



Primary Elements Artist Agreement

Effective 10/20/2010

This agreement ("Agreement") is between Primary Elements ("Pe"), represented by Mark Lindsey Brainard ("Lindsey"), Founder & CEO of Primary Elements, a California (United States) sole-proprietorship operating from 5318 E 2nd Street #352, CA, 90803, and the artist or the artist's legal representation or authorized publishing holder (enter full legal name):

("Artist")

operating from (enter complete active Mailing Address, including Country):

and is wholly entered into on this date (complete Date of Signing - use MM/DD/YYYY format):

1. Pe is a digital music marketing, licensing, and distribution company. Pe will act as Artist's non-exclusive marketing, licensing, and distribution agent (consignee) for digital audio Sound Recordings of original musical compositions or soundscapes ("Tracks" or "Track" or "Music" or "Media" or "Elements" or "elements") supplied by the Artist (consignor).

2. Pe may market and sell synchronization licenses for the Artist's Tracks on the Primary Elements Web Site at www.PrimaryElements.com through it's own transaction gateway or a secure 3rd-party shopping cart, order processing and fulfillment gateway and associate affiliate networks on the Internet, or by direct-mail, or by email, or by phone or facsimile, or at an industry-related trade show or user group or marketing event, or by means of an embedded licensing transaction engine in an affiliate digital media production system or related software, or in person by the Pe staff or its official agents and marketing partners. Pe agrees to license the Tracks only for the amounts authorized by the Artist via email or the Pe web site or in writing, notwithstanding the allowed discounts outlined in this Agreement, to be specified in US Dollars. Pe agrees to license the Tracks only for the specific Pe License Agreements available on the Pe web site or licenses otherwise pre-authorized by the Artist. The Artist's authorization will be required in writing, or by email, or by a Pe web site form, prior to licensing any Tracks with a license agreement other than one of the license agreements available on the Pe web site, including but not limited to any "custom" or "special" or "exclusive" license negotiated by Pe or its agents or partners on behalf of and with the artist and a Pe client (customer).

Custom license agreements enacted by the client and Pe or Pe's agents, partners, affiliates or assigns, may contain varying language depending on which Pe agent, partner, affiliate or assign generates the transaction, but the core usage restrictions and provisions will comply with the usage agreed to by the Artist as presented by Pe prior to such authorization.

Pe may compile individual Tracks into pre-formatted Pe CD Collections on Compact Discs or as digital product download bundles or as part of additional Pe production services and products, for which the Artist must agree at his/her sole discretion prior to the release of any such collections of the Tracks. Artist agrees that Pe may license all accepted Tracks for any type of production on an International basis, without exception. Pe reserves the right to refuse licensing any Tracks to any entity, without cause or reason, if it feels the Tracks may likely be exploited beyond the

authorization given in the license agreement, or because of any US Trade and Export restrictions. Pe may license Tracks to any 3rd-party entity and provides Artist no opportunity to approve of the specific entity or intended license use prior to such licensing except for custom, special-use licenses such as an exclusive, multiple production use, combined market license, bulk or blanket license, or license renewal.

3. The Artist agrees to supply to Pe, at his/her own expense, the Artist's CD-Quality Media masters in uncompressed, mastered 16-bit, 44.1kHz formatted (or higher) music elements on an Audio CD or Data CD-ROM or as files transferred to our FTP or Web server as AIF or WAV files (or other suitable lossless format). Each Track must be in a finished, "ready for retail" format, including level normalization between -1 and 0 dB scale and each Track must have proper in and out fades beginning and ending at digital black (silent) and must have any excess black at the beginning or end of the track trimmed off. Discounted mastering services may be available from Pe if the Artist's Media is not prepared to these standards. Pe may exempt some Tracks from some of these format requirements in this paragraph at Pe's sole discretion and for which Pe may offer some audio mastering services at no charge.

Due to the volume of Artist Media submissions Pe receives, Pe can not return Artist's Media unless specifically requested by the Artist and agreed to by Pe prior to receipt of the submission, which may include a return handling fee in addition to any return shipping costs, to be determined by Pe and at it's sole discretion.

