

## Exclusive License Agreement

This AGREEMENT made as of February \_\_\_\_\_, 2017, by and between **Shiny Tracks** (“Company”) with its principal offices at \_\_\_\_\_ and

\_\_\_\_\_ p/k/a “ \_\_\_\_\_ ” (“Client”) whose address is

\_\_\_\_\_ (Company and Client collectively referred to hereinafter as “Parties”). The parties acknowledge that Client has retained the production services of Company for the production of **one (1)** master recording titled, “ \_\_\_\_\_ ” (“**Master**”) featuring the musical performances of \_\_\_\_\_ (“Artist”).

The parties hereby agree as follows:

### **1. COMPENSATION**

As full and final consideration for Company’s Services and for all rights granted in the Agreement and hereunder, including without limitation the rights granted under Section 6 hereinbelow, Client shall pay to Company: (i) the recoupable advance as set forth in Section 2 hereinbelow; and (ii) the Producer royalty set forth in Section 3 hereinbelow.

### **2. ADVANCE**

Not later than ten (10) business days following the complete execution of this Production Agreement, Client shall pay Company, as a recoupable advance against Producer Royalties that may become due hereunder, the sum of **One Thousand Nine Hundred Ninety-Nine (\$1,999) dollars** (the “Advance”).

### **3. ROYALTIES**

(a) Client shall pay to Company a royalty on all exploitations of Master, including without limitation net profits (defined below) of full-priced top-line Albums embodying the Master at a basic rate of three percent (3%) of the retail base price or the equivalent purchase price to dealers of such Albums (the “Producer Royalty”). The basic rate shall be prorated based on a fraction, the numerator of which shall be one (1) and the denominator of which is the total number of royalty-bearing master recordings (including the Master) embodied on such phonorecord.

Net Profits shall be defined as follows: “Gross Income” as defined below, minus “Expenses”, as defined below.

Gross Income shall be any and all income monies received by Client from the exploitation of the Master, including from sale, license, assignment, lease, or rental of the Song or any other use thereof, including sale or license of phonorecords in any media now known or hereinafter developed throughout the world for as long as

Client receives income from such exploitation. expenses shall mean any and all actual recording costs paid by Client, except the royalty payable to Company hereunder, including without limitation fees to session musicians, engineers, mixing, mastering, sample and clearance costs, and the Advance.

(b) Company hereby grants to Client and Client's assignees, in perpetuity a license to exploit the Master (and also the Controlled Composition embodied therein) in all forms and configurations of phonorecords and audiovisual recordings in any and all media. In consideration for the license to reproduce the Controlled Composition mechanically, Client shall pay to Company a so-called "mechanical royalty" for net sales of the applicable Album (or Master as the case may be) embodying such Controlled Composition equal to the minimum statutory rate applicable to the use of musical compositions on audio recordings under the United States copyright law effective on the date hereof. Mechanical royalties payable in connection with any such Controlled Compositions will otherwise be accounted for, calculated and paid on the same basis (e.g., reductions, deductions, prorations, non-payments, etc.) as are Artist's mechanical royalties under an applicable Recording Agreement, should one exist, including without limitation, any so-called "cap" on aggregate mechanical royalties.

For the purposes of any publishing income that may hereby and at some later date be due to any songwriter associated with the Master, Company, Artist and Client hereby agree and confirm to be bound by the so-called "split-sheet," an example of which is attached hereto as "Schedule A", once fully executed by all songwriters associated the Master. Company and Company's publishers agree to be bound by the so-called controlled composition provisions in any applicable recording agreement concerning Artist (should one exist), and agree to issue a mechanical license for their share of the composition hereunder in accordance therewith, as well as free synch licenses for any promotional videos embodying the compositions hereunder.

#### **4. TERM**

The term of this Agreement shall commence as of the date hereof and shall continue in perpetuity.

#### **5. NOTICE OF OUTSTANDING CLIENTS**

The Client hereby understands that the underlying musical composition produced/created by Company that make up part of the whole of the Master ("Beats") may have been non-exclusively licensed by other third-parties. Also, that those licenses will remain valid for up to two (2) years pursuant to their respective acquisition dates, even after the induction of this agreement, none of which will commence after the complete execution of this Agreement. After such period, the non-exclusive licenses acquired by said third-parties will be completely void, and said third-party Clients will not have any usage or distribution rights whatsoever to use/exploit songs created with Beats. Company agrees to completely refrain from licensing Beats, whether non-exclusively or exclusively, to any other third-party upon the execution of

this agreement, along with compensation paid to Company by Client outlined in this agreement. Client indemnifies and holds Company harmless for any damaging circumstances caused by the exploitation of Beats by any prior third-party non-exclusive Client of Beats.

