

DIGITAL ONLY DISTRIBUTION AGREEMENT

This exclusive distribution agreement (“Agreement”) by and between Smith Entertainment LLC, 131 E. Exchange Avenue, Suite 102, Fort Worth, Texas 76164 (“Distributor”) and **Artist/Individual/Label** (“Client”)

The parties hereby agree as follows:

1. **Definitions.** The following capitalized terms shall have the following meanings for the purposes of this Agreement:
 - (a) **“Album Units”** means the units of the Album manufactured in any audio format.
 - (b) **“Authorized Territory”** means the Universe.
 - (c) **“Content”** means the collection of sound recordings, both individually (“Single”), and collectively as released in a single musical album by the Artist listed on Exhibit A (“Albums”), including, by way of example and not limitation, the musical works embodied in such sound recordings, any related artwork, photos, liner notes, metadata, and other material related to the Content.
 - (d) **“Copyright Management Information”** means the digital information conveying information regarding a Digital Master, including, by way of example and not limitation, the title of the applicable album, the name of the song, the International Standard Recording Code (ISRC), the Universal Product Code (UPC), the marketing label, and the record company name.
 - (e) **“Digital Master(s)”** means a copy or copies, if plural, of the Content in digital form, whether created by Artist or Distributor.
 - (f) **“Direct Digital Download Distribution Service”** means the online services operated by Distributor for the sale, distribution, marketing, streaming, licensing, or other means of digital transmission of the Content and other media.
 - (g) **“Net Profits”** means the gross proceeds received by Distributor after deduction of pre-approved advertising costs **and shipping costs**, but specifically excluding distribution costs.

- (h) **“Service(s)”** means sale, distribution, marketing, streaming, whether by way of digital download or sale of the Physical Product, of the Content pursuant to this Agreement.
 - (i) **“Single Units”** means the units of any individual song included as Content manufactured in any audio format.
 - (j) **“Third Party Licensee”** means any third party licensee that Distributor may authorize to carry out the sale, distribution, marketing, streaming, licensing, or other use of the Album pursuant to the terms of this Agreement, including, by way of example and not limitation, Apple iTunes, Amazon Music, Spotify, and others that Distributor may choose in its sole and absolute discretion.
- 2. **Distribution of Product.** This Agreement is for the digital distribution of the Content, listed on Exhibit A, through all forms of media distribution, whether now known or hereinafter devised, including, for the purpose of example and not limitation, online streaming, digital downloads, and all other forms of electronic media transmission. Master recordings, graphic art, and all other Materials described in Paragraph 20 below and all materials related to the Content herein must be delivered to Distributor no later than sixty (60) days from the signing date of this Agreement.
- 3. **Exclusive Grant of Rights.** Artist hereby appoints Distributor as the sole and exclusive digital Distributor of the Content within the Authorized Territory for the Term of this Agreement. Artist shall neither allow nor permit any other person, company, or entity to distribute the Content within the Authorized Territory within the Term of this Agreement without express written permission of Distributor.
- 4. **Term:** The term of this Agreement shall begin on the date of the execution of this Agreement and shall continue for a period of five (5) years. The term shall automatically renew each year, for additional one year periods unless terminated in writing by either party no later than 60 days prior to the end of the Term. Final accounting will include a report detailing total digital downloads from a Direct Digital Download Distribution Service or Third Party Licensee, and an itemized list of all authorized discounts, advertising, marketing and other authorized charge backs. All monies due from either party at the time of the final accounting for this product shall be paid within thirty (30) days

following Artist's receipt of such final accounting. Payment may include monies due Artist for product sold or reimbursements from Artist to Distributor for over-payments made by Distributor.

