

**COMEDY EXCHANGE ASSOCIATION  
LABEL AGREEMENT**

AGREEMENT made on \_\_\_\_\_ [DATE] between COMEDY EXCHANGE ASSOCIATION (“CXA”), a Pennsylvania corporation, whose address is 4006 Gulfview, Rowlett, TX 75088 and \_\_\_\_\_ [COMPANY NAME] a \_\_\_\_\_ [STATE] company doing business as \_\_\_\_\_ [NAME] (“Label”), whose address is [ADDRESS].

**WITNESSETH**

1. The term of this agreement shall be the three (3) year period from [BEGINNING DATE] to [DATE] and continuing thereafter for additional periods of three (3) years each unless terminated by either party at the end of said initial period or any additional period, upon notice sent by registered, certified or Express mail, or other sending method that requires that the date that the item is sent be recorded by the courier (e.g., overnight mail or messenger service), not more than six (6) months or less than three (3) months prior to the end of any such period.

2. As used in this agreement, the word “Written Work” or “Written Works” shall mean:

- A. All comedic writings, spoken or musical, (including the comedic segments and individual writings written for a comedic work) whether published or unpublished, now owned or copyrighted by Label or in which Label owns or controls performing rights, and
- B. All comedic writings, spoken or musical, (including the comedic segments and individual writings written for a comedic work) whether published or unpublished, in which hereafter during the term Label acquires ownership of copyright or ownership or control of the performing rights, from and after the date of the acquisition by Label of such ownership or control.

3. A. As full consideration for all rights granted to CXA hereunder and as security therefore, CXA agrees to make the following payments (on a quarterly basis) to Label with respect to each of the Written Works in which CXA has performing rights:

(1) For analog radio performances of Written Works in the United States, its territories and possessions, CXA will pay amounts calculated pursuant to CXA’s then standard practices upon the basis of the then current performance rates generally paid by CXA to its affiliated Labels for similar performances of similar writings. CXA’s current standard practices are attached herein at Schedule A of this Agreement. The number of performances for which Label shall be entitled to payment shall be the number of cuts that are aired or tracked by CXA.

(2) In the case of Written Works which, or rights in which, are owned by Label jointly with one or more other Labels, the sum payable to Label under this subparagraph A shall be a pro rata share determined on the basis of the number of Labels, unless CXA shall have received from Label a copy of an agreement or other document signed by all of the Labels providing for a different division of payment.

B. Notwithstanding the provisions of subparagraph A of this paragraph 3, CXA shall have no obligation to make payment hereunder with respect to (1) any performance of a Written Work which occurs prior to the effective date of this Agreement, or (2) any performance for which no license fees shall be collected by CXA, or (3) any performance of a Written Work which Label claims was either omitted from or miscalculated on a royalty statement and for which CXA shall not have received written notice from Label of such claimed omission or miscalculation within nine (9) months of the date of the royalty distribution seeking to be adjusted.

4. In accordance with CXA's then current standard practices, CXA will furnish quarterly statements to Label during each year of the term showing the monies due pursuant to subparagraph A of paragraph 3 hereof.

5. Nothing in this agreement requires CXA to continue to license the Written Works subsequent to the termination of this agreement. In the event that CXA continues to license Label's interest in any Written Work, however, CXA shall continue to make payments to Label for such Written Work for so long as Label does not make or purport to make directly or indirectly any grant of performing rights in such Written Work to any other analog licensing organization. The amounts of such payments shall be calculated pursuant to CXA's then current standard practices upon the basis of the then current performance rates generally paid by CXA to its affiliated Labels for similar performances of similar writings. Label agrees to notify CXA by registered or certified mail of any grant or purported grant by Label directly or indirectly of performing rights to any other performing rights organization within ten (10) days from the making of such grant or purported grant and if Label fails so to inform CXA thereof and CXA makes payments to Label for any period after the making of any such grant or purported grant, Label agrees to repay to CXA all amounts so paid by CXA promptly with or without demand by CXA. In addition, if CXA inquires of Label by registered or certified mail, addressed to Label's last known address, whether Label has made any such grant or purported grant and Label fails to confirm to CXA by registered or certified mail within thirty (30) days of the mailing of such inquiry that Label has not made any such grant or purported grant, CXA may, from and after such date, discontinue making any payments to Label.

