

DualDisc Trademark Licensing Terms for Record Labels

This document sets forth the terms upon which, as of the date identified above, the Recording Industry Association of America, Inc. (“RIAA”) is prepared to grant licenses to record labels for the use of the “DualDisc Logo” identified in Part III of the current version of the “DualDisc License Book” that is incorporated herein by reference and may be found on the DualDisc licensing website (currently found at www.dualdisclicensing.org) (the “DualDisc Licensing Website”), and/or any related or substituted trademarks that RIAA may from time to time identify in subsequent versions of the DualDisc License Book (collectively the “DualDisc Marks”). If a record label wishes to obtain a license with respect to the DualDisc Marks on the terms set forth herein, such person or entity may apply for such a license through the DualDisc Licensing Website. Upon RIAA’s receipt of payment as required herein and acceptance of such an application, such person or entity shall be treated as the “Licensee” for purposes of these terms, and RIAA and the Licensee shall have a legally binding agreement between them on the terms set forth herein (the “Agreement”). RIAA shall provide notice thereof to the Licensee. RIAA and Licensee are each referred to herein as a “Party” and collectively as the “Parties.”

WHEREAS, RIAA, to the best of its knowledge, owns all right, title and interest in and to the DualDisc Marks in the territories from time to time identified on the DualDisc Licensing Website (the “RIAA Territory”) for use in connection with prerecorded discs consisting of: (1) one side on which content is embodied, and in the ordinary course is playable, in the CD format; and (2) one side on which substantially the same content, as well as additional content, is embodied, and in the ordinary course is playable, in the DVD format (“CD/DVD Discs”);

WHEREAS, RIAA makes its DualDisc Marks available as a service to promote consumer understanding and acceptance of CD/DVD Discs and to allow record labels to communicate that their CD/DVD Discs have the same basic qualities as similar discs sold by others;

WHEREAS, Licensee distributes, markets, and/or sells CD/DVD Discs or plans to do so in the future;

WHEREAS, Licensee wishes to use the DualDisc Marks in connection with its CD/DVD Discs; and

WHEREAS, RIAA is willing to grant to Licensee a nonexclusive license, with a limited right to sublicense, to use the DualDisc Marks in the RIAA Territory in conjunction with Licensee’s distribution, marketing, and sale of CD/DVD Discs in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth in this Agreement and other good and valuable

consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows.

1. GRANT OF NON-EXCLUSIVE LICENSE.

1.1. Subject to the terms and conditions specified herein, RIAA grants to Licensee a nonexclusive license, with the right to sublicense only to Licensee's "Affiliates" and distributors, to use the DualDisc Marks in the RIAA Territory on (1) CD/DVD Discs (the "Licensee Goods") that are distributed, marketed, and/or sold by Licensee or on Licensee's behalf under (a) a "label" or "label imprint" owned, controlled or operated by Licensee or one of its Affiliates and registered by Licensee through the DualDisc Licensing Website as being covered by the Agreement (a "Covered Label"), or (b) a "label" or "label imprint" for which Licensee distributes CD/DVD Discs but that is owned, controlled or operated by another then current licensee of the DualDisc Marks and registered by that licensee through the DualDisc Licensing Website as being covered by its license, and (2) on any other materials that Licensee or its Affiliates or distributors create and distribute in connection with the distribution, marketing and sale of the Licensee Goods (such other materials, "Related Materials"). For purposes of this Agreement, the term "Affiliate" means (i) any entity in which 50% or more of the outstanding equity or capital interests are directly or indirectly owned by Licensee, (ii) any entity directly or indirectly owning 50% or more of the outstanding equity or capital interests in Licensee, and (iii) any entity in which 50% or more of the outstanding equity or capital interests are directly or indirectly owned by an entity as described in clause (ii). For the avoidance of doubt, any right of Licensee or its Affiliates to use the DualDisc Marks in connection with CD/DVD Discs of a distributed label or label imprint that is not a Covered Label under this Agreement would depend upon the distributed label or label imprint being covered by another license to use the DualDisc Marks.

