

FACTOR/RECIPIENT GENERAL AGREEMENT
for FACTOR programs funded under
INDIVIDUAL INITIATIVES or RADIO CONTRIBUTIONS ONLY
v. 6.2

Agreement entered into on «Date_Submitted»

Between: **The Foundation Assisting Canadian Talent on Recordings**
247 Spadina Avenue
3rd Floor
Toronto, Ontario
M5T 3A8
("FACTOR")

And **«Applicant_Applicant_Name»**
«Applicant_Address_Line_1» «Applicant_Address_Line_2»
«Applicant_City», «Applicant_State_or_Province»
«Applicant_Postal_Code»
("Recipient")

(collectively "Parties")

WHEREAS by Application dated «Date_Submitted», the Recipient has applied and been approved for funding for a Project to which FACTOR has assigned the Project #«Project_No» (the "Project");

AND WHEREAS FACTOR has agreed to disburse certain funds to the Recipient in respect of the above-named Project;

THEREFORE, for good and valuable consideration, the Parties hereto agree to the following terms and conditions as of the «Date_Approved».

ARTICLE 1 – INTERPRETATION

Definitions

1.01 The following terms shall have the following meaning for the purpose of this Agreement:

- a) "Album" means at least six different sound recording masters, or those sound recording masters running in excess of twenty minutes in duration, all as funded under this Agreement and packaged together as one collection.;
- b) "Annex" shall mean the schedule appended hereto and containing the key commercial terms of the Agreement to fund the Project;
- c) "Agreement" means this General Agreement and any related written Documentation between the Parties hereto along with any and all subsequent Annexes, there being one Annex for each approved application. This shall also mean and include any subsequent amendments to this Agreement, as posted online with Notice to the Recipient.
- d) "Application" means all of the Documentation, including FACTOR's guidelines and forms along with the Applicant's submissions that are submitted at the time of Application, or are required by FACTOR to be submitted in the assessment process, which together constitute the information relevant to the request for funding;
- e) "Approved Application" means the Application as approved by the FACTOR Board of Directors, including all the content, activities, budgets and intended outcomes represented by the Recipient to FACTOR, of which is relied on by FACTOR in making the Offer;

- f) "Business Policies" means the Glossary of Standard Terms and Business Policies, a document published by FACTOR and setting out FACTOR's operating and business policies;
- g) "Canadian" means a person who is a:
 - (i) a "Canadian citizen" within the meaning of the Citizenship Act;
 - (ii) a "Canadian permanent resident" within the meaning of the Immigration and Refugee Protection Act.
- h) "Canadian not-for-profit organization or association" means:
 - (i) A non-for-profit organization registered in Canada;
 - (ii) An organization whose activities are based primarily in Canada;
 - (iii) An organization in which over half the members and directors are Canadian.
- i) "Canadian-owned and controlled firm" means a firm:
 - (i) That is a sole proprietorship, partnership, cooperative or a corporation established under the laws of Canada or a province;
 - (ii) Whose activities are based primarily in Canada;
 - (iii) Whose chairperson or presiding officer and at least half the directors and other similar officers are Canadian;
 - (iv) If a corporation with share capital, established under the laws of Canada or a province, of which Canadians beneficially own or control, other than by way of shares held only as security, directly or indirectly, in the aggregate at least 50% plus 1 of all the issued and outstanding voting shares;
 - (v) If a corporation without share capital, established under the laws of Canada or a province, of which Canadians beneficially own or control, directly or indirectly in the aggregate at least 50% plus 1 of the total value of the assets;
 - (vi) If a partnership, trust or joint venture, of which a Canadian or a Canadian corporation or any combination of the two beneficially own or control, directly or indirectly, interests representing in value at least 50% plus 1 of the total value of the assets, and of which the Chairperson or other presiding officers and more than half of the directors or other similar officers are Canadian;
 - (vii) In which more than half of the directors (or equivalent) – depending on the number of persons required to make up a quorum for the firm's board of directors – must be Canadian citizens or permanent residents of Canada.
- j) "Completion" means the process of closing a Component or Components related to an Application, during which the Recipient files a Completion and additional documentation to be reviewed by FACTOR staff before the final costs are approved by FACTOR and the Disbursement Amount is fully paid out;
- k) "Component" means a group of activities and costs, forming part of a Project and subject to unique rules, limits, costs, obligations and deadlines within the Project as a whole;
- l) "Disbursement Amount(s)" means the funds allotted to the Recipient to complete a Project as approved by FACTOR;
- m) "Documentation" means all of the documentary evidence that verifies the proof of citizenship, proof of corporate ownership, financial statements, proof of payment, proof of sales of the Recipient;
- n) "Employee" means a person with whom the Recipient has an employer/employee relationship;
- o) "Final Project Completion" means the event of all Components of the Project being completed;
- p) "Full-Length Sound Recording Project" means a Project funded under the Juried Sound Recording Program, the Comprehensive Artist Program, or the Comprehensive Music Company Program;
- q) "Good Standing" means that a Recipient has complied with all of FACTOR's formal obligations and requirements under all outstanding Agreements such as filing of sales reports and Documentation, executing agreements, providing copies of finished Works, repayment of overpayments or other requirements;