Unless the Artist requests and pays for their Media to be returned, Pe shall effectively own the physical Media master CD or audio files, including any Media that Pe produces or masters and is paid for by the Artist to comply with Pe's Media submission requirements, as outlined elsewhere in this Agreement. Pe will make available to Artist any such edited Media masters paid for by Artist, upon request, at the sole cost of the Artist. Pe will not own any copyright (including the Sound Recording) or publishing rights to Artist's Tracks or edited Media outside of any rights explicitly outlined in this Agreement, but notwithstanding the right to perform mechanical and digital reproductions and distribution of the Artist's Tracks for the sole purpose of fulfilling licensing or additional Pe service orders or providing demonstrations of the Artists's elements for marketing purposes per this agreement.

The Artist agrees to regularly visit the Pe Artist Services web site for important notifications and changes to Pe policies and agreements, including this Pe Artist Agreement. Pe will also make a concerted effort to notify Artist of any important changes to the Pe service or this Agreement.

4. The Artist may request in writing or by email that Pe remove specific individual or all Tracks from Pe's future representation at any time. Pe agrees to comply with such request within 90 days of such notice, with the exception of any printed or otherwise persistent advertising formats that can not be reasonably recalled. In the event that a licensing order is placed between the time the Artist requests such removal and the Tracks are actually removed from Pe's advertising media, marketing or sales channels, the Artist agrees that such order is valid and acceptable, notwithstanding any other guideline contained herein. Upon a Tracks removal from the Pe web site and from Pe's total representation, Pe will release its right to license or re-license the Tracks. Pe may refuse to accept, or may remove specific or all Tracks from the Pe web site, additional Pe production services or CD Collections or from Pe's total representation, without notice at it's sole discretion for any reason at any time. The Artist must submit a Primary Elements Audio Media Release Form, in the form of a written or email authorization or by completing a Pe web-based Element Submission Form or other official online element acceptance method for all Media elements submitted and accepted for representation by Pe, which may outline the pricing, copyright status and licensing availability for such individual Tracks.

5. The following licensing procedure will be followed:

a. A client will submit a license purchase order to Pe through our web-based secure shopping cart or a Pe agent or affiliate, or via a 3rd-party online retail service such as eBay.com. Pe or its fulfillment agent or retail service will verify the order to ensure that all required information is present and attempt to rule out any ordering fraud or tampering to the best of our abilities, either by manual or automated process.

b. After funds have been received, cleared or accepted, Pe will prepare and mail a CD-ROM master to the client with a printable copy of the Licensing Agreement(s), or make the Media master available to the client in a discreet account on our FTP server for a limited time, or make available through an automated online download by our order fulfillment

affiliates or directly by our agents, in which the element masters may be pre-loaded on said affiliate's fulfillment processing system, local or remote data storage system outside of Pe's physical premises and which will be done with the utmost concern for the security and proper handling of the Artist's Media, but for which Pe will be held harmless for any breach or theft of the Media from such external system. If the client has difficulties accessing our FTP server or fulfillment gateway, we may arrange an alternate method of delivery, such as by email attachment, other digital delivery methods, or on physical media via postal mail. Pe will take reasonable measures to protect the licensed Media masters from unauthorized use.

c. Pe will send an electronic PayPal (www.PayPal.com) payment or mail a paper check to the Artist (in US Dollars) for the Artist's share of the license fees, as outlined by the payment schedule below. PayPal is currently a free service and is accepted in over 45 Countries, including the US. Artists must acquire a PayPal account to receive commission payments and can use the link provided on the Primary Elements Artist Services site to do so. Paper check payments in US Dollars, which will be issued if the Artist can not obtain a PayPal account, will be subject to a \$5.00(US) transaction fee per quarterly payment, but only when a payment is actually made. Non-US Artists are responsible for exchanging their commission payments to their native monetary format, as needed. Exchange rates for International payments will be made at the time of the commission payment, not the license order, as a function of Pe's banking provider or the PayPal service.

d. Pe will send the Artist any broadcast, film, or theatrical Media element usage information (cue sheet) reported to Pe by the client when received, but will not be held responsible for a client's failure to submit such usage information.

