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Jay L. Cooper

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RECORDING CONTRACT NEGOTIATION: A PERSPECTIVE

*By Jay L. Cooper**

I. INTRODUCTION

At the outset of any discussion of recording contracts it must be stressed that certain underlying factors play a major role in defining the parameters of every negotiation: the bargaining power of the artist, the strength of the desire of the artist to be with the particular company, the type of company, and the strength of the desire of the company to obtain the services of the particular artist. An artist with apparent ability, and a recording company desirous of securing the artist's services, will invariably improve the attorney's bargaining position and his¹ ability to negotiate a more lucrative contract. Typically, the attorney's strength is directly proportionate to the degree to which the recording company wants the artist. The attorney who is sensitive to this balance is in a position to exercise unusual maneuverability for his artist and devise terms beyond the scope of the standard recording contract. Conversely, regardless of an attorney's skill or experience, his ability to obtain a particularly favorable deal is diminished when a recording company is less desirous of an artist.

Traditionally, attorneys represented an individual artist in negotiating her contract with a record company. After the contract was signed, the record company would provide an in-house producer or employ an independent producer to produce the artist. Essentially, the composition of the package was largely controlled by the record company. However, in recent years, there has been a substantial trend to-

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* Previously a professional musician, the author is a senior partner in the law firm Cooper, Epstein & Hurewitz of Beverly Hills. He received a J.D. degree from DePaul University in 1951 and was admitted to the California Bar in 1953. Billboard Magazine named him Entertainment Attorney of the Year in 1975. He has served as a member and officer on many intellectual property and entertainment law committees and symposium panels, has authored and edited numerous articles and books in the entertainment field, and was President of the National Academy of Recording Arts & Sciences from 1975 through 1977. He is currently a professor at Loyola Law School of Los Angeles, teaching, naturally, entertainment law.

1. I have used the word "his" for convenience in writing only. Every "his" is interchangeable with the word "her", and vice versa.

ward what might be termed the "all-in" package, where the services of the artist and producer are negotiated in one agreement. The package is controlled either by the producer who furnishes the services of the artist, or by the artist who agrees to furnish the services of a designated or non-designated producer.

Perhaps a brief description of the role of the producer is necessary. The producer is the overall creative director of the recording product and, in some respects resembles a motion picture director. He chooses the material to be recorded, the musicians, the particular recording studio and the engineer. He decides upon an arranger and is responsible for supervising the mastering of the final product. He works with the vocalist on her voice and style. Recently the producer has become so significant in our industry that many companies will enter into agreements with certain producers for substantial sums, even hundreds of thousands of dollars, predicated on the belief that he will deliver a successful artist or record, despite the fact there may be no particular artist contemplated when the contract is signed.

Most of the contract terms discussed in this article will be those of the "all-in" arrangement, which terms, aside from the royalty commissions and advances, are fairly similar to those in an ordinary artist contract.

Every company in the recording industry has its own contract "form" which varies as much as the individuals in the record business.² There can be a great disparity between the various form contracts—each company utilizing different language. In any event, one should realize that every word and sentence should be carefully scrutinized, even when an attorney becomes familiar with the contract of a particular company; for in the next negotiation, the company may have altered portions of the contract, thereby requiring a whole new analysis. Additionally, one must be aware that the omission of certain language, intentional or accidental, could ultimately affect the client's rights.

II. CONTRACT DURATION

Most contracts encompass a five-year period: a one-year initial term with four options, each to extend the initial term for an additional one-year period. Occasionally, contracts specify a flat three, six or even seven years, but the arrangement first mentioned above is the most

2. This article will attempt to provide a general guide to negotiation terms and principles, although it is not an attempt to cover *all* the possible negotiable items, and will refer throughout to clauses delineated in the sample contract provided in the Appendix.

common.³ In addition to the period of years, the company typically provides for the right to call for a certain minimum and/or maximum amount of product during the term (usually between six and ten LPs over the agreed period of time) with the right to extend the term of the agreement if the product is not delivered on time.⁴

Essentially, artists and recording companies have competing interests regarding contract duration and the amount of product to be delivered. The artist would like to keep her contractual commitment to the shortest period of time and the fewest required LPs to be delivered, to allow for renegotiation of the agreement should she achieve early success. However, the recording company would like to retain the artist under contract for the longest period of time allowable, along with the maximum amount of LPs to be delivered, claiming that it takes between two and three years and a significant amount of money to develop an artist and realize a return on its investment. Recording costs for relatively new artists range from \$75,000 to \$125,000 or more per album. A company firmly committed to an artist may spend \$100,000 to \$150,000 per album for promotion. If a company has spent this amount of money for three or four albums before an artist achieves commercial success, it may have an investment in the artist of close to \$1 million. If the contract was of short duration, the company would not have sufficient time or product to recover its investment. Therefore, such expenditures make multiple option periods highly desirable to a recording company.

Nevertheless, the onus of multiple options can be eased if a company's exercise of options is tied to certain conditions, such as the payment of advances. In order for the label to exercise its option for the next period, it could be required to pay the artist a specified amount of money, either as an advance against future royalties, a non-recoupable sum, or in the form of a specified album fund. There is no standard formula for determining these amounts. They may range from \$10,000 to \$1 million or more. If the company has to pay a large amount of money to exercise its option it will not do so unless it firmly believes in the artist. This insures the artist that either the recording company is committed to her future, or she will probably be free to sign with another label.

Another method used to guarantee further commitment by the label as a prerequisite to exercising the option is to require that the rec-

3. See the example of an Exclusive Artist's Recording Agreement, Appendix *infra*, ¶ 1(a)-(b) at A-1 [hereinafter cited as Sample Contract].

4. Sample Contract, *supra* note 3, ¶ 2 at A-2.

ord company release a certain amount of product,⁵ such as one LP, or perhaps that the company achieve a specified minimum amount of sales of the artist's records during the preceding year. The latter requirement may be difficult to compute, however, because all the facts and sales figures often are not known by the end of the year due to the record company's policy with respect to returns from the distributors. For that reason, the "minimum sales performance" method is not often used.

III. GUARANTEED RELEASE OF PRODUCT

One of the most important items in the contract negotiation is the guarantee of the release of a minimum amount of product.⁶ Records are the artist's life-blood. The artist's entire career depends upon having record product in the marketplace. Many years ago the artist might have been on the road ten years or more before becoming widely known throughout the country, after which she may have received an offer of a record contract. Today, subteens and teenagers are being offered record contracts; then the labels worry about getting them out in front of the public, a step for which many artists are often totally unprepared. It is very difficult for an artist to obtain work today, whether in a concert hall or a night club, unless she has record product. Promoters, colleges and night clubs are reluctant to engage an artist without available current recordings, because records are the primary vehicle of promotion in the personal appearance field today.

Until recently, one would ask for, and many times receive, a guarantee of two LPs to be released per year. However, if the artist did obtain such a guarantee, it could work to her detriment in that if she is unable to deliver the two LPs, the company will extend the term of the contract until the artist delivers the total number of albums agreed to. If this happens, a five year contract may turn out to run substantially longer than five years (subject to state law governing the maximum period of exclusive employment contracts), which is not uncommon in the industry. Once an artist has completed a number of albums, her creativity may slow. In addition, her time commitments, if she is successful, are such that with television, concerts and other personal appearances, she may not have the time or the energy to produce two albums per year.

In view of this, one current trend is to ask the company for a mini-

5. In our appended Sample Contract, *supra* note 3, no such provision was included.

6. *Id.*

mum and maximum guaranteed release of two albums per 18 month period and, if the label fails to release the product as agreed, the artist has the right to terminate the contract. If the label is not committed enough to the artist to release a certain minimum of record product in the marketplace, the artist should have the freedom to sever the relationship. Most record companies understand the problem and will agree to such a provision.