5. Compensation.

- (a) **Digital Distribution Fees.** For the Services provided pursuant to this Agreement, Distributor will be paid according to the following fee schedule:

Content Form	% of Net Profits for each Unit that is sold, paid for, and not returned
Album Unit, Direct Digital Download:	10%
Single Unit, Direct Digital Download:	10%

- 6. Authorization.** Artist hereby appoints the Distributor as Artist's exclusive authorized representative for the sale and other distribution of the Content. Accordingly, Artist hereby grants to Distributor the exclusive right, during the Term and throughout the Authorized Territory to:

- (a) Reproduce and create derivative works of the Content (including any Physical Product) by converting the Content, or any portion thereof, into Digital Masters, including less than full-length versions of sound recordings ("Clips") that can be used for promotional purposes as authorized in this Agreement and, if necessary, reproducing the Content, or any part thereof, in new Physical Products;
- (b) Publicly perform, publicly display, communicate to the public, and otherwise make available the Content, any portion thereof, and portions thereof as embodied in Clips, by means of digital audio transmissions (on an interactive or noninteractive basis) through a Direct Digital Download Distribution Service or Third Party Licensee, or any person authorized by the Artist to place on any website, to identify the availability of the Content for license, sale, or distribution and to promote the Content, on a through-to-the-listener basis, *without payment of any fees or royalties* to (i) the songwriters, composers, or music publishers owning any rights in and to the Album; (ii) any performing artist(s) (including non-featured vocalists and musicians) on the Album; (iii) any other person involved in the creation of or owning any portion of the Album, including, but not limited

to a record label, and (iv) any agents for any of those individuals or entities listed above, such as performing rights organizations (“PROs”) and unions or guilds, whether U.S.-based (such as ASCAP, BMI, SESAC, SoundExchange, AFTRA, and/or AFM) or foreign (e.g. PRS for Music, PPI, CMRRA, CSI, GEMA, etc.);

- (c) Use and distribute Copyright Management Information as embodied in a Digital Master of the Content;
- (d) Use the Content and metadata that may be reasonably necessary or desirable for Distributor to exercise its rights under this Agreement;
- (e) Authorize Distributor’s Third Party Licensees to perform

7. Name and Likeness; Promotional Use and Opportunities.

- (a) **Name and Likeness of Artist and Songwriters.** Artist hereby grants to Distributor during the Term the right to use, and authorize Third Party Licensees to use, the names and approved likenesses of, and biographical material concerning, any artists, bands, producers and/or songwriters, as well as track and/or album name, and all artwork related to the sound recordings or audiovisual works, in any marketing materials for the sale, promotion, and advertising of the Content, which is offered for sale or other use under the terms of this Agreement.
- (b) **Promotion.** Artist grants to Distributor the right to market, promote, and advertise the Content as available for purchase in any and all media, whether now known or hereafter devised.

8. Reversion of Rights. All rights granted hereunder to Distributor revert to Artist on expiration or termination of the Term.

9. Sale of Rights in Content Prohibited. Artist may not sell or assign the rights to the Content during the Term of this Agreement to any entity, person, company, or third party without express written permission of Distributor.

10. Earnings Statements.

(a) **Digital Monthly Accounting Statements.** Distributor will render to Artist digital statements for the Content within 90 days of the month end (i.e. January sales will be due by April 30th), indicating the actual number of Album Units and Single Units sold, paid for and not returned, the wholesale sales price (if applicable in the calculation of Net Profits) and gross receipts (if applicable in the calculation of Net Profits) received by Distributor in connection with Distributor's exploitation of the Content.

11. **Accounting Records and Audit Rights.** Distributor will keep full and complete records of all transactions relating to the Content. No more than once per each year of the Term, and upon reasonable notice, Artist may, at its own expense, audit Distributor's records in order to verify earnings statements rendered hereunder. Any such audit will be conducted by a certified public accountant and during Distributor's normal business hours. Any statement not questioned by Artist by notice in writing within one (1) year from the date of such statement will be deemed final and conclusive. Artist's right to examine Distributor's records will be limited to only those books, records, and accounts applicable and relevant to this Agreement.
12. **Further Actions and Chain of Title Verification.** Distributor will execute and deliver to Artist, promptly upon reasonable request by Distributor, any other instruments or documents reasonably considered in good faith by Artist to be necessary or desirable to evidence, effectuate, or confirm this Agreement, or any of the terms and conditions hereof, including but not limited to Artist's "chain-of-title" verification in and to the Content.
13. **Content Ownership.** Subject to Distributor's rights hereunder, all right, title, and interest in and to the Content, including the Digital Master Recordings, the Clips, the Physical Product, all copyrights and equivalent rights embodied therein, and all Materials furnished to Distributor by the Artist related to the Content is owned by the Artist.
14. **Marketing and Advertising.** All advertising is 100% recoupable from first monies due to Artist. All advertising or marketing must be approved by Artist and Distributor.
15. **[Promotions. Any promotions with respect to the Content must be pre-approved by the Artist. Promotional expenses shall be charged against Artist's account. At times Distributor will need promotional copies on each title or offer discounts to its**

