

**LABEL/ARTIST – DIGITAL DISTRIBUTION AGREEMENT**

Between MISSING RECORDS ("Missing Records")  
And  
\_\_\_\_\_ ("Label/Artist")

Label/Artist Name:

Label/Artist Address:

Label/Artist Telephone Number:

Label/Artist Fax Number:

Label/Artist Email:

Technical Contact Info:

Royalty Contact Info:

Content Contact Info:

Legal Contact Info:

Effective Date:

Expiration Date:

Territory:                   The Universe

Compensation:           Eighty Percent (70%) of "Gross Receipts" for sales of full album  
downloads. Sales price determined by Label/Artist.

**BY CLICKING "I AGREE" BELOW, YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED TO BIND THE ENTITY ON WHOSE BEHALF YOU ARE ENTERING INTO THIS AGREEMENT, AND YOU AGREE TO ABIDE AND BE BOUND BY THIS AGREEMENT. THIS AGREEMENT INCLUDES ALL OF THE TERMS AND CONDITIONS SET FORTH IN THE STANDARD TERMS AND CONDITIONS BELOW, WHICH ARE INCORPORATED HEREIN BY THIS REFERENCE. YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD AND AGREED TO THE TERMS AND CONDITIONS [CHECK BOX]**

**[ ] AGREE [ ] DO NOT AGREE**

**LABEL/ARTIST – DIGITAL DISTRIBUTION AGREEMENT**  
**TERMS AND CONDITIONS**

In consideration of the following promises, covenants and agreements, the parties agree as follows:

1. Grant of Rights. During the Term (as defined herein) or any extension thereof, Label/Artist hereby grants to Missing Records, for the term of this Agreement, the following rights:

(a) the non-exclusive right to electronically distribute in the Universe, without any limitation not specifically set forth herein or hereinafter, the Licensed Masters and all electronic copies thereof and the performances embodied thereon including but not limited to the right to make, cause or otherwise effect Digital Audio Transmissions and Digital Phonorecord Deliveries of the Licensed Masters, including, without limitation, the right to couple any of the Licensed Masters with recordings other than the Licensed Masters ("Electronic Distribution"). The term "Digital Audio Transmission" shall mean a transmission that embodies a sound recording including the performance thereof. The term "Digital Phonorecord Delivery" shall mean each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording. The term "Licensed Masters" shall mean all sound recordings owned or controlled by the Label/Artist at any time during the Term.

(b) the non-exclusive right during the Term, throughout the Territory, to use, reproduce, display, perform, distribute, transmit, publicly and privately, by any and all means and in any and all media now known or hereafter devised: (a) the names, approved likenesses and biographical information (including professional, group, and other assumed or fictitious names) of any and all persons performing on or rendering services in connection with the creation of Licensed Masters, as well as of the Label/Artist (collectively, "Name and Likeness"); (b) any artwork, drawings, photographs, liner notes and/or other graphical materials furnished or identified by Label/Artist for Missing Record's use hereunder (collectively, "Artwork"); and (c) any trademarks, service marks or trade names embodied in the foregoing (collectively "Marks"). No so-called "merchandising rights" in and to the Artwork, Name and Likeness or Marks are granted by Label/Artist hereunder.

(c) the non-exclusive right and license during the Term and throughout the universe to use, reproduce, distribute, display, deliver and transmit, publicly and privately, by any means now known or hereafter devised, the lyrics of the Controlled Compositions (as defined herein) embodied in the Licensed Masters, solely for the purpose of promoting the Licensed Masters or facilitating the exercise of the rights of Electronic Distribution of the Licensed Masters. The term "Controlled Compositions" shall mean any and all musical works embodied in the Licensed Masters which are owned or controlled, directly or indirectly, by Label/Artist, collectively or individually.

(d) the non-exclusive right and license during the Term and through the universe to perform and make clips of up to the full length of each Licensed Master available by streaming ("Clips"), free of charge and without any payment to Label/Artist or to any third party (including any applicable performing rights society), to promote the sale of applicable Licensed Masters hereunder, which Clips, if not provided by Label/Artist, may be created by Company by using any portion of or the entirety of any applicable Licensed Master hereunder.

(e) As between Missing Records, and Label/Artist, Label/Artist is the sole owner of the Licensed Masters and all rights in and to the Licensed Masters not expressly granted to Missing Records herein are hereby reserved to Label/Artist.