IV. ADVANCES

Initially, it should be stressed that recording costs as well as cash advances are all considered advances against royalties. The artist ultimately will repay all such advances out of her record sales royalties. Advances are not bonuses or gifts; they are more comparable to an interest-free loan which is repayable only from earnings. Thus, if the label advances the money for recording costs and the record does not sell, the recording company is out-of-pocket unless and until there are sufficient sales to allow the label to recoup the advance from the record sales royalties due to the artist. Consequently, an artist should be cognizant before going into a studio to spend \$100,000 or \$200,000 on recording that, should she be successful, she is spending her own money.⁷

There are various methods by which advances (other than actual recording costs) may be structured for payment to an artist. One, as previously discussed, is an advance of a specified sum upon exercise of an option to extend the term for an additional period of time.⁸ A common alternative is for the recording company to pay the artist a negotiated amount upon delivery of each album. The amount varies considerably based on the leverage of the artist, etc.

The rapid rise of recording costs has led to the development of still another type of advance: the "recording fund." Instead of the "option advance" or "delivery advance," attorneys are now negotiating for the artist to receive a flat sum (recording fund) to produce an album, out of which the artist pays all of the recording costs. To the extent that the recording fund exceeds actual recording costs, the artist is free to pocket the difference. The entire recording fund is, of course, an advance against royalties. The companies benefit from this method because it predetermines their recording costs exposure, and often reduces expenditures. The artist benefits from the increased awareness that she is spending her own money and that any savings realized between the

7. See Sample Contract, *supra* note 3, ¶ 4 at A-4.

8. See text accompanying notes 3-5 *supra*.

actual costs of production and the recording fund advance is hers to keep. If the artist is well-organized in her approach to recording, she may be able to retain a substantial amount of the recording fund as a personal advance.

Most companies are willing to start new artists with an album fund of about \$100,000 or \$150,000 per album, escalating on a per album or per year basis, over a five year period possibly, to \$400,000 or \$500,000 per album or more. There is no standard formula for the amount of the recording funds; they are a matter of negotiation and vary greatly.

The recording fund advance is best structured to the "all-in" arrangement where the producer and artist are in one package. The artist-only contract has in the past more commonly utilized the year by year advances, although recent trends indicate that the "album fund" is currently the most widely used for all types of deals.

V. RECORDING COSTS

As previously mentioned, it is custom and practice in the industry for recording companies to advance production costs and to recoup the total from the artist's or "all-in" (combined artist and producer) royalties. Essentially, all costs that are directly attributable to the production of the finished master tape (prior to the laquer master tape) which would include studio time, musicians, vocalists, editing, etc., are proper, chargeable recording costs. Nevertheless, there are certain charges which some companies will seek to deduct at accounting time as recording costs which are not in accordance with custom and practice in the industry. One of these items is promotion and/or advertising.⁹ This is not a proper recording cost and if the attorney so requests the company will normally delete such charges from the recording costs provision of the contract.

The label may also try to charge as recording costs to the artist advances paid to the producer.¹⁰ These are not proper recording costs in situations where the artist and producer have independent contracts with the record company, as advances paid to an independent producer are advances against that particular producer's royalties only.

Another expense sometimes included in the recording costs provisions refers to "all payments to the AFM."¹¹ The language disguises a major potential problem: there are various kinds of payments to the

9. See Sample Contract, *supra* note 3, ¶ 3 at A-3.

10. *Id.*

11. *Id.*

AFM (American Federation of Musicians), only some of which are properly recoupable as recording costs.

The union scale payments made to the musicians for recording sessions and the pension and welfare fund payments which are based on such amounts are proper recording costs. Additionally, however, the musicians' union collects from the recording companies approximately 1.2% of the income derived from sales of records for payments to the Music Performance Trust Fund and the Phonograph Record Special Payments Fund. For example, if the all-in royalty is 10% of retail, the royalty could be reduced to 8.8% unless the language was amended to bar recoupment of any AFM payments other than those based on payroll. These are not proper recording costs since the payments are triggered not by the recording but by the sale of the product.

An interesting example of the potential impact of the "all payments to the AFM" language arose while reviewing the contract of a major recording artist who had sold in excess of twenty million records and never received any royalties. In seeking to determine why she was never paid any royalties, we found that although the contract provided that she was to get a royalty of 1% of wholesale (which is equal to half a percent of retail), it was discovered that the contract also allowed the company to deduct all AFM payments, inclusive of the trust funds, which amount to 1.2% of retail. As a result, on the face of the contract, it appeared that she owed the company money each time one of her records sold!

VI. CREATIVE CONTROLS

The retention of creative control is of utmost importance to the artist in any negotiation. Many record companies tend to be less and less involved in the creative aspects of a recording career. The companies finance the record, promote the record, advertise it, and get it to the marketplace; but they do not necessarily exercise much input into the creative processes, particularly with an artist who they feel can deliver hit records. Therefore, most artists are in a position to ask for, and many times receive, if not complete control, at least mutual control over the selection of the material, the individual producer, the arranger, the studio, the engineer, and frequently album cover artwork and ad graphics.¹²

Occasionally, a company will step in either in isolated situations

12. The appended Sample Contract, *supra* note 3, provides the artist with none of these creative controls.

warranted by the facts or as a matter of general policy, and aggressively exercise its authority over the selection of material. Some record company executives not only like to select the material but also prefer to be in the studio to generally supervise the recording. Although these situations are rare, an attorney should know who these people are and advise his client what she can expect if she is going to deal with that particular company. It may be that the artist welcomes such close supervision.

While most of the big companies will not exercise such extensive creative authority, if they are unhappy with the masters delivered, they will advise the artist; but whether they must release the product regardless of such dissatisfaction, is a contractual matter. One solution to the contest over who has creative control is to agree on mutual approval of the creative elements. Generally, however, the trend is to give a certain degree of creative independence to the artist.

VII. PROMOTION AND ADVERTISING

This sensitive subject is very important to the artist because recording companies do not always promote and advertise each artist equally or at all. Accordingly, one should attempt to negotiate some protection for the client if it is at all feasible. It may satisfy an artist's ego to have a billboard on Sunset Boulevard, but it really has minimal impact on record sales when contrasted with other direct methods of reaching the consumer.

Companies are cognizant of the fact that sales increase significantly in a city in which an artist has performed, particularly when an act has a substantial impact in "live" performances; therefore, touring is an important promotional vehicle. However, at the date of writing this article (February, 1981), the ailing health of the recording industry has made many record companies somewhat reluctant to advance substantial funds to underwrite the cost of a promotional tour. If they do agree to participate at all, the labels usually prefer tying in the promotional tour with the release of an album and financing the tour only to the extent of the "shortfall" or the difference between the compensation the artist receives from the paid engagements and the costs of the tour.

The costs of financing a promotional tour today have become enormous. Artists may carry truckloads of equipment and as many as thirty-five people on the road with them and, although the record companies may furnish some of the required funds, the portion, if any, of these funds that will be recoupable from artist earnings is a matter of

negotiation. The record company, of course, will argue its utmost to have all such funds treated as advances against artist royalties.

Another form of promotional tour is one in which the artist (with or without her manager) travels to certain major cities to meet the press and local disc jockeys, with the purpose of creating interest in the artist's product and securing air play. Like the "performing" promotional tour, these costs are a subject of negotiation with respect to both amount and recoupability.

A further type of promotion which can be very effective is the purchase of air time for advertising. This method directly reaches the potential record-buying public by exposing a taste of the artist's performance and, therefore, should not be overlooked in the negotiation.

VIII. ROYALTIES

For many years it was considered standard in the industry to give a new artist (not the "all-in" package) a royalty of 5% of the suggested retail list price of records sold.¹³ Recently, new artists begin with between 6% and 9% of retail, and in some cases, even more. (For purposes of this discussion, there will be general references to *retail* royalties, since most companies frame their contracts in retail terms. As some companies compute royalties based on a wholesale price, one should know that a royalty of 5% of retail is roughly equivalent to 10% of the wholesale price).¹⁴

Normally, an independent producer who has contracted with a recording company to produce an artist under contract to the company will receive the following: a new producer may only receive in the vicinity of 2% of retail, if he has some degree of success or experience he will probably receive 3%, and if he has an outstanding history of accomplishment his percentage will probably be 4% and possibly 5%. Currently, by reason of the increased use of the "all-in" package, record companies have been giving approximately 11% to 12% of retail as a start to the combination involving a new artist, and up to 18% or more for one involving an established artist.