- r) "Initial Offer" means the amount of funding that FACTOR is prepared to disburse toward the first submitted Component(s) of the Project. The amount of the Initial Offer and the Disbursement Amount may differ on Completion, depending on the final analysis by FACTOR of the Component(s) costs declared by the Recipient.
- s) "Maximum Amount" means the maximum amount of funding FACTOR is prepared to disburse to any project as set out in the Program Guidelines;
- t) "Minister" means the federal Minister of Canadian Heritage or the Minister's duly authorized representatives;
- u) "Individual Initiatives" means the so-named component of the federally-enacted Canada Music Fund;
- v) "Program" means a program offered by FACTOR, with a specific set of eligibility criteria, rules, funding limits and expected outcomes;
- w) "Project" means the initiative(s) proposed to be undertaken by the Recipient, as deemed by FACTOR as eligible under the applicable Program, the project number being «Project_No»;
- x) "Project Costs" means the costs incurred or intended to be incurred by the Recipient;
- y) "Proof of Payment" means Documentation that confirm the payment of an eligible cost including cancelled cheques, credit card and debit card receipts, money order and postal order receipts, wire transfer and online transfer receipts, credit card and debit card statements and, where allowable, cash register and signed personal receipts;
- z) "Recipient" means the approved Applicant who has signed all the necessary agreements to be granted the program funds;
- aa) "Subsequent Offer" means the amount of funding that FACTOR is prepared to disburse toward the Project subject to approval by FACTOR of each subsequent Component. Details of each Subsequent Offer, the Initial Offer, and the running Total Offer and Disbursement Amount, are set out and can be viewed in the Project's Home Page on the FACTOR website;
- bb) "Total Eligible Budget" means the total approved project costs plus any allowable administrative fees or overrides as approved by FACTOR;
- cc) "Total Eligible Costs" means the total Project Costs that are deemed to be eligible for reimbursement by FACTOR;
- dd) "Total Government Assistance" means all federal, provincial, territorial and municipal assistance provided towards the same eligible costs;
- ee) "Total Offer" means the cumulative sum of the Initial Offer plus any Subsequent Offers, not to exceed the Maximum Amount. Details of the Total Offer are set out and can be viewed in the Project's Home Page on the FACTOR website.

ARTICLE 2 – DISBURSEMENT AMOUNT FROM FACTOR

Disbursement Amount

- 2.01** FACTOR agrees to disburse to the Recipient an amount equal to the lesser of the Total Offer or the percentage of the final and actual Project Costs approved by FACTOR, subject to the Maximum Amount set forth in the Program Guidelines.

Use of Disbursement Amount

- 2.02** The Recipient agrees to promptly use all of the amounts disbursed pursuant to Section 2.01 solely for the purpose as outlined in the Description of the Project and in accordance with all the information provided in the Application, the Business Policies and all other terms and conditions of this Agreement.

Commercial Release

- 2.03** It is a material condition of this Agreement that all Full-Length Sound Recording Projects must be commercially released in accordance with this Agreement, the Program Guidelines, and the Business Policies. The Recipient acknowledges that the failure to commercially release the Full-Length Sound Recording Project shall constitute an Event of Default.

Disposition of Masters (for Full-Length Sound Recordings only)

- 2.04** For a period of two years following the commercial release of a funded full-length sound recording (the "Active Term"), the Recipient must have FACTOR's express permission in writing for the Recipient to license, sell, assign or otherwise transfer (collectively "Transfer") the exclusive Canadian exploitation rights including copyright in any or all of the Master Recordings which embody the Album, to a Third Party. If such Third Party is non-Canadian (such as a "major label"), the Recipient shall repay the full Disbursement Amount, within 30 days of the execution of any such Transfer.

Completion

- 2.05** The Recipient agrees that promptly following the completion of each Component of the Project, the Recipient shall execute and deliver to FACTOR a Completion in form and content satisfactory to FACTOR. This Completion shall include, but not be limited to, information certifying the Total Eligible Costs incurred and expended, and the Recipient's explanation in narrative form of each variance between the budgeted costs and the actual costs incurred and shall identify each separate source of public funding.

Timing of Disbursements

- 2.06** FACTOR shall disburse the amount set forth in Section 2.01 within 60 days of receipt by FACTOR of the Completion(s) as required under Section 2.05. In the event that FACTOR chooses, in its sole discretion, to advance funds (a "FACTOR Advance") to the Recipient after the signature of this Agreement, the amount of the FACTOR Advance shall be deducted from the total Disbursement Amount defined in Section 2.01, with the balance being payable within 60 days of receipt by FACTOR of the Completion(s).

Event of Adjustment

- 2.07** If upon Component Completion and/or Final Project Completion any costs are subsequently disallowed for any reason, or if the Recipient's Project Costs are less than the FACTOR Advance and an adjustment is necessary, the Recipient shall return to FACTOR the amount necessary to make the total amount received by the Recipient equal to the amount which should have been disbursed pursuant to Section 2.01 after adjusting for the revised Total Eligible Costs. This adjustment must take place within 15 business days upon Recipient receiving a notice of adjustment from FACTOR.

Conditions Precedent

- 2.08** Before disbursing any amounts pursuant to this Article 2, FACTOR shall be entitled to require and/or verify that the following conditions precedent be met:
- a) all representations and warranties of the Recipient set out in this Agreement and in the Application, are true and correct;
 - b) the Recipient is in Good Standing and no Event of Default exists by the Recipient or its related entities;
 - c) upon request from FACTOR, the Recipient provide satisfactory evidence that the Recipient has the balance of the funding necessary to complete the Project; and
 - d) the Recipient has signed and/or delivered to FACTOR any necessary or applicable Annex(es), Completion(s) or subsequent Documentation.

