

INTELLECTUAL PROPERTY
Course Handbook Series
Number G-1307

Advanced Licensing Agreements 2017

Volume One

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Content License Agreement

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CONTENT AGREEMENT

This Content Agreement (“Agreement”), dated as of INSERT DATE, 2004 (the “Effective Date”), by and between INSERT LABEL NAME, a INSERT STATE OR COUNTRY [company/LLC/corporation] (“Company”) located at INSERT LABEL ADDRESS, and [Online Music Co., a State corporation (“Online”) located at Street, State, Zip.

WHEREAS, Company produces, markets, distributes and exploits recorded music (and/or represents individuals and entities that do so) and Online operates an online music service;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1. **Definitions/Additional Rights Addendum**. Capitalized terms used but not otherwise defined, will have the meanings assigned in Schedule A. The attached Additional Rights Addendum is incorporated herein as part of this Agreement.

Section 2 **Company Content**.

Section 2.1 **Grant of Rights**. Company grants to Online the non-exclusive right to reproduce and transmit Permanent Downloads of Company Content via the Electronic Medium to Service Users in the Territory subject to the terms of this Agreement. The foregoing grant also includes the right to make available thirty (30) second promotional clips (“Clips”) of the Company Masters or Company Videos, to display and transmit Other Company Materials in conjunction with the applicable Company Master, and to use Other Company Materials for promotional purposes at no cost to Online in connection with the Service.

Section 2.2 **Third Party Rights**.

- (a) In the U.S. and any other country where online music publishing licenses are administered via separate performance and mechanical rights societies:
- (i) Online will be responsible for all licenses for the “performance” use of the musical compositions and, if Online chooses to use them, any lyric reprint rights embodied in the Company Content in connection with the Service.
 - (ii) Company will be responsible for obtaining, administering and making any related payments on any and all other third party rights, consents and licenses with respect to the Company Content, including mechanical licenses.

- (b) For the United Kingdom and any other country where online music publishing is administered via an “all-in” performance/mechanical rights society (“All-in Countries”), Online will be responsible for obtaining, administering and making any related payments on any and all publishing rights, consents and licenses with respect to the Company Content, including mechanical licenses.
- (c) Upon delivery of Company Content to Online, Company will notify Online of any Company Content to which it or its affiliates control the publishing rights (“Controlled Masters”) or which, to its knowledge, is considered to be “in the public domain” with respect to music publishing rights.

Section 2.3 Exclusions. To the extent Company advises Online in writing reasonably in advance, use of particular Company Content hereunder will be limited to the extent that use of the Company Content is subject to territorial limitations (statutory or contractual), contractual limitations (between Company and a rights-holder, including a bona fide “artist relations” issue), and other valid legal reasons (i.e., use of the Company Content would infringe on someone’s rights or violate a law). Notwithstanding the foregoing, any Company Content which has been excluded from Online that is made available to any other on-line music provider and/or any Company Content that is otherwise provided to any other on-line music provider (excluding one-off, limited promotions) will promptly be made available to Online hereunder. If, during the Term, Company notifies Online in writing that any particular Company Content requires exclusion under this Section 2.3, Online will use best efforts to remove the designated Company Content as soon as possible, but in no event more than two (2) business days after such notification.

Section 2.4 Delivery. Except with respect to the licenses for which Online is responsible pursuant to Section 2.2, the exclusions in Section 2.3, and/or any unique and limited promotional circumstances with respect to any particular Company Master, Company warrants and represents that all Company Content is and will throughout the Term be available hereunder (on a track and album basis) without requiring further consents or payments to third parties, and will provide the Company Content to Online as follows:

- (a) Currently Available. Set forth on Exhibit B hereto is a list of all currently available Company Content. Company will deliver the Delivery Elements for such Company Content no later than fourteen (14) business days from the execution of this Agreement. As any Company

Content that was previously unavailable becomes available, Company will promptly provide the related Delivery Elements.

- (b) New Releases. Company will deliver a release schedule for each newly released or acquired Company Content promptly after Company has such schedule. Company will deliver Delivery Elements for all such Company Content no later than fourteen (14) days prior to release (whether commercial or promotional) of the applicable Company Masters; provided, however, that any casual or inadvertent one-off failure to provide a release schedule or newly released Company Masters within such seven day time period shall not be a breach hereunder.