6. In the event that CXA has reason to believe that Label will receive, or is entitled to receive, or is receiving payment from another analog performing rights licensing organization for comedic writing other than CXA for or based on United States performances of one or more of the Written Works during a period when such Written Works were licensed by CXA pursuant to this agreement, CXA shall have the right to withhold payment for such performances from Label until receipt of evidence satisfactory to CXA that Label was not or will not be so paid by such other organization. In the event that Label was or will be so paid or does not supply such evidence within twelve (12) months from the date of CXA's request therefore, CXA shall be under no obligation to make any payment to Label for performances of such Written Works during such period.

## 7. Termination

A. In the event that this agreement shall terminate at a time when, after crediting all earnings reflected by statements rendered to Label prior to the effective date of such termination, there remains an unearned balance of amounts paid to Label by CXA or

any other indebtedness owed to CXA by Label, such termination shall not be effective until the close of the calendar quarterly period during which (1) Label shall repay such unearned balance of payments or indebtedness, or (2) Label shall notify CXA by registered or certified mail that Label has received a statement rendered by CXA at its normal accounting time showing that such unearned balance of payments or indebtedness has been fully recouped by CXA.

B. The termination of this agreement shall be deemed subject to any rights or obligations existing between CXA and its licensees under licenses then in effect. As a result thereof, notwithstanding such termination, CXA shall have the right to continue to license all of Label's Written Works in all places and in all analog radio with respect to which such licenses exist as of the date of termination, until such licenses expire.

8. Notwithstanding the termination of this agreement, all of the terms and conditions of this agreement shall continue to apply subsequent to such termination with respect to any Written Works which may continue to be licensed by CXA and any monies payable to Label by CXA pursuant to the provisions of this agreement.

9. Label agrees:

A. To secure and maintain copyright protection of the Works pursuant to the Copyright Law of the United States and pursuant to the laws of such other nations of the world where such protection is afforded; and

B. To give CXA prompt notice by registered or certified mail in each instance when, pursuant to the Copyright Law of the United States, (1) the rights granted to CXA by Label in any Work shall revert to the writer or the writer's representative, or (2) copyright protection of any Work shall terminate.

10. Label warrants and represents that:

A. Label has the right to enter into this agreement; Label is not bound by any prior commitments which conflict with its undertakings herein; the rights granted by Label to CXA herein are the sole and exclusive property of Label and are free from all adverse encumbrances and claims; and exercise of such rights will not constitute infringement of copyright or violation of any right of, or unfair competition with, any person, firm, corporation or association.

B. Except with respect to Written Works in which the possession of performing rights by another person, firm, corporation or association is specifically set forth, Label has performing rights in each of the Written Works by virtue of written grants thereof to Label signed by the authors and writers or other owners of such Written Work.

11. A. Label agrees to defend, indemnify, save and hold CXA, its licensees, the advertisers of its licensees and their respective agents, servants and employees, free and harmless from and against any and all demands, loss, damage, suits, judgments, recoveries and costs,

including counsel fees, resulting from any claim of whatever nature arising from or in connection with the exercise of any of the rights granted by Label in this agreement; provided, however, that the obligations of Label under this paragraph 11 shall not apply to any matter added to, or changes made in, any Written Work by CXA or its licensees.

B. Upon the receipt by CXA or any of the other parties herein indemnified of any notice, demand, process, papers, writ or pleading, by which any such claim, demand, suit or proceeding is made or commenced against them, or any of them, which Label shall be obliged to defend hereunder, CXA shall, as soon as may be practicable, give Label notice thereof and deliver to Label such papers or true copies thereof, and CXA shall have the right to participate and direct such defense on behalf of CXA and/or its licensees by counsel of its own choice, at its own expense. Label agrees to cooperate with CXA in all such matters.

C. In the event of such notification of claim or service of process on any of the parties herein indemnified, CXA shall have the right, from the date thereof, to withhold payment of all sums which may become due pursuant to this agreement or any modification thereof and/or to exclude the Written Work with respect to which a claim is made from this agreement until receipt of satisfactory written evidence that such claim has been withdrawn, settled or adjudicated.

12. Label makes, constitutes and appoints CXA, or its nominee, Label's true and lawful attorney, irrevocably during the term hereof, in the name of CXA or that of its nominee, or in Label's name, or otherwise, in CXA's sole judgment, to do all acts, take all proceedings, and execute, acknowledge and deliver any and all instruments, papers, documents, process or pleadings that, in CXA's sole judgment, may be necessary, proper or expedient to restrain infringement of and/or to enforce and protect the rights granted by Label hereunder, and to recover damages in respect of or for the infringement or other violation of said rights, and in CXA's sole judgment to join Label and/or others in whose names the copyrights to any of the Written Works may stand, and to discontinue, compromise or refer to arbitration, any such actions or proceedings or to make any other disposition of the disputes in relation to the Written Works; provided that any action or proceeding commenced by CXA pursuant to the provisions of this paragraph 12 shall be at its sole expense and for its sole benefit.

