

# SNOCAP, INC. AGREEMENT

FROM: [AIM PARTICIPANT]  
("COMPANY")  
[AIM PARTICIPANT ADDRESS]

TO: SNOCAP, Inc.  
("SNOCAP")  
201 3rd St., 2nd Floor  
San Francisco, California 94103 USA

DATE:

## 1. **RIGHTS.**

- 1.1. **Right to Re-Sell.** During the Term, COMPANY authorizes SNOCAP to re-sell the Recordings as permanent digital music Downloads through the SNOCAP MyStores strictly subject to the terms and conditions set out herein. Such authorization is non-exclusive, extends only to sales to customers located in the Territory, is subject to the territorial restrictions in respect of particular Recordings, which COMPANY advises SNOCAP of and is conditional on the timely accounting and payment of sums due to COMPANY from SNOCAP under this Agreement. SNOCAP shall also have the right during the Term (subject always to the terms of any collective licenses in respect of the performance of sound recordings) to stream audio clips of not more than thirty (30) seconds, and use album Artwork and artists' names, likenesses and biographical material provided to SNOCAP by COMPANY to promote Downloads of Recordings only (subject to any artist-related restrictions as to which COMPANY gives SNOCAP notice).
- 1.2. **Acoustic Fingerprinting.** SNOCAP shall perform certain content identification services as described herein. SNOCAP may initiate and store an analysis of the acoustic properties of the Recordings (an "Acoustic Fingerprint").

## 2. **USE TERMS & RETAILER USE TERMS.**

- 2.1. **COMPANY Use Terms:** COMPANY shall have the sole and exclusive authority to establish and change COMPANY Use Terms with respect to the Recordings. SNOCAP shall comply with the COMPANY Use Terms and will make available for Exploitation only those Recordings, which were actually delivered to SNOCAP by COMPANY for Exploitation, or otherwise approved by COMPANY as Recordings to be made available by SNOCAP for Exploitation.
- 2.2. **Retailer Use Terms:** Subject to COMPANY's right to opt-out of a particular Retailer as set forth below, COMPANY authorizes SNOCAP or COMPANY (as COMPANY shall decide) shall enter into agreement(s) on terms to be agreed with one (1) or more Retailer(s) whereby SNOCAP facilitates the sale or blocking of COMPANY Recordings. SNOCAP shall provide COMPANY with an Interface Account. When COMPANY first signs up for an Interface Account, SNOCAP may have previously entered into agreement(s) with one (1) or more Retailers in respect of providing SNOCAP Services to such Retailers. For each such Retailer then or in the future listed in the Interface Account, COMPANY will be presented, through the Interface Account, Retailer Use Terms. If COMPANY does not opt-out of a particular Retailer though the Interface Account within fifteen (15) business days after such presentation, COMPANY

will be deemed to have accepted such Retailer Use Terms and SNOCAP will make COMPANY Content available to such Retailer in accordance with the Retailer Use Terms. Any additional Recordings that COMPANY Registers, will be automatically made available to each Retailer in accordance with the Retailer Use Terms.

- 2.3. If COMPANY desires for a Retailer to cease Content Sales, COMPANY must modify its Use Terms so that COMPANY's Registered Content is blocked for a particular Retailer or otherwise opt out of such Retailer Use Terms. COMPANY acknowledges, and agrees that the distribution of Unregistered Content is solely up to each Retailer. It is COMPANY's sole responsibility to review the Interface Account from time to time and to opt-out of such Retailers or to modify COMPANY Use Terms if the Retailer or the Retailer Use Terms are objectionable to COMPANY.

**3. SNOCAP MYSTORE.** Separate and apart from the Retailer arrangement described above, SNOCAP offers a distinct sales and distribution opportunity through its SNOCAP MyStores. The SNOCAP MyStore is an online store that provides a sales and/or distribution opportunity for COMPANY Registered Content whereby such a virtual storefront may be inserted into any product or service that has the capability of rendering html (such as, by way of example only, and not limitation, a web page). COMPANY shall be able to add to, delete, and modify the Registered Content in the SNOCAP MyStore(s) through the Interface Account. COMPANY's Interface Account may be used solely by COMPANY and/or COMPANY's authorized users. The Interface Account is password protected. COMPANY shall be solely responsible for the security of passwords and shall not share the Interface Account password with anyone except through procedures for multiple users of an Interface Account or as SNOCAP otherwise requires. By signing up for an Interface Account, COMPANY is not automatically enabling the SNOCAP MyStore. COMPANY may elect to enable and use the SNOCAP MyStore, from the Interface Account by following the instructions accessible through the Interface Account. In addition, upon establishing an Interface Account, SNOCAP may make other processes available to COMPANY for enabling the SNOCAP MyStore(s). If COMPANY uses the SNOCAP MyStore, COMPANY agrees that all of the terms and conditions in this Agreement apply. COMPANY acknowledges, agrees and understands that the SNOCAP MyStore consists in part of html computer code language and it is possible because of the functionality of the html computer code language (the "**HTML Code**") for a person (e.g., a third party other than COMPANY) to replicate the HTML Code such that links to COMPANY Registered Content could occur on any web site that accepts HTML Code.

