

## MERCHANDISING LICENSE AGREEMENT

This **MERCHANDISING LICENSE AGREEMENT** (the “M/L Agreement”) is made and entered into as of December 15, 2010 (the “Effective Date”) by and between **LICENSEE**(“**LICENSEE**”) and **ARTIST**(“**Licensor**”) with respect to the recording and performing artist, Artist(“**Artist**”)

### RECITALS

**RECITAL ONE.**

**RECITAL TWO. .**

**RECITAL THREE.**

**RECITAL FOUR.** Licensor and Artist represent and warrant to and for the benefit of **LICENSEE** that neither Artist no Licensor will now or hereafter make any effort or take any action to waive, disavow, renounce or reject this Agreement or Licensor and Artist’s obligations hereunder whether based on the Artist Declaration or any assertion made by Artist therein.

**RECITAL FIVE.** THE parties agree that the following terms and conditions will govern the merchandising, licensing, fan club and ticketing relationship between Artist and Licensee on a going forward basis.

Now therefore, in consideration of the foregoing and for good and valuable consideration the receipt and sufficiency of which is hereby mutually acknowledged, the parties agree as follows:

### MERCHANDISING AND LICENSING AGREEMENT

**1) MATERIAL INDUCEMENT.** Licensor understands and agrees that the representations and warranties set forth in Recital Three and Recital Four, above, are a material inducement to **LICENSEE**’s entering into this M/L Agreement and that a breach of either such representation and warranty will constitute a material breach of this M/L Agreement and the Settlement M/L Agreement.

**2) LICENSES AND RELATED TERMS.** Subject to the terms and conditions hereof, Licensor hereby grants to **LICENSEE**, the sole and exclusive right and license to use the Licensed Marks and Materials and Artist Artwork (defined in Section 9) in connection with the rights listed in the subsections 2(a) through 2(g), below: For the avoidance of doubt all distribution rights, including those of third party licensees, include the right to promote and advertise Merchandise arising from such rights. For the avoidance of doubt a license to manufacture Merchandise\_includes the right to have such Merchandise manufactured by third parties.

a) **Concerts.** The sole and exclusive right and license to manufacture Merchandise, and distribute such Merchandise as well as Concert Peripherals in and about the venue of each of Artist's live performances.

i) No Merchandise may be given away or otherwise distributed at any live performance of Artist covered by this M/L Agreement other than by LICENSEE or its designee without the prior written consent of LICENSEE, but for merchandise sold by co-headliners when Artist is not a sole headliner.

ii) No Excluded Merchandise or other merchandise or products of any type, other than non-souvenir consumables (i.e., food, beverages and tobacco), will be authorized for sale by Licensor, sold or otherwise distributed in and about any venue except by LICENSEE or its designee(s). Licensor shall use reasonable commercial efforts to arrange with each venue for LICENSEE (or LICENSEE's designee) to have the exclusive right to distribute Concert Peripherals

b) **Wholesale/Retail/Direct-to Consumer.** The sole and exclusive right and license to sell Merchandise direct-to-consumer, through distributors, and to wholesalers and retailers (both brick 'n mortar and online). LICENSEE has the right to retain third party distribution partners and salespeople in connection with this license.

c) **Third Party Licensing.** The sole and exclusive right and license to sublicense to third parties, or enter into licenses directly between Licensor and third party licensees; provided the material terms of each such license is approved by Licensor.

d) **Official Online Store.** The sole and exclusive right and license to develop, host, maintain and promote the Official Online Store.

e) **Fan Club.** The sole and exclusive right and license to develop, host, maintain, administer and promote the Fan Club.

f) **Ticketing.** The sole and exclusive right and license to conduct ticket presales in connection with Artist's Fan Club, and the right to sell Ticket Packages – the content of which is subject to Licensor's reasonable approval – to the public at large.

g) **Sponsorships & Endorsements.** The non-exclusive right and license to seek and enter into agreement covering sponsorship and endorsement opportunities for Artist.

h) For the avoidance of doubt all distribution rights set out above, including those of third party licensees, include the right to promote and advertise the approved Merchandise arising from such rights. For the avoidance of doubt a license to manufacture Merchandise includes the right to have such Merchandise manufactured by third parties.

i) **Support of the Official Online Store and Fan Club Website.** Licensor shall use reasonable efforts to actively promote the Official Online Store and Fan Club including, without limitation, on Artist's album packaging (subject to the consent of Artist's record company), and at Artist's live performances. Licensor shall provide unique textual content and other services to support the Official Online Store and Fan Club as reasonably requested by LICENSEE.