Section 2.5 Online Operational Responsibilities. As between Company and Online, Online will be responsible for encoding the Company Content from CD form and the cost associated therewith (unless delivered electronically in a Online-approved format as described herein) and creating and operating the Service (though Online may use third party service providers). As between Online and Company, Online will have exclusive control over the development and exploitation of the Service including, without limitation, the sole right to determine all fees and arrangements with Linking Sites, Service Users or other third parties. In order to induce a Service User to join, pay for and/or retain the Service or content offered therein, Online may offer Promotional Use. Online will not be required to utilize or offer any particular Company Master or Company Video in the Service.

Section 2.6 Promotional Support. Company will reasonably try (but not be obligated) to provide Online with requested promotional support, including (i) making artists available for promotional advertisements, (ii) providing 'b sides' and other unreleased content, and (iii) generally working with Online to create unique programming opportunities to promote Company Masters in and with the Service.

Section 3 **Payments and Fees**.

Section 3.1 Permanent Download Content Fees. Online will pay to Company the wholesale price applicable to each Permanent Download sale in accordance with the prices set forth on Exhibit A hereto. Each Permanent Download sale will occur when the applicable track or album is successfully delivered to a Service User and payment will accrue at that time.

Section 3.2 Payments and Reports.

- (a) Payments. Online will account to and pay Company for all Permanent Download sales hereunder as of the end of each calendar month on the forty-fifth (45th) day thereafter. Online's accounting reports shall identify the number of times each Company Master was delivered, segmented by delivery type. Notwithstanding the foregoing, to the extent that the accrued monthly payment for any given month is not equal to at least \$500.00, then Online may withhold payment for that month (but it will still report sales) and for any additional months until, at any monthly reporting date, the cumulative amount accrued from months where payment has been withheld is equal to \$500.00.
- (b) W-9. Concurrent with the execution of this Agreement, Company shall provide Online a fully executed U.S. Government Form W-9.
- (c) Books and Records/Audit. To verify the accuracy of prior statements, Company may examine, at Company's expense, Online's books and records relating to the calculations of payments due hereunder. Company may make such examination for a particular statement only once, and only within two (2) years after the date when Online sends Company that statement. Company must engage an independent, certified public accountant to make those examinations, only during Online's usual business hours, on reasonable written notice, and for a reasonably convenient time.

Section 3.3 Taxes. With respect to the use of the Company Content, Online may to the extent required by local law or custom withhold and pay, on behalf of Company, taxes due on the proceeds of exploitations in each applicable country, if any.

Section 4 Ownership of Company Content.

Section 4.1 Company Content. As between Company and Online, the Company Content and all "goodwill" related thereto will remain the sole property of Company.

Section 4.2 Notices and Credits. During the playing of any Company Master, Online will cause the artist name and track title to be displayed along with any copyright notice or other metadata provided by Company to the extent that Online is generally providing such attribution for content from its other content providers.

Section 5 Term.

Section 5.1 The term of this Agreement will commence on the Effective Date and continue until the third anniversary of the Effective Date (the “Term”).

Section 5.2 Upon expiration of this Agreement: (i) Online will cease using Company Content in connection with the Service; (ii) Online will cease using any other materials owned or controlled by Company; and (iii) Online will, at Company’s option, either (A) return to Company the Company Content at Company’s sole cost and expense, or (B) destroy, delete or erase all or a portion thereof at Company’s sole cost and expense.

Section 6 **Security**. Online will protect the Company Content included in the Service using security technology no less protective than the security features provided to any other contributor of content to the Service. If at any time the Service’s security solution(s) is materially breached or disabled and a significant amount of Company Content is being transferred from the Service in an unprotected manner, Online will immediately attempt to remedy such breach. If Online cannot remedy such breach within fourteen (14) days, then Online will stop offering all (or, if applicable, just the affected) Company Content until the security features are reinstated. Such suspension will constitute Online’s only obligation and Company’s only remedy from Online if such a security breach occurs.

