

ANNEX TO GENERAL FACTOR/RECIPIENT AGREEMENT

-- Sound Recording Loan Program--

Annex # «ApplicantFileTrackingNumber» to the FACTOR/Recipient General Agreement for FACTOR programs funded under The New Musical Works Component entered into between The Foundation Assisting Canadian Talent on Recordings, "FACTOR" (30 Commercial Road, Toronto, Ontario, M4G 1Z4) and «BorrowerName» "Recipient" («Address», «City», «PROVINCE», «PostalCode») on _____ (For FACTOR Use Only), which shall herein be defined as the "Agreement."

In addition to the terms and conditions of the Agreement, FACTOR and the Recipient agree that the Project is defined by the information in this Annex, the Attached Application and accepted or revised Budget Information and any additional terms and conditions found herein.

This Annex Dated:	(For FACTOR Use Only)
Approved File #:	«ApprovedNumber»
FACTOR Program:	Direct Board Sound Recording Loan
Artist Name:	«ArtistName»
Borrower Name:	«BorrowerName»
FACTOR Approved Project Costs (including Admin Fee):	«COUTS_TO»
% of Costs FACTOR Agrees to Fund:	%
Maximum FACTOR Disbursement Amount to Recipient (including Admin Fee):	«TotalAmountOffered»
Deadline For Project Completion:	«ProjectCompletionDate»

Recipient Initials: _____

FACTOR Representative Initials: _____

Article 1 – DISBURSEMENT AS A LOAN

1.01 All FACTOR monies disbursed to the Recipient for the Recipient's Project defined in this Annex shall be considered a Loan to the Recipient, subject to the terms and conditions hereunder.

Article 2 – TERMS OF THE LOAN

Loan Amount

2.01 In addition to the fulfilment of terms in the Agreement, the Recipient hereby promises to pay to FACTOR an amount equal to the aggregate of all amounts disbursed by FACTOR for the Recipients' Project defined in this Annex. This amount shall be defined in this Annex as "the Loan".

Term of the Loan

2.02 The term of the Loan shall be the earlier of the two years from the "Effective Date" of the Loan, or the date in which the Recipient has fully re-paid the Loan to FACTOR. The "Effective Date" of the Loan shall be the date in which the Recipient first commercially releases the "Record" ("Record" herein defined as the aggregate product of all of the individual Sound/Master Recordings which are the subject of the Recipient's Project defined in this Annex) in any territory in the World.

Notice of Effective Date

2.03 The Recipient shall notify FACTOR of the date of the first Commercial Release of the Record, so that the Effective Date may be established. "Commercial Release" is herein defined as a professionally manufactured CD, containing a bar code, catalogue number, and a minimum of six tracks or 20 minutes of recorded material that is made available for sale to the general public. A digital-only release does not meet the Commercial Release criteria under this contract.

Failure of Release Resulting in Default

2.04 In the event that the Recipient has not notified FACTOR of the Effective Date within six months of FACTOR having received and accepted the Recipient's Completion Certificate for the Project, this failure shall be considered as an Event of Default under the Agreement.

Payment Parameters

2.05 From the Effective Date and for a period of two years thereafter, or until the Loan is fully re-paid:

- (a) the Recipient shall pay to FACTOR an amount equal to \$0.50 for each "Record sold" by Recipient – a "Record sold" being determined as the net records sold by the Recipient after any Vendor returns;
- (b) upon the Recipient generating revenue from sales of the Record and its individual Master Recordings which is equal to the Project's costs which were not paid for by the funds disbursed by FACTOR for this Project, the Recipient shall pay to FACTOR an amount equal to twenty-five percent of all revenue generated by the Master Recordings found on the Record from the commercial sales of these Recordings including, but not limited to, digital sales and compilation sales.

Disposition of Masters

2.06 The Recipient must have FACTOR's express permission in writing for the Recipient to license, sell, assign or otherwise transfer its Canadian copyright in any or all of the Master Recordings which embody the Record, to a third party.

- (a) in the event that such Third party is a non-Canadian, the Recipient shall repay the balance of the Loan in full within 30 days of the execution of any such sale, assignment or transfer;
- (b) in the event that such Third Party is a Canadian, such Third Party Canadian must agree to be bound in writing to all of the obligations of the Agreement and this Annex.

Recipient Initials: _____

FACTOR Representative Initials: _____

Direction

2.07 At FACTOR's request, the Recipient shall promptly execute and deliver to FACTOR a written direction, in a form satisfactory to FACTOR, to any and all persons who owe or will owe to the Recipient any amounts arising from revenues described in paragraph 2.05 of this Annex which are payable to FACTOR. The direction shall require these persons to pay and account directly to FACTOR, for FACTOR's full and proper share thereof pursuant to this Annex.