Pe, acting as the consignee for the Artist, who is acting as the consignor, may report such consignment commission payments as desired or if required by law to the IRS (United States Internal Revenue Service), United States or other International Customs or Revenue Agencies or other Governmental entities using the Artist's Federal Tax ID Number, Social Security Number, or equivalent International tax identification number for Artist's Country. The Artist's Federal Tax ID Number, Social Security Number, or equivalent International tax identification information must be

provided to Pe by the Artist as part of this Agreement's enactment. Pe will employ all measures at its disposal to protect such information, which may be transmitted to Pe using alternate methods, such as by telephone or postal mail, if Artist does not wish to transmit this information online.

Pe will hold the Artist's commission in trust, without earned interest, from each separate order until the next quarterly payment is made to the Artist within 30 days of the first day of any quarterly payment month. The Artist agrees that Pe may issue a debit to Artist's account for any Artist commission payment previously paid by Pe to Artist if a client demands a refund or charge-back on the original order. Pe will do everything in its power to avoid such charge-back actions with the aid of Pe's merchant account or transaction processing affiliate service provider. Sufficient evidence of any charge-backs will be provided to the Artist if available, along with an Artist commission retraction notice. Pe will use Artist's pending or future commission payments posted to Artist's account to offset any such chargebacks, until Artist's account becomes positive again.

Pe and its affiliates, agents and partners may act as a mediator between the Artist and a Pe client for the purpose of negotiating any film, theatrical, or special-use licenses such as an exclusive, multiple production use, bulk or blanket licenses, or combined market licenses or license renewals.

Pe may at its sole discretion, also act as a mediator between the Artist and a Pe client for the purpose of negotiating any custom element production contracts with or without an associated license for the produced elements. Pe will charge the Artist a minimum of \$100 or fifteen percent (15%) of the total contract amount, whichever is higher, for the negotiation of such contract with or without an associated license for the produced elements, to be paid out of the Artist's contract retainer payment, or by the Artist directly upon signing of such contract if no retainer payment is negotiated, or as a deduction in Artist's accrued commission account, at Pe's discretion.

Pe and Lindsey may also utilize Artist's Tracks for internal, contracted productions for its own clients, employing one of the published Pe Licenses and prices, less the allowed discounts of up to 30%, and for which the Artist will earn the same commissions as with any other client license purchase.

6. The Artist authorizes Lindsey and other Pe employees, contractors, agents, partners or affiliates, as official representatives of Pe, to issue only Pe License Agreements on behalf of the Artist, notwithstanding any other restrictions and in compliance with the licensing availability guidelines and authorizations outlined in this Agreement.

7. The Artist guarantees that any Tracks supplied to Pe are the sole creation of the Artist, and that he/she owns the complete copyrights and publishing rights for such Media or otherwise has the full legal right to represent the Media, including any loops, sound fragments or fonts, vocals, or audio samples contained in the Media elements. The Artist agrees to hold Pe, Lindsey and any employees, contractees, contractors, partners, affiliates, agents, or assigns of Pe, harmless from any and all claims of copyright infringement or unpaid performance royalties or breach of contract by the Artist concerning the Artist's Media. In the event of any breach of this Agreement, Pe may take any steps it deems necessary, including claiming any funds accrued in Artist's commission account to recover any lost revenues or monetary damages caused by fees, judgements, or otherwise, due to any misrepresentation of Artist's claim of copyright of Artist's Media elements, in addition to any and all other legal remedies available.

Pe will make reasonable attempts to compel clients to file cue sheets to the appropriate performance rights organizations for all broadcast, film and theatrical uses of licensed Media and forward such information to Pe, which we will then forward to the Artist, but Pe is not required to do so and must be held harmless against any claims brought by any party relating to any broadcast or public performance reporting, or breach thereof, for Artist's Media.

Artist understands that Pe is not responsible for reporting any usage of Artist's Media elements to any performing rights organization, but will assist the Artist at his/her sole expense, in investigating any suspected infringement or any use of the Artist's elements not allowed by a particular license or not reported when required by a given License Agreement. All broadcast, film and theatrical Pe License Agreements require the client to report each Track's use to the appropriate performing rights organizations, and to make such records available to Pe upon request for the above license enforcement purposes.

8. Pe agrees not to distribute, demonstrate, sell or lend the Artist's Media to anyone for any reason except as outlined in this Agreement without the prior written or email consent of the Artist.