customers as sales incentives on the Content. This discount will be charged back to Artist.]

16. Representations And Warranties.

(a) **Mutual Representations and Warranties.** Each party represents and warrants to the other that it:

- i. Is authorized to enter into this Agreement on the terms and conditions set forth herein;
- ii. Will not act in any manner that conflicts or interferes with any existing commitment or obligation of the other party, and that no agreement previously entered into by the party will interfere with the performance of its obligations under this Agreement;
- iii. Shall perform its obligations hereunder in full compliance with any applicable laws, rules, and regulations of any governmental authority having jurisdiction over such performance.

(b) **Artist's Representations and Warranties.** Artist represents and warrants to Distributor that:

- i. Artist has the full right, power, and authority to act on behalf of any and all owners of any right, title, or interest in and to the Content, including, but not limited to, all musical works embodied in the Content, and that the Artist is authorized to provide the Content to the Distributor for the uses specified in this Agreement. For the avoidance of doubt, if Artist is acting on behalf of a band, group, or corporation, Artist hereby represents and warrants to Distributor that Artist is fully authorized to enter into this Agreement on behalf of that band, group, or corporation and to grant all of the rights and assume and fulfill all of the obligations, covenants, and representations and warranties set forth in this Agreement;
- ii. Artist owns or controls all of the necessary rights in the Content in order to make the grant of rights, licenses, and permissions herein, and that Artist has permission to use the name and likeness of each identifiable

individual person whose name or likeness is contained or used within the Content, and to use such individual's identifying or personal information (to the extent such information is used or contained in the Content) as contemplated by this Agreement;

- iii. The use or other exploitation of the Content, including but not limited to, any musical works embodied in the sound recordings, by Distributor and Distributor's Third Party Licensees, as contemplated by this Agreement, will not infringe or violate the rights of any third party, including, without limitation, any privacy rights, publicity rights, copyrights, contract rights, or any other intellectual property or proprietary rights;
- iv. To the extent the Artist is the songwriter of any or all of the musical works embodied in the Content, whether in whole or in part (e.g., as a co-writer), Artist has the full right, power, and authority to grant the rights set forth in this Agreement notwithstanding the provisions of any agreement Artist may have entered into with any PRO, whether based in the United States or elsewhere, or any music publisher, and that Artist is solely responsible for taking all steps necessary to inform such PRO or music publisher of Artist's grant of a royalty free license to Distributor and our Licensees for the public performance and communication to the public of the Content, including as Clips, and that no fees or payments of any kind whatsoever shall be due to any PRO or music publisher for the use of the musical works in the Content when publicly performed, communicated or otherwise transmitted Distributor and its Third Party Licensees;
- v. Artist has not assigned any of the rights in and to the sound recordings embodied in the Content to any third party (e.g., a record label) that obtained exclusive rights in and to such sound recordings.

17. Indemnification. Artist agrees to indemnify, defend, and hold Distributor harmless from and against any and all damages, claims, liabilities, costs, losses, or any and all other expenses (including, but not limited to attorneys' fees) (collectively "Claims") arising out of any breach or alleged breach of any of the warranties, representations,

covenants, or agreements made by the Artist in this Agreement, including but not limited to, any Claims made by a PRO or music publisher with respect to any public performances or communications to the public of any musical works embodied in the Content, including claims from any unions, guilds, background musicians or vocalists, engineers, etc., or any party for any use or misuse of any other forms of intellectual property or proprietary rights in the Content, including but not limited to, trademark rights and invasions of the right of privacy or publicity. Artist expressly agrees to be liable to Distributor for any payment made by Distributor at any time with respect to any Claims to which the foregoing indemnity applies. Pending the resolution of any claim, demand, or action, Distributor may, at Distributor's sole discretion, withhold payment of any monies otherwise payable to Artist hereunder in an amount which does not exceed Artist's potential liability to Distributor pursuant to this Section.