Ownership of Intellectual Property

- 2.09** FACTOR shall not acquire any ownership in the intellectual property of the Applicant or any work subsequently developed by a Recipient pursuant to the receipt of FACTOR funding. Any of the Intellectual Property rights that have been the subject of the FACTOR grant to the Recipient:
- a) must be maintained (for the purpose of exploitation by the Recipient) for the duration of the Active Term (as defined above at paragraph 2.04) and execution of an Annex to this Agreement; or
 - b) may be assigned to an eligible third party but only with the consent of FACTOR.

Funding Limitation

- 2.10** Notwithstanding any contrary provisions elsewhere in this Agreement, the obligation of FACTOR to disburse funds shall be subject to the provision of adequate funds being made available to FACTOR by the Government of Canada and private sponsors, and is further subject to any restrictions that may be imposed by the Government of Canada or private sponsors. In the event that FACTOR is required to lessen, or completely eliminate, any of the funding to be disbursed under this Agreement, FACTOR shall notify the Recipient of this fact within thirty business days of FACTOR determining that it is required to lessen or eliminate said funding. The Recipient's obligations under this Agreement shall not be released or diminished in the event that FACTOR has disbursed amount(s) subject to Article 2.

Further Information

- 2.11** The Recipient shall without delay, upon reasonable Notice comply with a request from FACTOR to provide any further information and Documentation that FACTOR may require at any stage of the Funding or Project processes.

ARTICLE 3 – REPRESENTATIONS AND WARRANTIES

Representations and Warranties

- 3.01** The Recipient represents and warrants as follows to FACTOR, and acknowledges and confirms that FACTOR is relying on such representations and warranties in connection with the disbursement of funds as provided for in this Agreement:
- a) the Recipient has all the requisite power, authority and right to enter into and deliver this Agreement and to fully perform all of the Recipient's obligations under this Agreement;
 - b) this Agreement and attached Annex, Completion(s) and any subsequent Documentation, when executed and delivered, constitute valid and legally binding obligations of the Recipient, enforceable against the Recipient in accordance with their respective terms;
 - c) the Recipient is Canadian and meets all of the eligibility criteria;
 - d) the information contained in the Application(s) is true and the projected costs therein are based on fact and have been prepared with due regard to reality and moderation;
 - e) the Recipient holds sufficient intellectual property rights for the conduct of the activities in the Project, or the exploitation of any intellectual property resulting thereof;
 - f) no portion of the Disbursement Amount shall be used toward, and none of the Project Costs may include, the creation of intellectual property and/or material that is or contains:
 - (i) hate propaganda; obscene or child pornography; or any other illegal material as defined in the Criminal Code; nor
 - (ii) pornography or other material having significant sexual content unless it can be demonstrated that there is an overriding educational or other similar purpose; nor
 - (iii) excessive or gratuitous violence; nor
 - (iv) material that is denigrating to an identifiable group; nor
 - (v) any other similarly offensive material.

- g) the proceeds of the Disbursement Amount shall be used only for the purposes as outlined in the Description of the Project; all other possible sources of public funding are fully and accurately disclosed in the Application(s) and Completion(s), and the Total Government Assistance (including from FACTOR) does not cover more than 100% of all Project Costs;
- h) none of the Project Costs set forth in the Application(s) have been or will be submitted to or financed under any other FACTOR program or by Musicaction, the Canada Council, the Department of Canadian Heritage or any other administrator of the federal Canada Music Fund, without FACTOR'S being advised thereof;
- i) the Recipient hereby declares that it is not in default under any other agreements with FACTOR and has complied with all terms and conditions stipulated in agreements for any and all previous programs in the music industry supported by the Government of Canada in which the Recipient has received assistance;
- j) all information and Documentation provided in and with the Completion(s) shall be truthful and accurate;
- k) the Recipient has complied with all terms and conditions stipulated in Agreements for any and all previous programs in the music industry supported by the Government of Canada in which the Recipient has received assistance;
- l) if the Recipient has a contractual relationship(s) with an artist(s) with respect to the undertakings of the Project, that the Recipient has fulfilled, and will continue to fulfill the required contractual obligations to the artist(s);
- m) the Recipient shall not mortgage, charge or encumber those accounts receivable, book debts and copyright assets that pertain to the Project without receiving express permission from FACTOR;
- n) all those employed by the Applicant who are former public office holders or public servants are in compliance with the Values and Ethics Code for the Public Service and the Conflict of Interest and Post-Employment Code for Public Office Holders;
- o) the Recipient warrants that in the implementation of the Project it will comply with all applicable statutes, regulations, orders, standards and guidelines and shall ensure through its contractual agreements with its sub-contractors that any sub-contractor involved in the implementation of the Project shall be subject to the same obligations herein;
- p) the Recipient shall take measures conducive to creating a workplace free from harassment, abuse and discrimination.

ARTICLE 4 - OBLIGATIONS OF THE RECIPIENT

Books of Account

- 4.01** The Recipient shall at all times maintain complete, accurate and up-to-date books of account with respect to all financial matters relating to this Agreement. Such books of account shall be maintained in accordance with generally accepted accounting principles and must accurately reflect all costs and expenses incurred and expended under this Agreement.

Retain All Documentation

- 4.02** The Recipient shall also retain all contracts, invoices, cancelled cheques, credit card receipts, money order receipts, royalty statements and any other Documentation supporting each entry in the books of account. All books of account and supporting Documentation shall be retained for not less than seven (7) years from the date of the final amount disbursed by FACTOR for the Project.