**4. DELIVERY OF CONTENT.** COMPANY shall deliver to SNOCAP all Recordings, along with associated Artwork (collectively, "**COMPANY Content**"), in a mutually agreeable format. As part of the initial delivery of COMPANY Content and in connection with any updates, COMPANY shall enter Use Terms into the Interface Account and/or transmit to SNOCAP Use Terms and an accompanying electronic list of Recordings, including the necessary metadata required to link each of the Recordings to each Use Term (e.g. UPC or ISRC and Track Number) ("**Use Terms**"). COMPANY agrees to submit updates of the COMPANY Content in a mutually agreeable format. In addition, COMPANY may elect to Register updates through the Interface Account as directed by SNOCAP or as provided in SNOCAP's then current content delivery specifications and requirements guidelines, as amended from time to time.

**5. TERM.** The initial term of this Agreement shall commence upon the Effective Date and continue for two (2) years, unless sooner terminated in accordance with this Agreement (the "**Initial Term**"). Following the Initial Term, this Agreement shall renew automatically for successive three (3) month terms (each a "**Renewal Term**") unless either party gives the other not less than thirty (30) days prior written notice in advance of a Renewal Term of its intent not to

renew the Agreement. For the purposes of this Agreement, the Initial Term and any Renewal Term(s) shall be collectively referred to herein as the “**Term.**” Except, as explicitly set forth herein, upon the expiry or earlier termination of the Term all rights granted herein shall immediately cease.

## **6. RECORDINGS.**

- 6.1. Recordings shall include all sound recordings that COMPANY makes available to SNOCAP for re-sale as digital music Downloads during the Term. COMPANY shall have the right to exclude and/or withdraw any Recording from Exploitation by SNOCAP hereunder.
- 6.2. SNOCAP agrees to accept the digital delivery of Recordings from the party designated by COMPANY.
- 6.3. SNOCAP shall not be authorized to exploit COMPANY’s sound recordings/Artwork/other content (“**COMPANY Content**”) in any manner or form not expressly authorized herein. SNOCAP shall not pledge, mortgage or otherwise encumber any part of COMPANY Content. COMPANY Content used by SNOCAP pursuant to this agreement shall reside solely on a network server controlled by SNOCAP and shall be secured with restricted access.
- 6.4. It is a further condition of this agreement that SNOCAP makes available for Download sale all Recordings supplied by COMPANY to SNOCAP, with the intention and effect that SNOCAP shall not under any circumstances “cherry-pick” COMPANY’s Catalog of Recordings.
- 6.5. SNOCAP further agrees to (i) if so requested in writing by COMPANY confirm to us which Recordings have been delivered to them within ten (10) business days of their delivery, (ii) use commercially reasonable efforts to make available for Download sale all Recordings delivered within sixty (60) days of their delivery, (iii) if so requested in writing by COMPANY confirm to us which Recordings have been made available, and (iv) if so requested by COMPANY confirm to us which Recordings have not been made available and the reasons why.

## **7. FEES.**

### **7.1. Transaction Fee:**

- 7.1.1. During the Term for transactions other than occurring through a SNOCAP MyStore, SNOCAP shall be entitled to a transaction fee (“**Transaction Fee**”) equal to Two and One-Half Percent (2.5%) of the sum of the Proceeds paid to the COMPANY by each Retailer for Content Sales of Recordings for which SNOCAP has provided COMPANY with the SNOCAP Services in respect of such Content Sales during the applicable Accounting Period.
- 7.1.2. Where COMPANY enters into an agreement with a Retailer and is accounted Proceeds directly, COMPANY shall pay SNOCAP the Transaction Fee within thirty (30) days of receiving the applicable Proceeds;
- 7.1.3. Where SNOCAP enters into an agreement with a Retailer and is accounted Proceeds directly, SNOCAP shall retain the Transaction Fee from Proceeds before accounting the balance of the Proceeds to COMPANY in accordance with Section 7.2 below.
- 7.1.4. For the sake of clarity, COMPANY shall be exclusively entitled to establish and set the wholesale prices for Content Sales.

7.2. **SNOCAP MyStore Fees.**

7.2.1. For Content Sales that occur through a SNOCAP MyStore, SNOCAP shall deduct from Proceeds a Transaction Fee equal to:

7.2.1.1. Thirty Cents (US\$0.30) for each single song Download in the USA that occurs through a SNOCAP MyStore(s);

7.2.1.2. an amount to be agreed between COMPANY and SNOCAP for each single song Download in countries other than the USA that occurs through SNOCAP MyStore and each country may be subject to a different fee;

7.2.1.3. an amount that is the greater of Thirty Percent (30%) of the retail price for the applicable Album and Thirty Cents (US\$0.30) for Album Downloads occurring through a SNOCAP MyStore. For purposes of transmissions occurring by means of the SNOCAP MyStore, “**Album**” shall mean two (2) or more single song Downloads that are designated by COMPANY to be sold as a bundle.