3) **DEFINITIONS.** *(ROYALTY-RELATED DEFINITIONS ARE SET FORTH IN SECTION 6(G))*

The following capitalized terms, when used in this M/L Agreement shall the meanings ascribed to them below:

- a) "Concert Peripherals" means merchandise and product typically sold at live performances whether or not relating to Artist or bearing the Licensed Marks and Materials (such as glow sticks, binoculars, "blinkies" and the like).
- b) "Digital Merchandise" means images sold as "wallpaper" for computers and other personal computing devices (including, but not limited to, PDAs, digital music players, and cellular phones), stand-alone images for cell phone download, screensavers, digital calendars, digital products such as mobile and digital streaming, avatars, virtual products as may be "bought" and "sold" by end-users in virtual stores appearing in Internet-based community networks and games or other platforms such as those developed by [www.doppelganger.com](http://www.doppelganger.com)), and applications for download and/or use on mobile phones and other mobile and digital devices (e.g. so-called iPhone "apps").
- c) "Excluded Merchandise" means pre-recorded music, CDs and DVDs to the extent they are not video games or constitute all or part of Digital Merchandise, or subject to applicable restrictions in Artist's recording agreement, videos and auto-biographical and biographical books, coffee table books including picture books, educational books, music story books, storybooks, trade books, keepsake books and humor books; and Artist's "Air Boy" clothing line. Notwithstanding the foregoing and subject to the terms of this M/L Agreement – including LICENSEE's royalty and accounting obligations – LICENSEE shall have the right to sell third party Excluded Merchandise through the Official Online Store.
- d) "Fan Club" means Artist's official online fan club, which shall contain only those elements and features mutually agreed to by Licensor and LICENSEE.
- e) "Fan List" means a list of e-mail addresses (and any other demographic registration data) of Artist fans delivered by Licensor to LICENSEE for use under this M/L Agreement, including, but not limited to, the promotion of Merchandise, the Official Artist Website, Online Store, Fan Club, and Ticket Packages.
- f) "Licensed Marks and Materials" means the following items, for which Licensor holds all ownership and intellectual property rights or otherwise has the rights necessary to grant to LICENSEE the licenses set forth herein, all to the extent delivered by Licensor to LICENSEE or otherwise authorized by Licensor for LICENSEE's use hereunder: (i) the names, voices, signatures, photographs, or likenesses of Artist; (ii) symbols, logos, trademarks, designs, graphics, and graphic designs; (iii) song titles and lyrics of all songs written or co-written by Artist, and titles of all of Artist's music recordings; (iv) the name(s), symbols, logos, trademarks, and designs associated with any concert tour or sound recording by Artist; and (v) any Internet domain names and/or URLs that are proprietary to Licensor or Artist and authorized for use by LICENSEE in connection with this M/L Agreement.
- g) "Merchandise" means merchandise and products, including Digital Merchandise, utilizing or relating to the Licensed Marks and Materials, and Licensor Artwork as authorized and approved by Licensor pursuant to this M/L Agreement, but exclusive of Excluded Merchandise.

- h) "Licensed Marks and Materials" means the following items, for which Licensor holds all ownership and intellectual property rights or otherwise has the rights necessary to grant to LICENSEE the licenses set forth herein, all to the extent delivered by Licensor to LICENSEE or otherwise authorized by Licensor for LICENSEE's use hereunder: (i) the names, voices, signatures, photographs, or likenesses of Artist; (ii) symbols, logos, trademarks, designs, graphics, and graphic designs; (iii) song titles and lyrics of all songs written or co-written by Artist, and titles of all of Artist's music recordings; (iv) the name(s), symbols, logos, trademarks, and designs associated with any concert tour or sound recording by Artist; and (v) any Internet domain names and/or URLs that are proprietary to Licensor or Artist and authorized for use by LICENSEE in connection with this Agreement.
- i) "Official Online Store" means an online presence, directly linked to the Official Artist Website, Fan Club and Artist's Social Network Pages and to be located at a discrete location at LICENSEE online superstore located at [www.store.livenation.com](http://www.store.livenation.com) (and any successor site or Live Nation site), for the primary purpose of distributing Artist Merchandise, as well as Fan Club memberships, tickets and Ticket Packages to Artist's live performances. The Official Online Store will also be the sole website authorized for the sale of Artist's Tour-related merchandise and products.
- j) "Online Ticketing" means Fan Club-related ticket sales, including concert pre-sales, and any and all other online Ticket Package sales.
- k) "Social Network Pages," means Artist's official presence on Internet-based communities such as MySpace, Face Book, and the like.
- l) "Specialty Product" means: (a) tour books and programs; and (b) any Merchandise that is produced (i) using non-standard blank stock, or (ii) using non-standard manufacturing methods, or (iii) in limited quantities, or (iv) in a manner that results in significantly higher production costs.
- m) "Territory" means the World.
- n) "Ticket Package" means, for sale to the public, the combination of a concert ticket with one or more value-added components, as agreed by the parties, which may include, by way of example and without limitation, merchandise, Official Online Store discount coupons, pre-Concert parties, VIP entry, travel and hotel accommodation arrangements, and so-called meet 'n greets.
- o) "U.K." means the countries of England, Scotland, and Wales, only.

#### 4) **TERM.**

a) **Term.** This M/L Agreement shall be in effect from and after the Effective Date through and including the date that is the later of (i) December 31, 2013, or (ii) the date upon which the entire Settlement Amount has either been repaid and/or fully-recouped (the "Term").

