

## FIXED RETURN PURCHASE AGREEMENT

This fixed return purchase agreement is dated as of the date of its full execution and is between \_\_\_\_\_ (“**Seller**”) whose address is \_\_\_\_\_ and \_\_\_\_\_ (“**Purchaser**”) whose address is \_\_\_\_\_.

The parties agree as follows:

### 1. Assignment.

**1.1** Effective \_\_\_\_\_ (“**Effective Date**”) and in consideration of the sum of U.S. \$\_\_\_\_\_, Seller hereby assigns to Purchaser \_\_\_% of Seller's right, title, and interest, along with a security interest, in the \_\_\_\_\_ share of \_\_\_\_\_ royalties attributable to the related Works (“**Assigned Royalties**”), until Purchaser has received a total of U.S. \$\_\_\_\_\_ (“**Term End**”), subject to the Recoupment Terms in Section 1.2. “**Works**” are the \_\_\_\_\_ listed in Attachment A.

**1.2 Recoupment Terms.** The rights and obligations of the parties begin on the Effective Date and end when the Term End is reached and royalty payments for the Assigned Royalties are reassigned to Seller according to Section 2.

*(IF LISTING CONTAINS AN ANNUAL CAP: Purchaser shall collect 100% of payments for the Assigned Royalties during each Payment Year until the Annual Cap is met. “**Annual Cap**” means the maximum amount Purchaser shall receive in a Payment Year, subject to increases as laid out below. Payment Year 1 shall begin on the Effective Date and shall continue through the one-year anniversary of the Effective Date. Each subsequent Payment Year shall begin on the prior Payment Year's end date and continue through the one-year anniversary of the prior Payment Year's end date. Seller shall collect all earnings in excess of the Annual Cap in each Payment Year. If Purchaser's cumulative payments within a given Payment Year do not reach the Annual Cap, the Annual Cap of the following Payment Year shall be increased by the amount of the shortfall.*

**Payment Year – Annual Cap**

Payment Year 1 – \$[Year 1 Cap]

Payment Year 2 – \$[Year 2 Cap]

Payment Year 3 – \$[Year 3 Cap]

Payment Year 4 – \$[Year 4 Cap]

Payment Year 5 – \$[Year 5 Cap]

Payment Year 6 – \$[Year 6 Cap]

*If at the end of Payment Year 6, Purchaser has not received a total of \$\_\_\_\_\_ Purchaser shall continue to collect -- uncapped -- 100% of payments for the Assigned Royalties until Purchaser has received a total of \$\_\_\_\_\_.)*

**1.3 Seller Buyback Option.** During the period after the Effective Date through Term End, Seller may repurchase the Assigned Royalties from Purchaser for an amount equal to \$\_\_\_\_\_ minus the total amount of payments received by Purchaser.

**1.4** This assignment includes the right to receive all payments from any source with respect to the Assigned Royalties that have not been received by Seller on or before the Effective Date, and a proportional share of all existing or potential causes of action including, without limitation, those for infringement, underpayment, or non-payment of the Assigned Royalties. The assignment includes the applicable percentage of Seller's royalty interest as of the Effective Date but does not include any additional reversionary interest retained by Seller. This assignment is not an assignment of ownership or control of the copyright in the Works and does not include a

royalty interest in any derivatives of the Works. This assignment is subject to the terms of Seller's agreement with Seller's Distributor, including, if applicable, a right to match the terms of this assignment, and the Distributor's rules and regulations.

**1.5** Seller shall direct its current royalty distributor \_\_\_\_\_, and any other paying entity ("**Distributor**"), to pay the Assigned Royalties directly to Purchaser or Purchaser's administrator. Seller shall promptly execute any document required by any Distributor necessary to assign the Assigned Royalties.

**2. Reassignment.** When the Term End is reached, Seller and Purchaser shall promptly notify the Distributor and take all steps necessary to reassign the Assigned Royalties from Purchaser to Seller. The reassignment will be considered complete when the Distributor verifies that it has correctly made a payment to Seller after the Term End, and when Purchaser transmits any incorrectly received payments to Seller according to Section 5. If royalty payments otherwise due to Purchaser prior to the Term End are reduced by recoupment of encumbrances (e.g., tax liens), advances, or other costs incurred by Seller, the Term End shall be extended until such time as the amount recouped is recovered by Purchaser.

### **3. Seller's Obligations and Statements of Fact.**

**3.1** Seller is the sole owner of its interest in the Works and Assigned Royalties and has full authority to enter this agreement and perform its obligations. The Assigned Royalties are free and clear from all encumbrances and to Seller's knowledge the performance of its obligations does not infringe the rights of any third party. No third party other than Royalty Exchange Inc. holds a power of attorney on Seller's behalf affecting the assigned interest.

**3.2** Seller has not and shall not do anything that would impair Purchaser's right to receive the Assigned Royalties prior to the Term End, including but not limited to terminating Seller's entitlement to receive accountings and corresponding payments from the Distributor or taking an advance. Promptly after the Effective Date, Seller shall execute letters of direction to each Distributor and any other documents reasonably required to notify the Distributor (or any successors or assigns) that the Assigned Royalties shall be paid to Purchaser or Purchaser's administrator.

**3.3** Seller is not bound by any action or agreement that would prevent it from performing its obligations and to Seller's knowledge no third party has any actual or potential claim against Seller or Seller's interest in the Works or Assigned Royalties that would in any way impair the rights being assigned to Purchaser.

**3.4** To Seller's knowledge, all material conditions to the assignment have been or shall be upon the Effective Date satisfied including, without limitation, the obtaining of any approval, the giving of any notice, the making of any filing, and the satisfying of any payments or claims of any third party.