7.2.2. For the avoidance of doubt, SNOCAP shall (i) only charge COMPANY the SNOCAP MyStore Transaction Fee for all Content Sales in respect of which SNOCAP has collected payments from purchasers and for which COMPANY has been paid for such Content Sales; and (ii) have the right to deduct the aggregate amount of the SNOCAP MyStore Transaction Fees from Proceeds in accordance with Section 7.1.

7.2.3. For the sake of clarity, COMPANY shall be exclusively entitled to establish and set the wholesale prices for Content Sales through the SNOCAP MyStore; provided that the SNOCAP MyStore Transaction Fee shall apply to all Downloads, regardless of the retail prices for Content Sales exclusively set by COMPANY.

7.3. **Direct Payment by Retailers:** For transactions other than through a SNOCAP MyStore COMPANY may elect to receive Proceeds directly from one (1) or more Retailers (“**Direct Payment**”). If COMPANY elects Direct Payment, COMPANY shall look solely to the particular Retailer(s) concerned for all such payments; provided, however, as a condition of such Direct Payment, that COMPANY shall irrevocably instruct each Retailer providing Direct Payment to COMPANY in a letter of direction, the form of which shall be mutually approved by SNOCAP and COMPANY, to pay to SNOCAP the Transaction Fee as and when the Transaction Fee becomes payable.

- 7.4. **Favored Provider.** SNOCAP shall treat COMPANY as a most favored SNOCAP Content Provider. The Transaction Fees granted hereunder shall be the most favorable available from SNOCAP for any SNOCAP Content Provider that licenses its Content to SNOCAP for Downloads through SNOCAP MyStore(s) to End Users. If, during the Term of this Agreement, SNOCAP enters into arrangements with any SNOCAP Content Providers providing such provider more favorable (to the provider) Transaction Fees, then: (a) SNOCAP shall, within thirty (30) calendar days after the effective date of such offering, notify COMPANY; and (b) this Agreement shall be deemed to be automatically amended to provide COMPANY with the more favorable (to the provider) Transaction Fees, effective as of the date of such offering to such provider of such more favorable (to the provider) Transaction Fees.
- 7.5. For each Download of COMPANY's Recordings, SNOCAP shall pay COMPANY's Wholesale Price to COMPANY. COMPANY may vary the Wholesale Price from time to time and COMPANY shall give SNOCAP no less than thirty (30) days prior notice of price changes. COMPANY shall make all changes to the Wholesale Price through the SNOCAP Interface.

## 8. **ACCOUNTING.**

- 8.1. **Statements:** Statements as to COMPANY Net Proceeds payable hereunder shall be delivered by SNOCAP to COMPANY within thirty (30) days after the end of each calendar month. Concurrently with the rendition of each statement, SNOCAP shall pay COMPANY amounts shown to be due by such statement. No statement need be rendered or payment need be made by SNOCAP for any such monthly period during which the total amount due COMPANY is less than Twenty Dollars (US\$20.00) and SNOCAP shall have the right to holdover such amounts until such time as the termination of the Term or COMPANY's Net Proceeds total an amount that is more than Twenty Dollars (US\$20.00).
- 8.2. **Reports:** SNOCAP's reports shall set forth, in reasonable detail, the name of the Artist, the name and quantity of Digital Masters sold, and, if the Digital Masters were sold by a Retailer, the report shall include the identity of the Retailer that conducted such sales during such calendar month, together with the applicable Wholesale Price and total COMPANY's Net Proceeds payable in respect of such Content.
- 8.3. **Audit Rights:** COMPANY, at its own expense, shall have the right to designate a certified public accountant who is not being paid on a "contingent fee" basis (an "**Auditor**", or other experienced music industry royalty auditor), to examine, on at least thirty (30) business days' prior written notice to SNOCAP, during normal business hours, SNOCAP's relevant books and records solely for the purpose of confirming the accuracy of an accounting statement (an "**Audit**"). The Auditors must act under a confidentiality agreement consistent with the confidentiality terms herein. COMPANY shall not conduct an Audit more than once in any twelve (12) month period and only until eighteen (18) months after the termination or expiration of this Agreement. In the event that the Audit reveals inaccuracies, the party that owes money shall pay the other party within thirty (30) days. If the Audit reveals an underpayment by SNOCAP in excess of the greater of Five Percent (5%) of the amounts actually paid during the period the subject of the Audit and Five Thousand Dollars (US\$5,000.00), SNOCAP shall pay COMPANY's actual out-of-pocket Audit costs in respect of third party unaffiliated Auditors engaged by COMPANY solely in respect of the subject Audit of SNOCAP within thirty (30) days, subject to reasonable verification thereof by SNOCAP.