Inspection Rights

- 4.03** Notwithstanding any other requirements of audit that form part of the business policies, practices and procedures established by FACTOR, including the accounting terms of the Annex hereto, an agent acting on behalf of FACTOR or the Minister shall have the right to enter onto the premises of the Recipient for the purpose of inspecting, auditing and making photocopies and extracts of

the books of account, ledgers and all other Documentation and information of the Recipient insofar as they pertain to this Agreement entered into between the Recipient and FACTOR. Any inspection may be made at any time during the Term and up to seven years following the Termination of this Agreement on 24 hours' written notice from FACTOR or the Minister to the Recipient and shall be made during normal business hours on normal business days. The Recipient shall hold harmless FACTOR or the Minister from any and all consequential damages, costs and inconvenience as may result from the execution of audits undertaken by FACTOR or the Minister, as the case may be.

Post-Inspection Repayment

- 4.04** Upon request from FACTOR post-inspection pursuant to section 4.03, the Recipient shall provide a signed commitment stating that any amounts identified by an audit as being owed to FACTOR shall be repaid without delay. If the Recipient wishes to dispute the results of the audit, Notice must be given to FACTOR within seven days of the delivery of the inspection report and such information under dispute shall be submitted to the Board of FACTOR for review and determination and the Board's decision on the matter under dispute shall be final.

Subsequent Change(s) to the Recipient

- 4.05** Until such time as the completion of the obligations of the Recipient under this Agreement, attached Annex(es), Completion(s) and any subsequent documentation, the Recipient shall notify FACTOR within 10 days of any changes to the corporate structure or business ownership such as an amalgamation, reorganization, change to its name, or any material matter that may affect the Recipient's eligibility under FACTOR, or that may in any way affect the Recipient's capacity to fully perform the Recipient's obligations under this Agreement.

Exclusive Use of Canadian Suppliers

- 4.06** The Recipient is obliged to make use of Canadian individual(s) and/or businesses for all goods and services required in the Recipient's Project for Canadian-based initiatives. Any exception to this obligation must be approved by FACTOR. With regards to those Projects in which the initiatives are not based in Canada, the Recipient shall make use of Canadian individuals and/or businesses for any portion of the Project for which it is reasonable to use a Canadian goods-and-services supplier.

Completion of Project

- 4.07** The Recipient is required to complete each Project by the deadline determined by FACTOR. Failure to complete a Project by the FACTOR determined deadline will be considered an Event of Default as defined in this Agreement at the discretion of FACTOR. The Recipient may, in writing, make a request to FACTOR to extend a Project deadline, however, FACTOR retains the sole right in its complete discretion to approve or deny the request for an extension. The date of the Completion of the Project shall be determined by the date in which FACTOR has received the Completion(s) considered by FACTOR as adequately completed.

Credit

- 4.08** For projects funded under the following programs:
- Artist Development
 - Comprehensive Music Company
 - Envelope Funding for Music Companies
 - Juried Sound Recording
 - Live Performance
 - Support for Eligible Music Companies
 - Video

The financial contribution that the Recipient is receiving from FACTOR from those Programs under this Agreement is made possible by the Government of Canada and by contributions by Canada's private radio broadcasters. In recognition of these contributions, the Recipient must:

- a) affix the FACTOR logo and Canada Wordmark on the artwork of any physical media formats, artwork accompanying digital music files, metadata for the digital files, video title and end credits, artist and band webpages, label webpages; posters, flyers, handbills, evites promoting a funded sound recording, sound recording launch event, funded tour or showcase; promotional materials, e-communications, press releases or any written communications supported by this financial contribution;
- b) display the FACTOR logo and Canada Wordmark on promotional items related to the funded Project if the logos of other sponsors, supporters or funding parties are to be displayed;
- c) verbally acknowledge FACTOR, the Government of Canada and Canada's private radio broadcasters in any radio, TV or online ads where any other funders are being acknowledged;
- d) where other sponsor logos are displayed, display the FACTOR logo and Canada Wordmark on uniforms or clothing related to the funded Project (excluding artist's merchandise items such as band t-shirts). Acknowledgement on clothing must be pre-approved by the Department.
- e) print in both official languages the Acknowledgment Text beside the Canada Wordmark on any and all printed materials issued in any format including print and electronic, including marketing materials, public reports, publications and media products (including news or media releases, backgrounders, media kits and media advisories), promotional materials, programs, handbills, posters, Web site home pages or any written communications and in digital correspondence, social media and e-mail promotions for events and projects which are supported by this financial contribution;
- f) In cases where a published document is the Project (e.g. publication of a magazine), the acknowledgement must be prominently displayed in the masthead or an acknowledgement page at the front of the publication regardless of where the logos of other sponsors, supporters or funding parties are displayed. FACTOR shall have pre-approval over such placement before its publication;
- g) where other sponsor, supporter or funding party logos are displayed, display the FACTOR Logo, Canada Wordmark and Acknowledgement Text (in both official languages) on any electronic billboards, signs, screens, or page or section for all Recipient-controlled public facing websites and applications (apps) related to the funded Project. In such case the Wordmark and Text must be at least of equal size, prominence and duration as that of any other sponsor, supporter or funding party.
- h) where materials are electronic and/or online, the FACTOR Logo must link to the FACTOR homepage at <http://www.factor.ca> and the Canada Wordmark must link to the Government of Canada website at <http://www.canada.ca>;
- i) affix signage bearing the FACTOR logo and Canada Wordmark along with the Acknowledgement Text (in both official languages) in prominent locations;
- j) verbally acknowledge, whenever possible, FACTOR, the Government of Canada, and Canada's private radio broadcasters in all official remarks during official engagements, ceremonies, special public events related to the Project supported by this financial contribution, and in media interviews about these events.