Greater complexities become evident when one attempts to *define* royalty terms.¹⁵ An artist's ability to receive payment is dependent upon his knowledge of the system and how it operates. The more spe-

13. See Sample Contract, *supra* note 3, ¶ 5 at A-4, 5.

14. See Sample Contract, *supra* note 3, ¶ 6 at A-5.

15. See Sample Contract, *supra* note 3, ¶ 19 at A-16, 17.

cific an attorney can be in this area, the greater protection afforded his client.

Currently, the most widely used suggested retail list price is \$8.98. It should be noted, however, that rarely do stores sell a record for \$8.98, nor do the record companies pay a royalty on the \$8.98 figure. They deduct certain items before the computation of royalties, one of those being a packaging allowance.¹⁶

One great source of frustration for attorneys and their clients in the computation process is that the packaging allowance is arbitrarily set by the recording companies and may vary greatly among labels. The language of various form recording contracts state the following: "Royalties on records sold in albums, jackets, boxes, etc., . . . shall be based upon the applicable suggested retail list prices . . . after deducting a packaging charge equal to — . . .," or "[W]e will pay only on the costs of replacement records" Neither manner of computation bears a true relationship to the actual packaging costs; the company simply deducts from the suggested retail price an arbitrary amount for packaging and reduces the royalty base accordingly. Currently recording companies deduct between 10% and 15% of retail for a single LP package, between 12-1/2% and 17% for a doublefold package, and between 20% and 25% for a tape, prior to computing the royalty. The deduction varies, of course, from company to company.

Another baffling practice is the increased (20% to 25%) deduction for tape packaging,¹⁷ in light of the fact that a tape box costs the same or less than an LP package. I cannot suggest an answer except to reiterate that this has been the custom in the industry.

Therefore, to calculate the royalty on a single-disc LP to this point, the company deducts, for example, the 10% packaging allowance from the \$8.98 suggested retail price ($10\% \times \$8.98 = \$.8980$), which reduces the royalty base to \$8.0820 (\$8.98 less \$.8980), translating into a royalty of \$.9698 per LP based on 12% "all-in" royalty rate ($12\% \times \$8.0820$).

However, the artist cannot expect to receive \$.9698 per album because some recording companies only pay on 90% of sales.¹⁸ There was, at one time, a logical reason for this: approximately 10% of records broke during shipping. Despite the fact that current technology has removed this risk, some recording companies continue to pay on 90% of sales. In reality, it is simply another method of reducing the

16. See Sample Contract, *supra* note 3, ¶ 6(e), at A-10.

17. *Id.*

18. See Sample Contract, *supra* note 3, ¶ 6(a) at A-5.

royalty base. However, as attorneys continue to question this point, some companies have capitulated and raised the base to 100%.

When the royalty statement arrives, the artist will also realize that the recording company does not pay him based on all the records "sold." The label will hold "reserves,"¹⁹ another policy which varies greatly among companies. Although records shipped by the record company are "sold," records are actually sold on a "full-return" privilege. This means that when the manufacturer ships to the distributor, and the distributor ships to the retail outlet, the store is entitled to return all unsold records to the distributor who then returns the unsold records to the record company. In theory, if 500,000 records are shipped, it is possible that most, if not all, may be returned. Therefore, in order to protect themselves against possible returns, the labels generally will pay the artist on the albums shipped less a certain percentage held in "reserve."

Obviously then, reserves are a critical point of negotiation. One major company was known to have held 90% reserves and never to have paid them. It is important to try to limit the percentage of reserves perhaps to no greater than 25% to 30% of records shipped and to require payment or liquidation of such reserves at a fixed time, from twelve to twenty-four months after the reserves were first withheld so that the artist knows when she will have a full and final accounting for all reserves.²⁰

We should now touch briefly on other aspects of current royalty structures. As previously outlined, the "all-in" package royalty may start at 12%, a rate which is not that difficult to secure in today's business. Therefore, the next move is to try to obtain royalty percentage increases on a year by year or album by album basis; for example, 12% in years one and two, 13% in years three and four, or 12% for the first two LPs, 13% for the following two LPs, and so forth.²¹

The "all-in" royalty, of course, includes the royalty payable to both the artist and the producer. As stated earlier, this "package" being controlled either by the artist (who has agreed in her deal with the record company to supply a producer) or the producer (who has agreed in his deal with the record company to supply an artist), the percentage split between the artist and the producer will vary according to their relative negotiating strengths. For example, a successful artist who has sold enough records to earn several platinum albums would be in a

19. See Sample Contract, *supra* note 3, ¶ 6(a) at A-5.

20. *Id.*

21. See Sample Contract, *supra* note 3, ¶ 5(b) at A-4, 5.

fairly strong position in a package arrangement to obtain an experienced producer for three or four percent. Thus, that artist who may have an "all-in" royalty of 14%, would probably retain for her own account no less than ten percentage points. An example to the contrary would be the case where a rather successful producer, who has negotiated an "all-in" royalty of approximately 14% and has signed a new artist to his production company, might only agree to give that artist six or seven percentage points, thus retaining for himself (at least in the early stages of the recording agreement) seven or eight percentage points.

Another standard formula popularly used is that of royalty increases based on sales; for example, 11% for the first 250,000 records sold, 12% of all sales between 250,000 and 500,000 units and 13% of all sales in excess of 500,000 records. Such royalty increases reward the artist for success without requiring her to go back to the company to renegotiate her royalties each time she has a successful record. Many companies have not opposed this method of escalating royalties based on sales because they too believe that substantial sales allow them the financial ability to reward the artist for her successful endeavors. This royalty structure also allows the company to negotiate lower percentages at the early stages of the artist's career on the premise that with success, royalties will automatically increase. There are as many formulas as there are companies and individuals.

Tapes generally sell for at least the same price or more than their counterpart discs and account for at least one-third of total record sales. However, for a number of years, the royalty for tapes had been paid at 50% of the otherwise applicable disc rate, so that if an artist received 10% for LPs in the form of discs, the company only paid 5% for tapes.²² The reason for this discrepancy was that the record companies licensed the right to manufacture tapes to specialized tape manufacturers who in turn paid the record companies a royalty. Today, most, if not all, record companies manufacture their own tapes. Consequently, there is no longer any justification for an artist to receive a lower royalty for tapes than for discs.

Historically, foreign royalties were paid at 50% of the domestic royalty rate²³ because, more often than not, the companies licensed the foreign rights to third parties and the percentage royalty received by the labels was not that substantial. However, in the last several years

22. See Sample Contract, *supra* note 3, ¶ 6(f) at A-6.

23. See Sample Contract, *supra* note 3, ¶ 6(a) at A-5.

the amount of such royalty has increased considerably. It is now possible for an artist to receive a foreign royalty equal to at least 75% of the domestic royalties, although the foreign royalty rate may vary for different countries. Again, the percentage obtained is based upon bargaining power, although generally one receives less than the domestic rate for sales in foreign countries. One should ask for foreign royalties equal to 100% of the domestic royalties for territories in which the licensee is affiliated with the domestic company, although there may be some resistance to this particular request. In any event, the current trend has been toward negotiating and receiving more than the traditional foreign royalty rate of 50% of the domestic rate.

It is also common practice in the industry to pay royalties equal to 50% of the domestic rate on budget records, records sold as premiums and records sold by record clubs.²⁴ Some companies attempt to negotiate payment of less than 50%, but custom and practice dictates at least a 50% rate for these types of record sales.