Notwithstanding the foregoing, nothing in this paragraph 12 requires CXA to take any proceeding or other action against any person, firm, partnership or other entity or any writer or Label, whether or not affiliated with CXA, who Label claims may be infringing Label's Written Works or otherwise violating the rights granted by Label hereunder. In addition, Label understands and agrees that the licensing by CXA of any comedic writings which Label claims may be infringing Label's Written Works or otherwise violating the rights granted by Label hereunder shall not constitute an infringement of Label's Written Works on CXA's part.

13. CXA shall have the right, in its sole discretion, to terminate this agreement if:

A. Label, its agents, employees, representatives or affiliated companies, directly or indirectly during the term of this agreement:

- (1) Solicits or accepts payment from or on behalf of comedic writers. -5- 2550049v4

(2) Permits Label's name, or the fact of its affiliation with CXA, to be used by any other person, firm, corporation or association engaged in any of the practices described in subparagraphs A(1) and A(2) of this paragraph 13.

(3) Submits to CXA, as one of the Written Works to come within this agreement, any comedic writing with respect to which any payments described in subparagraph

A (1) of this paragraph 13 have been made by or on behalf of a writer or author to any person, firm, corporation or association.

B. Label, its agents, employees or representatives directly or indirectly during the term of this agreement makes any effort to ascertain from, or offers any inducement or consideration to, anyone, including but not limited to any radio licensee of CXA or to the agents, employees or representatives of CXA or of any such licensee, for information regarding the time or times when any such CXA licensee is to report its performances to CXA, or to attempt in any way to manipulate performances or affect the representative character or accuracy of CXA's system of sampling or monitoring performances.

C. Label fails to notify CXA's Department of Writer/Label Administration promptly in writing of any change of firm name, ownership or address of Label. In the event CXA exercises its right to terminate this agreement pursuant to the provisions of subparagraphs A, B or C of this paragraph 13 CXA shall give Label at least thirty (30) days' notice by registered or certified mail of such termination. In the event of such termination, no payments shall be due to Label pursuant to paragraph 5 hereof.

14. In the event that during the term of this agreement (1) mail addressed to Label at the last address furnished by Label pursuant to paragraph 18 shall be returned by the post office, or (2) monies shall not have been earned by Label pursuant to paragraph 3 hereof for a period of two consecutive years or more, or (3) the proprietor, if Label is a sole proprietorship, shall die, CXA shall have the right to terminate this agreement on at least thirty (30) days notice by registered or certified mail, electronic mail ("e-mail") or facsimile number addressed to the last postal or electronic address or transmitted to the last facsimile number furnished by Label in writing to CXA's Department of Writer/Label Administration and, in the case of the death of a sole proprietor, to the representative of said proprietor's estate, if known to CXA. If Label failed to maintain a current address with CXA and CXA has made reasonable good-faith efforts in attempting to locate Label without success, CXA shall have the right to terminate this agreement pursuant to this paragraph 14 by regular first-class U.S. mail, in lieu of the means otherwise specified, regardless of anything in paragraph 13 to the contrary. In the event of such termination, no payments shall be due Label pursuant to paragraph 5 hereof.

15. Label acknowledges that the rights obtained by it pursuant to this agreement constitute rights to payment of money and that during the term CXA shall hold title to the performing rights granted to CXA hereunder. In the event that during the term Label shall file a petition in bankruptcy, such a petition shall be filed against Label, Label shall make an assignment for the benefit of creditors, Label shall consent to the appointment of a receiver or trustee for all or part of its property, Label shall file a petition for corporate reorganization or arrangement under the United States bankruptcy laws, or Label shall institute or shall have

instituted against it any other insolvency proceeding under the United States bankruptcy laws or any other applicable law, or, in the event Label is a partnership, all of the general partners of said partnership shall be adjudged bankrupts, CXA shall retain title to the performing rights in all Written Works the rights to which are granted to CXA hereunder and shall subrogate Label's trustee in bankruptcy or receiver and any subsequent purchasers from them to Label's right to payment of money for said Written Works in accordance with the terms and conditions of this agreement.