9. The Artist agrees to allow Pe to demonstrate the Artist's Media on the Pe or affiliate web sites or otherwise as outlined in Section 2 above, to the general public, for the express intent of marketing and licensing such Media or promoting the Pe company and licensing service or the Pe web site or any additional Pe production service that utilizes the Artist's Media, in any of the following non-CD Quality demonstration audio formats:

- a.** QuickTime Encoded 128kbps (or lower) Stereo Audio.
- b.** RealAudio or Windows Media Encoded 128k (or lower) Stereo Audio.
- c.** MPEG-1 Audio Layer III (mp3) or AAC 128kbps (or lower) Stereo Audio.
- d.** Compressed or less-than-CD-quality WAV, AIF, FLAC or Ogg Vorbis Stereo Audio.
- e.** Future "lossy" compressed audio streaming formats not to meet or exceed the general perceived quality of a standard audio CD.

Pe may incorporate a copy-deterrent scheme as timed audible multi-frequency tone bursts, voice overdub "slates," or a proven professional watermarking technology into the audio Media preview files, at Pe's sole discretion and expense, to deter the general public from illegally copying any Media. If an alternate form of demonstration outside that which Pe normally makes available to the general public is requested by a Pe client or prospective Pe client, such demonstration must be authorized in writing or by email by the Artist prior to the demo Media release.

Artist agrees that for the purposes of advertising and marketing, Pe may use what could reasonably be considered a brief excerpt not to exceed 60 seconds total from each of any or all of the Artist's individual Media elements, including but not limited to demonstrations at trade shows, on radio or television programs, as web-based streamed programs, or as other public demonstrations, without compensation to Artist. Artist agrees that his or her real name or Pe Artist pseudonym may be used by Pe, alone or in

conjunction with a licensing order or element usage report, for all advertising, marketing or promotional purposes, unless a specific separate written agreement is enacted by both parties to the contrary. Pe will not divulge or otherwise make readily available any additional personal Artist contact information or commission amounts without the express prior written or email consent of the Artist, unless such personal information is officially requested by a Governmental, Law Enforcement or other legitimate entity as part of an investigation or as otherwise required by law.

10. The Artist agrees not to knowingly circumvent the Pe licensing process if a potential client referred by Pe or its affiliates, agents or partners contacts the Artist directly regarding Media that is represented by Pe at the time of such contact. Pe reserves the right to revoke this Agreement and remove the Artist's Media from representation if Pe suspects or finds that the Artist has circumvented the Pe licensing process. This will in no way limit the Artist from licensing their own Media outside of the Pe licensing service if the client is referred from sources not associated with Pe.

11. Pe will send the Artist quarterly (January, April, July, October) payments from each element licensing fee sold using the following Artist Resale Formula:

Element or CD Price (USD, less any allowed coupon discounts) X 50% = Artist's share of each license fee.

The remaining percentage of each element's licensing fee will be deducted by Pe as payment for it's consignment services.

The Element Price on licenses sold as part of a collection or CD library will be pre-calculated on a per-CD basis, and will be disclosed to Artist as part of the Artist's acceptance of such pricing terms, prior to the sale of such CD. The Artist split on CD Collections with elements from multiple Artists will be based on the total of each Artists' individual element prices, a 3-star rating system based on quality, length and marketability of each Track to be determined by Pe, and then divided by the total CD license fee, less any allowed coupon discounts.

Artist agrees that Pe may, at it's sole discretion, offer any or all of Artist's Media elements at a reduced price as part of promotional campaigns in the form of a discount percentage up to a maximum of thirty percent (30%) off

any Media elements or an entire order containing Artist's elements. Any discount higher than thirty percent (30%) on the Artist's Media elements will first require the written or email consent by the Artist, excepting the following; Pe may offer a 40% discount on bulk CD purchases of no fewer than 15 CD Collections in the same purchase.

Pe may ask the Artist to participate in ongoing or periodic promotional offers whereby one or more of an Artists' Media elements are offered for free or as part of a contest, limited-time free or "buy one get one free" offer, permanent or occasional free element page, or as a free "Linkware" (non-commercial A License use only with an active text or image link to the Pe web site) loop or Track on an external or affiliate loop or Track distribution/marketing site, to help drive traffic to the Pe web site, and which authorization for such free use will be at the Artists' sole discretion, and which will require written or email consent by the Artist prior to any such offering or distribution.