Section 7 **Online’s Representations and Warranties**. Online represents and warrants that:

- (a) Online is a limited liability company duly organized and in good standing under the laws of the State of [incorporation], United States of America, with the right, power and authority to enter into this Agreement.
- (b) Online will operate the Service and protect and safeguard the Company Content to the best of Online’s commercially reasonable abilities and comparably to similar services in the music industry; and
- (c) Except as otherwise provided hereunder, Online owns, has obtained or will obtain from all necessary third parties all licenses and other rights necessary to create and operate the Service.

Section 8 **Company’s Representations and Warranties**. Company covenants, represents and warrants that:

- (a) Company is a INSERT TYPE OF CORPORATE ENTITY duly organized and in good standing under the laws of INSERT APPLICABLE STATE OR COUNTRY, with the right, power and authority to enter into this Agreement.

- (b) Company owns and/or controls all Company Content provided to Online hereunder; and
- (c) Company has the right to provide the Company Content as contemplated hereunder; there are no agreements between Company and any Person which would interfere with the operation of this Agreement; and the use of the Company Content hereunder will not infringe upon the rights of any person or entity.

Section 9 **Assignments**. Except as specifically provided herein, neither Online nor Company may assign or otherwise transfer any of its rights, duties or obligations under this Agreement without the other's prior written consent, except to a Person that owns or controls such party or to an entity acquires substantially all of its assets or equity interests.

Section 10 **Indemnification**.

Section 10.1 Online will at all times indemnify and hold harmless Company from and against any and all claims, damages, liabilities, costs and expenses (including legal expenses and counsel fees) arising out of any breach or alleged breach by Online of any representation, warranty, covenant or other obligation of Online herein; provided that except for as required by a judgment of a court of competent jurisdiction, no payments shall be made nor costs incurred in connection with any such claim without the prior written consent of Online, such consent not to be unreasonably withheld.

Section 10.2 Company will at all times indemnify and hold harmless Online from and against any and all claims, damages, liabilities, costs and expenses (including legal expenses and counsel fees) arising out of (i) any breach or alleged breach by Company of any representation, warranty, covenant or other obligation of Company herein or (ii) any claim that use of the Company Content pursuant to this Agreement infringes the rights of any third party; provided that except for as required by a judgment of a court of competent jurisdiction, no payments shall be made nor costs incurred in connection with any such claim without the prior written consent of Company, such consent not to be unreasonably withheld.

Section 10.3 Except with respect to the foregoing indemnification obligations, in no event will either party be liable to the other for indirect, incidental, consequential or special damages, including loss of profits or punitive damages, even if advised of their possibility. Except as provided herein, neither party makes any warranties, express, statutory or implied with respect to their services or products described hereunder and any such warranties are expressly disclaimed.

Section 11 **Governing Law**. This Agreement will be governed under the laws of the State of California without reference to the choice of law principles thereof. Any actions commenced by either party will be brought in the courts of either the State of California, sitting in Los Angeles County, or the courts of the United States for the Central District of California.

Section 12 **Confidentiality**.

Section 12.1 **Confidential Information**.

- (a) “Confidential Information” means the terms, but not the existence, of this Agreement and all information provided to Company hereunder (including reporting information) and any non-public, proprietary information designated by the party disclosing such information (the “Disclosing Party”) as confidential information to the receiving party (the “Receiving Party”).
- (b) Each party agrees not to use, reveal or disclose any Confidential Information for any purpose (except as permitted by the following sentence) to any third party without the prior written consent of the Disclosing Party, except on a need-to-know basis to Company artists and/or their representatives, certain authorized employees or management, agents, attorneys, accountants and other third party professionals under written privilege at least as stringent as the terms herein.
- (c) Confidential Information will not include information which: (i) was known to or independently developed by the Receiving Party, except to the extent unlawfully appropriated; (ii) becomes generally available to the public through no violation of this Agreement; (iii) the Receiving Party receives from a third party that is legally free to make such disclosure; (iv) is required to be disclosed pursuant to any law or order, provided that prior written notice is promptly furnished to the Disclosing Party, or (v) with respect to financial records, in connection with an audit or review by any taxing authority, provided that prior written notice of the request is furnished to the Disclosing Party.
- (d) The Receiving Party will notify the Disclosing Party immediately upon discovery of any breach of this Section 12 and cooperate to help the Disclosing Party regain possession of the Confidential Information and prevent the further prohibited use.