## **6. GRANT OF RIGHTS**

- (a) Master shall be the sole property of Client throughout the universe, free from any claims whatsoever by Company and Client shall have the exclusive right to copyright such Master (as “sound recordings”) in its name as the owner and author thereof and to secure any and all renewals and extensions of such copyrights.
- (b) Without limiting the generality of the foregoing, Client and any person authorized by Client shall have the unlimited exclusive right, throughout the universe, to manufacture records by any method, now or hereafter known, be it physical or digital, derived from the Master hereunder, and to sell, market, transfer or otherwise deal in the same, under any trademarks, trade names and labels, or to refrain from such manufacture, sale and dealing. Such rights shall exist in perpetuity.
- (c) Client has the exclusive right to distribute the Master (or to engage a third-party to distribute the Master) directly to consumers by means of any and all media, including, without limitation, by means of electronic transmissions.
- (d) Client and any Person authorized by Client each shall have the exclusive right throughout the universe, and may grant to others the right, to reproduce, print, publish, or disseminate in any medium, Company’s name, portraits, pictures, likenesses and biographical material as news or information, or for the purposes of trade, or for advertising purposes in connection with Master hereunder... As used in this Agreement, “name” shall include, without limitation, any professional names.

## **7. ACCOUNTING AND PAYMENT**

Client shall account to Company on a semi-annual basis starting December 31<sup>st</sup> of the year of the induction of this agreement, and continue so long as Net Profits are earned, by furnishing statements and any payments due to Company after deduction of permissible Expenses. Each such accounting statement shall include a description of any transaction subject to this Agreement including identification of any third party, the amount paid and the nature of the products and/or services for which payment was made. Each such accounting statement shall cover all relevant transactions for the immediately preceding semi-annual period.

## **8. AUDIT**

Company shall have the right upon thirty (30) days advance written notice to Client to engage a certified accounting professional to inspect Client's books and records at Client's normal place of business during normal business hours, as the same may relate specifically to the royalties payable to Company hereunder, provided that Company shall: (i) only have the right to do so with respect to any royalty statement within 1 year of the date such statement was rendered, and only once with respect to any such statement, (ii) Company may only exercise the aforementioned right once every three (3) years and (iii) not have the right to inspect Client's distributors' books or records (if any). Without limiting the foregoing, if Client audits its distributors' books and records (if any) and recovers additional royalties for the Master, Client shall promptly pay Company Company's share of such royalties after such recovery is received by or credited to Client, after deduction of a proportionate share of the costs of such audit. Company's royalties, if any, shall be sent to the address above. Any change in Company's address must be provided in writing to Client at least fifteen (15) days before any applicable and scheduled payment date.

(b) Company acknowledges that Client's books and records contain confidential trade information. Neither Company nor Company's representatives (including the accountants conducting any such audit) will communicate to others, or use on behalf of any other person, any facts or information obtained as a result of such examination of Client's books and records, except as may be required by law or judicial decree.

## **9. LEGAL COUNSEL**

Client hereby acknowledges that it has sought and received legal advice from independent counsel or that it has voluntarily waived his right to independent counsel with respect to the terms and provision contained in this Agreement.

## **10. INDEPENDENT CONTRACTOR**

Company and Client shall have the relationship of independent contractors. Nothing herein shall be construed to place Company and Client in the relationship of principal and agent, employer and employee, master and servant, partners, or joint ventures, and neither party shall have expressly or by implications, represented themselves as having any authority to make contracts in the name of, or binding on, each other, or to obligate the other in any manner.

## **11. NOTICES**

Notices, reports, accountings or other communication which the Company or the Client may be required or desire to send to the other, must be delivered EITHER by

- (a) Certified mail, return receipt requested to the parties at the addresses first written above or other address to be designated by Company or Client.
- (b) Electronic mail at the following addresses: (i) for Client: \_\_\_\_\_@\_\_\_\_.com (ii) for Company: [jim@shinytracks.com](mailto:jim@shinytracks.com)

## **12. GOVERNING LAW**

This Agreement is made, and is to be construed under the laws of the State of Florida with respect to contracts to be executed and performed in this State, and the courts of Florida State shall have exclusive jurisdiction thereto.

## **13. ENFORCEMENT**

If any provision of this Agreement shall be found invalid or unenforceable, then such provision shall not invalidate or in any way affect the enforceability of the remainder of this Agreement.

## **14. WARRANTIES AND REPRESENTATIONS**

- a. Company warrants and represents that it has the authority and power to grant the rights granted herein, that Company's contribution to the Master will be entirely original, and that the use thereof shall not infringe upon the rights of any person, firm, or entity.
- b. Company agrees to indemnify and hold Artist, Client and their respective affiliates and assigns harmless from and against any claims that are inconsistent with the foregoing, or with any representations, obligations, or agreements in this Agreement.
- c. Without limiting the generality of the foregoing, the amount of any monies payable to Company hereunder may be reduced by the amount of any liability to which the foregoing indemnity relates. In addition, payment of such monies may be withheld pending the determination of any claim to which the foregoing indemnity relates, provided that the amount so withheld shall not exceed a good-faith estimate of the amount of the potential liability involved.
- d. Company further warrants that no so-called samples (i.e., third-party copyrighted material) are contained and/or embodied within the Master. If it is later determined that samples have been utilized in the production of the Master, Company will fully indemnify and hold Client, Artist and their respective licensees harmless from any liability as a result of such uses in accordance with this Agreement.
- e. Company may not assign any of Company's obligations hereunder, apart from designating a new party to receive Company's royalty payments hereunder.

