Michael W. Lawrence, Esq.
lawrence@mikelawrencelaw.com

Record Contract Do's and Don'ts

1. No returns on digital sales.

2. Cross-collateralization **(NEVER GOOD)**
   a. Can be with respect to albums within a record deal
   b. Can be with respect to any artist signing a record deal and a publishing deal with the same company.
   c. Can be with respect to sequential record deals.
   d. **Example of Cross-Collateralization clause:** "The term "Advance" shall mean prepayment of royalties. Company may recoup Advances from royalties to be paid to you or on your behalf **pursuant to this Agreement or any other agreement between you and Company's affiliates**. Except as otherwise set forth herein, Advances shall be non-refundable."

3. 360 record deals
   a. 10-35% of artists net income from non-record sources (passive deal)
   b. Some record companies take an active interest (artist signs with a record company and also enters into a publishing deal with a publishing company owned by a record company).
   c. Another approach is for a record company to be given a right of first refusal and a matching right.
   d. Record company should never have a passive right in the areas they have active rights

4. Pay or Play Provision
   a. If record company doesn't release your album they have to pay you
   b. If they pay you the deal is over
   c. This is hard to get and even if you have it and the record company pays you to release you from the record deal they still own the earlier records released under the deal. You are free to release music yourself or sign with another record label going forward.

5. For escalations of royalty rates based on sales negotiated in Track Equivalent Album (TEA). Every 10-12 singles sold equates to the sale of an album. Streaming Equivalent Album (SEA) is less common but may be included in more escalation clauses in the future as streaming income becomes more prevalent.

6. Recording fund formulas (60-70% of all royalties earned in previous album cycle as advance)
    a. Broaden formula by including digital downloads and streaming into the royalty calculation.
    b. Ask for a floor (no matter how few royalties earning advance won't go below a certain figure)
    c. Because a formula advance is less any unrecouped amount you need a subfloor to the floor, which is an amount that your advance will not go below regardless of how unrecouped you are (e.g., the advance shall be reduced by any outstanding unrecouped advance balance but in no event shall the advance be reduced to less than $XX,000.00).

7. For any optional album you should get a higher royalty rate and advance.

8. Guaranteed Release
    a. Doesn't obligate record company to release your records but will let you out of the deal if they don't
    b. Push for clause that if the record company doesn't release two consecutive albums in a particular territory you can get the rights back in that particular territory.
    c. Example:
        i. Guaranteed Release: Company agrees to commercially release the Album in the digital format no later than [DATE] and to commercially release the Album in the compact disc configuration [or the then-current configurations typically used for frontline releases of records in normal distribution channels in the United States] no later than [DATE] and to release all subsequent albums within one hundred 120 days from the date of technically and commercially satisfactory delivery to Company of the Master Recordings, along with all required artwork and reasonable documentation. With respect to each Album, a Master Recording shall be "commercially satisfactory" to Company if the musical works embodied in such recording are of a style that is reasonably consistent with the musical works previously delivered to Company.
        ii. Reversion After Notice & Cure, Physical Configuration Required: If Company fails to so release the Album as provided above, Artist will provide written notice to Company of such failure and Company will commercially release the record in the compact

disc configuration or other comparable physical format throughout the Territory within 60 days after Company's receipt of the notice. If Company fails to release the applicable record within that 60-day period, the Term of this Agreement shall then terminate.

iii. Automatic Reversion, Digital Only Release: Company agrees to commercially release the Album throughout the Territory within 6 months of the Effective Date of this Agreement. "Commercially Release" means that Company shall release the Album in the permanent download configuration throughout the Territory through normal retail distribution channels for sale to the general public (e.g., iTunes). If Company fails to so commercially release, this Agreement shall automatically terminate at the end of such 6-month period.

9. If you're on an indie label, make sure you only give the record company rights to territories where they will release your albums.