## **9. THIRD PARTY OBLIGATIONS.**

### **9.1. Royalties and Fees Relating to Exploitation of COMPANY Content:**

- 9.1.1. COMPANY acknowledges and agrees that SNOCAP's sole obligation as to COMPANY (and expressly excluding any music publishing designee or affiliate of COMPANY or any of COMPANY's affiliates) with respect to the payment of mechanical royalties shall be with respect to mechanical royalties that are payable, if at all, in connection with SNOCAP's use of non-dramatic musical works then in an effective term of copyright in the United States solely for purposes of the operation of the Database.
- 9.1.2. As between COMPANY and SNOCAP, COMPANY shall be solely responsible for, and shall pay, (a) any and all royalties, fees or other monies which are payable to any and all recording artists and any and all other royalty participants in connection with any and all Exploitations of COMPANY Content permitted hereunder and accounted to COMPANY, (b) mechanical royalties payable in connection with Content Sales of Recordings comprising of Compositions in the United States for which a mechanical royalty is payable under the laws of the United States (e.g., Section 115 of the United States Copyright Act and the accompanying regulations as and when promulgated by the U.S. Copyright Office or other authority) and in respect of which COMPANY has been accounted and paid for such Content Sales, and (c) any and all amounts required to be paid under collective bargaining agreements applicable to COMPANY or any of its affiliated recorded music operations in connection with any and all Exploitations of COMPANY Content permitted hereunder and accounted and paid to COMPANY for such Content Sales.
- 9.1.3. SNOCAP acknowledges and agrees that COMPANY's and SNOCAP's standard policy will be to attempt to oblige the applicable Retailers to be solely responsible for, and to pay, any and all performance and/or publishing royalties and/or fees (including, without limitation, mechanical royalties and performance royalties in respect of Compositions embodied in COMPANY Content) required to be paid by law or by virtue of industry-wide agreement(s) or blanket licenses in connection with Exploitations of COMPANY Masters.
- 9.1.4. COMPANY and SNOCAP further acknowledge and agree that if a potential Retailer refuses to agree to pay any and all sums payable with respect to the reproduction, distribution, transmission, and public performance of the Compositions (save in respect of mechanical royalties for Content Sales in the USA which are COMPANY's responsibility in accordance with the foregoing), and if COMPANY does not agree to make such payments with respect to such sums as may be payable, neither SNOCAP nor COMPANY shall be obligated to approve or enter into a SNOCAP Retailer Agreement with such potential Retailer with respect to the COMPANY Catalog. If a Retailer fails to comply with any obligations it assumes to pay mechanical or performance royalties under a COMPANY Retailer Agreement, neither COMPANY nor SNOCAP shall be in breach of this Agreement.
- 9.2. **COMPANY Metadata:** COMPANY shall use best efforts to deliver accurate COMPANY Metadata; provided that immediately following its discovery that any such COMPANY Metadata is inaccurate, COMPANY shall immediately notify SNOCAP and all Retailers of such inaccuracy through the SNOCAP Interface Account, instruct

SNOCAP whether to permit Content Sales of the associated COMPANY Masters or COMPANY Artwork until COMPANY is able to correct such inaccurate COMPANY Metadata and export corrected COMPANY Metadata to SNOCAP.

- 9.3. **COMPANY Obligations Relating to COMPANY Catalog or Content:** COMPANY represents and warrants that COMPANY has the sole and exclusive right throughout the Territory to enter into this Agreement and to perform all of its terms, and no consent of a third party is necessary, desirable or required in order for COMPANY to enter into this Agreement or to make the COMPANY Content available as set forth herein and in the Use Terms. COMPANY further represents and warrants that COMPANY owns or exclusively controls (subject to any territorial restrictions of which COMPANY has advised SNOCAP) the COMPANY Catalog and neither the COMPANY Catalog, nor Exploitations of the COMPANY Catalog in accordance with this agreement and the Use Terms, infringe upon the rights of any person, firm, corporation or other entity, including, without limitation, rights of copyright, publicity, trademark, or comparable intellectual property rights.