Section 12.2 **Injunctive Relief**. In view of the difficulties of placing a monetary value on the Confidential Information, the parties agree that

the Disclosing Party shall be entitled to seek injunctive relief without posting any bond or undertaking to prevent any further breach of this Section 13, separate and apart from any other remedy that the Disclosing Party may have.

Section 13 **Miscellaneous Provisions**. All notices hereunder must be in writing and mailed by registered mail (return receipt requested) or overnight courier service to the parties at the addresses set forth above. The relationship of the parties is in the nature of independent contractors. This Agreement will not be deemed to create a partnership or joint venture, and neither party is the other's agent, partner, employee or representative. After the termination of this Agreement for any reason, any payment obligations with respect to Company Content utilized prior to the date of termination, as well as Sections 3.2(b), 5, 9, 10 11, 12, and 13 hereunder, will survive. This Agreement will constitute the entire agreement between the parties with respect to the subject matter hereof and will supersede all previous commitments with respect thereto. This Agreement is solely for the benefit of the parties hereto and is not intended to and will not confer any remedies or rights on any other Person. This Agreement may not be modified or amended except by an agreement in writing signed by each party. This Agreement may be executed in one or more counterparts. Unless this Agreement otherwise provides, neither party will be deemed to be in breach hereof until and unless the breaching party fails to substantively commence curing such breach within thirty (30) days of the non-breaching party's written notice describing the alleged breach or fails to complete such cure within thirty (30) days thereafter.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective as of the date first above written.

INSERT LABEL NAME - ALL CAPS

By: _____

Name:

Title:

ONLINE MUSIC CO.

By: _____

Name:

Title:

DEFINITIONS

“Company Content” means the Company Masters, Company Videos, Company Trademarks and Other Company Materials. Company Content may also include EPKs (Electronic Press Kits) and other advertising, marketing, publicity and promotional materials in each case which materials may be provided to Online by Company from time to time for promotional use hereunder.

“Company Master(s)” means the Recordings owned and/or controlled by Company or Company’s Corporate Affiliates in the applicable country of the Territory that are intended for general public release (whether commercial or promotional).

“Company Video(s)” means the audio-visual works embodying the Company Masters in synchronization with visual images owned and/or controlled by Company or Company’s Corporate Affiliates, that have been generally commercially released on video in the applicable country of the Territory subject in each case to Company’s rights to provide such videos, either on a promotional or commercial basis.

“Corporate Affiliate” of any Person means any other Person directly or indirectly controlling, controlled by or under common control with such Person; for purposes of this Agreement only, neither Company nor its Corporate Affiliates will be deemed to be Corporate Affiliates of Online. The term “control” means the possession, directly or indirectly, of the power to direct the management and policies of a Person.

“Delivery Elements” means the applicable Company Master (in CD configuration), the Other Company Materials relating thereto, and the related Company Video (if any) (and any additional promotional materials, if any). Company may also deliver such Delivery Elements in electronic form, pursuant to the standards set forth in the Online Content Handbook, which will be provided to Company at its request.

“Download” means an electronic transmission of digital data which results in the creation of an Electronic Digital Copy of the content concerned.

“Electronic Digital Copy” means a copy of any content in a digitized format (excluding any temporary copy such as a “buffer” or “cache” copy made during the transmission).

“Electronic Medium” means any medium utilized to effectuate digital data transmission, including but not limited to the Internet and any other public or private data networks, narrowband or broadband telecommunications methods or systems, including, without limitation, any electronic, magnetic, terrestrial, satellite, radiophonic, POTS, ISDN, cable, fiber

optics, cellular, or other wireline or wireless communications technology. Nothing herein will prohibit Online from facilitating the transmission of the digital data relating to a Download by delivering all or a portion (i.e., an encrypted form of the digital data concerned) of that digital data other than via the Electronic Medium (e.g., via preloading to a digital compact disc or to the hard drive of a personal computer or portable device) and, if applicable, delivering the remainder (i.e., the digital data needed to “unlock” or “decrypt” the encrypted digital data concerned) via the Electronic Medium.

“Linking Site” means any Person that enters into an agreement with Online by which Online authorizes such Person to promote or distribute the Service directly to Service Users.