- 18. Distributor Responsibilities.** Distributor will provide a distribution and sales service to the best of its skill and ability and in any event no less favorable than that provided to any other artist it distributes. Such services shall include invoicing, shipping to retail and other third parties, packing, processing returns, collecting sales income, and in-house promotion of Product.

19. Artist Responsibilities.

(a) **Specific Responsibilities.** Artist, or Artist's agent, will be responsible for obtaining and paying for any and all clearances or licenses required in the Authorized Territory for the use of any musical works embodied in the Content. Without limiting the generality of the foregoing, Artist shall be responsible for:

- i. (i) any royalties and other sums due to artists (featured and non-featured), authors, co-authors, copyright owners and co-owners, producers, engineers, and any other record royalty participants from sales or other uses of the Content;
- ii. (ii) all mechanical royalties or other sums payable to music publishers and/or authors or co-authors of musical compositions embodied in the Content from sales or other uses of the Content;

- iii. All payments that may be required under any collective bargaining agreements applicable to you or any third party (e.g., to unions or guilds such as AFM or AFTRA); and
- iv. Any other royalties, fees and/or sums payable with respect to the Content or other materials provided by Artist to Distributor. Artist agrees that the amount payable to Artist is inclusive of any so-called “artist-royalties” that might otherwise be required to be paid for sales or exploitations pursuant to the applicable laws of any jurisdiction for any public performances, public displays or communications to the public of the sound recordings and musical works constituting the Content.

(b)[Parental Advisory Labeling Responsibility. Artist will be responsible for complying with the Recording Industry Association of America’s (“RIAA”) Parental Advisory Logo (“PAL”) Standards, as applicable, for the Term of this Agreement.]

20. Delivery. Artist agrees to deliver to Distributor all of the materials described below (the “Materials”). Preparation and delivery of the Materials shall be at Artist’s expense. Artist understands and agrees that all Materials delivered to Distributor are pre-approved for use and distribution by Distributor:

- (a) Finished, packaged goods of one Physical Album Unit;
- (b) Metadata sheet, which must include complete song title, the music publisher(s), song run-times, and all appropriate credits (including the complete names of the songwriters and composers);

21. No Representations and Warranties with Respect to Sales and Distributions. Distributor makes no guaranties regarding the minimum number of unit sales or uses of the Content. In addition, Distributor makes no guaranties that Third Party Licensees will perform under any agreement into which they enter with Distributor for the sale, distribution, or licensed use of the Content, including by paying the royalties Third Party Licensees owe Distributor for the distribution of the Content. Should a Third Party Licensee refuse to pay Distributor for the use and/or distribution of the Content, Artist agrees that the Artist will assume the responsibility for collecting any

payments that may be due from such Third Party Licensees for any sale, distribution, or licensed use of the Content if such Third Party Licensees fails or refuses to pay the amounts to Distributor upon Distributor's request.

- 22. Content Returnable.** All Content is 100% returnable to Distributor and Artist. Artist recognizes that no sales are "final" and, even though Distributor has reported a "sale" of the Content and paid Artist accordingly, such product may be returned in accordance with Distributor's return policies. In the event of a return, or returns, Artist shall be obligated to reimburse Distributor the compensation paid to Artist for such Content. All returned Content shall be credited to Distributor in the Earnings Statements provided by Distributor to Artist. In the event any statement reflects that returns for the period exceed sales, then such balance shall be carried forward from statement to statement until the final statement. Should the final statement reflect that applicable returns have exceeded sales, then Artist shall remit to Distributor within thirty (30) days of such statement the amount reflected thereon.
- 23. Default and Breach.** In the event either party should violate any of the material terms and conditions of this Agreement and such default remains uncured for a period of thirty (30) days after written notice has been delivered to the defaulting party, then in such event the other party will have the right to terminate all or any part of this Agreement by delivering written notice to the defaulting party of its intention to terminate. Should Artist breach any representations and warranties set forth in the Agreement, and Distributor exercises its termination right hereunder, Artist agrees to immediately reimburse Distributor any and all Advances paid and expenses incurred by Distributor in connection with the Services described in this Agreement. Acts of God and matters traditionally considered beyond the control of the party (e.g. riot, weather, governmental edict) shall not be considered a default or breach under this Agreement; provided, if Distributor cannot render services due to a force majeure event for a period in excess of ninety (90) days, Artist may terminate this Agreement and distribute the Content through a third party.
- 24. Choice of Venue.** All disputes arising between Artist and Distributor under this Agreement shall be subject to the sole and exclusive jurisdiction of the state and federal courts located in Tarrant County, Texas, and Artist and Distributor hereby submit to the personal jurisdiction and venue of these courts.

