

# SkyLimit Music, LLC

## ARTIST NON-EXCLUSIVE LICENSING AGREEMENT

This Non-Exclusive Licensing Agreement is dated \_\_\_\_\_, 20\_\_ , and is between SkyLimit Music, LLC of Albuquerque, NM, a New Mexico Limited Liability Company ("SLM") and \_\_\_\_\_, ("Content Provider").

### Introduction

Content Provider owns and controls the publishing in and to certain master recordings and their related underlying musical compositions ("Represented Tracks").

SLM engages in the online licensing, marketing and sale of "Tracks" to their registered "Customers" (as each are defined within this agreement) via the URL/ [www.skylimitmusic.com](http://www.skylimitmusic.com), which includes without limitation, any and all sub-URL's of SLM, or authorized or powered by SLM and any third party sites featuring Tracks and/or using any SLM web properties or assets ("the Site"). This agreement provides for "Public Performance", "Master Use Licensing" and "Synchronization Licensing".

Content Provider wishes the Represented Tracks to be offered by SLM on the Site as "Pre-Cleared Music" and Content Provider agrees to make the Represented Tracks available to SLM upon the terms and conditions set forth herein.

The Parties therefore agree as follows:

### Definitions

"Customer" shall mean users of the SLM service that are duly registered and approved in accordance with SLM's terms of trading and who have notified SLM of their acceptance of SLM's standard Terms of Use and Customer License Agreement.

"Gross Revenues" shall mean all fees and payments actually received by SLM or credited to its account for licenses granted after provision for delivery charges, shipping charges and credit card transaction fees payable by SLM in connection with such licenses.

"SLM" shall mean SkyLimit Music, LLC, and their authorized agents, assigns, successors and nominees without limitation.

"Net Revenues" shall mean sums received by SLM, being Gross Revenues less (i) any taxes, duties, fees, public charges or withholdings imposed by any governmental agency. SLM shall not recharge its costs incurred for the placement, audio encoding, promotion, sales and marketing of Represented Tracks except where otherwise agreed in writing by the Parties.

"Pre-Cleared Music" shall mean Tracks where both the publishing owners of the musical composition and the master recording each consent to its use on pre-determined license terms

and at a set or interactively computed price and which are not subject to any approvals, rights or restrictions whatsoever and may be offered and sold by SLM in accordance with all of the terms, conditions and uses specified and contemplated herein.

“Public Performance” shall mean music that is performed in a public broadcast on television, radio, DVD, video, Internet, etc.

"Represented Tracks" shall mean the master sound recordings and their underlying musical compositions and all musical, artistic, literary material, and all other related intellectual property which Content Provider owns, controls or administers and has the right to exploit for the purposes contemplated under this agreement and which are set forth in Schedule "A", as may be amended by written notice from Content Provider from time to time during the Term.

"Tracks" shall mean the master sound recordings and their underlying musical compositions provided to and represented by SLM to be sold as Pre-Cleared Music and which were, (i) originally produced as production or library music produced specifically as background non-featured music for use in any and all licensing applications or (ii) Tracks which never gained significant sales after their first commercial release, and which were never re-released, or (iii) produced by an artist-controlled label or production company, or (iv) made by an 'unsigned artist', or (v) which are in the public domain.

“Master Use License” grants the right to use the recording in film, public broadcast on television, radio, DVD, Video, etc.

“Term” shall mean one (1) year of signed agreement.

"Territory" shall mean the Universe.

## **Terms and Conditions**

### **1. Grant of Rights**

Content Provider grants SLM the non-exclusive right and full authority throughout the Territory and during the “Term” via the Site and in connection with the Represented Tracks set forth in Schedule "A" (as the same may be amended or supplemented during the Term) to price set, negotiate and grant the rights set forth below including for periods exceeding the Term:

In connection with:

- a) Synchronization. The right to market, offer for license and to license the Represented Tracks or any part, segment, sample or fraction, for use in synchronization or timed-relation or transcription with audio-visual productions of any nature whether now known or hereafter created, including without limitation, motion pictures, TV programming, commercials, videogames and CD-ROMs and including the use in connection with the distribution, exhibition, promotion and advertising of such productions in any media, manner, or form, and the copying,

manufacture, distribution and sale by any means, method, process or technology of any form of derivative of such productions intended for retail sale or otherwise. Nothing in this section shall grant the right to license the reproduction of Represented Tracks for inclusion in any audio-only retail product derived from such productions except pursuant to Content Provider's prior written consent;

b) Internet Performance. The right to market, negotiate and license Represented Tracks for Internet synchronization on or via Customers web sites or other online applications, including the right to license the public performance rights;

c) Public (Non-dramatic) Performance. The right to market, negotiate and license Represented Tracks for public performance(s) as defined in this agreement.