1.2. By accepting this Agreement, Licensee binds itself and its Affiliates, including its Covered Labels, by the terms of this Agreement. Licensee and its Affiliates shall be jointly and severally liable for any breach of this Agreement by or on behalf of any of them.

1.3. RIAA may from time to time and in its sole discretion, without notice to Licensee, update the list of countries identified on the DualDisc Licensing Website as comprising the RIAA Territory; provided, however, that no removal of a country from the RIAA Territory will be applicable to Licensee unless and until RIAA provides Licensee with at least thirty (30) days' notice of such removal, and following such thirty (30) day period, Licensee may sell off any then-existing Licensee Goods targeted for sale in such country that were manufactured prior its receipt of notice of such removal.

2. PAYMENT.

To enable RIAA to recover its administrative costs related to the protection, licensing and proper use of the DualDisc Marks, Licensee agrees to pay RIAA's current

standard fee for an annual license. Currently, at the time Licensee applies for this license it may elect between two payment options. A “trial license” limited to two releases by Licensee and its Affiliates in the aggregate within a one year period is available at a cost of \$100. If Licensee elected that option, the license granted in Section 1.1 is limited to only the first two releases of Licensee Goods by Licensee and its Affilates. A license that is not limited by number of releases is available at a cost of \$250 per Covered Label, up to a maximum of \$2500 per year. Even if licensee has more than ten (10) Covered Labels so that its license fee is capped at \$2500, each Covered Label must be registered through the DualDisc Licensing Website to be covered by the Agreement. Licensee must make its first fee payment through the DualDisc Licensing Website as a condition to this Agreement’s becoming effective. If during the Term (as defined in Section 11.1), Licensee wishes to register additional Covered Labels that, under RIAA’s then current rate structure, would require additional payment, Licensee must make such payment as a condition to registering the Covered Labels, and irrespective of the point in the Term when such additional registration is made, no such payment shall be prorated. RIAA may adjust its standard fee from time to time, and the new fee shall apply to any renewal of this Agreement thereafter; provided, however, that no fee increase will be applicable to Licensee unless and until RIAA provides Licensee with at least thirty (30) days’ notice of such increase. Licensee must pay RIAA’s then-standard fee at the time of renewal through the DualDisc Licensing Website as a condition to any renewal of this Agreement. Except as specifically provided herein, all payments are nonrefundable.

3. OWNERSHIP OF AND RIGHTS IN THE MARK; FORM OF USE.

Licensee acknowledges that RIAA owns all right, title and interest in and to the DualDisc Marks and agrees that it will do nothing to challenge or undermine such ownership, including without limitation, applying to register the DualDisc Marks or any confusingly similar variations thereof as trademarks, service marks, domain names, or business names with any governmental agency, tribunal or other entity anywhere in the world, including, without limitation, the United States Patent and Trademark Office and/or any Internet registrars or other Internet service providers. Licensee further acknowledges that nothing in this Agreement shall convey to Licensee any right, title or interest in or to the DualDisc Marks other than those limited rights to use the DualDisc Marks that are prescribed in the license granted in Section 1 of this Agreement.

4. QUALITY MAINTENANCE AND CONTROL.

4.1. Licensee shall use the DualDisc Marks only in connection with Licensee Goods that conform to all the requirements set forth in the then current version of the DualDisc License Book and that are manufactured by a manufacturer (which may be Licensee, an Affiliate thereof or a third party) that is currently certified by RIAA by virtue of its having the compliance of its CD/DVD Discs with the DualDisc Physical Specification set forth in Part I of the DualDisc License Book confirmed by independent testing at a testing facility recognized by RIAA. A list of certified manufacturers is

available on the DualDisc Licensing Website. Without limiting the foregoing, Licensee shall ensure that its use of the DualDisc Marks in conjunction with the Licensee Goods and Related Materials is, at all times, consistent and in compliance with the Logo and Style Requirements set forth in Part III of the DualDisc License Book. Licensee shall ensure that all Licensee Goods and its use of the DualDisc Marks complies with the foregoing requirements throughout the term of this Agreement, and on request, provide to RIAA evidence of such compliance, including, if so requested, proof of manufacture by a particular manufacturer.