25. Construction of Contract. This Agreement has been drafted in whole or in part by Distributor and Artist. In the event a court is called upon to construe this contract, the same shall not be construed in favor or against either party as this contract has been drafted for and on behalf of each of the parties to their mutual benefit. This contract shall be construed according to the spirit and purposes of this Agreement taking into consideration the four corners of this instrument together with industry usage and custom.

26. General Provisions.

- (a) **Relationship of the Parties.** The parties hereto agree and acknowledge that the relationship between them is that of independent contractors. This Agreement shall not be deemed to create an agency, partnership, or joint venture between the Distributor, and the Distributor shall not have a fiduciary obligation to the Artist as a result of this Agreement. Accordingly, neither party shall become liable
- (b) **Entire Agreement.** This Agreement contains the entire understanding of the parties relating to the subject matter of this Agreement. This Agreement, including all Addenda, supersedes all previous agreements or arrangements between the Distributor and the Artist pertaining to the Services. This Agreement cannot be changed or modified except as provided herein.
- (c) **Waiver and Severability.** A waiver by either party of any term or condition of this Agreement will not be deemed as a waiver of such term or condition, or of any subsequent breach thereof. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, such determination shall not affect any other provision of this Agreement, and the unenforceable provision shall be replaced by an enforceable provision that most closely meets the commercial intent of both parties to this Agreement.
- (d) **Notices.** All notices hereunder will be in writing and sent by certified or registered mail (return receipt requested), telecopier (with oral confirmation), or messenger (with receipt of delivery) to the addresses set forth below:

To Distributor: SMITH ENTERTAINMENT LLC

131 E. Exchange Avenue, Suite 102,
Fort Worth, Texas 76164

Any such notices sent hereunder will be deemed served or receipted upon delivery, except notices sent by telecopier, which will be deemed delivered when sent. Each party may designate in writing such other place or places that notices may be given hereunder; provided however, that any notice of change of address will only be effective upon actual receipt thereof by the other party.

- (e) **Binding Effect.** This agreement will be binding on the assigns, heirs, executors, affiliates, agents, personal representatives, administrators, and successors (whether through merger, operation of law, or otherwise) of each of the parties to this Agreement.
- (f) **Governing Law; Dispute Resolution.** This Agreement is governed and interpreted in accordance with the laws of the State of Texas applicable to agreements entered into and to be wholly performed in Texas, without regard to conflict of laws principles.
- (g) **Cumulative Rights.** To the extent permitted by applicable law, the rights and remedies of the parties provided under this Agreement are cumulative and are in addition to any other rights and remedies of the parties at law or equity.
- (h) **Headings.** The titles and headings used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.
- (i) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
- (j) **No Third Party Beneficiaries.** This Agreement is for the sole benefit of the parties to this Agreement and their authorized successors and permitted assigns. Nothing herein, express or implied, is intended to or shall confer upon any person or entity, other than the parties hereto and their

authorized successors and permitted assigns, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

- (k) **Assignment.** Except with respect to assignments by either party to a parent entity which acquires or succeeds to all or substantially all of the assigning party's assets or voting stock, the rights and obligations pursuant to this Agreement cannot be assigned without the written consent of the other party provided, however, that such consent is not unreasonably withheld.