d) Internet Multimedia Reproduction. The right to market, negotiate and license Represented Tracks for synchronization and reproduction as part of internet-based audio-visual multimedia productions including without limitation digital post cards, sonified e-mails, rich media and personal digital media productions;

e) Telephony, Streaming and Webcast Transmission. The right to market, negotiate and license the streamed public transmission of the Represented Tracks from the SLM server, Customers servers or such servers or telephony wireless operators as are designated and authorized by SLM;

f) Special Markets. The right to market, negotiate and license Represented Tracks for use in special products, including without limitation as premiums, incentives, give-aways, promotions, audio compilations and business to business applications generally, except that SLM shall not have the right to license Represented Tracks for inclusion in audio-only compilations in the form of CDs or otherwise which are intended for commercial retail sale except with Content Provider's prior written consent;

g) Adaptations. The right to authorize licensees of Represented Tracks to edit the same for timing purposes or to be allowed to edit the music to a degree and use a portion thereof for their particular use or remove lyrics, or to sample any portion;

h) Limited Reproduction. The right to copy and authorize Customers to copy Represented Tracks for the purposes of temp-tracking, editing, encoding, hosting and archiving or the production of ephemeral copies;

i) Materials. The right to reproduce, display, distribute Content Provider's photographs, song lyrics, artists name and likeness and any other design elements provided by Content Provider in connection with the Represented Tracks.

j) Promotion and Demonstration. The right to use the Represented Tracks and Materials without payment to Content Provider in relation to or arising from the promotion and marketing activities of SLM including, without limitation, (i) the right to perform, broadcast and transmit Represented Tracks on the Site, (ii) to reproduce Materials in all SLM marketing materials for

the purposes of advertising, marketing and promotion, (iii) to use Represented Tracks and Materials for preview and demonstration purposes to Customers and potential customers, (iv) to manufacture and distribute demonstration or promotional copies of Represented Tracks in the form of Digital Downloads and CDs or otherwise in SLM 's sole discretion;

k) Pricing. The right to set the license fee for any and all licenses of the Represented Tracks including without limitation special pricing arrangements for multiple licenses, licenses to key customers, annuals, blankets, bundles and aggregate usage licenses, promotional compilations and corporate premium business products etc., whether such licenses are granted for Represented Tracks alone or licensed together with Tracks not the subject of this agreement;

l) Refusal and Withdrawal of Represented Tracks. The right to refuse to accept or to withdraw and/or delete from its database any Represented Tracks or any portion at SLM's sole discretion. Acceptance of Content Provider's Represented Track does not, in any way, guarantee placement on the Site.

m) Removal of Represented Tracks. Content Provider may request removal of its Represented Track from the Site before the expiration of the first Term, provided, however, that removal is subject to a One Hundred Dollar (\$100.00) fee. No fee shall be charged if such removal is deemed necessary due to an exclusive agreement with a publishing company or music label.

n) Content Provider has the option to refuse their music in any project/scene/clip which Content Provider may find objectionable. Content Provider must exercise this option on "Schedule A" (attached).

o) Content Provider's account will be flagged by SLM to indicate that the music may not be used in certain instances which Content Provider has notified SLM of according to paragraph n.

## **2. Term and Termination**

The initial term of this agreement shall be for one (1) year commencing at the date stated in the introductory clause ("the Term") and thereafter the Term shall continue and shall be renewed automatically for successive periods of one (1) year each unless Content Provider gives thirty (30) days notice of its desire to not renew.

If Content Provider is in material breach of this agreement, SLM may terminate the agreement immediately and without notice.

Upon termination of this agreement, the Parties shall be released from each of their rights and obligations, except for those set forth in paragraphs 6, 8, 9, 10, 11 and the Represented Tracks shall be removed from the Site.