10. Get the record company to pay producer royalties. Why?

a. Because artist advances are usually all-in which means the producer gets paid out of the advance you receive.

b. Because artists don't collect royalties until they recoup advance, you may be required to pay producer royalties before you are collecting royalties yourself.

c. To combat this, get the record company to pay the producer and treat the payment as additional advances under your deal.

11. Get reserves liquidated after 2 years.

12. Get commitment that reserves can't be more than albums shipped minus Soundscan sales figure plus 10%. In other words, if they shipped 100,000 albums, and SoundScan showed 80,000 sold, the reserve couldn't exceed 20,000 to 22,000 (the 100,000 shipped, less the 80,000 that SoundScan said were sold, plus a 10% cushion).

13. Eliminate fee for handling master licenses (so that money doesn't come off the top before your master license split, which in essence lowers your master license percentage share).

14. Increase the objection period to accounting statements to three years.

15. Keep some of your share of the master use synch license even when you are unrecouped.

16. Ask for the right to do TV performances, webcasts, and live streams after the term but before the recording restriction of songs recorded during the term (Taylor Swift). **Example clause:** Artist will not re-record any Composition (as defined below) recorded hereunder for any party other than [Record label] before the date which is five (5) years after the initial commercial release date of the Recording containing such Composition in the United States. A webcast or televised live performance of any Composition will not constitute a re-recording under this Agreement.

17. If you are in a genre that doesn't lend itself to having your songs performed by others, you should only enter into a publishing deal to receive guaranteed money. Rather than signing on with a publisher, you can hire an administrator to administer your publishing.

18. In a co-publishing deal (deal where publisher owns part of your composition copyright), make sure you as the artist are not paying for the costs of 3rd party administrators. Administration is part of the job of the publisher.

19. A control composition clause limits the amount a record company pays in mechanicals to a controlled composition. The problem with this in addition to arbitrarily lowering the mechanical royalty is that the way a controlled composition is defined includes songs that might be owned or controlled mostly by 3rd parties and you as the artist should not dictate what another artist should make in mechanical royalties in these instances. **Example:** "Controlled Composition" is hereby defined as each musical composition wholly or partially written by You [Artist], or owned or controlled directly or indirectly by You or by any party associated or affiliated with You. If and to the extent Controlled Compositions are recorded hereunder, **each such Composition is hereby licensed to [Company], for the United States and Canada, at 3/4 of the current minimum fixed statutory copyright royalty rate** (the "Applicable Rate") on the earlier of (i) the date the recording commences or (ii) the date the recording is required to be delivered; **provided that [Company] will not be required to pay more than then (10) times the Applicable Rate** for an Album and no more than two (2) times the Applicable Rate for a seven-inch or twelve-inch singles record. Without limiting Company's rights, **it is agreed that [Company] shall have the Offset Right if mechanical royalties payable by Company are in excess of such amounts**.

20. Mechanical royalties should not be recoupable from royalties. Many record labels don't pay them or make them recoupable.

21. Record companies try to limit the mechanical royalty to 75% of the statutory rate. Try to eliminate this.

22. Record companies try to limit the number of songs they have to pay the mechanical royalty for to 10 or a lesser number. Try to eliminate this.

23. If future advances are based on a formula and the floor is reduced by the unrecouped balance make sure to ask for a sub-floor so you get an advance of some kind even when your unrecouped balance is high. (e.g., the advance shall be reduced by any outstanding unrecouped advance balance but in no event shall the advance be reduced to less than $XX,000.00).

24. In a Key Man clause, the record company gets an option to pick up the services of a key departing member of a band, often at less favorable terms spelled out in the contract. If the group has a deficit, ask that only a pro-rata share of the solo artists' slice of the group deficit apply to the new solo artist account. If the new solo artist runs their own deficit and the group was recouped, ask that the groups surplus only be used to recoup the new solo artist's deficit up to the point of their pro-rata share of the solo artist's slice of the group's surplus. If the group continues minus the new solo artist, then the new solo artist shouldn't participate either way in future deficits or surpluses.