2. Term. The initial term of this agreement ("Term") shall consist of a period of Three (3) years commencing on the Effective Date of online submission and ending on the Expiration Date. The Term shall be automatically extended for consecutive one (1) year periods, unless terminated by either party by written notice to the other party between ninety (90) and sixty (60) days preceding the expiration of the Term or the then current one year extension of the Term. Notwithstanding the foregoing, either party shall have the right to terminate this agreement prior to the expiration of the Term upon three (3) days prior written notice to the other party. Missing Records shall be entitled to remove any of the Licensed Masters from its website at any time if Missing Records deems any such Licensed Masters to be objectionable for any reason whatsoever in Missing Records sole discretion.

3. Warranties and Indemnification.

(a) Label/Artist warrants and represents that (i) it has the right and authority to enter into this agreement and to grant to Missing Records all rights specified, (ii) Label/Artist has finalized all clearances and licenses specified in Section 5(d) below and, without limitation, Label/Artist has obtained signed mechanical licenses from all copyright owners, (iii) all of the Licensed Masters, Name and Likeness, Artwork, Marks, metadata, videos and any other materials furnished by Label to Missing Records or relating to the Licensed Masters are owned or controlled by Label/Artist and shall not infringe on the copyrights or other rights of any person or entity, and (iv) Missing Records shall have the right to exploit all of the foregoing in all manner hereunder free from adverse claim and without any obligation to make any payment of any nature to any Label/Artist, or to any other person or entity, other than the Allowed Expenses described in Section 5(b) below and the fees due to Label hereunder.

(b) Missing Records represents and warrants that it has the right and authority to enter into this Agreement and that the conduct of its digital distribution activities complies with all applicable laws.

(c) Each party shall defend and indemnify the other party (including its directors, members, officers, employees and other representatives) against any third party claims or expenses and losses resulting from breach, or a claim which if true would constitute a breach, of the respective warranty, including reasonable attorneys' fees and litigation expenses. The indemnified party shall give the indemnifying party prompt notice of any claim. The indemnifying party shall defend the other party at the indemnifying party's expense with counsel approved by such other party (which approval shall not be unreasonably withheld).

(d) If any claim shall be lodged with Missing Records or any action commenced having as its basis a claim which, if proved, would constitute a breach by Label/Artist of any of Label's/Artist's representations, warranties, or agreements contained herein, Missing Records, in addition to any other right or remedy, shall have the right to withhold from any payments otherwise due to Label/Artist an amount equivalent to that claimed or sued for plus reasonably anticipated attorney's fees and costs relating thereto. Any amount so withheld shall be credited to Label's/Artist's account (after deduction of any amounts Missing Records may retain under this Section 3) when Missing Records shall have received reasonable assurances that the claim or action has been finally settled or fully adjudicated and the judgment satisfied, or that the statute of limitations on such claim has run, or when reasonable and adequate security for the claim has been provided by Label/Artist to Missing Records.

(e) EXCEPT PURSUANT TO AN EXPRESS INDEMNITY OBLIGATION, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING LOSS OF PROFITS OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THEIR POSSIBILITY.

(f) NO WARRANTY OR TERM, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO THE CONDITION, QUALITY, DURABILITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE MISSING RECORDS SERVICE, OR ANY ELEMENTS OF THE FOREGOING IS GIVEN TO, OR SHOULD BE ASSUMED BY, LABEL/ARTIST, AND ANY SUCH WARRANTIES AND TERMS ARE HEREBY EXCLUDED.

(g) MISSING RECORDS SHALL NOT BE LIABLE OR DEEMED TO BE IN DEFAULT FOR ANY DELAYS OR FAILURES IN PERFORMANCE OR INTERRUPTION OF SERVICES RESULTING DIRECTLY OR INDIRECTLY FROM ANY CAUSE OR CIRCUMSTANCE BEYOND ITS REASONABLE CONTROL, INCLUDING, WITHOUT LIMITATION ACTS OR OMISSIONS OF THIRD PARTY PROVIDERS OF HARDWARE, SOFTWARE OR CONNECTIVITY.

#### 4. Delivery of Licensed Masters.

(a) Within fourteen (14) days of the execution of this Agreement, Label/Artist shall deliver CD's of the Licensed Masters and Artwork to Missing Records, without charge. If available, and the parties agree to such alternate delivery format, Label/Artist shall furnish the Licensed Masters to Missing Records, also without charge, in the form of digital files, together with accurate metadata and the highest resolution cover art available.