### **3. Representations of Content Provider**

Content Provider warrants and represents that:

- a) it owns and or controls the publishing in and to the master recordings and the underlying musical compositions in each of the Represented Tracks and has and will hold throughout the Territory and during the Term unrestricted rights to exploit the Represented Tracks;
- b) it is a member of a PRO such as BMI, ASCAP, SoundExchange or SESAC. SLM will not enroll Content Provider in such organizations;
- c) it has all rights, power and authority necessary to enter into and to fully perform this agreement and to make the grant of rights to SLM;
- d) all Represented Tracks have been or will be written or created in accordance with the rules of all unions having jurisdiction, and Content Provider either holds or does not require authorization from any contributing artists, musicians, producers, songwriters, lyricists, or their representatives to exploit the Represented Tracks;
- e) none of the Represented Tracks or Materials or information supplied by Content Provider will violate any law or infringe upon the rights any person or entity;
- f) it will in connection with each Represented Track provide to SLM, at SLM's request, correct and complete information concerning contributing artists, songwriters and any third party with an interest to ensure full and correct on-screen credits if and where applicable;
- g) it has and will hold throughout the Territory and during the Term unrestricted rights in and to the name and likeness of any and all parties with any interest in the Materials and has the right to exploit the same;
- h) it is and shall remain during the Term, solely responsible for making all payments due (and shall not require, obligate or seek to impose any duty on SLM to pay or to provide for any payment whatsoever) to any contributing artist, producer, composer, performer, lyricist, licensee, sub- licensee, or any other party who contributed to the creation, financing, manufacture, production or otherwise of the Represented Tracks or the Materials or who is purportedly entitled to be paid for any reason;
- i) in the event that it shall during the Term knowingly receive any inquiry from any Customer originally introduced to it by SLM, it shall immediately forward in writing full details of any such inquiry to SLM.

### **4. Compensation to Content Provider**

Content Provider shall receive in connection with each individual and completed license of any Represented Track for which SLM shall have received full payment, a license fee equal to fifty

percent (50%) of SLM's Net Revenues. Such license fee shall be paid by SLM and accounted in accordance with SLM's standard terms and conditions as follows:

- a) SLM shall account for licensing fees at least twice a year, June 30, and December 31 in each year of the Term ("the Accounting Periods") for any such period when Content Provider earned Licensing fees. If your licensing fees are less than \$100, we hold onto them until they reach at least \$100. SLM shall send via U.S. Mail to the address listed in Schedule A of this agreement (as may be amended from time to time), Licensing fees due for each respective Accounting Period. SLM will report to Content Provider on a yearly basis a sales summary of license fees for that calendar year;
- b) Content Provider will be precluded from bringing any action with respect to any statement unless such action is commenced against SLM in a court of competent jurisdiction within one (1) year after such statement is rendered.
- c) SLM shall charge no fee to Content Provider for its services under this agreement. Content Provider shall expect no payment from SLM for placing 60-second clips of the Represented Tracks on the Site. As such use is considered "fair use" and SLM is specifically granted permission from Content Provider for that use. Content Provider's sole payment under this agreement is for Licensing fees earned from visual industries, including but not limited to motion pictures, TV programming, commercials, videogames and CD-ROMs.

## **5. Proprietary Rights**

The Parties agree that Content Provider owns or controls all proprietary rights, including publishing, in and to the Represented Tracks and that this agreement does not transfer or attempt to transfer such ownership to SLM. The Parties further agree that SLM owns all proprietary rights including without limitation, copyright, patents, trademarks and the like in and to all designs, systems, programs, developments and ideas used or intended to be used on or in connection with the Site or the business of SLM.

## **6. Indemnity**

Content Provider shall defend, indemnify and hold SLM harmless from and against any and all liabilities, suits, claims, losses, damages, costs or judgments, and shall pay all costs, including reasonable attorneys' fees, and damages arising from or in any way related to:

- a) any breach or alleged breach by Content Provider of any warranty or representation under this agreement;
- b) any claim that any act or omission of SLM in performance of this agreement or by SLM with respect to any Represented Track constitutes any infringement or violation of any right, interest or law, including applicable copyright laws, of any third party in or to the Represented Tracks;

- c) any failure or inadequacy by or on behalf of Content Provider with respect to any registration or filing of any right or entitlement related to any Represented Tracks;
- d) any claim by any person or entity for any royalty or other compensation arising from use or licensing by SLM, consistent with this agreement, of any Represented Tracks;
- e) SLM shall defend, indemnify and hold Content Provider harmless from and against any and all liabilities, suits, claims, losses, damages or judgments related to any adjudicated breach by SLM of any of its warranties or representations provided always that SLM shall not be liable for any indirect or consequential damages, including without limitation anticipated profits in connection with or arising out of this agreement or SLM's performance of any activity contemplated herein. SLM shall not be liable to Content Provider for any loss, damages, claims or liabilities arising from or related to any software program or data errors or digital transmission errors or failures, regardless of cause connected to the Site or otherwise;
- f) The Parties shall promptly provide each other with written notice of any claim or threatened claim and the indemnified Party may, at its own expense, assist in the defense of any claim provided that the indemnifying Party shall control such defense and all negotiations in settlement provided that any settlement intended to bind the indemnified Party shall not be final without the indemnified Party's written consent, which shall not be unreasonably withheld or delayed.