Cancellation of Payment Obligations

2.08 Provided there has never been an Event of Default under the Agreement, the Recipient's obligations on the Loan shall cease and be cancelled by FACTOR upon FACTOR having received re-payment in full of the Loan, or shall be ceased and cancelled by FACTOR two (2) years following the Effective Date of the Loan, provided that at such time the Recipient shall remit to FACTOR the balance on all monies due FACTOR under section 2.05 of this Annex, which shall be the lesser of the unpaid balance of the Loan or the remaining sales on the Project within this two year period including the liquidation of any reserves held against returns.

ARTICLE 3 – ACCOUNTING

Rendering Account on the Loan

3.01 Amounts payable to FACTOR pursuant to the Loan described in this Annex shall be computed by the Recipient on a semi-annual basis. The semi-annual periods for the Recipient's computation shall be the period ending June 30th and December 31st of each calendar year, and the Recipient must provide FACTOR with a Statement no more than sixty days following the completion of the semi-annual period. This Statement must be reasonably detailed in a form acceptable to FACTOR, and shall include the payment of all amounts shown thereon to be due to FACTOR. So long as the Loan remains unpaid, the Recipient shall submit such Statements whether or not any revenues have been received by the Recipient during the period covered by a given report. The first Statement to FACTOR shall be at the completion of the first semi-annual period following the Effective Date of the Loan. If the Loan is not paid in full before the expiration of the two-year period, the final Statement and payment to FACTOR shall be at the completion of the semi-annual period following the expiration of the two-year term.

Foreign Revenues

3.02 Amounts payable to FACTOR for Records sold outside of Canada or from other foreign revenues shall be made in Canadian dollars with the amount of each payment being converted to Canadian dollars at the exchange rate in effect on the day on which the Statement is issued by the Recipient.

Deemed Sale

3.03 A Record or any additional revenue under paragraph 2.05 of this Annex shall be deemed sold whether or not the Recipient has received payment in full for it or would have received payment in full but for the fact that Third Party retains the payment in satisfaction of an outstanding obligation of the Recipient.

Reserve

3.04 Where revenues are received from the sale of Records that are subject to return, the Recipient is entitled to maintain a maximum reserve against returns of thirty-five percent (35%). For records sold pursuant to License Agreements, the Recipient may not maintain an additional reserve if the respective licensee or assignee maintains a reserve. If the respective licensee or assignee maintains a reserve lower than 35%, the Recipient can only maintain a reserve commensurate with this rate.

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ARTICLE 4 – ADDITIONAL CREDITS

4.01 In addition to the credits required in Paragraph 4.08 of the Agreement, the Recipient shall also ensure that both the FACTOR and Canada wordmark logos are printed on the back tray card of the Commercial Release of the Record. In addition, the Recipient shall ensure that the following sentence will appear in the acknowledgements section in the booklet of the Commercial Release of the Record: "We acknowledge the financial support of the Government of Canada through the Department of Canadian Heritage (Canada Music Fund) and of Canada's private radio broadcasters." In the event that the Commercial Release of the Record is not accompanied by a booklet, the Borrower shall ensure that the following sentence will appear on the back cover of the Commercial Release of the Recording beside the Canada wordmark logo: "With the participation of the Government of Canada (Canada Music Fund)."

ARTICLE 5 – FACTOR’S RIGHT TO USE RECORDINGS FOR PROMOTION

5.01 The Recipient hereby agrees to provide 50 copies of the Record funded by FACTOR under this Annex upon completion of the Project. FACTOR agrees to use these Records for promotional purposes only. The copies provided to FACTOR must be professional quality pressings with the proper logos and wording as per Section 4.01 above.

5.02 The Recipient hereby grants FACTOR the right to use, at no charge, any of the Master Recordings funded under this Project for FACTOR’s promotional purposes on a limited run promotional compact disc album – a limited run which will not exceed one thousand pieces manufactured. For such purpose, FACTOR will use a maximum of two Master Recordings from the Project herein and will notify Recipient of its intention to use a Recording(s) in advance of the manufacturing of the album. For such use, FACTOR warrants that it shall take responsibility for acquiring the necessary mechanical publishing license for the use of the compositions embodied in the Recipient’s Master Recordings and any subsequent necessary mechanical royalty payments.

IN WITNESS WHEREOF both FACTOR and The Recipient agree to the specific terms of this Annex and have caused this Annex to be duly executed by their respective representatives thereunto duly authorized.

THE FOUNDATION ASSISTING CANADIAN TALENT ON RECORDINGS

«BorrowerName»

Phil Gumbley
Director, Operations

Authorized Signatory

Printed Name

Social Insurance Number
(REQUIRED if above named Recipient is an individual or sole proprietorship. We cannot process your payment without this.)

Title

Authorized Signatory (2)

Authorized Signatory (2)

Printed Name

Title

FACTOR has provided the space for a second signatory for corporations or registered partnerships, where a second signatory is required.