**3.5** All taxes accrued or owing through the Effective Date related to the Assigned Royalties, including without limitation any sales or transfer taxes resulting from the transaction, if any, have been or will be paid by Seller.

**3.6** Seller shall not re-register, remove, move, re-direct or disassociate any of the Works from Seller's Distributor or any other entity that pays the Assigned Royalties as of the Effective Date without Purchaser's consent, which shall not be unreasonably withheld. Seller shall notify Purchaser or Purchaser's administrator of any such proposed change and take whatever actions are necessary to ensure the Assigned Royalties will continue to be paid to Purchaser uninterruptedly. Any royalties collected by Seller after such a change that should have been paid to Purchaser per this agreement shall be paid directly to the Purchaser by the Seller no later than 15 days after Seller's receipt. Any delay in payment of royalties under this section will be subject to payment of interest to Purchaser at a rate of 2% per month.

**3.7** Seller has not and will not enter into any agreement with respect to the Works or the Assigned Royalties that would conflict with the terms of this agreement. Seller has not settled any claim nor waived any right and will not settle any claim or waive any right concerning any of the Assigned Royalties or the Works that would conflict with the terms of this agreement.

**3.8** Seller states that the information and earnings history related to the Assigned Royalties presented in the marketplace listing for the Assigned Royalties is accurate. Seller also states that Seller's participation interest and underlying royalty shares in each of the Works is accurate.

**4. Purchaser's Statement of Fact and Acknowledgment.** Purchaser states that it has the full authority to enter and perform its obligations under this agreement. Purchaser acknowledges that Purchaser may not receive payment from the Distributor or other paying entity until after the first accounting period following the Effective Date and may need to rely on Section 5 for any post-Effective Date payments sent to Seller.

**5. Payments or Debits After Assignment.** All of the Assigned Royalties paid after the most recent distribution reflected in the marketplace listing and through the Term End, regardless of when earned or when the performances from which such royalties derive occurred, are the sole property of Purchaser. All of the Assigned Royalties paid after the Term End, regardless of when earned or when the performances from which such royalties derive occurred, are the sole property of Seller. If the incorrect party receives payments for the Assigned Royalties outside of the above timeframes, the receiving party shall transmit or cause the recipient to transmit the Assigned Royalties immediately upon receipt to the other party. If during the Term Seller's Distributor account is debited to recoup an advance, cost, share change, or other encumbrance incurred by Seller and such debit has the effect of reducing the royalty payments otherwise due to Purchaser, Seller shall immediately transmit or cause the recipient to transmit the shortfall to Purchaser. All sums incorrectly received by or debited against either party under this section and not transmitted within 15 days after receipt shall accrue interest at the rate of 2% per month. The Term End shall not be satisfied until Purchaser receives all sums due under this section, if any, plus interest.

**6. Additional Documents and Power of Attorney.** Upon the initial assignment discussed in Section 1.4, upon any change in the paying entity for the Assigned Royalties prior to the Term End, and upon the reassignment discussed in Section 2, the parties shall promptly execute all documents necessary to allow the appropriate party to receive the Assigned Royalties ("**Assignment Documents**"). If one party requests the other to execute an Assignment Document and the requested party fails to execute the document within 14 days after the request, the requested party appoints the requesting party, as the requested party's true and lawful attorney, to execute all Assignment Documents in the requested party's name. The requesting party shall deliver to the requested party copies of all Assignment Documents executed by the requesting party in the exercise of the power of attorney. The power of attorney granted to the requesting party is limited and specific to Assignment Documents.

**7. Indemnity.** Seller shall indemnify Purchaser and Purchaser's administrator against all losses and liabilities, including reasonable attorneys' fees, related to any inaccurate statement of fact made by Seller or any alleged breach of or failure by Seller to perform any of Seller's obligations under this agreement. Purchaser or Purchaser's administrator shall notify Seller of any claim presented to Purchaser or Purchaser's administrator by a third party and Seller shall have the right to participate in the defense of any such claim with counsel of Seller's choosing at Seller's sole cost and expense.

**8. Confidentiality.** Except as otherwise required by law, the parties shall not, without the other party's written consent, disclose to any third party any confidential information supplied by the other party in connection with this agreement, except that such confidential information may be disclosed to either party's counsel, accountants and other professionals on a need-to-know basis related to this agreement.

**9. Expenses and Attorneys' Fees.** The parties shall pay all of their own costs and expenses (including legal fees) in performing due diligence and in negotiating and performing their obligations under this agreement. If any

proceeding is brought for the enforcement of this agreement, or because of a dispute in connection with any of its provisions, the prevailing party is entitled to recover reasonable outside attorneys' fees and other costs incurred in the proceeding, in addition to any other relief to which it may be entitled.

**10. Representation by Legal Counsel.** The parties acknowledge that they have had the opportunity to retain legal counsel with respect to this agreement and any choice by either party not to be represented is made independently.

**11. Miscellaneous.** The laws of the State of Colorado govern all matters arising from this agreement and the exclusive forum shall be a federal or state court in Denver County, Colorado. This agreement constitutes the entire understanding of the parties and no amendment will be valid unless it is in writing and signed by both parties. This agreement is binding upon and inures to the benefit of the successors, assigns, heirs, executors, and legal representatives of the parties. Any notice required by this agreement shall be in writing and sent to the address in the introductory clause, or to the email address in this agreement's electronic signature verification page (if any), unless the party has given a new address to the other party.

Each party is signing this agreement on the date verified by its electronic signature certificate.

By: _____	By: _____
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## **Attachment A**

The Works