Another item which prompts considerable discussion is the recording companies' policies regarding "free goods." Essentially, the company will ship ten singles to a distributor marked "sold" and send three singles marked "free." (This number varies from company to company). I have never yet found a record store where one could obtain those "free" records free of charge, and must therefore surmise that free goods are simply a disguised discount. The wholesaler averages the price of the records he has received as though he were paying for all thirteen records. The recording company, however, allocates the receipts from such wholesaler to only the ten records marked "sold," pays royalties for ten records only, and does not pay any royalties for the three "free" records. Why? "Because that's our policy," the company will tell you. The bottom line is that it is one of the computations you must make in your determination of what the percentage royalty means in pennies for all records ultimately sold.

The "free" goods policy can also create problems in returns and the application of credits with respect to returns. If the contract does not provide otherwise, if the thirteen records (ten paid and three "free") are returned, the company might charge them all back against the records sold and not charge any against the records distributed free of charge. Usually, the label will agree to charge those returns in the same proportion in which they are originally shipped. For example, if one hundred records are shipped of which twenty are free, then, for

24. See Sample Contract, *supra* note 3, ¶ 6(j) at A-6, 7.

purposes of computing royalties, only 80% of the records would be charged against records sold.

It is very important to regularly audit the books and records of the companies, no matter how much faith or trust exists between the artist and the company on a professional basis. An audit of most companies could reveal substantial sums owed to the artist. There is always room for reasonable interpretation of the language of recording contracts, and one should never overlook "creative" accounting.

For some years now, I have been advocating that royalties be defined in the form of so many "pennies" or "dollars" per record sold. This would be a clear departure from the very complicated percentage formula under which for any number of reasons, various items are deducted from that percentage to arrive at a royalty base that is never quite definite or certain. Royalties could be fixed, for instance, on an "all-in" basis, at \$1.00 per record (which could go up or down in proportion to a fixed change in wholesale price). This would greatly reduce the complicated computations with respect to packaging deductions, free goods, discounts and other such amorphous items, and problems of accounting, auditing, and aggravation and apprehension would all be substantially alleviated both in the negotiating phase and at statement time.

IX. MISCELLANEOUS

In most agreements the copyrights in the sound recordings are owned perpetually by the record company,²⁵ which contends that it has advanced the cost of producing the record, has spent appropriate sums to promote it, and has agreed to pay substantial royalties based on record sales. In short, ownership is the reward for the investment and the inherent risks involved. However, in rare situations, and under the right circumstances, artists have been able to secure a reversionary right to their masters. This could become an important benefit should the artist remain prominent for several years. In any event, if the artist has sufficient bargaining power, the attorney should attempt to secure the reversion. The ultimate value of the reversionary right will only become known in the future.

Another point of concern to the artist is the coupling of masters.²⁶ Artists today are very particular about the arrangement or sequencing of cuts on an album, and they usually do not want that tampered with

25. See Sample Contract, *supra* note 3, ¶ 7 at A-8, 9.

26. Coupling is unrestricted in Sample Contract, *supra* note 3, ¶ 7(f) at A-9.

in any way. Further, they may not want their cuts put out on a record with those of another artist. This not only results in a reduction of royalties (since payment is based on only a portion of the record rather than the entire record) but may be creatively unacceptable as well. Typical coupling involve "greatest hits" or "best of" albums, television packages, premium packages, etc. The trend is to restrict or control coupling as much as possible so that each coupling request can be evaluated separately.

Another very significant item is a concept known as "cross-collateralization." Cross-collateralization is the combining of two or more contracts with respect to advances, debts and monies earned. The operative language may take the form of a separately identifiable paragraph labeled "cross-collateralization." However, it usually takes a more subtle form through the use of only three words, "or any other." The language may simply state, "the advances paid under this *or any other* contract are recoupable herein."

The most common problem related to cross-collateralization arises when an artist has a recording contract with one company and also has a songwriting contract with an affiliated publishing company. Under the terms of the recording contract, the artist may find that royalties from sales of the first 100,000 records are used to recoup the recording costs, which is not unusual. Under the normal songwriting-publishing agreement there are essentially no recoupable sums at all (except, of course, direct songwriter advances); consequently, the artist, as composer, would be paid from the first record sold. Without cross-collateralization, the artist would receive songwriting royalties for the first 100,000 records even though she did not receive royalties under the recording agreement. However, if the recording agreement contains the cross-collateralization language, the artist will not receive songwriting royalties or recording royalties until the recording costs are recouped from both her earnings as a recording artist and composer. It thus becomes apparent that this practice can have a major impact upon one's client and should be strenuously objected to.

Videodiscs and video cassettes are not, as yet, a significant factor as far as record sales are concerned. However, it does appear that there may be a substantial market in the future for these devices, and the possible value of these rights is just beginning to surface. Currently, both attorneys and recording companies are having problems in determining possible royalty structures. Recording companies are desirous of obtaining "sight and sound" (audio-visual) rights but it is difficult to predict where the industry and state of the art will go. As a result,

attorneys representing artists have attempted to withhold these rights from the record companies. A relatively common compromise is that neither side have the right to exploit such rights. In essence, this reserves to the artist the right of a separate future negotiation with the company on sight and sound rights at a time when it will be more apparent how much those rights may be worth.

A discussion of audio-visual devices prompts some mention of soundtrack rights. In the ordinary recording contract, there is a clause which states that if an artist performs on a television or motion picture soundtrack, she will not grant to the television or motion picture production company the right to embody such performance on a soundtrack album. If the recording artist is also an actor, that clause could potentially damage her career, because she could be forced to decline employment in situations where the motion picture company requires the granting of soundtrack album rights. If the artist is primarily a songwriter-performer, it may be difficult to prevent the recording company from imposing this restriction, the company contending that it has spent substantial sums developing the performer as a recording artist and would not wish to allow a motion picture company to reap the benefit of its investment by releasing records embodying the performances if the artist on their competing label. However, some record companies, realizing the promotional advantage of having an artist appear in a motion picture and the difficulty of achieving such "free" promotion if a ban on soundtrack records is imposed, will agree to compromise provisions, such as giving the third party record company the right to use the performance in a soundtrack LP, but reserving the sole right to release such records as singles or simply negotiating an override with the third party record company.

Of significance to a number of artists is the freedom to perform as a "sideman" (background musician or vocalist) notwithstanding the exclusivity provision in most recording contracts. In view of the fact that a number of artists earn substantial amounts performing on record dates for many companies and many artists during the year, it is important to exclude this type of service from such exclusivity provisions.

X. CONCLUSION

It must be stressed that everything is negotiable and variable in recording contracts if you have the right artist and the right set of circumstances. One is limited only by his imagination, creativity and the

company's ultimate desire to obtain the artist's services.*

* A brief note of thanks to my own "personal" editor, Ronnie Dashey, Esq., and for the additional help from Ann-Dominique Snyder.

APPENDIX

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EXCLUSIVE ARTIST'S RECORDING AGREEMENT

1. *Employment Term:*

(a) XYZ does hereby engage Artist's exclusive personal services in connection with the production of records for an initial period of one (1) year, as the same as may be extended or renewed, commencing on the date hereof. Artist does hereby accept such engagement and agrees to render such services solely and exclusively for XYZ during the term hereof upon the terms and conditions set forth herein.

(b) Artist hereby grants XYZ four (4) irrevocable options, each to renew this agreement for that period specified beside each option period in the "Duration" column of the Option Periods & Master Schedule below. The option periods shall run consecutively, beginning at the expiration of the prior operative period upon all of the terms applicable to the initial period, except as otherwise specified below. Each option period may be exercised by XYZ by written notice on or before the expiration of the then current period.