The FACTOR Logo, Canada Wordmark, and text specific to each Program are available on the FACTOR website at: <http://factor.ca/frequently-asked-qs/recipient-resources-2/#logo-and-acknowledgment>.

4.09 The following terms and definitions apply to the logo and credit provisions set out at section 4.08 in this Agreement:

- a) the “FACTOR logo” means FACTOR’s official logo which may include, as space permits, the accompanying text “The Foundation Assisting Canadian Talent on Recordings with support from Canada’s Private Radio Broadcasters”;
- b) the “Department” means the Department of Canadian Heritage over which the Minister of Canadian Heritage and Official Languages presides;
- c) the “Project” means any activity for which the Recipient has been funded either in whole, or in part, by the Department;
- d) the “Acknowledgement Guide” is the *Guide to public acknowledgment of financial assistance received*, which are incorporated by reference into and form part of this Agreement;
- e) “Canada Wordmark” means the Government of Canada logo. The style and use of the Canada Wordmark is outlined in the Acknowledgement Guide.
- f) the “Acknowledgement Text” is: “This project has been made possible in part by FACTOR, the Government of Canada, and Canada’s private radio broadcasters.”, “*Ce projet a été rendu possible en partie grâce à FACTOR, le gouvernement du Canada, et les radiodiffuseurs privés du Canada.*” Other acceptable variations of the Acknowledgment Text are indicated in the Acknowledgement Guide.
- g) the Recipient must acknowledge FACTOR and the Government of Canada’s support in at least equal prominence, proportion and duration as any other funding party, supporter or sponsor who has made a similar financial or in-kind contribution to the Recipient in support of the Project;
- h) the requirement to acknowledge FACTOR and the Government of Canada support as set out in this Agreement applies to media or public activities undertaken by the Recipient that are related to promoting the Project that has been funded either in whole, or in part by the Government of Canada. This requirement is applicable for the duration of the Project. However, the Department may deem advisable to withdraw, either in whole or in part, the requirement for acknowledgement of federal funding by the Recipient.
- i) Recipient must acknowledge the Government of Canada’s support in English and in French, according to the conditions set out in this Agreement.

4.10 For projects funded under the following programs:

- Comprehensive Artist
- Marketing and Promotion for Non-FACTOR-funded Sound Recordings
- Songwriter Development

The financial contribution that the Recipient is receiving from FACTOR from those Programs under this Agreement is made possible by contributions by Canada’s private radio broadcasters. In recognition of these contributions, the Recipient must:

- a) affix the FACTOR logo on the artwork of any physical media formats, digital artwork, metadata for the digital files, video title and end credits, artist and band webpages, label webpages; posters, flyers, handbills, evites, advertisements promoting a funded sound recording, sound recording launch event, funded tour or showcase; promotional materials, e-communications, press releases or any written communications supported by this financial contribution;
- b) verbally acknowledge FACTOR and Canada’s private radio broadcasters in any radio, TV or online ads where any other funders are being acknowledged;
- c) display the FACTOR logo on promotional items related to the funded Project if the logos of other sponsors, supporters or funding parties are to be displayed;
- d) where other sponsor logos are displayed, display the FACTOR logo on uniforms or clothing related to the funded Project (excluding artist’s merchandise items such as band t-shirts);

- e) print the Radio Acknowledgment Text beside the FACTOR logo on any and all printed materials issued in any format including print and electronic, including marketing materials, public reports, publications and media products (including news or media releases, backgrounders, media kits and media advisories), promotional materials, programs, handbills, posters, Web site home pages or any written communications and in digital correspondence, social media and e-mail promotions for events and projects which are supported by this financial contribution;
- f) where other sponsor, supporter or funding party logos are displayed, display the FACTOR Logo, and Radio Acknowledgement Text on any electronic billboards, signs, screens, or page or section for all Recipient-controlled public facing websites and applications (apps) related to the funded Project. In such case the FACTOR Logo and Radio Acknowledgment Text must be at least of equal size, prominence and duration as that of any other sponsor, supporter or funding party.
- g) where materials are electronic and/or online, the FACTOR Logo must link to the FACTOR homepage;
- h) affix signage bearing the FACTOR logo along with the Radio Acknowledgement Text in prominent locations;
- i) verbally acknowledge, whenever possible, FACTOR and Canada's private radio broadcasters in all official remarks during official engagements, ceremonies, special public events related to the Project supported by this financial contribution, and in media interviews about these events.

The FACTOR Logo and text specific to each Program are available on the FACTOR website at: <http://factor.ca/frequently-asked-qs/recipient-resources-2/#logo-and-acknowledgment>.

4.11 The following terms and definitions apply to the logo and credit provisions set out at section 4.10 above in this Agreement:

- a) the "FACTOR logo" means FACTOR's official logo which may include, as space permits, the accompanying text "The Foundation Assisting Canadian Talent on Recordings with support from Canada's Private Radio Broadcasters";
- b) the "Radio Acknowledgement Text" is: "We acknowledge the financial support of FACTOR and Canada's private radio broadcasters.";
- c) the Recipient must acknowledge FACTOR's support in at least equal prominence, proportion and duration as any other funding party, supporter or sponsor who has made a similar financial or in-kind contribution to the Recipient in support of the Project;
- d) the requirement to acknowledge FACTOR as set out in this Agreement applies to media or public activities undertaken by the Recipient that are related to promoting the Project that has been funded either in whole, or in part by FACTOR. This requirement is applicable for the duration of the Project.