12. Pe is only entitled to re-license Artist's Media previously licensed through the Pe service, or as a direct negotiated license, to the same client with the Artist's prior written or email approval. The Artist must respond to any Pe re-license request in a timely manner, no more than 14 days after any such request, or Artist automatically grants to Pe the right to re-license said element, providing said element is still represented by Pe for the Artist. Such Pe re-license requests may be sent in writing or by email, using the last known contact information for the Artist, and for which Artist is solely responsible for notifying Pe of any updated contact information. Any such re-license in which Artist does not respond within the allotted 14 days, may be issued to the client for a maximum discount of 50% of the original license price, but only for the same production or a derivative production with the same or closely related subject matter as the original. For the purpose of this paragraph, an additional or separate use of an Artist's previously licensed Media element for any given client, as described in the Pe License Agreements, is not considered a re-license and will require a new license.

13. Pe agrees to make it's best effort in marketing and demonstrating the Artist's Media to the general public, but offers no guarantee, prediction or estimate whatsoever of the success of Pe and the Pe web site or any projected or expected number of orders, commissions or profits for the Artist.

14. Pe reserves the right to modify and amend this Agreement at any time, and agrees to properly notify contracted Artists in writing or by email of any such changes on or prior to the date of the change, using the last known contact information for the Artist, and for which Artist is solely responsible for notifying Pe of any updated contact information, or by posting an announcement on the Pe Artist Intranet or message boards, if active. If the Artist does not dispute the change or terminate this Agreement within 30 days of the change, such change will be considered accepted by the Artist and shall supersede this entire Agreement.

15. The Artist and Pe agree that any dispute regarding this agreement shall be solved by mediation in Long Beach, CA, or another location convenient for Pe, for which an uninterested third-party mediator will be mutually agreed upon by both parties. Any party that brings to bear any such dispute, will do so solely at his or her own cost, notwithstanding anything else outlined in this Agreement regarding any breach of this Agreement by the Artist.

16. In the course of discussions, email, or any other communication between Pe and the Artist, Pe may disclose to Artist certain information that is considered confidential or proprietary to Pe or its affiliates, partners, agents, assigns, employees, vendors, or contractors.

Artist agrees not to disclose any such confidential or proprietary information that Pe may disclose to Artist by any means of communication, including but not limited to this entire Agreement, information contained in the Pe Artist Intranet or Artist Services area on the Pe web site or affiliate web sites, or other official Pe documents.

For the purposes of this section, the term "Confidential Information" ("Confidential Information") means any information concerning Pe's current or future technology, computer programs, products, services, pricing, procedures, intellectual property rights, business or marketing plans, financial information, client lists, or any information which is conspicuously marked or otherwise clearly identified as confidential or proprietary. However, the term "Confidential Information" does not include any information that is publicly available on the Pe web site. For the purposes of this paragraph, the Pe Artist Services area on the Pe web site is not considered information that is publicly available, as it is not directly linked from the main Pe web site.

The Artist will inform any employees, partners or co-producers of his/her Media elements with access to Pe's Confidential Information that such Confidential Information is confidential and proprietary to Pe and by affiliation with the Artist, they are also subject to the terms of this section.

This section of this Agreement is specifically enforceable without proof of monetary damages. This section of this entire Agreement will remain in full force and effect indefinitely, regardless of whether or not any or all other sections of this entire Agreement are held to be invalid, breached, amended or cancelled for any reason.

17. This Agreement will not be interpreted or construed as granting, assigning or otherwise transferring to Artist any license, right, title or interest in, to or under any patent, copyright, trademark, trade secret or other Confidential Information or proprietary right owned, licensed or otherwise controlled by Pe.

18. In the event that any portion of this Agreement is held to be invalid for any reason, the remainder of this Agreement will remain in full force and effect.

19. This Agreement shall be governed by and construed in accordance with the laws of the State Of California at the time of execution.

To uniquely identify this electronic Agreement with the full equivalent effect of a wet-signed agreement, enter your Birth Date (use MM/DD/YYYY format):

I hereby agree to all of the terms in this entire Agreement

Signature / Date

Complete online at <http://artists.PrimaryElements.com/> or mail to:

Primary Elements Artist Agreement

5318 E 2ND ST #352

Long Beach, CA 90803