters and ii) __ percent (--%) of our or Record Company's net receipts with respect to any flat fees, master licenses, synch licenses, or other third party receipts, with all other standard royalty reductions, calculation, and accounting and payment provisions as are applicable by virtue of any agreement with the Record Company. We shall execute the attached Letter of Direction with respect to SoundExchange royalties. Royalties shall be payable from "record one", subject to recoupment of a \$_____ advance, after our recoupment of all recording costs and you hereby acknowledge and agree that no additional fees, royalties, or other consideration shall be payable to you or Producer with respect to your services hereunder. Accountings shall be rendered by us or Record Company semi-annually and you shall be accorded standard audit rights with respect to the books and records of Company.

- 3) **Misc.:**
 - a) We shall use best efforts to provide standard producer credit to you on all records embodying the Master in substantially the form:
 - b) As between you and us, all Masters produced by you hereunder, all phonograph records and reproductions made therefrom, together with the performances embodied therein and all copyrights therein (including all renewals and extensions thereof), and all duplicates and derivatives thereof, shall be exclusively and perpetually property of Company, free from any claim whatsoever by you or any person deriving any rights from you. The Master shall be deemed a work made for hire within the meanings of the United States Copyright Act. If the Master is determined not to be a work made for hire it will be deemed transferred to Company by this Agreement, together with all rights in it. Without limiting the generality of the foregoing, Company, or any person authorized by Company shall have the perpetual unlimited, exclusive right, throughout the world: (i) to manufacture records, video-records, and any derivatives thereof, derived from the Master, in any form, in any medium, and by any method now or hereafter known; (ii) to sell, transfer or otherwise deal in the same under any trademarks, trade names and labels; (iii) to reproduce, adapt transmit, distribute, communicate and otherwise use the Master in any medium or in any

manner now or hereafter known, including but not limited to use in all digital and mobile formats, audiovisual works and video-records; (iv) to cause or permit the public performance of the Master, or derivatives thereof, through any and all media; (v) to add to, delete from, edit, mix and otherwise alter the Master without restriction; and (vi) to exploit the Master and derivatives therefrom through any and all means, whether now or hereafter known, all without payment of any compensation to you except the royalties, if any, which may be expressly prescribed in this Agreement. In the alternative Company may, at its election, refrain from doing any or all of the foregoing.

c) We and our designees shall have the world-wide right in perpetuity to use and to permit others to use your name (legal and professional, and whether presently or hereafter used by you), likeness, and biographical material concerning you, for purposes of trade and otherwise without restriction in connection with the Master, phonograph records derived therefrom, and our record business and products.

d) No Master shall be made by, or include, unauthorized Sampling. ("Sampling", as used herein, refers to the use and/or reproduction of pre-existing musical material owned or controlled by any person other than you.)

e) You and Producer warrant and represent that you have the right to enter into this agreement and that doing, so, and that our or Record Company's exploitation of its rights hereunder shall not infringe upon the rights of any third parties. You further warrant and represent that you or Producer shall not produce or otherwise record any master recorded hereunder for a period of five (5) years from the date hereof.

f) You warrant, represent, acknowledge and agree that the Song was written by the parties set forth on Schedule A, and the copyright therein will be owned by the parties respective publishing entities in the shares set forth on such Schedule A. The writers (and their publishing designees) shall each have the sole and exclusive right throughout the universe in perpetuity to exploit and to authorize the exploitation their respective ownership share of the Song.

4) Mechanical License: To the extent written, owned, or controlled by you (or your publisher), with respect to the musical compositions embodied on the Master (the "Song(s)");

(a) You hereby grant to us and/or Record Company the irrevocable non-exclusive right to reproduce the Song on records (including digitally delivered reproductions) and to distribute any of those records in the United States and Canada;

(b) Mechanical royalties shall be payable on net sales of such records at the following rates:

(i) on such records sold in the United States, the rate shall be the United States mechanical rate. The "United States mechanical rate" shall mean the amount equal to seventy-five percent (75%) of the minimum statutory royalty rate (without regard to playing time) provided for in the United States Copyright Act which is applicable to the reproduction of musical compositions as of the date of delivery to us of the Master; and