4.12 The Recipient expressly acknowledges that failure to provide the credit and logos set out in this Agreement, for any reason, shall be considered an Event of Default and, cumulative to the Effects of Default set out at section 5.02, may at FACTOR's sole option result in a financial penalty including, but not limited to, a reduction of fifteen percent of the Disbursement Amount.

Deposit with National Library

4.13 In the event that the Project is a sound recording project, Under the *Library and Archives of Canada Act*, Recipients are required to send a copy of any commercially released sound recordings or commercially released digital video recordings to the Library and Archives Canada. Upon request from FACTOR, the Recipient agrees to submit to FACTOR documentary evidence of compliance with the "legal deposit" requirements outlined in subsection 13(1) of the *National Library Act*.

FACTOR's Promotional Use (All Sound Recordings)

4.14 It is a condition of funding and the Recipient expressly acknowledges that FACTOR shall have the right to distribute a limited number of promotional copies of the sound recording funded under this Agreement to its key stakeholders, as FACTOR sees fit. Upon completion of the Project, the Recipient hereby agrees to deliver to FACTOR:

- a) 1 CD or vinyl copy of the Album. The copies provided to FACTOR must be professionally manufacture quality pressings with the proper credit and logos as set out herein; AND
- b) A digital audio file of each master recording along with artwork and credits comprising the Album, in such digital format as reasonably designated by FACTOR.

FACTOR agrees to use all such copies for strictly promotional purposes only. In the event the request is for a digital file, FACTOR agrees to limit the distribution of such file to its key stakeholders on a secured basis.

The Recipient represents and warrants that it has obtained the necessary rights and permissions to allow it to grant FACTOR the right to distribute such copies or digital files in accordance with this Agreement, without payment by FACTOR of any additional fees or royalties.

4.15 Subject to Recipient's approval, not to be unreasonably withheld, FACTOR shall have the right to select any two of the master recordings funded under this Project, royalty-free, for the purpose of producing a promotional Compilation. If such Compilation is manufactured in physical format it shall be limited to a run not exceeding one thousand units manufactured. In the event FACTOR produces such a Compilation, FACTOR shall be responsible for acquiring the necessary mechanical licenses for the use of the compositions embodied in the Recipient's Master Recordings and any subsequent statutory mechanical royalty payments.

4.16 The Recipient must disclose to the Minister, without delay, any fact or event that would or might compromise the activities' chances of success or the Recipient's ability to carry out any of the terms and conditions of the Agreement between FACTOR and the Recipient, either immediately or in the long term, including but not limited to, harassment, abuse or discrimination in the workplace, pending or potential lawsuits and audits.

ARTICLE 5 – DEFAULT

Events of Default

5.01 Each of the following events shall be considered an Event of Default:

- a) the Recipient ceases to meet the funding eligibility criteria;
- b) the existence of a misrepresentation or of a material inaccuracy in a representation or the breach of a warranty made by the Recipient in this Agreement or in any document furnished by the Recipient pursuant to this Agreement including, without limitation, the Application and Completion Report;
- c) the failure or refusal by the Recipient to perform or comply with any term, obligation, condition or provision of this Agreement where the failure continues un-remedied for 10 business days after the Recipient has received written notice from FACTOR pertaining to this failure or refusal;
- d) the failure by the Recipient to pay in full any sum payable by the Recipient under this Agreement or any other agreement between FACTOR and the Recipient when due;
- e) the existence of any forged, falsified or fabricated document, intended to substantiate the payment or receipt of any of the Project Costs;
- f) the failure by the Recipient to complete the Project by the deadline determined by FACTOR.

- g) the Recipient becomes bankrupt or insolvent or is placed in receivership or takes the benefit of any statute relating to bankrupt and insolvent debtors;
- h) a resolution is passed, or order is made, for the winding-up of the Recipient, or the Recipient is dissolved;
- i) the failure to commercially release a Full-Length Sound Recording Project in accordance with the terms of funding;
- j) the failure to notify FACTOR of a Recipient's Subsequent Change of Status required under Section 4.05;
- k) the failure to notify FACTOR of a Transfer of control in a sound recording master under section 2.04;
- l) a Subsequent Change(s) to the Recipient renders the Recipient ineligible to receive FACTOR funding;
- m) due to a Subsequent Change(s) to the Recipient, FACTOR, at its discretion, considers it improbable that the Project as initially contemplated by the Recipient can be successfully completed;
- n) due to a circumstantial change(s) to the Recipient, FACTOR, at its discretion, considers it improbable that the Project as initially contemplated by the Recipient can be successfully completed;
- o) the failure of the Recipient or its sub-contractors to comply with all applicable statutes, regulations, orders, standards and/or guidelines in the implementation of the Project.