b) **Right of First Negotiation; Matching Right.** Licensor hereby grants to LICENSEE a right of first negotiation to obtain any and all merchandising rights of Artist after the expiration or early termination of this M/L Agreement. At any time during or after the Licensed Term, and prior to entering into bona fide negotiations with any third

party for the merchandising rights of Artist, Licensor shall first offer such rights to LICENSEE in writing. Licensor and LICENSEE shall thereupon have 30 days in which to agree to the terms and conditions of the merchandising rights to be granted by Licensor to LICENSEE for Artist. In the event that the parties do not agree to such terms and conditions within such 30-day period, then Licensor shall be free to negotiate with any and all third parties with regard to Artist's merchandising rights. However, prior to entering any such agreement with a third party, Licensor shall give LICENSEE written notice of all the material terms of any bona fide offer from a third party that Licensor desires to accept, including the name of the proposed licensee. LICENSEE shall have the right, within fifteen (15) days after receipt of such notice, to notify Licensor in writing of LICENSEE's desire to enter into an agreement on the terms set forth in Licensor's notice. If LICENSEE so notifies Licensor, Licensor and LICENSEE shall enter into a new agreement incorporating the terms set forth in Licensor's notice and such other terms as the parties may negotiate in good faith. If LICENSEE fails to give Licensor such written notice, Licensor shall be free to enter into an agreement with any third party, within sixty (60) days after the end of such 15-day period, provided that the material terms of any new agreement shall be no less favorable to Licensor than those set forth in Licensor's notice to LICENSEE. If Licensor does not so enter into a new agreement within such 60-day period, LICENSEE shall again have the right to match any third-party offer in accordance with the procedure set forth herein. Notwithstanding anything to the contrary contained herein, the provisions of this Paragraph 2(a) shall apply only with respect to Licensor's next touring immediately following the expiration or early termination of the Licensed Term.

5) **RECOUPMENT.** For the avoidance of doubt, LICENSEE shall be entitled to deduct and recoup all royalties otherwise due Licensor under this M/L Agreement against the Settlement Amount set out in the Settlement Agreement as if set out fully herein and incorporated herein by reference, unless and until the Settlement Amount is either fully-recouped and/or fully repaid by Artist to LICENSEE.

**6) ROYALTIES.** *SEE, ALSO, ROYALTY DEFINITIONS IN SECTION 6(G).*

a) **Tour Royalties.** For sales of Merchandise at live performances by Artist, LICENSEE shall pay the following royalties during the Licensed Term (the "Tour Royalties"):

i) With respect to sales of all Merchandise except Specialty Products:

(a) In the U.S.: 36% of the Gross Sales at live performances by Artist exceeding \$200,000 in the aggregate but less than or equal to \$1,000,000; 37% of the Gross Sales at live performances by Artist exceeding \$1,000,000 in the aggregate but less than or equal to \$2,000,000; 39% of the Gross Sales at live performances by Artist at which Gross Sales exceed \$2,000,000 in the aggregate;

(b) In Canada: 36% of Gross Sales at live performances by Artist;

(c) In Japan, Australia, the U.K., and France: 33% of Gross Sales at live performances by Artist;

(d) In Germany, Austria and Switzerland: 34% of Gross Sales at live performances by Artist;

(e) In all other parts of the Territory: 70% of the Net Profit attributable to such sales.

ii) Licensor shall use reasonable efforts to insure that hall and vend fees, credit card fees, and hall security fees (“Hall Fees”) together average no more than 30% at Artist's live performance in the United States and Canada. In the event average Hall Fees are less than 30%, Licensor shall receive the benefit of such difference; likewise, if average Hall Fees exceed 30%, Licensor shall bear the burden of such difference.

(a) With respect to sales of Specialty Products, 70% of Net Profit attributable to such sales.

(b) With respect to the sale of Concert Peripherals, 70% of Net Profit attributable to such sales.

(c) With respect to any sales of Artist's music videos and pre-recorded music recordings (e.g., CDs and cassettes), autobiographical and biographical books, 100% of the Net Profit after deduction of an administrative fee to LICENSEE of 12% of Gross Sales attributable to such sales.

b) **Third-Party Licensing.** 70% of Net Receipts throughout the Territory. If any third party license or sublicense extends beyond the Term, LICENSEE shall be entitled to its commissions on the original term of such license or sublicense, as well as any extensions, renewals, or options expressly contained in such sublicense and/or license agreement(s) that are made during the Term.

c) **Sponsorships and Endorsement Royalties:** 87.5% of the Net Receipts.

d) **Royalty Rates For Official Online Store:**

i) 25% of Gross Online Sales for purchases made by users arriving via link from Artist's official website; and

ii) 15% for users arriving at the Official Online Store other than via direct link from Artist's official website.

e) **Wholesale/Retail Royalty Rates:**

i) With respect to sales of standard T-shirts:

(a) In the U.S., other than to mass market retail stores, 20% of the Wholesale Net Sales attributable to such sales; and

(b) To mass market retail stores in the U.S., 10% of the Wholesale Net Sales attributable to such sales; and

(c) In all other parts of the Territory, 12% of the Wholesale Net Sales attributable to such sales; and

ii) With respect to sales of all other Merchandise:

(a) In the U.S., 12% of the Wholesale Net Sales attributable to such sales, or such other amounts as negotiated by the parties; and

(b) In all other parts of the Territory, 10% of the Wholesale Net Sales attributable to such sales.

f) **Fan Club and Ticket Package Royalties.** 60 % of Sales Revenues (as hereinafter defined) on all Fan Club Memberships, and 60% of Sales Revenues on Ticket Package sales. Notwithstanding anything to the contrary contained in this Section 6(f), no Ticket Package royalties will be due and payable until the ticketed Concerts have been performed by Artist. In the event that any customer is refunded the cost of any Fan Club Membership, ticket or Ticket Package by LICENSEE and royalties have already been paid to Licensor with respect to such Fan Club membership, ticket or Ticket Package, at LICENSEE' discretion such royalties: (i) will be added to Licensor's account balance as an Additional Advance; or (ii) upon demand of LICENSEE, refunded to LICENSEE by Licensor within fifteen (15) days.