4.2. The current version of the DualDisc License Book is posted on the DualDisc Licensing Website. Licensee acknowledges and agrees that RIAA shall have the right, from time to time and in its sole discretion, to change or revise the DualDisc License Book without notice to Licensee, by posting the revised DualDisc License Book on the DualDisc Licensing Website; provided, however, that no such changes or revisions will be applicable to Licensee unless and until RIAA provides Licensee with at least ninety (90) days' notice thereof, and any such changes so noticed by RIAA shall not affect (i) Licensee Goods and Related Materials that have been printed, manufactured, produced, or disseminated via a digital transmission system prior to the expiration of the ninety (90) day notice period, and (ii) subsequent production "runs" of substantially unchanged Licensee Goods and Related Materials conforming to an earlier authorized version of the DualDisc License Book.

4.3. To enable RIAA to ensure that the quality of the Licensee Goods satisfies the quality standards prescribed in Subsection 4.1 above, at RIAA's request, Licensee shall supply RIAA with a reasonable number of samples of Licensee Goods that bear the DualDisc Marks, along with a reasonable number of samples of any Related Materials then being used or intended to be used by Licensee in connection with its distribution, marketing and sale of the Licensee Goods, for RIAA's review. (Each such set of samples of Licensee Goods and Related Materials is sometimes referred to herein, collectively, as a "Sample Set".) In the event that RIAA finds that any such samples do not satisfy the applicable quality standards referred to herein, then Licensee shall take all steps reasonably requested by RIAA to remedy such failure in respect of any subsequent manufacturing run of Licensee Goods that it distributes, markets, or sells and any Related Materials that it continues to use. In such instance, RIAA shall have the right to request additional samples of the relevant Licensee Goods and/or Related Materials until it determines that Licensee has remedied the failure concerned.

4.4. Licensee shall not use (or allow others to use) the DualDisc Marks in combination with, or as part of, any so-called "composite marks."

4.5. Licensee shall not use the DualDisc Marks in any manner that would, in the sole reasonable discretion of RIAA, dilute or tarnish the DualDisc Marks.

4.6. RIAA may from time to time and in its sole discretion, without notice to Licensee, impose on its licensees of the DualDisc Marks additional reasonable requirements intended to ensure that CD/DVD Discs using the DualDisc Marks are of

uniform high quality; provided, however, that no such requirements will be applicable to Licensee unless and until RIAA provides License with at least ninety (90) days' notice thereof, and such requirements shall apply to previously distributed Licensee Goods only if practicable (for example, and not by means of limitation, a requirement to report consumer complaints).

5. REPRESENTATIONS, WARRANTIES.

5.1. Licensee represents and warrants that: (i) it has the full corporate authority and ability to enter into this Agreement; (ii) the individual applying for a license on its behalf has full authority to enter into the Agreement, make the payment made and bind Licensee fully to the Agreement; (iii) all information provided in its application for a license or renewal thereof, or otherwise provided through the DualDisc Licensing Website, is true, accurate, complete and not materially misleading; and (iv) its manufacture, distribution, marketing and/or sale of the Licensee Goods and any Related Materials shall comply in all material respects with all applicable laws and regulations.

5.2. RIAA represents and warrants that: (i) it has the full corporate authority and ability to enter into this Agreement; and (ii) the individual providing Licensee notice of RIAA's acceptance of Licensee's license application has full authority to enter into the Agreement and to bind RIAA fully to the Agreement. RIAA MAKES NO OTHER WARRANTIES WITH RESPECT TO THIS AGREEMENT, THE DUALDISC MARKS, OR THE RESULTS LICENSEE WILL ACHIEVE BY USING THE DUALDISC MARKS, AND HEREBY DISCLAIMS ANY OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY.