Effects of Default

5.02 Upon declaration by FACTOR of an uncured Event of Default pursuant to 5.01 above, the following consequences shall be imposed as an "Effect of Default" without any further demand notice being required to be given to the Recipient:

- a) All of the Disbursement Amount(s) received by the Recipient from FACTOR under this Agreement and all other agreements between FACTOR and the Recipient shall become immediately due and payable together with interest. Such interest shall be at the rate of prime plus 2% per annum calculated in respect of the unpaid balance from the date of each disbursement made by FACTOR, to the date of actual repayment thereof. Payments received by FACTOR shall be deemed to have been credited first against accrued and unpaid interest (if any) and then against the unpaid principal sum of the Disbursement Amount(s). Without any limitation whatsoever of this right, FACTOR may, at its sole discretion, direct the Recipient to repay less than the full Disbursement Amount(s) received by the Recipient under this Agreement, and all other agreements between FACTOR and the Recipient.
- b) FACTOR may resort to any rights or remedies provided herein or available under any applicable law or equitable relief and these rights and remedies shall be enforceable successively, concurrently or cumulatively;
- c) In the exercise of its unrestricted discretion FACTOR may refuse to advance any further funds to the Recipient under this Agreement and/or any other agreements, may reduce the amount of funds disbursed and decline to accept any further applications for FACTOR funding of any kind whatsoever from the Recipient;
- d) FACTOR may also exercise these rights in conjunction with any affiliate of the Recipient. An affiliate shall be considered as any entity that is controlled by or controls the Recipient (such as a parent or subsidiary corporation) or the related entity shares senior officers, directors or major shareholders in common with the Recipient making it a Related Party as set out more specifically in the Business Policies posted on the FACTOR Web site. A Related Party may also include co-management companies managing the same artist even if distinct entities. The Board of FACTOR shall review the ownership documentation and shall decide in its sole discretion if an entity is considered an affiliate for the purposes of this Agreement.

Cross Default

- 5.03** Once an Event of Default status has been determined by FACTOR and communicated to the Recipient the Recipient shall also be considered in default under any and all present or future agreements between FACTOR and the Recipient. The defaulting Recipient and its affiliates and any Related Party may also be prevented from receiving further FACTOR funding. Moreover, FACTOR reserves the right in its sole discretion to apply other contractual or legal remedies against an affiliate or Related Party of the Recipient.

End of Default

- 5.04** FACTOR, at its sole discretion, shall advise the Recipient if, and when, it considers the Recipient no longer in default with FACTOR for this Agreement or future agreements.

ARTICLE 6 - GENERAL

Term and Termination

- 6.01** This Agreement shall come into force as of the date first written above and shall remain in force and effect, subject to amendments, until otherwise Terminated in accordance with this Agreement.
- a) This Agreement shall automatically terminate if the Recipient files a petition in or been assigned into bankruptcy or becomes an insolvent person or entity within the meaning of the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3 as amended or makes any assignment for the benefit of creditors or makes any arrangements or otherwise becomes subject to any proceedings under applicable bankruptcy laws or insolvency laws with a trustee or receiver appointed in respect of a substantial portion of the property of the Recipient.
 - b) This Agreement shall automatically terminate in the event that FACTOR or the Recipient liquidates or winds up its daily operations for any reason whatsoever.
 - c) FACTOR may terminate this Agreement for repeated acts or omissions by the Recipient that qualify as Events of Default, as set out in Clause 5 or for misrepresentations in Application submissions.
 - d) The Recipient may terminate this Agreement with thirty (30) days' Notice to FACTOR if the Recipient does not consent to a subsequent amendment to this Agreement made by FACTOR and notified to the Recipient.
 - e) Upon Termination of this Agreement for any reason, all of the outstanding Disbursement amounts owed by the Recipient to FACTOR become immediately due and payable.

Indemnity of FACTOR

- 6.02** The Recipient shall at all times indemnify and save harmless FACTOR and FACTOR's employees and agents from and against any and all reasonable claims, losses, damages, costs, expenses, actions (including, without limitation, court costs and counsel fees on a solicitor client basis) and other proceedings arising out of or connected with any claim in which it is asserted that any of the representations, warranties or agreements made by the Recipient in this Agreement have been breached, or in which assertions are made which are in any way inconsistent with any such representations, warranties or agreements, or proceedings or claims arising from the Recipient's negligence or unlawful acts within the Project's activities.

Indemnity of the Minister

- 6.03** The Recipient shall at all times indemnify and save harmless the Minister, his/her officers, employees, servants and agents, successors and assigns from and against any and all claims, liabilities, and demands arising directly or indirectly from any act, omission, or negligence of the Recipient, and breach of this Agreement by FACTOR, and performance or non-performance (in

whole or in part) of FACTOR's obligations under this Agreement, and any claims, liabilities, and demands that may arise from the Recipient entering into any loan, capital lease or long term obligation. Such indemnification will survive the termination or expiration of this Agreement.

Decision of FACTOR Final

- 6.04** Factor reserves the right to refuse any Application, for any reason, or to propose or impose modifications to the budget or project proposal submitted. An Applicant or a Recipient may not institute any claim or proceeding against FACTOR (or its directors, officers or employees) by reason of any approval or disapproval of FACTOR (directly, by its juries or board) in connection with an Application for funding, a refusal of an Application for funding, or in connection with any payment, non-payment or allocation of funds.

No Liability for FACTOR

- 6.05** The Recipient acknowledges that FACTOR (and its directors, officers and employees) shall not be liable for any direct, indirect, consequential or incidental loss or damage arising out of such application or the payment or non-payment of such funding.

Cumulative Rights and Remedies

- 6.06** The rights, remedies, undertakings and obligations under this Agreement or under any other document or instrument executed pursuant to this Agreement are cumulative and none of them shall be in limitation of any other remedy, right, undertaking or obligation of either party available at law or in equity.

Waiver

- 6.07** Any waiver by FACTOR of the strict observance, performance or compliance with any term, obligation, condition or agreement herein contained and any indulgence granted, either expressly or by course of conduct, by FACTOR shall be effective only in the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any rights and remedies of FACTOR under this Agreement or any other document or instrument executed pursuant to this Agreement.