## **10. REGISTRATION AND DISPUTE RESOLUTION POLICY.**

- 10.1. With respect to disputes among SNOCAP Content Providers (including COMPANY), SNOCAP will maintain and abide by the first Registration entered into the Database unless and until SNOCAP receives (a) a court order which requires SNOCAP, or the first Registered SNOCAP Content Provider to cause SNOCAP to transfer a Registration to another SNOCAP Content Provider, or (b) a notice of transfer document (the “**Notice of Transfer**”) delivered electronically by the first Registered SNOCAP Content Provider, or such other document signed by the first Registered SNOCAP Content Provider, which instructs SNOCAP to transfer a Registration to another SNOCAP Content Provider
- 10.2. With respect to disputes among COMPANY and third parties, SNOCAP will cease delivering, or otherwise making available, such Digital Content to Retailers until the resolution of such dispute; provided that if SNOCAP is fully indemnified by COMPANY and all third parties with regard to such dispute (pursuant to an indemnification letter which is, in form and substance, acceptable to SNOCAP), then SNOCAP shall not unreasonably cease delivering, or otherwise making available, the Digital Content to Retailers.
- 10.3. COMPANY hereby acknowledges the Registration and dispute resolution policy set forth in this Section 10.3 and agrees to waive any action against SNOCAP and indemnify SNOCAP as described in Section 13.3 for (x) all claims against SNOCAP relating to or arising from this Registration and dispute resolution policy and/or (y) SNOCAP’s actions or omissions in accordance with the Registration and dispute resolution policy, other than with respect to SNOCAP’s fraud or gross negligence in connection therewith
- 10.4. **Contractual Transfers of Rights.** If COMPANY acquires digital distribution rights in any Digital Content, which are the subject of a Registration, COMPANY shall Register such Digital Content following SNOCAP’s receipt of a Notice of Transfer from such Third Party SNOCAP Content Provider. If COMPANY sells, assigns, exclusively licenses or otherwise transfers digital distribution rights in any COMPANY Content to a Third Party SNOCAP Content Provider, COMPANY shall, upon its execution of the transfer document(s) relating to such transfer, furnish a Notice of Transfer to SNOCAP in respect of such COMPANY Content such that SNOCAP may transfer the

Registration covering such COMPANY Content and remove such COMPANY Content from the COMPANY Catalog in the Database.

## **11. DISCLAIMER; LIMITATION OF LIABILITY.**

- 11.1. **Warranty Disclaimer:** SNOCAP does not represent or warrant that the SNOCAP MyStore, the SNOCAP Services or any other items furnished by SNOCAP under this Agreement are free from viruses, bugs, errors, defects or deficiencies or that use of the SNOCAP MyStore or the SNOCAP Services will be uninterrupted or error-free. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE DATABASE, THE SNOCAP ENABLING INTERFACE, THE SNOCAP SERVICES, AND ANY OTHER ITEMS PROVIDED BY SNOCAP UNDER THIS AGREEMENT, ARE PROVIDED WITH NO WARRANTIES OF ANY KIND, AND SNOCAP DISCLAIMS, AND COMPANY HEREBY WAIVES, ALL WARRANTIES (OTHER THAN THOSE EXPRESSLY STATED HEREIN) WITH RESPECT TO THE DATABASE, THE ARCHIVE, THE SNOCAP ENABLING INTERFACE, THE SNOCAP SERVICES, AND ANY OTHER ITEMS PROVIDED BY SNOCAP UNDER THIS AGREEMENT, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.
- 11.2. **No Fault of SNOCAP:** SNOCAP shall not be deemed to be in breach of its obligations hereunder and SNOCAP shall not be deemed to have failed to provide the SNOCAP Services to the extent that any such purported breach or failure results from any of the following: (a) use software, hardware or other items not furnished by SNOCAP; (b) use not in accordance with this Agreement; (c) unauthorized modification, damage, or misuse by COMPANY, any Retailer or any third party; (d) unauthorized or unapproved combination of the SNOCAP MyStore or the SNOCAP Services with COMPANY's computer system or any other goods, services or items provided by COMPANY, a Retailer, or any third party; (e) any failure of COMPANY to comply with this Agreement; or (f) any other cause beyond SNOCAP's reasonable control.
- 11.3. **Errors in Use Terms or Metadata:** SNOCAP shall not be liable to COMPANY, Retailers, or to any other party (including, without limitation, recording artists) in connection with: (a) any errors or omissions by COMPANY in Use Terms; provided that SNOCAP's applications of such Use Terms are accurate; or (b) SNOCAP's use of COMPANY Metadata provided to SNOCAP by COMPANY.
- 11.4. **Security Disclaimer:** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR WITH RESPECT TO INCIDENTS ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL ACTS OF SNOCAP OR ITS EMPLOYEES OR AGENTS, WITHOUT REGARD TO ANY BASIC INSTALLATION OR OPERATIONAL SECURITY GUIDELINES WHICH MAY BE PROVIDED BY SNOCAP WITH THE DATABASE, THE SNOCAP ENABLING INTERFACE OR THE SNOCAP SERVICES, COMPANY SHALL REMAIN SOLELY AND EXCLUSIVELY RESPONSIBLE FOR THE CONTROL, OPERATION AND SECURITY OF COMPANY'S COMMUNICATIONS MADE THROUGH ACCESS TO OR USE OF THE DATABASE, THE SNOCAP ENABLING INTERFACE AND THE SNOCAP SERVICES, AND SNOCAP DISCLAIMS, AND COMPANY HEREBY WAIVES, ANY SUCH RESPONSIBILITY BY SNOCAP. COMPANY HEREBY ACKNOWLEDGES THAT SNOCAP HAS INFORMED COMPANY

THAT THE INTERNET IS NOT A SECURE MEDIUM, MAY BE INHERENTLY UNRELIABLE AND SUBJECT TO INTERRUPTION OR DISRUPTION AND MAY BE SUBJECT TO INADVERTENT OR DELIBERATE BREACHES OF COMPANY'S SECURITY.