OPTION PERIODS & MASTER SCHEDULE

| Periods of This Agreement | Duration | Minimum No. of LPs |
|---------------------------|----------|--------------------|
| Initial Period | One Year | 1 LP |
| 1st Option Period | One Year | 1 LP |
| 2nd Option Period | One Year | 1 LP |
| 3rd Option Period | One Year | 1 LP |
| 4th Option Period | One Year | 1 LP |

(c) In the event that any master recordings which XYZ requests hereunder are due to be delivered to XYZ by Artist after the expiration of the operative period in which such master recordings were requested by XYZ (as set forth in the Delivery Schedule below) then said operative period shall automatically be extended so as to expire ninety (90) days after XYZ's release of such master recordings or six (6) months after the delivery of same, whichever is sooner. All other dates and time periods shall be adjusted accordingly.

2. *Product:*

(a) During each operative period of this agreement, Artist shall render exclusive personal services for XYZ as a performer in the pro-

duction of master recordings (hereinafter referred to as the "Masters"), which Masters shall be of satisfactory technical quality for the manufacture and sale of phonograph records and shall be in sufficient numbers to comprise the minimum number of LPs shown in the "Minimum Number of LPs" column in the Option Periods & Master Schedule in Subparagraph 1(b) above, or more at XYZ's request up to a sufficient number of Masters to compromise two (2) LPs; and upon such request, Artist shall record and deliver said Masters pursuant to the Delivery Schedule set forth in Subparagraph 2(d) below.

(b) The Masters shall embody performances by Artist of contemporary popular selections which have not been recorded at a "live" or "in concert" performance and which have not been previously recorded by Artist and released as records, whether hereunder or otherwise.

(c) XYZ shall have the right to reject any Master which is technically unacceptable or which XYZ reasonably deems to be offensive to reasonable standards of public taste or morals or which infringes on the rights of others. If XYZ properly rejects any such Master, Artist shall record for XYZ a substitute Master which does not embody such defect or material, as the case may be.

(d) The Masters produced hereunder shall be delivered to XYZ in accordance with the Delivery Schedule set forth below; and Artist shall not deviate from the Delivery Schedule without XYZ's written consent.

DELIVERY SCHEDULE

Initial Period:

| | |
|-----------------------|-------------------------------------------------------|
| 1st LP | Within ninety (90) days after the execution hereof. |
| 2nd LP (if requested) | Within ninety (90) days after XYZ's request therefor. |

Each Option Period:

| | |
|-----------------------|-----------------------------------------------------------------------|
| 1st LP | Within ninety (90) days after the commencement of each option period. |
| 2nd LP (if requested) | Within ninety (90) days after XYZ's request therefor. |

(e) If in the initial period or any option period Artist records more than the minimum number of Masters specified or requested in this agreement for that period, XYZ may elect to apply all or part of the excess Masters in fulfillment of the minimum number specified for any subsequent period or periods.

(f) Any Masters which are not recorded in all respects in accord-

ance with the terms and provisions hereof, shall not apply in reduction of Artist's recording commitment, unless XYZ otherwise consents in writing.

(g) Each Master hereunder shall be delivered in the form of a two-track stereo tape master, (and if requested by XYZ a monaural and quadrophonic tape master to be furnished at XYZ's expense), all of which shall be fully edited, mixed, equalized and leadered and from which technically satisfactory phonograph records can be manufactured, to XYZ's Director of Manufacturing at the address specified on page X hereof.

3. Production and Production Costs:

(a) XYZ shall engage and pay for the services of vocalists, musicians, arrangers, sketchers, conductors, orchestrators, producers, contractors, copyists, recording studios and other personnel selected by XYZ in connection with the performance to be rendered by Artist at all rehearsal and recording sessions hereunder. Such payments, together with payroll taxes thereon, payments based on payroll to any labor organization or designee thereof, the cost of cartage and and rental of instruments for such recording sessions, studio costs and all other costs incurred in producing or acquiring completed masters hereunder, shall be deemed additional nonreturnable advances to Artist and shall be deducted from any royalties payable to Artist by XYZ under this or any other agreement between Artist and XYZ, its parent, divisions, affiliates and/or subsidiaries. In the event that Artist should delay the commencement or completion of, or be unavailable for, any recording session hereunder, XYZ shall have the right to charge Artist for all expenses actually incurred by XYZ by reason thereof.

(b) XYZ shall hire the individual producer of all Masters to be recorded hereunder; and such producer shall be mutually approved by Artist and XYZ, it being agreed that _____ is deemed mutually approved as the individual producer for the first three (3) Masters recorded hereunder.

(c) Artist shall appear at all recording sessions required by XYZ at times and places designated by XYZ. At each recording session, Artist will render his services hereunder to the best of Artist's ability, will make proper preparations for such sessions, will rehearse, record and rerecord the selected musical compositions until acceptable Masters are obtained.

4. *Advances:*

(a) Within fourteen (14) days after the complete execution hereof, XYZ shall pay Artist the sum of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00) as a nonreturnable advance.

(b) Within fourteen (14) days after the commencement of the applicable operative period, XYZ shall pay Artist the sum set forth in the Advance Schedule below as follows:

| ADVANCE SCHEDULE | |
|-------------------|-------------|
| PERIOD | ADVANCE |
| 1st OPTION PERIOD | \$10,000.00 |
| 2nd OPTION PERIOD | \$15,000.00 |
| 3rd OPTION PERIOD | \$20,000.00 |
| 4th OPTION PERIOD | \$25,000.00 |

(c) All sums paid pursuant to this Paragraph 4 shall be deemed nonreturnable advances fully recoupable from any royalties due and payable to Artist.

5. *Royalty Rates:*

(a) In consideration of (i) the copyright ownership provided in Paragraph 7(c) below, (ii) XYZ's right to use Artist's name and likeness as provided herein, and (iii) the other agreements, representations and warranties contained herein, XYZ agrees except as hereinafter provided to pay, Artist in connection with records manufactured from Masters recorded hereunder and sold, a royalty at the applicable rates specified in the Royalty Schedule below:

| ROYALTY SCHEDULE | |
|------------------|-----|
| Singles | LPs |
| 7% | 8% |

(b) Notwithstanding the royalty rate of eight percent (8%) set forth in the Royalty Schedule above, the royalty rate for net sales of LPs in the United States in excess of one hundred fifty thousand "units" (as that term is defined in Subparagraph 19(j) below) shall be

nine percent (9%). All calculations made pursuant to this Subparagraph 5(b) shall be made on an LP-by-LP basis with no retroactive application of royalty rates.

6. Royalty Terms:

With respect to royalties:

(a) The applicable royalty rate will be paid upon the suggested retail list price (as defined in Paragraph 19(f) below) less all sales, excise or other similar taxes, if any, on ninety percent (90%) of all records sold, except as hereinafter provided. With respect to sales outside of the United States, XYZ shall pay Artist one-half (1/2) of the otherwise applicable royalty rate hereinabove specified. In computing the number of records sold, XYZ shall have the right to deduct returns and credits of any nature and to withhold reasonable reserves therefore from payments otherwise due Artist. Such reserves which are withheld by XYZ shall not exceed fifty percent (50%) of payments otherwise due Artist in connection with such records; and shall be liquidated by XYZ within two (2) accounting periods following the accounting period during which or with respect to which such reserves were originally withheld.

(b) Foreign royalties shall be computed in the currency of the country involved and shall be paid only after receipt by XYZ of United States currency (less cost of conversion) at the same rate of exchange as XYZ was paid after the deduction of all applicable foreign taxes. If XYZ does not receive payment from a licensee because the currency of the relevant country is "blocked," XYZ may elect to accept payment of royalties in the currency of such country, in which case XYZ shall deposit to Artist's credit (and at Artist's expense) sums payable to Artist hereunder with respect to such sales in such currency in a depository selected by XYZ and will promptly notify Artist thereof. Deposit in accordance with the foregoing provisions shall fulfill XYZ's obligations hereunder as to such foreign record sales.

(c) The royalty due on account of the sales of any record released hereunder shall be at the rate of royalty in effect hereunder at the time each Master used in the manufacture of such record was recorded.