“Other Company Materials” means all photographs, “cover art”, artwork, liner notes, and other graphic and textual material used by Company in the packaging of phonorecords containing the Company Masters and/or related promotional or publicity materials provided by Company, including the artist’s name, likeness and biographical information.

“Permanent Download” means an unrestricted Download which may reside and/or be copied to a Service User’s device(s), or to a CD and/or other physical or digital media.

“Person” means any individual, partnership, corporation, limited liability company, trust, business trust, cooperative, association or other business organization, and their respective heirs, executors, administrators, legal representatives, successors and assigns.

“Promotional Use” means use of the Service by a Service User on a free introductory or other similar promotional basis, provided that unless otherwise agreed for any specific promotions, Online will be responsible for the wholesale price to Company for any Permanent Downloads made available for Promotional Use.

“Recording” means every recording of sound, whether or not coupled with a visual image, by any method and on any substance or material, or in any other form or format, whether now or hereafter known.

“Service” means the online services operated by Online that will integrate therein the Company Content, and content provided by other Persons, and distribute such content via the Electronic Medium.

“Service User” means any Person authorized to receive the Service.

“Territory” means the World.

“Video” means an audio-visual work embodying a Recording in synchronization with visual images that are produced for promotional use.

EXHIBIT A

Wholesale Prices

- I. Sales within the United States:
 - A. Singles. \$.XX per Permanent Download of Company Content sold by Online through the Service.
 - B. Albums. \$Y.YY per frontline album and \$Z.ZZ per back catalog album, each as sold by Company through the Service as a Permanent Download of a whole album and as designated by Company with respect to pricing tier.*
- II. Sales within the UK:
 - A. Singles. £.XX per Permanent Download of Company Content sold by Online through the Service.
 - B. Albums. £Y.YY per album £Z.ZZ per back catalog album, each as sold by Company through the Service as a Permanent Download of a whole album and as designated by Company with respect to pricing tier.*
- III. Sales within Canada:
 - A. Singles. C\$.XX per Permanent Download of Company Content sold by Online through the Service.
 - B. Albums. C\$Y.YY per albums and \$Z.ZZ per back catalog album, each as sold by Company through the Service as a Permanent Download of a whole album and as designated by Company with respect to pricing tier.*

* If albums are not specifically designated by Company, Online will designate newly released albums as frontline for one year from their street release date, and as back catalog thereafter. Notwithstanding the foregoing album pricing, (i) the wholesale price of any album may not be greater than the price would have been were the single tracks in such album sold separately as singles pursuant to subsection A above, and (ii) any multi-CD albums shall be priced as the number of CDs times the appropriate price category.

- IV. Sales within other countries:

The applicable wholesale prices for any new country of the Territory where Online launches the Service will be the highest general prices offered to independent labels in that country.

EXHIBIT B

Currently Available Company Content

[TO BE PROVIDED BY LABEL AND ATTACHED]

CONTENT MAY BE INSERTED HERE OR ATTACHED AS A
SEPARATE DOC

ADDITIONAL RIGHTS ADDENDUM

These additional terms and conditions are incorporated into and made a part of the attached agreement (the “Main Agreement”) between Online Music Co. and INSERT LABEL NAME as indicated below. Any defined terms that are used but not defined herein will have the meanings assigned to them in the Main Agreement. References to this “Agreement” will mean the Main Agreement and this Additional Rights Addendum.

Section 2.1.1. **Additional Grant of Rights**. The grant of rights with respect to Company Content under Section 2.1 shall include Streams and Conditional Downloads (the “Additional Rights”). All of the following terms of this Addendum apply to the Additional Rights.

Section 2.2.1 **Third Party Rights**.