g) **Royalty Related Definitions.**

i) *Gross Sales* means all moneys actually collected by LICENSEE (or credited to LICENSEE's account) in connection with the sales of applicable Merchandise, less (a) sales taxes, value-added taxes, or the equivalent, including import taxes or duties charged by foreign countries on the selling price or value of Merchandise, (b) charges paid or incurred for the acceptance of credit cards, and (c) hall security expenses.

ii) *Gross Online Sales* means the retail sales price of Merchandise sold by LICENSEE online pursuant to this Agreement and actually collected by LICENSEE (or any agent, representative or affiliate of LICENSEE) (or credited to LICENSEE' account), less (i) any applicable sales taxes, value-added taxes, or the equivalent, including any applicable import taxes or duties charged by foreign countries on the selling price or value of such Merchandise, (ii) charges paid or incurred for the acceptance of credit cards, (iii) chargebacks and returns; and (iv) applicable search engine optimization, advertising, and marketing costs. *Gross Sales* means the actual retail sales price of Merchandise sold by LICENSEE and actually collected by LICENSEE (or any agent, representative or affiliate of LICENSEE) (or credited to LICENSEE' account or another account on behalf of LICENSEE) in connection with the sale of applicable

Merchandise, less (i) any applicable sales taxes, value-added taxes, or the equivalent, including any applicable import taxes or duties charged by foreign countries on the selling price or value of such Merchandise, and (ii) charges paid or incurred for the acceptance of credit cards. Outside of the United States, in territories where royalties are based on Gross Sales, venue-imposed security fees, if any, will also be deducted in the calculation of Gross Sales.

- iii) *Net Profit* means, Gross Sales or Gross Online Sales, as the case may be less all production costs (i.e., direct costs of manufacture or purchase, as the case may be), and all direct selling expenses directly attributable to the sales of applicable Merchandise (including, but not limited to, freight, duties, and direct road expenses.
- iv) *Net Receipts* means all non-refundable advances against royalties, royalty guarantee payments, royalties and other licensing fees that are collected from (a) licensees and/or sublicensees (or credited to LICENSEE' account pursuant to licenses and/or sublicenses) and (b) LICENSEE' third party agents (after deduction of such agents' commissions), less deductions for: (i) any amounts actually expended by LICENSEE, including reasonable attorneys' fees, in connection with the collection of such sums; (ii) taxes, if any, incurred by LICENSEE with respect to the transactions covered by this definition including by way of example and without limitation, sales, use, value-added, and withholding taxes, and excluding taxes based on LICENSEE' net income; (iii) pre-approved marketing expenses (iv) other expenses as mutually approved.
- v) *Sales Revenues* means, to the extent actually collected by LICENSEE:
  - (1) With respect to Ticket Package sales, that portion of the retail sales price that is in excess of the face value of the ticket(s) included in the applicable Ticket Package, less only: (w) applicable sales taxes, value-added taxes, or the equivalent, import taxes or duties charged by foreign countries on the selling price or value of tickets or Merchandise, and third-party charges incurred for the acceptance of credit cards; (x) the cost of mutually agreed upon value-added elements of each Ticket Package; (y) preapproved search engine optimization, advertising, and marketing costs, and third party distribution fees; and (z) the cost, as applicable, of meet 'n greet and/or Ticket Package road coordinator. The parties will mutually agree in good faith as to the price of Ticket Packages, which prices they may agree to modify from time-to-time.
  - (2) With respect to Fan Club memberships, the price of membership less only: (u) Fan Club design and development costs; (v) Fan Club editor/content manager costs; (w) applicable sales taxes, value-added taxes, or the equivalent, import taxes or duties charged by foreign countries on the selling price or value of tickets or Merchandise, and third-party charges incurred for the acceptance of credit cards; (x) applicable third party sales fees, shipping and handling, order fulfillment, and customer service; (y) the cost of any mutually agreed-

upon value-added elements that may accompany Fan Club membership; and (z) preapproved search engine related optimization, advertising, and marketing costs, and third party distribution fees. The parties will mutually agree in good faith as to the price of Fan Club membership, which price they may agree to modify from time-to-time.

vi) *Wholesale Net Sales* means, all monies actually collected by LICENSEE' or credited to its account (after returns, and trade discounts, markdowns, and charge-backs actually granted to third parties), less: (i) any applicable sales taxes, value-added taxes, or the equivalent, and any applicable import taxes or duties; (ii) marketing expenses incurred in connection with marketing activities in connection with this Agreement; and (iii) applicable commissions and agency fees. Notwithstanding anything contained herein to the contrary, Wholesale Net Sales shall mean 37% of the actual retail sales price, less sales and value-added taxes, if any, included in the retail sales price, for sales of Merchandise in any proprietary catalog or through any direct-to-consumer marketing program (other than the Official Online Store and Artist Fan club), which is controlled by LICENSEE.