6. THIRD PARTY INTELLECTUAL PROPERTY.

Licensee acknowledges that the Licensee Goods may embody content that is protected by copyright, technology that is protected by patents, trademarks other than the DualDisc Marks, and possibly other forms of intellectual property or rights. Within the requirements of the DualDisc License Book, RIAA does not have knowledge of or control over the particular content or labeling of, or the particular technical approach employed by Licensee in, Licensee Goods. RIAA likewise does not have knowledge of or control over the licenses that Licensee or its manufacturers may have with respect to such content, technology, trademarks or other intellectual property. RIAA has made no effort to determine, and makes no representation or warranty, that CD/DVD Discs can be manufactured, distributed, marketed or sold free from claims of infringement. As would be the case if Licensee were manufacturing, distributing, marketing and selling CD/DVD Discs without the DualDisc Marks, RIAA shall have no responsibility for such matters. Licensee shall investigate whether any licenses are necessary for the manufacture, distribution, marketing and sale of its CD/DVD Discs in the jurisdictions in which it engages in such activities. Licensee represents and warrants that it has secured or will secure all rights and licenses necessary with respect to the Licensee Goods in all

jurisdictions where required and that the Licensee Goods do not and will not infringe any copyright, patent, trademark or other intellectual property right of any third party (except trademark rights to the DualDisc Marks in the RIAA Territory). On request, Licensee promptly shall provide to RIAA in writing adequate assurance that Licensee Goods do not infringe, including evidence of licensing where applicable.

7. INDEMNIFICATION.

7.1. Licensee shall indemnify and hold harmless RIAA and its officers, directors, agents, employees, successors and assigns from and against any and all claims, demands, obligations, causes of action and lawsuits, any damages, liabilities, fines, judgments, costs (including settlement costs), and expenses associated therewith (including the payment of reasonable attorney fees and disbursements), arising out of: (1) the manufacture, distribution, marketing, sale or use of Licensee Goods; (2) defects in the design, assembly, or manufacture of any Licensee Goods; (3) any actual or alleged infringement by the Licensee Goods; and (4) any breach by Licensee of this Agreement, including, without limitation, breach of any Licensee's, representations, warranties or covenants set forth herein.

7.2. Licensee's obligation to indemnify RIAA pursuant to this Section 7 shall survive the expiration or termination of the term of this Agreement.

8. INFRINGEMENT OF THE DUALDISC MARKS.

Licensee agrees to cooperate with RIAA's efforts to defend, protect and/or preserve its rights in and to the DualDisc Marks. To that end, Licensee shall promptly notify RIAA in writing in the event it becomes aware of any potential or actual infringement of the DualDisc Marks, and, upon the RIAA's request, Licensee shall reasonably cooperate with any actions or other measures RIAA takes to defend, protect, and/or preserve its rights, at Licensee's sole expense. In the event of any such potential or actual infringement, RIAA reserves the exclusive right to take any legal action or other measures it determines, in its sole discretion, to be appropriate (including electing not to take any such action or other measures), in order to defend and/or to protect the DualDisc Marks against such infringement. Licensee shall take no legal action or any other measures to defend or protect the DualDisc Marks without first obtaining RIAA's prior written approval.

9. ASSIGNABILITY.

Licensee may assign or transfer this Agreement to an Affiliate, to its successor by way of merger, to the acquirer of all or a substantial portion of its assets, or to any partnership or joint venture in which it participates, and such rights may be similarly assigned by any permitted assignee. In other respects, Licensee shall not have the right

to assign, transfer, mortgage or otherwise hypothecate this Agreement or any of Licensee's rights herein, in whole or in part, without the prior written consent of RIAA in each instance. Any purported assignment, transfer, mortgage or other hypothecation by Licensee in violation of this Section 9 shall be void. RIAA may assign or transfer this Agreement.