Severability

- 6.08** If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to that provision or part hereof and the remaining part of that provision and all other provisions hereof shall continue in full force and effect.

Assignment

- 6.09** The rights of FACTOR under this Agreement may be assigned by FACTOR without the prior consent of the Recipient. The Recipient may not assign this Agreement or any of its benefits or obligations hereunder without the prior written consent of FACTOR and the Recipient shall follow the assignment procedures established by FACTOR to ensure the subsequent assignees assume the obligations of the Recipient in this Agreement.

Notices

- 6.10** Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and may be given by email or fax (electronic delivery), by personal delivery or by registered mail addressed to the Parties at the respective addresses set forth on the first page of this Agreement or such other address and email address as may be designated by notice by any party to the other.

Any Communication shall be conclusively deemed to have been given, if by personal delivery or prepaid courier service, on the day of actual delivery thereof and, if given by registered mail, on the fifth business day following the deposit thereof in the mail and if by electronic means, on the same day, provided proof of delivery is maintained or acknowledged (read receipt tools, fax transmission confirmation reports).

Endorsement Clarification/Use of Recipient's Name and Likeness

- 6.11** This Agreement is not to be construed in any manner as an endorsement by FACTOR or any of FACTOR'S directors, officers, members or supporters of the Recipient or of the Project or any part thereof; however, FACTOR shall have the right to and to authorize other persons to publicize and advertise in any manner whatsoever in all media (including but not limited to print, radio, broadcast and pay television), the fact that FACTOR provided the Recipient support under this Agreement by using the names and likenesses of the Recipient for institutional advertising of FACTOR. If requested by FACTOR, in the event that the Recipient is a representative of an Artist, the Recipient shall obtain the Artist's consent to the use of the Artist's name and likeness for the purposes herein.

Status of the Parties

- 6.12** Nothing in this Agreement shall be construed to create a relationship between the Parties of employer/employee, franchiser/franchisee, principal/agent, a partnership, or a joint venture between the parties.

FACTOR Not Agent

- 6.13** FACTOR represents that it is not an agent of the Department of Canadian Heritage or of Her Majesty in Right of Canada.

Disclosure of Agreement to the Minister

- 6.14** Shall it be requested by the Minister, FACTOR shall, on a confidential basis, have the right to provide the Minister with a copy of this Agreement, Annex(es), Completion(s) and any subsequent documentation.

Annual Recipient Questionnaire Form and Survey

- 6.15** Shall either the Minister or FACTOR request it, the Recipient shall complete and submit, within 12 months following the receipt of funds hereunder, a Recipient's Questionnaire Form designed by the Department of Canadian Heritage. The Recipient may also be obliged to complete the Statistics Canada annual survey on the sound recording industry.

Amendments

- 6.16** This General Agreement together with each Annex that is executed for every funding project constitutes the entire agreement between the Parties and cannot be amended except in writing. FACTOR reserves the right to amend this Agreement by posting any such amended version on its website at www.factor.ca. All changes made to this General Agreement shall take effect thirty (30) days from providing official notice, either directly to Recipients or by posting such notification online.

Governing Law

- 6.17** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

Electronic Signature Accepted.

- 6.18** This Agreement may be signed, scanned as a PDF and sent by email, by facsimile or other means of “electronic signature”.

Entire Agreement and Amendments

- 6.19** This Agreement (and any Annex hereto) forms the entire Agreement between the Parties with respect to this subject matter and supersedes all prior agreements, negotiations or verbal conversations between the Parties with respect to the terms herein. Should FACTOR amend, supplement, or modify this Agreement, FACTOR shall forthwith notify the Recipient in writing of any such amendment and shall post the amendments on the FACTOR Web site in a prominent location. It is the Recipient’s responsibility to review the standard terms of the General Agreement with FACTOR as the Recipient shall be bound by them from the date of any posted amendment.

Understanding and Acceptance of this Agreement

- 6.20** The Recipient acknowledges that the Recipient has read this Agreement and that the Recipient has the right to consult with legal counsel concerning this Agreement. **In making an Application to FACTOR, signing the Annex and in accepting this offer of funding, the Recipient is deemed to have read and agreed to this Agreement.** The Recipient additionally acknowledges that Recipient has either consulted with such legal counsel or, without having consulted such legal counsel, is satisfied that Recipient fully understands and agrees to this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly executed by their respective representatives thereunto duly authorized.

**THE FOUNDATION ASSISTING CANADIAN
TALENT ON RECORDINGS**

Meg Symyk
President and CEO

ACCEPTED ELECTRONICALLY
By the Authorized Signatory for «**Applicant_Applicant_Name**»

ANNEX TO GENERAL AGREEMENT – INDIVIDUAL INITIATIVES AND PRIVATE RADIO CONTRIBUTIONS

1. FACTOR Program	«Program»
2. Date of first application	«Date_Submitted»
3. Project Name	«Name»
4. Project Number	«Project_No»
5. Recipient Name	«Applicant_Applicant_Name»
6. Artist (if applicable)	«Artist_Artist_Name»
7. Initial Offer	<p>«Total_Offer»</p> <p>To view Subsequent Offer and Total Offer details log in to the FACTOR Website and go to the Project Home Page for this Project.</p>
8. Maximum Amount	«Max_Amount»
9. Last date to submit additional components (if applicable)	«Last_Day_to_Submit_New_Applications»
10. Project Completion Date	<p>To view the completion deadline, login to portal.factor.ca, and all deadlines associated with the Project will appear on the Milestones page of each component.</p>