7) **Exceptions.** No Royalties shall be earned or paid with respect to Merchandise furnished on a “no-charge” basis, for promotional, marketing, or goodwill purposes (however, with respect to each type of Merchandise furnished on a no-charge basis, the number of units so furnished shall not exceed an amount equal to five percent (5%), or for discontinued or distress sales of Merchandise at or below manufacturing costs, or for promotional sales (for example, sales to Artist or Licensor). With respect to Merchandise that bear the Licensed Marks together with the marks of other artists, the Royalties paid hereunder shall be split pro-rata among Licensor and such other artists or as otherwise agreed.

**8) ACCOUNTINGS AND AUDIT**

a) **Tour Royalties.** Within twenty-four hours after each Concert or series of Concerts at the same venue, LICENSEE shall furnish Licensor with complete and accurate accounts of Merchandise distributed, taxes accrued, and fees paid for such Concerts. Licensor has the right to be present at all inventories, check-ins, and the like, and at all venues at which Merchandise is distributed.

b) For its part, Licensor agrees that to the extent any venue requires use of a third party concession company for the sale of Merchandise at Concerts, Licensor will use reasonable efforts, whether by contract with the applicable venue or otherwise, to ensure that the venue pays LICENSEE all sums due LICENSEE within five (5) business days after the applicable Concert or series of Concerts at such venue. LICENSEE shall furnish Licensor with a summary statement within forty-five (45) days after the end of each tour leg. Such statement will set forth in reasonable detail all sales figures (e.g. quantity and price) and expenses associated with the distribution of Merchandise at venues, Royalty earnings pursuant to this Agreement, and the balance of Royalties recouped or payable hereunder, and will be accompanied by

payment of any Royalties due after deductions in accordance with the provisions of this Agreement.

c) **Non-Tour Royalties.** Royalty earnings for Merchandise distributed by LICENSEE other than at Concerts shall be accounted for quarterly in arrears, within forty-five (45) days after each calendar quarter, provided there has been sales activity in the relevant quarter. When reporting, LICENSEE shall furnish Licensor with a complete statement showing the Merchandise distributed or sales during such quarter along with payment of Royalty earnings, if appropriate.

d) **Foreign Earnings and Withholding Taxes.** Royalties shall be computed in the currency of the country where earned and credited to Licensor's account in U.S. dollars at the exchange rate received by LICENSEE at the time of conversion. LICENSEE may, if necessary, deposit any Royalties due Licensor in an account bearing Licensor's name in the country where such Royalties are earned. Any such deposit will constitute Royalty payment hereunder. If LICENSEE is required to pay a tax on Licensor's or Artist's behalf due to the earnings or liability of Artist in such country (such as FEU, Australian withholding, and other withholding taxes in any jurisdiction), LICENSEE may deduct the full amount of such tax from any monies payable to Licensor, or, to the extent no monies are payable to Licensor, LICENSEE may require Licensor to repay LICENSEE such amount. After any such deduction or repayment, LICENSEE shall provide Licensor with tax certificates in Licensor's name or in Artist's name for such amount.

e) **Licensing/Sublicensing Royalties.** Royalties arising from licenses and sublicenses with third parties entered into pursuant to this Agreement and administered by LICENSEE shall be accounted for on a quarterly basis. Within forty-five (45) days after the last day of each calendar quarter during which any such license or sublicense is in place, LICENSEE shall furnish Licensor with a complete statement covering same along with payment of Royalty earnings, if appropriate, subject to LICENSEE's recoupment rights.

f) **Audit.** Licensor shall have the right upon reasonable notice to LICENSEE (but in no event later than one year after the date of the last accounting provided pursuant to this Agreement), at Licensor's sole expense and for the sole purpose of verifying the accuracy of the accountings hereunder, to audit and to make copies of the relevant portions of LICENSEE' books and records of transactions relating to or affecting this Agreement or any provision hereof; provided, however, that said audit is conducted at a time and place determined solely by LICENSEE so as not to unreasonably interfere with LICENSEE' business; and further provided that Licensor may not audit LICENSEE' books and records for or relating to a particular accounting period more than once. In the event any such audit reveals an underpayment of more than five percent (5%) for the period audited, LICENSEE agrees to reimburse Licensor for Licensor's documented out-of-pocket audit costs. Licensor shall not have the right to audit or inspect LICENSEE' books and records for or relating to a particular accounting period unless such audit is commenced within one year after the date the accounting for such period was first rendered; accountings not so audited shall be deemed to be conclusively accepted by Licensor.

9) **PERFORMANCE MATTERS.** When Artist is the sole headliner at a performance in the Territory, Licensor shall make reasonable efforts to arrange with the venue for LICENSEE (or LICENSEE's designee) to have the exclusive right to sell any and all types of merchandise and products (excluding only food and beverages) in and about the venue and/area of such performance, whether such merchandise and products bear the Licensed Marks or not (including, without limitation, glow-lights, photography, binoculars, etc.)