(ii) on such records sold in Canada, the rate shall be the Canadian mechanical rate. The "Canadian mechanical rate" shall mean the amount equal to the greater of (a) seventy-five percent (75%) of the minimum statutory royalty rate (without regard to playing time) provided for in the Canadian Copyright Act which is applicable to the reproduction of musical compositions as of the date of delivery to us of the Master and (b) two (2) cents Canadian

(iii) the mechanical royalty rate for a Controlled Composition contained on a mid-price record or budget record shall be three-fourths (3/4ths) of the United States mechanical rate or the Canadian mechanical rate; as applicable; and no mechanical royalties shall be payable on any phonograph records for which no royalties are payable by Record Company; and

(c) If the copyright in the Controlled Composition is owned or controlled by a person, firm or corporation other than you, you shall cause that person, firm or corporation to grant to us and our designees the same rights as you are required to grant to us and our designees hereunder;

(d) You hereby grant to us and our designees at no fee, royalty or other cost to us or our designees, the irrevocable, non-exclusive, worldwide right to reproduce and publicly perform each Song on audio-visual recordings, to distribute audio-visual records embodying those audio-visual recordings, and otherwise to exploit in any manner and through any media those audio-visual recordings. You grant to us and our designees, or shall cause to be granted to us, the irrevocable right to print and reproduce, at our election, the title and lyrics to the Song on the packaging of phonograph records embodying Masters throughout the world in perpetuity, without payment to you or any other person, firm or corporation of any monies or other consideration in connection therewith.

(e) Any assignment, license or other agreement made with respect to the Song shall be subject to the terms hereof.

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter thereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties. A waiver by either party of any term or condition of this agreement shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained herein shall be cumulative and none of them shall be in limitation of any other remedy, right, undertaking, obligation or agreement of either party. No breach of this agreement by either party shall be deemed material, unless the non-breaching party shall have given the other party notice of such breach and such breaching party shall fail to cure such breach within 30 days after receipt of such notice. If any part of this agreement shall be

determined to be invalid or unenforceable, the remainder of this agreement shall remain in full force and effect. The Agreement shall be governed by and construed in accordance with the laws of Florida, applicable to contracts executed, delivered and fully performed in Florida. The parties represent that they each have the full right power and authority to enter into this Agreement and that doing so shall not infringe upon the rights of any third party. The terms and conditions of this Agreement are strictly confidential and neither party will disclose such terms to any other party, except their employees, legal counsel, accountants and/or except as may be required by law or to enforce the provisions hereof.

Please confirm that the above is acceptable as soon as possible. It is our intention to execute a standard long form producer agreement but until such time, this Deal Memo shall represent a valid and binding contract with respect to the contents hereof. Counterpart signatures of this Agreement and electronically transmitted copies hereof shall be deemed original and fully binding.

Best regards,

Accepted and Agreed:

SCHEDULE A

EXHIBIT A



SoundExchange, Inc.
Letter of Direction

Solely as a service and accommodation to those featured artists entitled to royalties under 17U.S.C. § 114(g)(2)(D) who specifically authorize SoundExchange to collect and distribute royalties on their behalf, SoundExchange permits such featured artists to designate that a percentage of the royalties due them from SoundExchange relating to certain sound recordings be remitted to creative personnel credited or recognized publicly for the commercially released sound recording on which the featured artist performs or other usual and customary royalty participants in such sound recording.

Please note that a performer **need not execute this Letter of Direction in order to be paid statutory royalties by SoundExchange.**

To make such a designation, the performer submitting this Letter of Direction (“LOD”) must be registered with SoundExchange.

Sections with asterisks are required.

*Name of Solo Artist or Group on recording(s):

*Legal Name of Performer(s) for this LOD:

*Name of LOD Recipient (“Payee”):

*Payee Address:

Payee Telephone Number:

*Payee E-Mail:

*Track Name(s): The Repertoire Chart is required to complete the LOD, please submit with this form.

*Effective Date: (choose one)

- Check here if LOD applies as of _____ [date]
 Check here if LOD applies retroactively to all available SoundExchange royalties, for all LOD tracks
 Check here if the Effective Date varies by track. Enter the Effective Dates on the Repertoire Chart.

*Payment Percentage (“Percentage”): check applicable box

- ___% of Performer royalties are applicable to all LOD tracks
 Percentage varies by each track covered by this LOD. Enter percentages on the Repertoire Chart.