## **7. Submission Guidelines**

- a) SLM will review all submissions thoroughly for content and quality;
- b) SLM is under no obligation to accept or place submissions;
- c) Submissions will not be returned to Content Provider;
- d) Content Provider shall be notified within thirty (30) days of SLM's acceptance or rejection of Content Provider's submission;
- e) If SLM rejects submission, Content Provider may request, for a fee, a critique from SLM.

## **8. Relationship of the Parties**

This agreement does not create a joint venture, partnership or association between Content Provider and SLM and neither party shall have the right or power to obligate or bind the other to any obligation whatsoever except to the extent expressly agreed in writing.

**9. Confidentiality**

During the Term and for a period of three (3) years following the date of expiration of this agreement, Content Provider shall maintain strict confidentiality in connection with all information that is not a matter of public knowledge, concerning SLM, the Site and this agreement, including without limitation the SLM Pricing Matrix, commissions, technical information relating to the development, database, search, security or personalization systems used by the Site.

**10. Governing Law.**

This agreement shall be construed and interpreted in accordance with the laws of the State of New Mexico.

**11. Entire Agreement.**

This agreement constitutes the entire agreement between the parties and supercedes any prior agreement whether written or oral.

**12. Notices**

Any notice required to be given shall be made in writing and shall be deemed given only if delivered personally or by registered or certified mail, postage prepaid and sent to the addresses set forth below or to such other addresses as may have been specified in writing in accordance with this clause. Notices shall be deemed to have been given as of the date of their receipt.

**13. Amendment**

No amendment or variation to the terms of this agreement shall be valid unless made in writing and signed by the parties.

**14. Assignment**

This agreement and all rights and obligations shall be binding upon and shall inure to the benefit of the successors, licensees and assigns of each party. Neither party may assign its rights and obligations without the express written consent of the other party.

**15. Severability**

If any provision of this agreement is determined to be unenforceable for any reason, the validity of the remaining provisions shall not be affected and shall remain in full force and effect.

**16. Waivers**

The waiver by either party or the failure by either party to claim a breach of any provision of this agreement shall not affect the right to require full performance thereafter, nor shall it constitute a waiver of any subsequent breach.

**17. Headings**

The headings in this agreement are solely for the convenience of the parties, and are not intended to and do not limit, construe or modify any of the terms and conditions of this agreement.

**AGREED AND ACCEPTED:**

SkyLimit Music, LLC  
3 Skylimit Road  
Tijeras, NM 87059

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Content Provider:  
Phone: \_\_\_\_\_  
[provide address:]

By: \_\_\_\_\_

Title: \_\_\_\_\_, Dated \_\_\_\_\_

EIN or SS Number: \_\_\_\_\_

ASCAP/BMI/SESAC, SoundExchange  
(circle one) (internet licensing)

Content Provider license fee will be made payable to: \_\_\_\_\_  
(only one person can be named on the check)

CDs should be sent in a padded envelope to SkyLimit Music at the following address (COD deliveries will not be accepted):

SkyLimit Music, LLC  
3 Skylimit Road  
Tijeras, NM 87059

**Schedule "A"**

Complete the information below for all submitted track. SLM does not accept cover songs or songs containing samples that you don't have written permission to license.

Please complete a separate Schedule A for each CD you submit or if you need additional space.

CD Title \_\_\_\_\_

Licensor Name: \_\_\_\_\_

Genre Classification (please check any that apply).

- Blues    Country    Hip-Hop    Electronic    Pop    R&B/Soul    Rock/Metal  
 Jazz    World    Folk    Bluegrass    Other \_\_\_\_\_

Track#	Song Title	Writers	PRO
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Please use black or blue ink. Make copies if you are submitting more than one CD or if you need more space to list Tracks.

Option:

Music may not be used in any project/clips/scenes that contain:

Political Views *(please provide a clear explanation)*

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Religious Views *(please provide a clear explanation)*

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Explicit Sexual Situations, Violence or Pornography.

Other \_\_\_\_\_