(d) As to records not consisting entirely of Masters recorded hereunder, the royalty rates otherwise payable to Artist hereunder shall be prorated on the basis of the number of Masters recorded hereunder which are on such records compared to the total number of Masters

contained on such records. As to Masters embodying performances of Artist together with the performances of another artist or artists, the royalty rate otherwise payable to Artist hereunder shall be prorated on the basis of the number of artists whose performances are on such Masters.

(e) Royalties on records sold in albums, jackets, boxes, etc., and records packaged in cartridge, tape, wire, magnetic, electronic, etc. form, shall be based upon the applicable suggested retail list price less all applicable taxes after deducting a packaging charge equal to ten percent (10%), fifteen percent (15%) and twenty percent (20%) of the applicable suggested retail list price for such records in a two-paneled jacket disc form, three or more paneled jacket disc form, and tape form, respectively.

(f) The royalty rate shall be fifty percent (50%) of the otherwise applicable rate on all records which embody performances hereunder and which are sold in tape form (e.g., cartridge, cassette, eight-track, reel-to-reel or other similar form).

(g) With respect to so-called "economy line" long playing records which are generally designed to sell at two-thirds ($2/3$) the suggested retail list price or less, the royalty rate shall be fifty percent (50%) of the otherwise applicable royalty rate specified in the Royalty Schedule.

(h) With respect to records which embody performances hereunder sold to the United States Armed Forces, XYZ shall pay to Artist fifty percent (50%) of the otherwise applicable royalty rate specified in the Royalty Schedule.

(i) No royalties shall be due or payable on records which embody performances hereunder when, as part of a promotional program, such records are distributed as premiums or in connection with the sale of any other product, commodity or service; neither shall any royalties be due or payable on promotional LPs which include Masters recorded hereunder or such Masters together with masters recorded by others, which promotional records (sometimes referred to as "sampler" records) are designed for sale at substantially lower prices than the suggested retail list price of such records.

(j) As to records which embody performances hereunder sold through record clubs, direct mail order operations or similar sales plans or devices, the royalty rate shall be one-half ($1/2$) of the net sums actually received by XYZ relating to such sales. In XYZ's agreements with

operators of such clubs or plans, XYZ may agree that no royalty shall be payable with respect to records given to members of such clubs or plans as "bonus" or "free" records or on a "no-charge" basis (as such terms are defined in those agreements) as a result of joining such club or plan and/or purchasing a required number of records or otherwise, but if XYZ does receive a royalty on such records, the royalty rate shall be one-half (1/2) of the net sums actually received by XYZ relating to such records, if any.

(k) No royalties shall be due or payable hereunder with respect to records given away or furnished on a non-profit basis to disc jockeys, radio and television stations, motion picture companies, distributors, sub-distributors, dealers, consumers, employees, publishers, reviewers, critics or others. No royalties shall be due or payable hereunder with respect to records sold at salvage or close-out prices.

(l) No royalties shall be due or payable in connection with XYZ's licensing of Masters for airline or other transportation use.

(m) In the event that XYZ shall license on a flat-fee basis to third parties Masters produced hereunder, the royalty payable by XYZ to Artist shall be one-half (1/2) of the net amount actually received by XYZ from such licensee. The royalty which Artist is entitled to receive pursuant to this Subparagraph 6(m) shall be the only royalty payable to Artist for such licensing by XYZ, and Artist will not be entitled to receive any other payments specified in this agreement with respect to such licensing. The amount of royalty as provided in this Subparagraph shall be payable to Artist hereunder only after receipt by XYZ from licensees and shall be reported on the accounting date next succeeding the accounting period during which royalties have actually been received by XYZ from licensees. The flat-fee licensing referred to in this Subparagraph shall be in addition to XYZ's normal means of distribution records manufactured from Masters produced hereunder, such as the licensing by XYZ of a Master for use by XYZ's licensee in the soundtrack of a film or television show or photoplay.

(n) XYZ will compute the total composite royalties earned by Artist pursuant to this agreement within sixty (60) days after the first day of January and the first day of July in each year for the preceding six (6) month period and will remit the net amount of such royalties, if any, after deducting any and all unrecouped advances and chargeable costs under this agreement, and such amount, if any, which may be required to be paid under the applicable provisions of any state sales

and/or use tax laws or regulations which impose a tax based upon any sums paid by XYZ to Artist or on Artist's behalf, to Artist's designee, together with a royalty statement, within such sixty (60) days. After the term hereof, no royalty statement shall be required for periods during which no additional royalties accrue or reserves are liquidated. All royalty statements and other accounts rendered by XYZ shall be binding upon Artist and not subject to any objection for any reason unless such objection is made in writing, stating the basis thereof, and delivered to XYZ within one (1) year from the date of such statement or account, and after such notice of objection, unless suit is instituted within one (1) year after the date upon which XYZ notifies Artist that it denies the validity of the objection. XYZ may at any time elect to utilize a different method of computing royalties so long as such method does not substantially alter the net monies due Artist.

7. XYZ's Rights:

Artist acknowledges that XYZ is the sole, exclusive and perpetual owner of all of the Masters from inception, which ownership entitled XYZ among other things to:

(a) The exclusive and perpetual ownership of all duplicates of the Masters and records manufactured therefrom and the right to use and control the same and the performances embodied therein. XYZ's ownership and the rights with respect to the Masters shall extend to all tapes and other physical devices embodying performances made at recording sessions held pursuant to the terms of this agreement.

(b) The exclusive and perpetual right throughout the world to manufacture, advertise, publicize, sell, lease, license, or otherwise use or dispose of and exploit records and/or derivatives manufactured from or embodying all or any part of the contents of the Masters, and to permit others to do so, in any and all fields of use throughout the world upon such terms and conditions as XYZ may approve, or to refrain therefrom.

(c) All right, title and interest in and to the copyrights and rights in copyright of the Masters and all reproductions thereof and the sound performances contained therein, including the exclusive right to copyright same as "sound recordings" in XYZ's name, and to renew and extend such copyrights (it being agreed that for this purpose Artist is deemed XYZ's employee-for-hire, and the sound recordings are deemed "works made-for-hire," as that term is used and understood to

mean in the revised United States Copyright Act), and to exercise all rights of the copyright proprietor therein. To the extent, if any, that Artist may be deemed an "author" of such "sound recordings", Artist grants to XYZ a power of attorney irrevocable and coupled with an interest, for Artist and in Artist's name, to apply for and obtain, and upon obtaining same, to assign to XYZ, all such copyrights and renewal copyrights.

(d) The perpetual right to use and publish and permit others to use and publish Artist's name (including any professional names heretofore or hereafter adopted by Artist), likeness, voice and sound effects, and biographical material, or any reproduction and manufacture of phonograph records and for any other purpose related to the business of XYZ, or to refrain therefrom. This right shall be XYZ's exclusive right during the term hereof and non-exclusive thereafter.

(e) The right to release records and/or derivatives manufactured from the Masters under the name of "XYZ" or such other trade name or mark as XYZ may elect.

(f) The right to manufacture, sell and exploit records manufactured from the Masters on which performances by other artists are coupled and to sell records manufactured from the Masters in albums, which albums contain pictures, prose and verse, and records embodying performances of other artists.

(g) The right to perform the phonograph records and/or derivatives made from the Masters publicly and to permit the public performance thereof in any medium and by any means whatsoever, whether now or hereafter known, including but not limited to motion pictures and television.

(h) The right to refer to Artist as XYZ's Exclusive Recording Artist or other similar appropriate appellation. In all of Artist's endeavors in the entertainment field during the term of this agreement, Artist will exert all reasonable efforts to be billed, advertised and described as XYZ's Exclusive Recording Artist or such other similar appropriate appellation as XYZ may from time to time designate.

(i) The right to assign this agreement and to assign, license and otherwise transfer any or all of XYZ's rights, powers, privileges, and property under this agreement to any other person.