(b) Thereafter, as new Licensed Masters are produced or acquired by Label/Artist or, as applicable, digital rights are acquired by Label/Artist, they shall be made available to Missing Records at generally the same time that Label/Artist makes the same available to other download retailers, subject to special promotions, it being understood that Missing Records shall be afforded the opportunity to participate in special promotions of equivalent value from time to time (including equivalent featured artists, promotion duration, etc.).

(c) Missing Records' payment of any sums hereunder is conditioned upon Label's/Artist's fulfillment of all delivery obligations described above and receipt of Label's/Artist's completed U.S. Federal Tax form W-9 or W-8BEN, as applicable.

#### 5. Compensation.

(a) Label/Artist shall determine the retail price with respect to the Licensed Masters. Missing Records shall pay Label/Artist an amount equal to Seventy Percent (70%) of Gross Receipts on a prospective basis solely with respect to Licensed Masters sold by Company less Allowed Expenses (defined below). As used herein, "Gross Receipts" means all gross sums actually received by Company in the United States in connection with the exploitation of the Licensed Masters hereunder.

(b) As used herein, "Allowed Expenses" shall mean the following expenses, if any, to the extent incurred by Missing Records in connection with the receipt of Gross Receipts for the distribution of Licensed Masters hereunder:

- (i) Credit card transaction, electronic commerce processing, patent royalties and content transmission fees payable to or retained by unaffiliated third parties in connection with effecting a transaction or transmission, if any.
- (ii) Sales tax, if any.
- (iii) Customer credits, including, but not limited to those on account of errors in billing and errors in transmission, if any.

- (iv) Public performance fees, if any.
- (v) Internet referral fees payable to third parties who, through their web site, email or other means, referring to Missing Records a source of Gross Receipts, if any, provided that such costs shall not exceed fifteen percent (15%) of Gross Receipts.

(c) No fees shall be payable hereunder to Label/Artist for: (i) Digital Phonorecord Delivery or Digital Audio Transmission made available on a "no charge" basis for the purpose of promoting the Licensed Masters and Controlled Compositions (including non-downloadable streams on Missing Records' and Missing Records' partners' web sites and other mutually agreed marketing initiatives); (ii) incomplete, aborted or nonfunctional Digital Phonorecord Deliveries; and (iii) more than one Digital Phonorecord Delivery of the same Licensed Masters to a given end user. The term "Controlled Compositions" shall mean any and all musical works embodied in the Licensed Masters which are owned or controlled, directly or indirectly, by Label/Artist.

(d) Label/Artist shall be responsible for obtaining and shall bear the cost of all clearances, permissions and consents in connection with the digital exploitation of the Licensed Masters contemplated hereunder, including without limitation (i) all music publishing licenses including without limitation mechanical and any streaming mechanical licenses, (ii) all record royalties due to artists, producers and other persons who performed in the making of the Licensed Masters and other royalty participants, (iii) all payments that may be required under collective bargaining agreements applicable to the Labels/Artists, and (iv) any other royalties fees and/or sums payable with respect to the sound recordings, Artwork, metadata and other materials provided by Label/Artist and/or Missing Records' use thereof hereunder. Without limitation of Missing Records' rights in this Section, if Label/Artist fails to make any of the payments described in this Section 5(d), Missing Records shall have the right, but not the obligation, to do so on Label's/Artist's behalf and deduct all amounts from any payments otherwise due to Label/Artist.

(e) Missing Records shall have full freedom and flexibility in its decisions concerning marketing of the Licensed Masters. Nothing in this Agreement shall be construed as an obligation, guarantee or commitment by Missing Records that any of its marketing efforts will be productive on any level of net revenues, royalties or other payments hereunder.