- 11.5. **Limitation of Liability:** IN NO EVENT WILL SNOCAP HAVE ANY LIABILITY TO COMPANY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), INDEMNITY OR OTHERWISE) WHETHER OR NOT SNOCAP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT WILL SNOCAP'S OR COMPANY'S TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT UNDER ANY THEORY OF LAW EXCEED THE AGGREGATE MONIES PAYABLE BY SNOCAP TO COMPANY HEREUNDER DURING THE TERM PRECEDING THE DATE THE PARTICULAR CAUSE OF ACTION WAS FILED IN A COURT OF COMPETENT JURISDICTION. THE FOREGOING LIMITATION OF SNOCAP'S LIABILITY SHALL NOT APPLY TO ANY FRAUDULENT ACTS, GROSS NEGLIGENCE, OR INFRINGEMENT OF ENFORCEABLE COPYRIGHTS IN AND TO COMPANY'S CONTENT CAUSED BY SNOCAP'S ACTIONS.

**12. CONFIDENTIALITY.** Each party agrees to maintain in confidence all Proprietary Information (as hereinafter defined) disclosed or to be disclosed to it before, at the time of, or following the execution and delivery of this Agreement. Proprietary Information received by or disclosed to a party (the "**Receiving Party**") or any of its Agents (as hereinafter defined) from another party (the "**Disclosing Party**") (A) shall not be reproduced or copied in whole or part, except for use as authorized in this Agreement and (B) shall, together with any full or partial copies thereof, be destroyed when no longer needed. The Receiving Party shall use Proprietary Information only for the purposes contemplated by this Agreement. The Receiving Party may disclose Proprietary Information only to those of its officers, directors, employees and other authorized representatives (collectively "**Agents**") who have a need to know such information and shall inform such Agents of the terms of this Section 12. If a Receiving Party is required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand, any informal or formal investigation by any governmental or governmental agency or authority or other similar process) to disclose any Proprietary Information of a Disclosing Party, or is advised by its legal counsel that disclosure of any Proprietary Information of the Disclosing Party is required in order to comply with applicable government laws or regulations, then such Receiving Party shall (a) promptly notify the Disclosing Party in writing of the circumstances surrounding such request or requirement and (b) cooperate with such Disclosing Party in any efforts the Disclosing Party makes or requests the Receiving Party to make in order to seek or obtain a protective order or other remedy or to resist or narrow such request or requirement or to otherwise assure that such Proprietary Information is withheld from public availability. "**Proprietary Information**", as used herein, shall mean any proprietary ideas, plans and information, including information of a technological or business nature, trade secrets, trade names, slogans, copyrights, computer software, technology, know-how, intellectual property, Data (including customer data), marketing plans, summaries, reports, or mailing lists, in each case whether in tangible or intangible form. Information in tangible form shall be Proprietary Information if it is marked "proprietary" or "confidential" or bears a marking or legend of like import or restricting its use, copying or dissemination or is identified as being confidential in a letter or other written communication sent to the Receiving Party prior to or contemporaneously with disclosure to the Receiving Party. Information, whether in tangible or intangible form, also

shall be Proprietary Information if such information would logically be considered proprietary or confidential under the circumstances of the disclosure. “**Proprietary Information**” includes the contents of this Agreement. Information will not be deemed to be Proprietary Information, and the Receiving Party shall have no obligation with respect thereto, to the extent such information: (i) is already known to the Receiving Party at the time of receipt; (ii), becomes known to the Receiving Party through disclosure by a third party not subject to an obligation to maintain the confidentiality thereof; (iii) is already publicly available prior to receipt or disclosure or subsequently becomes publicly available without any fault of the Receiving Party or any of its Agents; or (iv) is independently developed by the Receiving Party.

### **13. OTHER IMPORTANT PROVISIONS.**

- 13.1. **Notices:** All notices hereunder shall be given by registered post, to the respective addresses below:

To **COMPANY:** [address of COMPANY]

To **SNOCAP:** General Counsel  
SNOCAP, Inc.  
201 3rd Street, Second Floor  
San Francisco, California 94103 USA