#### **10) ARTWORK.**

a) Supplied by Licensor. During and throughout the Term Licensor shall supply LICENSEE with such quantities and types of approved, reproducible photographs, designs, materials, album artwork and titles, titles and lyrics of songs written or co-written by Artist and other Artwork embodying the Licensed Marks ("Artist Artwork") as LICENSEE may reasonably request, all at Licensor's sole cost and expense, for use on or in connection with the manufacture, distribution, sale advertisement, and/or promotion of Merchandise. In connection with the design of any tour book or concert program, if any, Licensor shall, at its own cost and expense, supply LICENSEE with photographs suitable for printing as is, along with any required photography credits, and any text and any other credits that Licensor desires to include in the tour book. Licensor warrants that any and all third-party creators of Artist Artwork and/or any text supplied by Licensor have entered into written agreements with Artist that acknowledge Licensor's right to grant the use of such Artist Artwork and/or text for the purposed herein. If any Artist Artwork is supplied in a form that is not reproducible on Merchandise, then all costs incurred by LICENSEE to make the Artist Artwork reproducible on Merchandise shall be borne by Licensor and be treated as an additional advance hereunder. If any Artist Artwork contains fonts not currently licensed by LICENSEE, or if Licensor desires to incorporate into the design of Merchandise any such fonts, the cost of LICENSEE to License such fonts shall be borne by Licensor and treated as an additional advance hereunder. Notwithstanding anything to the contrary contained herein, if LICENSEE must pay a third party for the right to use certain Artist Artwork and/or if LICENSEE must pay a third party for the right to use certain song titles and lyrics, the cost shall be subject to Licensor's prior approval, which approval shall not be unreasonably withheld, and shall be borne by Licensor; however, at LICENSEE's sole election, LICENSEE shall (i) deduct such amounts from Royalties otherwise due to Licensor hereunder; or (ii) treat such amounts as an additional advance hereunder.

b) **Variety.** The Artist Artwork will include but not be limited to: (i) within ten (10) business days of execution of this M/L Agreement, an initial variety of Artist Artwork suitable and sufficient, in LICENSEE's opinion, for use on the Merchandise; (ii) upon LICENSEE's request (but no more frequently than every six (6) months during the Licensed Term), Licensor shall supply LICENSEE with new Artist Artwork; and (iii) Licensor shall use reasonable efforts to supply LICENSEE with Artist Artwork from Artist's music videos released prior to and during the Term. As between Licensor and LICENSEE, Licensor shall own all right, title, and interest in

all Artist Artwork, and LICENSEE shall own all designs developed or created by LICENSEE.

11) **APPROVALS.** The Merchandise shall at all times be of high quality in contents and workmanship. LICENSEE shall furnish Licensor with a sample of each item of Merchandise, including packaging, if applicable, for Licensor's approval, prior to the distribution of such Merchandise. LICENSEE acknowledges that such approval may be made at Licensor's sole discretion, provided, however, that such approval may not be unreasonably withheld. Licensor and Johnny Wright (or any other person authorized by Licensor in writing) shall be the individual designated by Licensor to approve such samples. Licensor pre-approves the following categories of Merchandise: souvenir tour programs, apparel (shirts, sweatshirts, etc.), headwear, accessories, and paper products of all kinds (posters, stickers, decals, heat transfers, calendars, trading cards, etc.), food, beverages, gold and platinum records, patches, bandannas, flags, school supplies, medals and coins, limited edition lithographs, jewelry, watches, telephonic cards, drinkware, magnets, pitchers, trivets, novelties, toys, games (including interactive video games), gifts, books and magazines. LICENSEE shall be entitled to refrain from or to cease production of any particular line, style or design of any Merchandise at any times.

## **12) COPYRIGHT OWNERSHIP & PROTECTION.**

a) **Goodwill.** LICENSEE acknowledges the value of the goodwill associated with the Licensed Marks and their secondary meaning in the minds of the public. Any and all goodwill associated with and identified by the Licensed Marks inures directly and exclusively to the benefit of the Licensor. Nothing contained herein shall be construed as an assignment or grant to LICENSEE of any ownership interest in or to the Licensed Marks; all rights relating to the Licensed Marks are reserved by Licensor except as licensed to LICENSEE in this Agreement.

b) **Preserving Rights.** LICENSEE shall assist Licensor, at Licensor's expense in any manner as Licensor may reasonably request, in connection with filing and prosecution by Licensor of applications in Licensor's name to register the Licensed Marks in the Territory and the maintenance and renewal of such registrations. LICENSEE shall affix to or imprint on the Merchandise, to the extent practicable, the copyright and/or trademark notice required by applicable law and in accordance with instructions from Licensor. Such notice shall initially be in the following form: © 20xx Artist unless and until LICENSEE is directed otherwise by Licensor. LICENSEE shall not take any action that might invalidate the Licensed Marks, impair any of Licensor's right in or to the Licensed Marks, or create any rights adverse to those of Licensor. LICENSEE shall not challenge Licensor's title or right in or to the Licensed Marks or assert the invalidity or contest any use or any registration by Licensor of the Licensed Marks.