10. CHANGES IN TERMS.

RIAA may change its standard DualDisc Trademark Licensing Terms from time to time in its sole discretion; provided, however, that no such changes will be applicable to Licensee unless and until RIAA provides Licensee with at least thirty (30) days' notice thereof. If RIAA gives such notice, this Agreement automatically shall be deemed amended to incorporate the changed terms rather than these terms upon the later of the end of such thirty (30) day period or the effective date for the new terms prescribed by RIAA. Notwithstanding the foregoing, if Licensee reasonably believes that any changed terms are disadvantageous to it, it may terminate this Agreement by written notice to RIAA during such thirty (30) day period, and if it does so, RIAA promptly shall refund a prorated portion of Licensee's fees for the remainder of the current Term.

11. TERM AND TERMINATION.

11.1. Term. The initial term of this Agreement shall begin on the date that RIAA has received the initial fee described in Section 2 and accepted Licensee's application for a license (the "Effective Date"). Thereafter, this Agreement shall continue in full force and effect for a one (1) year period, unless earlier terminated by either Party as provided in this Section 11 (the "Term"). Upon expiration of such initial period or any subsequent renewal of the Term, the license may be renewed for additional periods on RIAA's then-current terms (including fee structure) for licensing of the DualDisc Marks. Prior to any such renewal, Licensee must request renewal for a subsequent period of an available duration through the DualDisc Licensing Website and with that request: (1) pay the applicable fee, (2) update its contact and other administrative information, and (3) certify that it has complied with the requirements of this Agreement in all material respects during the period just ended and that it will comply with RIAA's then-current terms for the renewal period. For the avoidance of doubt, the Term expires unless the foregoing renewal requirements are satisfied before expiration of the then-current Term; provided that RIAA in its sole discretion may accept late renewal applications and apply them retroactive to the expiration of the previous Term. RIAA reserves the right to discontinue its DualDisc Mark licensing program at any time on thirty (30) days notice, and if it does so, this Agreement shall terminate without any obligation of RIAA to refund any fees paid.

11.2. Termination for Breach. RIAA may terminate the Term of this Agreement in the event that Licensee breaches any of Licensee's agreements, representations,

warranties or covenants set forth herein and fails to cure such breach within the applicable period prescribed below:

(1) In the event that Licensee's breach involves the failure of Licensee Goods to comply with the quality standards prescribed in Section 4 above, Licensee shall be deemed to have cured such breach by correcting such failure in the subsequent manufacturing runs of Licensee Goods concerned; provided that if more than two (2) separate Sample Sets are found to have breached such quality standards in any given twelve (12) month period, RIAA shall have the right to terminate the Term immediately, upon notice to Licensee, without giving Licensee an additional opportunity to cure the additional breach concerned.

(2) In the event that Licensee's breach involves the failure of Related Materials to comply with the quality standards prescribed in Section 4 above, Licensee shall be deemed to have cured such breach by ceasing to use the Related Materials in question and, to the extent Licensee wishes to continue using the same materials, promptly producing new Related Materials that comply with the foregoing quality standards; provided that if more than two (2) separate Sample Sets are found to have breached such quality standards in any given twelve (12) month period, RIAA shall have the right to terminate the Term immediately, upon notice to Licensee, without giving Licensee an additional opportunity to cure the additional breach concerned.

(3) In the event a third party makes a colorable claim of infringement involving the Licensee Goods, and Licensee does not provide to RIAA in writing, within five (5) business days after RIAA's request, assurance that RIAA deems adequate in its sole discretion that the Licensee Goods do not infringe, RIAA shall have the right to terminate the Term immediately.

(4) In the event of a breach by Licensee that does not involve any of the circumstances prescribed in clause (1), (2), or (3) above in this Section 11.2, Licensee shall have thirty (30) days following its receipt of notice from RIAA of the breach concerned to cure such breach.