- 13.2. **Representations and Warranties of SNOCAP:** SNOCAP warrants and represents that (i) it has the right and authority to enter into this agreement (ii) the conduct of its Download service complies with all applicable laws (iii) it has and will use the necessary technical capabilities to adhere to the restrictions set out in this agreement and to accurately monitor the delivery and sale of Downloads of Recordings.
- 13.3. **Indemnification:** Each party agrees to and does hereby indemnify save and hold as harmless the other party from any and all loss and damage (including reasonable legal fees) relating to, arising out of or resulting from a breach by a party of its obligations and/or warranties hereunder. If any claim for which a party is obligated under this Section 13.3 to provide indemnification (an “**Indemnifying Party**”) is asserted by any third party against or sought to be collected from any party indemnified hereunder (an “**Indemnified Party**”), such Indemnified Party shall promptly notify the Indemnifying Party of such claim. The Indemnifying Party shall, at its own expense, assume the conduct, and control of the settlement or defense thereof, provided that the Indemnifying Party shall permit the Indemnified Party to participate in such settlement or defense through counsel chosen by the Indemnified Party so long as the fees and expenses of such counsel are borne by the Indemnified Party. The Indemnified Party shall make available to the Indemnifying Party and its attorneys and accountants all books and records of the Indemnified Party specifically relating to such proceedings or litigation, and the parties hereto agree to render to each other such assistance as they may reasonably require of each other in order to ensure the proper and adequate defense of any such action, suit or proceeding. The Indemnified Party shall, at the Indemnifying Party’s request, cooperate fully with, the Indemnifying Party in any controversy, which may arise with third parties, or litigation, which may be brought by third parties concerning this Agreement or any rights hereunder.
- 13.4. **Termination:** Either party shall have the right to terminate forthwith this Agreement and the rights granted herein prior to the expiration of the Term in the event that the other party (i) becomes insolvent, (ii) files a petition in bankruptcy, (iii) makes an assignment for the benefit of creditors, or (iv) breaches any representation, obligation or

covenant contained herein, unless such breach is cured prospectively, no later than thirty (30) days from the date of receipt of notice of such breach. Notwithstanding anything to the contrary herein, absent the written consent of the COMPANY, COMPANY shall be entitled to terminate this Agreement and the rights granted herein forthwith in the event that a third party purchases and/or acquires a majority shareholding and/or controlling interest in SNOCAP and/or SNOCAP's holding company and/or any entity controlling SNOCAP (whether de jure or de facto). Upon the expiration or earlier termination of this agreement, all COMPANY Content, including all recordings, files, and Artwork shall be promptly deleted or destroyed by SNOCAP.

- 13.5. **Assignment**: No party may assign or delegate any of its rights under this Agreement, except with the prior written consent of the other party, which consent shall not be unreasonably withheld. All assignments of rights are covered by this Section 13.5, whether voluntary or involuntary, by dissolution, operation of law, or any other manner, except that a change of control of the ownership of the capital stock of a party and a merger in which a party participates, regardless of whether it is the surviving or disappearing corporation, shall not constitute an assignment of rights. Any purported assignment of rights or delegation of performance in violation of this Section 13.5 is void. This Agreement shall be binding on the parties' respective permitted successors and assignees.
- 13.6. **Public Announcements**: No party shall make, or cause to be made, any press release or public announcement in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed, and the Parties shall cooperate as to the timing and contents of any such press release or public announcement.
- 13.7. **Severability**: If any term or other provision of this Agreement is found to be invalid, illegal or unenforceable, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect, and the parties hereto shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible.
- 13.8. **Relationship of Parties**: Nothing contained in this Agreement shall, or shall be deemed, to place the parties in a relationship of partners or joint venturers; and neither party shall have the power to obligate or bind the other party in any manner whatsoever, except as set forth expressly herein.
- 13.9. **Amendment**: This Agreement may not be amended except by an instrument in writing signed by the parties.

- 13.10. **Waiver**: No action or inaction by either party shall be deemed to be a waiver of any term or condition of this Agreement unless expressly set forth in writing signed by the party to be charged. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition, of this Agreement. The failure of any party to assert any of its rights hereunder shall not constitute a waiver of any of such rights.
- 13.11. **Force Majeure**: If either party's material performance (but excluding the obligation to pay monies to the other party) hereunder is delayed or becomes impractical because of any act of God, fire, earthquake, strike, civil disorder, terrorist act, war, act of government, any order, regulation or action of any union or association of artists affecting such party or such party's industry as a whole, such party shall not be deemed in breach of this Agreement for a maximum period of three (3) months from when the performance should have occurred.
- 13.12. **Governing Law; Jurisdiction**: This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without regard to its choice of laws principles or laws regarding the conflict of laws. Any dispute arising out of or relating to this Agreement shall be subject to binding arbitration in San Francisco County, California under the auspices and the then-current Commercial Arbitration Rules of the American Arbitration Association. Judgment may be entered on the arbitrator's decision in any court having jurisdiction. COMPANY and SNOCAP shall each pay one-half of the costs and expenses of such arbitration, and each of the parties shall separately pay its counsel fees and expenses.
- 13.13. **Entire Agreement**: This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous agreements, covenants, undertakings, representations and warranties, whether written or oral, between the parties with respect thereto.