6. Payment; Audit Rights. All payments which shall be made to Label/Artist may be made via PayPal or made, if Label/Artist so desires, by depositing the same, postage prepaid, in any box, chute or other receptacle authorized by the United States Post Office for mail, addressed to Label/Artist at the address specified herein provided that Missing Records shall be entitled to deduct a processing fee in connection therewith. Statements of account shall be submitted and Label's/Artist's portion of Gross Receipts shall be payable monthly within fifteen (15) days after last day of each month. The portion of Gross Receipts payable to Label/Artist hereunder shall be based upon the currency in which the Gross Receipts are received by Missing Records. Any Gross Receipts received by Missing Records in a foreign currency, including but not limited to Canadian currency, shall first be converted into U.S. currency at the applicable currency exchange rate listed in the Wall Street Journal for purchase of U.S. Dollars at the date of conversion for purposes of calculating Label's/Artist's portion of Gross Receipts. At any time within two (2) years after a royalty statement is submitted to Label/Artist by Missing Records, a certified public accountant on Label's/Artist's behalf shall have the right to audit Missing Records' books and records, but only with respect to such statements and payments. Audits shall occur at times mutually agreed to between Missing Records and Label/Artist during regular business hours and at Missing Records' regular business address. Label/Artist shall conduct an audit no more than once during any calendar year, and no more frequently than twelve (12) months intervening each audit. Any failure to give written notice or objection within the two (2) year period from the date of the statements and payments to Label/Artist shall bar any further objections by Label/Artist. Label/Artist, in that situation, shall be foreclosed from maintaining any action, claim,

or proceeding against Missing Records on those statements and payments. Notwithstanding anything to the contrary provided for herein, no portion of Gross Receipts shall be paid to Label/Artist until the amount payable to Label/Artist is \$25.00 or more. In the event this agreement is terminated, Missing Records shall pay to Label/Artist any outstanding portion of Gross Receipts payable to Label/Artist in a timely manner.

7. Reserved Rights. Label/Artist reserves all rights in the Licensed Masters not expressly granted to Missing Records hereunder, including the copyrights therein. Missing Records shall have no right to modify the Licensed Masters, except that it may (a) employ audio-compression technology to encode the Licensed Masters into digital audio files for purposes of facilitating the exercise of the rights granted hereunder, or (b) add, remove or modify any digital rights management associated with the Licensed Master(s) in its sole business judgment. Missing Records shall have no right to manufacture and/or distribute the Licensed Masters in the form of physical media, such as pre-recorded compact discs or cassette tapes.

8. Customer Data. Customer data collected by Missing Records directly or through its third party relationships in regard to the Licensed Masters shall belong exclusively to Missing Records. Missing Records shall have the right to exploit same in any manner without any obligation to Label/Artist. Missing Records shall have no obligation to disclose such data to Label/Artist except as required for accounting purposes hereunder. Missing Records shall comply with all applicable laws, including privacy laws, regarding the collection, maintenance and use of such data.

9. Miscellaneous.

(a) The waiver, amendment or modification of any provision of this Agreement or of any right, power or remedy hereunder shall not be effective unless in writing and signed by the party against whom enforcement of such waiver, amendment or modification is sought. No failure or delay by any party in exercising its respective right, power or remedy with respect to any of the provisions of this Agreement shall operate as a waiver.

(b) This Agreement constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written of the parties, and there are no warranties, representations and/or agreements among the parties in connection with the subject matter except as specifically set forth and referred to in this Agreement.

(c) All the terms and provisions of this Agreement shall be binding upon and for the benefit of the parties and their successors and assigns and legal representatives.

(d) The validity, construction and performance of this Agreement and the legal relations among the parties to this Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding that body of law applicable to choice of law. In the event any provision of this Agreement or the application of any such provision shall be held by a tribunal of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall remain in full force and effect.

(e) This Agreement shall not be construed as creating a partnership between the parties nor to create any other form of legal association that would impose liability upon one party for the act or failure to act of another party.

(f) 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 (30) days after the date of the notice.

(g) All notices, reports, requests, approvals and other communications required or permitted under this Agreement must be in writing and sent to the party's address as set forth on the signature page below. Notices will be deemed given when required if (i) delivered personally with written confirmation of receipt, (ii) sent by confirmed facsimile, (iii) sent by commercial overnight courier with written verification of receipt, or (iv) sent by registered or certified mail, return receipt requested, postage prepaid. Notices will be treated as having been received upon the earlier of actual receipt or five (5) days after posting. Either party may, by properly written notice, to the other party, change the address to which notices shall thereafter be sent.

(h) If the performance of Missing Records' or Label's/Artist's obligations under this Agreement is delayed, or becomes impossible or impracticable by reason of any act of God, fire, earthquake, strike, labor disturbance, delays in the delivery of materials and supplies, or other causes beyond their respective control, then either party may suspend its obligations under this Agreement for the duration of such event. With respect to any provisions of this Agreement that include time provisions, the duration of any such suspension shall be added to the period of those time provisions.