By signing this Letter of Direction and submitting it to SoundExchange, Performer agrees as follows:

1. Performer represents and warrants that Performer is the featured recording artist who performed on the sound recording(s) identified on the “Repertoire Chart” attached hereto as Schedule 1 (the “Recordings”).
2. Performer represents and warrants that Payee is an individual credited or recognized publicly for the commercially released sound recording identified on the Repertoire Chart or is another usual and customary royalty participant in such sound recording.
3. Performer requests and authorizes SoundExchange to pay to and in the name of Payee an amount equal to Percentage of the royalties otherwise payable by SoundExchange to Performer in respect of the Recordings, thereby reducing the payments from SoundExchange to Performer. If a previous “Royalty Distribution Information for Featured Artist” or other letter of direction has been provided to SoundExchange that conflicts with this Letter of Direction, then any and all previous letters of direction or similar documents conflicting herewith are hereby revoked.
4. All monies becoming payable under this Letter of Direction shall be remitted to Payee at the address identified above or as Payee otherwise directs SoundExchange in writing. If SoundExchange requires additional information (e.g., Payee tax information) to remit payments under this Letter of Direction, then Performer and Payee shall be responsible for providing SoundExchange with such information promptly. To the extent SoundExchange is not provided with sufficient or correct information to remit payment to Payee, or checks mailed to Payee’s last known address are returned, SoundExchange may hold the monies pending receipt of such information or pay the royalties to Performer.
5. SoundExchange will honor a written revocation by Performer of the designation made by this Letter of Direction. In the event of such a revocation, SoundExchange may, but need not, mail notice of the revocation to the last known address of Payee. The foregoing is without prejudice to any other contractual arrangements between Performer and Payee requiring payment of the Percentage by Performer. SoundExchange has no responsibility for Performer’s performance or nonperformance of any such obligation.
6. SoundExchange may discontinue making payments under this Letter of Direction at any time, including if checks mailed to Payee’s last known address are returned, Performer ceases to be a registrant of SoundExchange, or SoundExchange modifies its policies concerning letters of direction. If it does so, then SoundExchange may, but need not, mail notice thereof to the last known address of Performer and Payee, and monies that otherwise would have been payable under this Letter of Direction will be paid to Performer.
7. Performer acknowledges that SoundExchange is providing payments to Payee solely as an accommodation to Performer but that all royalties distributed by SoundExchange to Payee are taxable to Performer. Performer shall be solely responsible for providing Payee with tax paperwork required by any governmental agency, including the Internal Revenue Service, and SoundExchange shall have no obligation to provide such information to Payee.
8. SoundExchange may rely conclusively, and shall have no liability when acting, upon any written notice, instruction, other document or signature that is reasonably believed by SoundExchange to be genuine and to be authorized by Performer. SoundExchange shall not be responsible for failure to act as a result of causes beyond the reasonable control of SoundExchange. SoundExchange shall not be liable to Performer, Payee or to any third party for, and Performer agrees to defend (with counsel satisfactory to SoundExchange), indemnify and hold harmless SoundExchange from, any damages or loss (including reasonable attorney’s fees) in any way related to this Letter of Direction, unless such loss is caused by SoundExchange’s gross negligence or willful misconduct. The provisions of this Paragraph 8 shall survive the revocation or other termination of this Letter of Direction.

9. This Letter of Direction shall be governed by and construed in accordance with the substantive laws of the District of Columbia. Any dispute relating to or arising from this Letter of Direction shall be subject to the exclusive jurisdiction of courts sitting in the District of Columbia.

ACKNOWLEDGED AND ACCEPTED BY:

(The signature of each Performer or Authorized Signatory for each Performer is required.)

Performer Signature: _____

*Performer Printed Legal Name: _____

OR, Authorized Signatory: _____

Authorized Signatory Printed Name: _____

Date of Signature: _____

Return the original of this form to:
SoundExchange, Inc.

733 10th Street NW, 10th Floor
Washington, DC 20001

You may also scan and email the completed forms to accounts@soundexchange.com

Or fax to: 202.640.5859

If you have questions, please call 1-800-961-2091 or email accounts@soundexchange.com