11.3. Rights Upon Expiration or Termination. Upon expiration or termination of the Term, as the case may be, all rights granted in Section 1 of this Agreement to Licensee shall terminate, and (i) Licensee shall immediately and permanently cease manufacturing new Licensee Goods and/or Related Materials that bear the DualDisc Marks; (ii) in the case of expiration (but not termination), Licensee may sell off any then-existing Licensee Goods conforming to the requirements of this Agreement that were manufactured in the ordinary course, in numbers that were consistent with Licensee's normal manufacturing practices, prior to the expiration of the Term; and (iii) Licensee shall destroy all Licensee Goods not sold off in accordance with clause (ii), and any and all Related Materials, that bear the DualDisc Marks.

11.4. Other Remedies. The Parties acknowledge that RIAA's right to terminate the Term of this Agreement, as set forth in Subsection 11.2, may be inadequate to

alleviate and/or remedy any damages or harm RIAA may suffer should Licensee breach any representations, warranties, covenants or other provisions set forth herein. The Parties therefore agree that in the event of any such breach, actual or threatened, RIAA shall have the right to seek injunctive or other equitable relief, in addition to any and all other remedies at law and in equity, including provisional remedies, that may be available.

12. NOTICES.

With its application for a license or request for renewal thereof, Licensee shall provide RIAA with an email address and other contact information for the provision of such notice. Licensee may update such information through the DualDisc Licensing Website, and it is Licensee's responsibility to ensure that such information has at all times been updated as needed. RIAA will provide Licensee with a user ID and password for accessing the portion of the DualDisc Licensing Website where such updates can be made. Licensee shall use commercially reasonable efforts to safeguard such user ID and password and is responsible for any actions taken using such user ID and password. Notices, demands or other communications provided by RIAA to Licensee pursuant to or in connection with this Agreement may be provided by RIAA by email or other means for which Licensee has provided contact information through the DualDisc Licensing Website, to the last address or other contact information so provided. Notices, demands or other communications sent by means of email shall be deemed given on the date sent, and those sent by any other means shall be deemed given upon delivery or on the first date on which receipt is refused, regardless of the date of delivery. All notices, demands or other communications provided by Licensee to RIAA pursuant to or in connection with this Agreement shall be provided by registered or certified mail, return receipt requested, and postage prepaid, to the address provided on the DualDisc Licensing Website, or by such other means as may be identified on the DualDisc Licensing Website, and shall be deemed given when received.

13. GOVERNING LAW; VENUE.

THIS AGREEMENT SHALL BE DEEMED TO HAVE BEEN ENTERED INTO IN THE STATE OF NEW YORK, AND THE VALIDITY, INTERPRETATION AND LEGAL EFFECT OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS ENTERED INTO AND PERFORMED ENTIRELY WITHIN THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES UNDER NEW YORK LAW). THE NEW YORK COURTS (STATE AND FEDERAL), SHALL HAVE SOLE JURISDICTION OF ANY CONTROVERSIES REGARDING THIS AGREEMENT; ANY ACTION OR OTHER PROCEEDING WHICH INVOLVES SUCH A CONTROVERSY SHALL BE BROUGHT IN THOSE COURTS IN NEW YORK COUNTY AND NOT ELSEWHERE. THE PARTIES WAIVE ANY AND ALL

OBJECTIONS TO VENUE IN THOSE COURTS AND HEREBY SUBMIT TO THE JURISDICTION OF THOSE COURTS.

14. GENERAL PROVISIONS.

15.1. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the Parties and their successors and permitted assigns.

15.2. No Waiver. The failure or delay of either Party in enforcing any of its rights under this Agreement shall not be deemed a continuing waiver or modification of such rights.

15.3. Headings. The section headings inserted in this Agreement are for convenience only and are not intended to affect the meaning or interpretation of this Agreement.

15.4. Entire Agreement. This Agreement and the DualDisc License Book incorporated by reference herein contain the entire agreement of the Parties with respect to the subject matter hereof and, except as specifically provided herein, no provisions of this Agreement may be changed or modified except by written instrument signed by the Parties or as otherwise specifically provided herein.