## **13) INFRINGEMENT BY THIRD PARTIES**

a) **Prosecution.** Licensor and LICENSEE shall cooperate to ensure that third parties may not unlawfully infringe on or imitate the Licensed Marks or engage in any acts of unfair competition involving the Licensed Marks. Each party shall promptly notify the other of any such infringements, imitations, or acts by third parties that come to its attention. LICENSEE may initiate and prosecute any claims or suits in its name and/or, with Licensor's prior approval, in Licensor's name, to enjoin such infringement, imitation, or act and to recover damages based thereon. Licensor shall also have the right to participate in any action initiated by LICENSEE. Notwithstanding anything herein to the contrary, Licensor shall have the right to prosecute such proceedings in his own behalf and at his own sole expense. No claim or action instituted by either party shall be settled without the approval of the other party, which approval shall not be unreasonably withheld. In the event that any sums are recovered from prosecution or settlement of a claim or suit initiated by LICENSEE, LICENSEE shall pay Licensor fifty percent (50%) of the recovery, after deduction of costs and expenses, including attorneys' fees. To the extent costs and expenses of the prosecution or settlement of a claim or suit initiated by LICENSEE exceeds any recovery, or in the event there is no recovery, then one-half of such excess shall be borne by Licensor and be treated as an additional advance hereunder, and one-half of such excess shall be born by LICENSEE.

b) **Seizure Orders; Other Actions.** With Licensor's approval, which approval shall not unreasonably be withheld, LICENSEE may seek injunctions authorizing the seizure of unauthorized Merchandise bearing the Licensed Marks and retain security to combat bootlegging at live performances. Eighty percent (80%) of the costs and expenses of such costs and expenses shall be borne by LICENSEE.

14) **Indemnification.** Each party to this M/L Agreement shall indemnify, save, and hold harmless the other party and such other party's parents, subsidiaries, affiliates, officers, directors, representatives, employees and agents (the "Indemnified Party") from and against any and all claims, liabilities, demands, causes of action, judgments, settlements and expenses (including, but not limited to, reasonable outside attorneys' fees, court cost and disbursements) (collectively, a "Claim"), which may be suffered, made, incurred, or assumed by the Indemnified Party (i) arising out of or in connection with any breach by the indemnifying party (the "Indemnifying Party") of any of its warranties, representations, or covenants set forth in this M/L Agreement, or (ii) by reason of the failure of the Indemnifying Party to perform any of its covenants or obligations contained in this M/L Agreement. The above indemnification shall apply to final adverse judgments entered into by a court having competent jurisdiction thereof or settlements entered into with the prior written consent of both parties, which consent shall not be unreasonably withheld. The Indemnified Party agrees to promptly notify the Indemnifying Party of any Claim. The Indemnifying Party shall have the right to undertake and control the defense of such Claim, and the Indemnified Party shall cooperate fully with the Indemnifying Party in connection therewith.

## **15) TERMINATION.**

a) **Rights and Duties on Expiration and Termination.** Any termination of this M/L Agreement shall be without prejudice to the non-breaching party's other rights and remedies, legal or equitable, against the breaching party, all of which shall be cumulative. Upon the expiration or termination of this M/L Agreement, all rights of LICENSEE to the Licensed Marks shall forthwith terminate and automatically revert to Licensor. Notwithstanding anything to the contrary contained herein, the provisions of this M/L Agreement providing for continuing rights and obligations and representations and warranties shall survive the expiration or termination of this M/L Agreement, except that LICENSEE shall have no obligation to pay further Advances or Deposits, if applicable.

b) **Sell-Off Period.** Notwithstanding anything to the contrary herein, LICENSEE shall be entitled for a period of one hundred eighty (180) days after expiration or termination hereof (the "Sell-Off Period") to continue to sell, on a non-exclusive basis: (a) existing Merchandise in accordance with the terms and conditions contained in this M/L Agreement (but in no case whatsoever shall LICENSEE be permitted to sell such Merchandise in or about concerts at which Artist is Performing); and (b) such Merchandise as may be manufactured to maintain an appropriate ratio of inventory in various sizes. LICENSEE agrees to limit its manufacture of Merchandise during the last four weeks of the Licensed Term to reasonable quantities anticipated to be sold during such four-week period. Notwithstanding the foregoing, Licensor may purchase from LICENSEE, at the then-current standard at LICENSEE's cost plus freight all unsold Merchandise, in lieu of permitting LICENSEE to exercise its sell-off rights. Within thirty (30) days after expiration of the Sell-Off Period, if any, LICENSEE shall supply Licensor with a written report of the sales of Merchandise during the Sell-Off Period, as well as the Royalties due. With respect to any inventory remaining upon expiration of the Sell-Off Period, Licensor shall have the option to (i) purchase such product at manufacturing cost less 50%; or (ii) require LICENSEE to destroy such inventory, the destruction to be verified by an officer of LICENSEE.

**16) [INTENTIONALLY OMITTED].**

**17) MISCELLANEOUS PROVISIONS.**

a) **Assignment.** Except as otherwise provided in this M/L Agreement, this M/L Agreement shall be binding upon and inure to LICENSEE's respective heirs, legal representative, successors, and assigns, and it is understood that LICENSEE may, upon written notice to Licensor, assign, transfer, grant, and license the rights hereunder in whole or in part to any person or entity, without limitation, provided such entity agrees in writing to be bound by the terms of this Agreement remain primarily responsible for its respective obligations hereunder. This M/L Agreement is not assignable by Licensor without the prior written consent of LICENSEE, which consent may be unilaterally withheld.

b) **Notifications.** All notices required to be given hereunder shall be in writing and shall be delivered personally, or by overnight courier, as follows:

If to Licensor:

With a copy to:

If \_\_\_\_\_ to  
LICENSEE:

Notice sent by overnight courier shall be deemed effective as of the date of delivery. Either party may change the address to which notice is to be sent by giving written notice of such change of address to the other party as provided herein.