8. *Mechanical Licenses:*

(a) It is agreed and understood that any selection (music and/or

lyrics) consisting of original material, or any arrangement or adaptation of public domain material, which is written in whole or in part by Artist, or which is owned or controlled directly or indirectly in whole or in part by Artist, (a "Controlled Composition") shall be licensed to XYZ at the minimum statutory mechanical license fee rate per selection (regardless of playing time) in effect in the United States at the time such composition was recorded for each record sold at XYZ's invoiced price and not returned.

(b) It is agreed that the combined mechanical license rates for all selections embodied in an LP shall not exceed the then current minimum statutory mechanical license fee rate multiplied by ten (10) for each LP sold at XYZ's invoiced price and not returned.

(c) In connection with Controlled Compositions, no mechanical royalties shall be payable for those phonorecords which shall be excluded from royalty payment by the term set forth in Paragraph 7 above.

(d) Artist agrees to indemnify and hold XYZ harmless from rates in excess of the applicable amounts specified in Subparagraphs 8(a) and 8(b) above. If XYZ pays any such excess, such payments shall be a direct debt from Artist to XYZ which, in addition to any other remedies available, XYZ may recover from royalties or any other payments to be made to Artist.

9. *Exclusivity:*

(a) From the date hereof and so long as this agreement remains in force, Artist will not perform for the purpose of making phonograph records for any person other than XYZ, and Artist will not authorize or permit the use of Artist's name, likeness or other identification, voice or sound effects, or performance for or in connection with the production, sale, distribution, advertising, publicity or exploitation of phonograph records by or for any person other than XYZ.

(b) Should Artist make any sound recordings for motion pictures, television, radio or any other medium, Artist will do so only pursuant to a written contract prohibiting the use of such recordings, directly or indirectly, for phonograph record purposes. Conditioned upon XYZ obtaining all necessary rights and licenses from any other persons involved, Artist hereby agrees that any performances by Artist during the term hereof for someone other than XYZ may be used by XYZ in the manufacture, distribution, sale, advertising and exploita-

tion of records upon the same terms and conditions as are applicable under this agreement to records manufactured from Masters recorded for XYZ during the period when such recording was made, but no such Masters, unless otherwise agreed to by XYZ, shall be deemed to have been delivered in fulfillment of Artist's obligation to deliver Masters to XYZ pursuant to Paragraph 2 above.

(c) Artist will not perform any selection or portion thereof recorded hereunder or pursuant to any prior written agreement with XYZ for the purpose of making records for any person other than XYZ at any time for (i) five (5) consecutive years after the release of XYZ's recording, or (ii) two (2) consecutive years after the date of expiration or other termination of this agreement, whichever is later.

(d) XYZ may take such action as it deems necessary, either in Artist's name or in XYZ's own name, against any person who uses the performances, name, likeness, other identification, voice and/or sound effects of Artist in violation of XYZ's rights under this agreement, but at XYZ's expense unless such use is made with the assistance of Artist or pursuant to authorization from Artist, in which event such action shall be at Artist's expense.

10. Pay or Play:

(a) Nothing contained in this agreement shall obligate XYZ to make or sell records manufactured from the Masters.

(b) Nothing contained in this agreement shall obligate XYZ to have Artist in fact record the minimum number of Masters specified, and XYZ shall fulfill its obligation to Artist as to unrecorded Masters by paying Artist union scale for each of the minimum number of Masters not recorded. Any sums paid to Artist pursuant to this Subparagraph 10(b) shall be deemed a non-returnable advance fully recoupable from any royalties payable to Artist by XYZ.

(c) Notwithstanding anything to the contrary contained in Subparagraph 10(b) above, if Artist fails to timely deliver any Master(s) requested by XYZ, the minimum number of Masters required for the then current period of this agreement may be reduced to the number which had been recorded and delivered as of the date when such Master(s) was due, but in no event less than one (1) Master, or the term of this agreement may be extended by the period of time that such Master(s) remains undelivered, or both, at XYZ's election. XYZ shall give notice of any such election during the term.

11. Pictures, Interviews, Appearances:

(a) Artist will, from time to time, at XYZ's request, whenever the same will not unreasonably interfere with other professional engagements of Artist:

(i) appear for photography, art work and similar reasons under the direction of XYZ or XYZ's duly authorized agent;

(ii) appear for interviews which XYZ may arrange;

(iii) confer and consult with XYZ regarding Artist's performances hereunder and other matters which may concern the parties hereto; and

(iv) make personal appearances on radio and television and elsewhere and record taped interviews, spot announcements, trailers and electrical transcriptions, all for the purpose of advertising, promoting, publicizing and exploiting phonograph records recorded by Artist hereunder and for other general public relations or promotional purposes related to the business of XYZ.

(b) Subject to the provisions of any applicants collective bargaining agreements, Artist shall not be entitled to any compensation from XYZ for the services performed pursuant to Subparagraph 11(a) above.

12. Union Membership:

Artist represents that during the term hereof, Artist is and will remain or will promptly become and remain a member in good standing of any applicable union and/or guild to the extent that XYZ may legally require such membership. All applicable provisions of the collective bargaining agreements to which XYZ is a party relevant to the type of services to be performed by Artist hereunder shall be deemed a part of this agreement and by this reference are hereby incorporated herein.

13. Legal and Equitable Relief:

(a) Artist acknowledges that Artist's performances hereunder and the rights and privileges granted to XYZ under the terms hereof are of a special, unique, unusual, extraordinary and intellectual character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at law,

and that a breach by Artist of any of the provisions of this agreement will cause XYZ great and irreparable injury and damage. Artist expressly agrees that XYZ shall be entitled to the remedies of injunction and other equitable relief to prevent or remedy a breach of this agreement or any portion thereof, which relief shall be in addition to any other rights or remedies, for damages or otherwise, which XYZ may have.

(b) XYZ may, by notice in writing to Artist given at any time during the initial or any option period of this agreement, elect to revise this agreement so that for the then current period and for all subsequent periods for which XYZ may exercise options, XYZ shall be obligated to pay Artist for Artist's services during each such period, compensation at the rate of not less than Six Thousand Dollars (\$6,000.00) per annum. Prior to the end of the period in effect at the time XYZ makes this election, XYZ will pay to Artist at least an amount equal to that portion of Six Thousand Dollars (\$6,000.00) that the number of days remaining in said period bears to three hundred and sixty-five (365); and prior to the end of each subsequent period for which XYZ may exercise options, XYZ will pay to Artist the amount, if any, by which the amounts earned by Artist in respect of Artist's services during each such subsequent period are less than Six Thousand Dollars (\$6,000.00). Any amounts paid under this Subparagraph 13(b) may be credited against any royalties payable to Artist by XYZ.

14. Force Majeure and Extension:

Neither XYZ nor Artist shall be deemed in default if the performance of their obligations hereunder is delayed or becomes impossible or impractical by reason of any act of God, war, fire, earthquake, sickness, accident, civil commotion, epidemic, act of government, its agencies or officers, shortages of materials or supplies, or any other legitimate cause beyond the control of the parties hereto (hereinafter referred to as a "force majeure contingency").

(b) Upon the happening of any force majeure contingency, or in the event or failure of Artist to perform any or all of the conditions or covenants herein contained on its part to be performed, which failures or inabilities are caused by means beyond the control of XYZ and not induced or brought about by the unreasonable acts of XYZ, XYZ may, in addition to any other rights or remedies it may have hereunder or otherwise, elect by notice to Artist to extend the term of this agreement

for a period equivalent to all or any part of the period that the force majeure contingency exists or that Artist shall be in default hereunder. In the event of any such extension, specific dates, periods and time requirements referred to herein shall be postponed or extended accordingly.