- (a) In the U.S. and any other country where online music publishing licenses are administered via separate performance and mechanical rights societies:
 - (i) Online will be responsible for all licenses for the “performance” use of the musical compositions and, if Online chooses to use them, any lyric reprint rights embodied in the Company Content in connection with the Service.
 - (ii) Online will be responsible for applying for mechanical licenses for Streaming and Conditional Downloading, and to the extent that, in any country of the Territory, the cost of such licenses exceeds [number] percent (XX%) of the Service Fee (as defined below), Online will be responsible for any such additional amounts (“Excess Mechanical Royalties”, which shall be paid each accounting period but may be adjusted at the end of each year on a cumulative yearly basis). To the extent Online pays any mechanical rights costs (other than Excess Mechanical Royalties) directly to rightsholders, Online will have the right either to deduct such amounts for which Company is responsible from payments otherwise owed to Company or to invoice Company separately. Company will be responsible for administering and making payments related to such mechanical licenses, as well as for providing Online with the necessary information to file such license applications.
 - (iii) If Company either is not a Harry Fox Agency (“HFA”) publisher principal or has elected not to “opt in” to the voluntary blanket license agreed to by HFA with respect to mechanical

licenses for digital rights (the “HFA Deal”), then Company will obtain and pay for mechanical licenses for use by Online of compositions embodied in Controlled Masters, if any. With respect to Controlled Masters, Online will not be obligated to reimburse Company for any Excess Mechanical Royalties to the extent that the financial terms of the licenses obtained by Company are less favorable than those contained in the HFA Deal. In countries outside of the U.S., the term “HFA” used herein will be deemed to refer to the applicable licensing body in such country (e.g., CMRRA in Canada).

- (b) For the United Kingdom and any other All-in Country: Online will be responsible for obtaining, administering and making any related payments on any and all publishing consents and licenses with respect to the Company Content, including mechanical licenses, provided that the variable cost cap when calculating the Service Fee for such countries as described in Section 3.1.1(a) below will be adjusted as provided therein.
- (c) In any country, aside from publishing licenses, Company shall be responsible for any other third party rights, consents and licenses with respect to the Company Content.

Section 3.1.1 **Streaming and Conditional Downloading Content Costs**

- (a) Each accounting period Online will pay Company its Usage Percentage of [number] percent (XX%) of: all subscription fees (net of any applicable taxes, such as VAT) received by Online during that period for Streaming and Conditional Downloading less [number] percent (XX%) of such fees (to cover some of Online’s variable costs related to such use (e.g. bandwidth, hosting, performance royalties, credit card fees, affiliate fees)) (such total amount, the “Service Fee”). Notwithstanding the foregoing, in any country of the Territory that is an All-in Country, the foregoing variable cost cap shall be [number] percent (XX%).

Section 3.2.1 **Payments and Reports**. Online will account and pay Company for all Streaming and Conditional Downloading hereunder as of the end of each calendar quarter on the forty-fifth (45th) day thereafter. Such accounting will be presented together (separate but on the same statement) with any accounting for Permanent Download sales under the Main Agreement and the actual payment thereon will be aggregated with any amounts due under the Main Agreement into a single payment.

Notwithstanding the foregoing, to the extent that the accrued payment amount (inclusive of any amounts owed under the Main Agreement) at any quarterly payment date is not equal to at least \$500.00 then Online may withhold payment for that quarter (but it will still report usage) and for any additional payment periods (months or quarters) until, the cumulative amount accrued from payment periods where payment has been withheld is equal to \$500.00.

DEFINITIONS

The following additional defined terms will be included in the Agreement:

“Conditional Download” means a Download subject to one or both of the following limitations: (i) the Electronic Digital Copy resulting from such Download may reside solely on computer hard drives (or other digital storage devices) owned or controlled by the Service User that requested the Electronic Digital Copy concerned; and (ii) such Download will be disabled and/or deleted from the Service User’s storage device upon termination of the Service User’s Service membership. Online may allow Service Users to continue to have access to Conditional Downloads transmitted to such Service User prior to the expiration of the Term for three (3) months following the expiration of the Term.

“Stream” means a single, encrypted digital transmission solely through the Electronic Medium, which digital transmission is contemporaneous with the performance of the Company Masters embodied therein and reasonably protected from digital duplication by Service Users (other than any ephemeral copies used for so-called “caching” or “buffering”).

“Usage Percentage” means, for each accounting period, the ratio of (i) the number of Streams and plays of Conditional Downloads of Company Masters through the Service to (ii) the aggregate Streams plus plays of Conditional Downloads of all content from all content providers through the Service. Promotional Use will not be counted for royalty payment purposes. Neither Promotional Use nor Clips will be counted for royalty payment purposes.

NOTES