#### **14. DEFINITIONS.**

- 14.1. **"Accounting Period"**: means each calendar month (or shorter period if the Term expires or is terminated prior to the completion of a calendar month) during the Term.
- 14.2. **"Acoustic Fingerprint"**: means an analysis of the acoustic properties of COMPANY Content such as a unique alphanumeric identifier generated from the audio properties of sound embodied on an audio file.
- 14.3. **"Artwork"**: means with respect to any Recording, a digital file embodying artwork associated with such Recording.
- 14.4. **"COMPANY Catalog"**: means any and all of COMPANY's Content in the Database, as the same may be updated or otherwise changed from time to time during the Term.
- 14.5. **"COMPANY Metadata"**: means metadata associated with COMPANY Content, and delivered by COMPANY to SNOCAP for inclusion in the Database.
- 14.6. **"COMPANY Net Proceeds"**: means Proceeds less the applicable Transaction Fee.
- 14.7. **"COMPANY Retailer Agreement"**: means an agreement between COMPANY and a Retailer pursuant to which, among other things, COMPANY authorizes SNOCAP to provide the SNOCAP Services and to facilitate the delivery of COMPANY's Catalog from COMPANY's digital delivery partner, which COMPANY shall designate, to such Retailer and authorizes the Retailer to make Content Sales from such COMPANY Catalog in accordance with the COMPANY Use Terms.

- 14.8. “**COMPANY Use Terms**”: means the Use Terms established by COMPANY.
- 14.9. “**Composition(s)**”: means one (1) or more non-dramatic musical works or other dramatic, literary or other works embodied in Digital Masters and digitally transmitted or intended to be digitally transmitted in a Digital Master (or, with respect to Albums, coupled together as the physical counterpart of such Albums as were released by COMPANY, or as is otherwise designated by COMPANY in the Registration for such Albums), irrespective of length, including all spoken words and bridging passages, including any portion of public domain works claimed by an author, writer or music publisher. To the extent that a Composition is embodied in COMPANY Content, no Registration shall disclaim a license for a particular Composition.
- 14.10. “**Content Sale**”: means a completed sale by a Retailer or through a SNOCAP MyStore to an End User consumer by a digital transmission Download of an item of COMPANY Content.
- 14.11. “**Data**”: means all information and records, collected, processed, and compiled by SNOCAP, in the Database.
- 14.12. “**Database**”: means SNOCAP’s collection and maintenance of Data in a form available for access by SNOCAP Content Providers and Retailers through the SNOCAP MyStore and SNOCAP’s network facilities.
- 14.13. “**Download**”: means a permanent resident copy of an audio file that may be perceived by an End User using a personal computer or portable device.
- 14.14. “**End User**”: means a person who accesses or receives COMPANY Content via a Retailer and/or SNOCAP MyStore(s).
- 14.15. “**Exploitation**”: means the sale, license, and/or distribution of Recordings.
- 14.16. “**Interface Account**”: means an online portal made available by SNOCAP to SNOCAP Content Providers that consists of, among other things, a real-time list of Content available for Content Sales, and Provider Use Terms then included in the SNOCAP Digital Registry.
- 14.17. “**Proceeds**”: means the gross monies actually collected from a Retailer by SNOCAP or COMPANY (as applicable) in respect of COMPANY Content.
- 14.18. “**Registration**”: means a SNOCAP Content Provider’s notification to SNOCAP that the Recording identified in such notification is subject to such SNOCAP Content Provider’s control in the Database. “**Register**” or “**Registered**” shall have correlative meanings, and “**Unregistered**” means a Recording that has not been Registered. A “**Registrant**” is a SNOCAP Content Provider who makes a Registration.
- 14.19. “**Retailer Use Terms**”: means the terms upon which a Retailer intends to exploit Content.
- 14.20. “**SNOCAP Content Provider**”: means a party (including COMPANY) with which SNOCAP has a contractual relationship pursuant to which such party delivers Recordings, metadata and Artwork to SNOCAP and SNOCAP renders services in connection therewith.

- 14.21. **“SNOCAP MyStore”**: means an online digital commerce store making available for sale Downloads to SNOCAP customers and consisting of, among other things, a real-time list of the COMPANY Catalog, other Recordings, metadata, and Use Terms then included in the Database.
- 14.22. **“SNOCAP Services”**: services provided by SNOCAP pursuant to the terms and conditions of this Agreement.
- 14.23. **“Retailer”**: means any online retailer with which SNOCAP has entered into an agreement to provide SNOCAP Services to such retailer.
- 14.24. **“Territory”**: means the universe, when used in this Agreement with respect to particular Recordings, **“Territory”** means the country or countries where a particular Recording is designated in the COMPANY Use Terms as being available for Exploitation.
- 14.25. **“Third Party Content”**: means Digital Content Registered to a SNOCAP Content Provider other than COMPANY in the Database.
- 14.26. **“Third Party Work”**: means Recording(s), Registered to a SNOCAP Content Provider other than COMPANY, in the Database.
- 14.27. **“Use Terms”**: means the rules established by each SNOCAP Content Provider, which govern the Exploitation or prohibition against Exploitation by Retailers approved by the respective SNOCAP Content Provider of a particular item of Digital Content Registered in the Database to each such SNOCAP Content Provider.

Please sign below to indicate your acceptance of the above terms.

Yours sincerely,

Agreed and Accepted

**COMPANY**

**SNOCAP, INC.**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_