15. Termination:

(a) If Artist fails to meet any obligations hereunder, XYZ may either (i) terminate this agreement as of the date XYZ sends Artist written notice to that effect and XYZ's only obligation to Artist thereafter shall be with respect to Masters theretofore accepted by XYZ which are used in the manufacture of records which are sold hereunder, or (ii) suspend the term of this agreement until Artist has once again complied with its obligations hereunder, in which event an amount of time equal to the period of such suspension shall be added to the term of this agreement, and all subsequent dates and times shall be correspondingly extended.

(b) If Artist's voice should be materially and permanently impaired or Artist should otherwise become physically disabled to perform recording and personal appearances services, if Artist should cease to pursue Artist's career as an entertainer, or if Artist should fail, refuse or neglect to comply with any of Artist's obligations hereunder, XYZ, in addition to any other rights or remedies which it may have hereunder or otherwise, may elect to terminate this agreement by notice in writing at any time during the period in which such contingency arose or continues and thereby be relieved of any liability for the executory provisions of this agreement.

(c) No termination of this agreement (whether by Artist or by XYZ) shall in any way limit or curtail any of XYZ's rights, title, interest or privileges to or in connection with any of the results and proceeds of Artist's endeavors under this agreement or any rights or privileges which continue after the term of this agreement ends.

16. Failure of Performance:

No failure by XYZ to perform any of its obligations under this agreement shall be deemed a breach of this agreement until Artist has given XYZ written notice of its failure to perform and such failure has not been corrected within sixty (60) days from and after the giving of such notice. In the event such failure is a material breach and has not

been corrected within sixty (60) days, Artist may, during the continuance of such failure, terminate this agreement by notice in writing given to XYZ within seventy-five (75) days from the date of service of Artist's original notice.

17. Notices:

(a) All notices or documents which Artist may be required or desire to serve upon XYZ may be served by depositing same, postage prepaid, in any mail box, chute or other receptacle authorized by the United States Postal Service for mail addressed to XYZ at the address set forth on Page X hereof, to the attention of the Law Department, or at such other address as XYZ may from time to time designate by written notice to Artist. The date of service of any notice or document so deposited shall be the date of deposit.

(b) All notices, statements and payments which XYZ may be required or desire to serve upon Artist or by served personally upon any representative of Artist or by depositing same, postage prepaid, in any mail box, chute or other receptacle authorized by the United States Postal Service for mail addressed to Artist at the address set forth on Page X hereof, or at such other address as Artist may from time to time designate by written notice to XYZ. The date of service of any notice, statement or payment so deposited shall be the date of deposit.

18. Representations and Warranties:

Artist represents, warrants and agrees that:

(a) Artist is the sole owner of the professional name "Double A."

(b) No other person has the right to use said professional name or to permit it to be used in connection with phonograph records.

(c) Artist has the authority to hereby grant XYZ the right to use said professional name. Artist agrees to indemnify and hold XYZ harmless from any claim, damages, expenses (including attorney's fees), and litigation which may come about because of XYZ's use of said professional name in accordance with this agreement.

(d) Artist will work diligently at and pursue Artist's career as a record artist and as an entertainer for the term of this agreement.

(e) Artist is not now and will not be under any disability, restriction or prohibition with respect to Artist's right to execute this agreement and fully perform its terms and conditions.

(f) Artist is not now and will not be under any disability, restric-

tion, or prohibition with respect to Artist's right to record any and all compositions recorded by Artist hereunder.

(g) Artist has not taken and will not take any actions and has not entered into and will not enter into any agreements which would in any way conflict with or derogate from the rights granted to XYZ hereunder.

19. *Definitions:*

For the purposes of this agreement:

(a) The term "record," "phonograph record" or "phonorecord" means and includes any disc record of any material and revolving at any speed, or any magnetic tape or wire, or any other device or contrivance of any type, character, or description, not known or unknown, designed for the reproduction of sound in the phonograph record field as said field is presently understood or may be hereinafter developed, including without limitation, devices designed to reproduce both visually and aurally the performances of recording artists.

(b) The term "Master" or "Master Recording" means any original recording which is used in the manufacture of phonograph records. Any Master exceeding five and one-half (5-1/2) minutes in playing time shall be considered two (2) Masters and any Master exceeding ten and one-half (10-1/2) minutes shall be considered three (3) Masters, etc.

(c) The word "performance" means singing, speaking, conducting or playing an instrument, alone or with others.

(d) The word "selection" means a single musical composition (including a medley), irrespective of length.

(e) The word "person" includes any individual, corporation, partnership, association or any other organized group of persons or legal successors or representatives of the foregoing.

(f) The term "suggested retail list price" or similar term means (i) with respect to records sold hereunder for distribution in the United States, the average suggested retail list price of XYZ's phonograph records during the six (6) month period immediately preceding the applicable accounting period for the computation of royalties to be made hereunder, it being understood that a separate calculation of the average suggested retail list price shall be made for each price category of phonograph records manufactured and sold by XYZ, and (ii) with respect to phonograph records sold hereunder for distribution outside the

United States, the suggested retail list price or the applicable list price, as the case may be, of such records in the country of manufacture or the country of sale, depending upon the manner in which XYZ is paid in connection with such sales outside of the United States.

(g) The term "LP" or "album" means a sufficient number of Master Recordings to constitute one (1) 12-inch, 33-1/3 rpm, long-playing phonograph record album of not less than thirty (30) minutes playing time. An album consisting of two (2) discs shall also constitute one (1) LP.

(h) The words "term of this agreement" or "period of this agreement" or "term hereof" or "so long as this agreement remains in force" or words of similar connotation shall include the initial period of this agreement and the period of all renewals, extensions, substitutions or replacements of this agreement.

(i) The words "United States" means the United States of America, its territories and possessions.

(j) The term "unit" as used herein means an LP, either in disc or tape form manufactured solely from Masters delivered hereunder and sold in the United States only through regular distribution channels. It does not include (i) singles; (ii) LPs sold through direct mail order operations, similar sales plans or devices, as part of a promotional program (so-called "premiums") or in connection with the sale of a product, commodity or service; (iii) LPs sold as promotional (sometimes referred to as "sampler") records; (iv) LPs sold on a so-called "economy line" label; (v) LPs sold at salvage or close-out prices; or (vi) LPs sold to the Armed Forces of the United States.

20. *Miscellaneous:*

(a) Artist does hereby undertake and agree to indemnify, save and hold XYZ free and harmless from any and all liability, loss, damage, cost or expense, including attorney's fees, arising out of, connected with or related to any claim by any person which is inconsistent with any of the warranties or representations made by Artist in this agreement. Artist will reimburse XYZ on demand for any payment made by XYZ at any time after the date hereof in respect of any liability, loss, damage, cost or expense to which the foregoing indemnity relates.

(b) This agreement supersedes all prior negotiations, understandings and agreements between the parties hereto, and both parties acknowledge and agree that neither party shall rely on any

representations or promises in connection with this agreement or the subject matter hereon not contained herein.

(c) All the parties hereto agree to execute any further document or documents which are necessary or proper to make the substance of this agreement effective and binding upon all of the parties hereto and which are necessary and proper for the performance of all matters herein agreed upon.

(d) This agreement can be renewed and extended as herein provided, but this agreement cannot be cancelled, altered, modified, amended or waived, in part or in full, in any way except by an instrument in writing signed by the party to be charged.

(e) This agreement shall be interpreted in accordance with the laws of the State of California.

(f) Artist agrees that Artist will not, directly or indirectly, give any consideration of any type of any radio or television station, broadcast employee, or program packager for the purpose of obtaining exposure over the air of any record covered by this agreement.

(g) The headings of the paragraphs herein are for convenience only, and they shall not be of any effect in construing the contents of the respective paragraphs.

(h) Should any paragraph or provision of this agreement be held to be void, invalid or inoperative, such decision shall not affect any other paragraph or provision hereof, and the remainder of this agreement shall be effective as though such void, invalid, or inoperative provision had not been contained herein.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed as of the day and year first above written.

XYZ RECORDS, INC.

By _____

ANN ARTISTE

Social Security No.