c) **No Partnership.** Nothing herein contained shall be construed to create a partnership, joint venture or agency (except as set forth in SECTION LICENSING “Agency”) between Licensor and LICENSEE.

d) **Choice of Law/Attorneys’ Fees.** This M/L Agreement shall be construed and enforced in accordance with the laws of the State of California as applied to agreements made in California by California residents, notwithstanding the actual residence of either of the parties. All disputes that cannot be amicably resolved by the parties shall be brought solely in the State and Federal Courts located in Los Angeles County, California. Each of the parties hereby agrees to submit to the personal jurisdiction of such courts, and waives any right to object to the venue of such courts. The prevailing party in any lawsuit shall be entitled to recover reasonable attorneys’ fees and other costs incurred in such action, in addition to any other relief to which it may be entitled.

e) **Breach of M/L Agreement.** Licensor understands and agrees that a default of this M/L Agreement by Artist or Licensor that remains uncured to LICENSEE’s reasonable satisfaction within thirty (30) days after receipt of LICENSEE’s notice of breach to Licensor, shall constitute a material breach of the Settlement Agreement, entitling LICENSEE to all remedies, whether contractual, at law, or in equity under both this M/L Agreement and the Settlement Agreement.

f) **Counterparts and Copies of Signatures.** This M/L Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same agreement. An executed copy of this M/L Agreement shall be treated the same as an original for all purposes if sent to the other party via e-mail as a .pdf file.

g) **Confidentiality.** Neither party shall disclose any of the terms of this M/L Agreement to any third party, except to the extent necessary to perform their respective obligations under the Agreement; provided, however, that each of the parties may reveal the terms of this Agreement to their bona fide financial and legal advisors and institutions, provided same are under legal or written obligations not to disclose to third parties the terms and conditions of this Agreement.

h) **Amendment.** This Agreement may only be amended by a written document signed by both parties.

i) **Entire Agreement.** This M/L Agreement constitutes the final and exclusive statement of the agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous, agreements, understandings and opportunity to review this Agreement with legal counsel of its choice, and there will be no presumption that ambiguities will be construed or interpreted against the drafter.

j) **Waiver or Invalidity of Provisions.** No waiver of any provision of this M/L Agreement by either party, whether express or implied, shall constitute a continuing waiver of such provision or any other provision, and any provision that is or becomes prohibited or unenforceable shall be so only to the extent of such prohibition or unenforceability; all remaining provisions shall remain valid and enforceable.

## **18) Representations and Warranties.**

- a) Each Party hereby represents and warrants to the other Party that: (a) it has full power, authority and legal right to execute, deliver, and comply with this M/L Agreement and any other document or instrument relating to this M/L Agreement to be executed by it; (b) it has taken all corporate or other actions that are necessary or appropriate for the execution and delivery of and compliance with this M/L Agreement; (c) upon its execution and delivery, this M/L Agreement will constitute the valid and legally binding obligation of such Party, enforceable against it in accordance with its terms, subject only to bankruptcy, insolvency, reorganization, moratorium and other laws applicable to creditors' rights or the collection of debtors' obligations generally; and (d) it acknowledges that the other Party has entered into this M/L Agreement in M/L upon each of its representations and warranties contained in this Settlement Agreement.
- b) Artist hereby represents to LICENSEE that the rights granted by Artist pursuant to LICENSEE and the exercise of those rights by LICENSEE do not and will not conflict with the rights – including, without limitation,

contractual rights, intellectual property rights, or any other proprietary right -- of any third party,.

- c) **Benefit of Counsel; Informed Review.** EACH OF THE PARTIES ACKNOWLEDGES AND REPRESENTS TO THE OTHER PARTY THAT: (A) THE PROVISIONS OF THIS MERCHANDISING LICENSING AGREEMENT AND THEIR LEGAL EFFECT HAVE BEEN FULLY EXPLAINED TO IT BY ITS OWN COUNSEL; (B) IT HAS RECEIVED INDEPENDENT LEGAL ADVICE FROM COUNSEL OF ITS OWN SELECTION; (C) IT FULLY UNDERSTANDS THE FACTS AND HAS BEEN FULLY INFORMED AS TO ITS LEGAL RIGHTS AND OBLIGATIONS UNDER THIS MERCHANDISING LICENSING AGREEMENT; (D) THIS MERCHANDISING LICENSING AGREEMENT IS BEING ENTERED INTO AND SIGNED BY IT KNOWINGLY, FREELY, AND VOLUNTARILY, AFTER HAVING RECEIVED SUCH LEGAL ADVICE AND WITH SUCH KNOWLEDGE; AND (E) ITS EXECUTION AND DELIVERY OF THIS MERCHANDISING LICENSING AGREEMENT IS NOT THE RESULT OF ANY DURESS OR UNDUE INFLUENCE. BY EXECUTING THIS MERCHANDISING LICENSING AGREEMENT, EACH OF THE PARTIES

ACKNOWLEDGES AND REPRESENTS TO THE OTHER PARTY THAT IT HAS READ AND UNDERSTANDS THIS ENTIRE MERCHANDISING LICENSING AGREEMENT.

**IN WITNESS WHEREOF**, the parties have executed this M/L Agreement as of the Effective Date.

By: \_\_\_\_\_

Print Name: Title:

**ARTIST**

\_\_\_\_\_