16. All disputes of any kind, nature or description arising in connection with the terms and conditions of this agreement shall be submitted to the American Arbitration Association in Philadelphia, PA, for arbitration under its then prevailing rules, the arbitrators to be selected as follows: Each of the parties shall, by written notice to the other, have the right to appoint one arbitrator. If, within ten (10) days following the giving of such notice by one party, the other shall not, by written notice, appoint another arbitrator, the first arbitrator shall be the sole arbitrator. If two arbitrators are so appointed, they shall appoint a third arbitrator. If ten (10) days elapse after the appointment of the second arbitrator and the two arbitrators are unable to agree upon the third arbitrator, then either party may, in writing, request the American Arbitration Association to appoint the third arbitrator. The award made in the arbitration shall be binding and conclusive on the parties and shall include the fixing of the costs, expenses and reasonable attorneys' fees of arbitration, which shall be borne by the unsuccessful party Judgment may be entered in Pennsylvania Superior Court or any other court having jurisdiction.

17. Label agrees that it shall not, without the written consent of CXA, assign any of its rights hereunder. No rights of any kind against CXA will be acquired by the assignee if any such purported assignment is made by Label without such written consent.

18. Label agrees to notify CXA's Department of Writer/Label Administration promptly in writing of any change in Label's postal or electronic ("e-mail") address, or facsimile number. Any notice sent to Label pursuant to the terms of this agreement shall be valid if addressed to Label at the last postal or electronic address or facsimile number so furnished by Label.

19. This agreement shall be subject to CXA's standard practices and procedures which are in effect as of the effective date of this agreement and as they may be modified and/or supplemented from time to time.

20. Label acknowledges that the relationship between CXA and Label which is created by this agreement is one of ordinary contracting parties and is not intended to be a fiduciary relationship with respect to any of the rights or obligations hereunder.

21. Label authorizes the inclusion of Label's name, likeness and biographical information, and those of Label's executive employees, in publicly-distributed material relating to Label's association with CXA.

22. This agreement constitutes the entire agreement between CXA and Label, cannot be changed except in writing signed by CXA and Label and shall be governed and construed pursuant to the laws of the State of Pennsylvania.

23. In the event that any part or parts of this agreement are found to be void by a court of competent jurisdiction, the remaining part or parts shall nevertheless be binding with the same force and effect as if the void part or parts were deleted from this agreement.

24. Any prior agreements, as modified, between Label and CXA are canceled and superseded as of the effective date of this agreement. All works that were embraced by any prior agreement between Label and CXA and in which no other analog licensing organization controls Label's performing right interest shall be deemed embraced by this agreement. Any unearned balance of payments previously paid to Label by CXA or unpaid indebtedness owed to CXA by Label shall be deemed to be recoupable by CXA from any monies which become payable to Label pursuant to this agreement and any extensions, renewals or modifications. If Label has acquired the works of the former CXA affiliate (who shall be indicated by attaching the terminated agreement), then all works which were embraced by that agreement and in which no other analog licensing organization controls the performing right interest shall be deemed embraced by this agreement. Any unearned balance of payments previously paid to said former affiliate by CXA or unpaid indebtedness owed by said former affiliate to CXA shall be deemed to be recoupable by CXA from any monies which become payable to Label pursuant to this agreement and any extensions, renewals or modifications.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be duly executed as of the day and year first above written,

**COMEDY EXCHANGE ASSOCIATION**

**"LABEL"**

By: \_\_\_\_\_  
George Gimarc, Executive Director

By \_\_\_\_\_  
(Print Name and Title of Signer)

If LABEL's company structure is a PARTNERSHIP all other partners must sign below.

By: \_\_\_\_\_  
(Print Name and Title of Signer)

By: \_\_\_\_\_  
(Print Name and Title of Signer)

By: \_\_\_\_\_  
(Print Name and Title of Signer)

## **SCHEDULE A**

# **Comedy Exchange Association Compensation for Comedic Writers and Labels**

Labels and Comedic Writers will be compensated by CXA based on the number of comedic cuts that are aired.

At the end of each business quarter an audit will take place to determine the exact amount of compensation owed to the Comedic Writers and Labels from Radio Station Licensing Fees. Within 90 days from the Audit, compensation checks will be mailed. During its first year in operation, CXA will charge a 20% operating fee to administer CXA. Every year thereafter (unless modified in accordance with this agreement), CXA will charge a 15% operating fee to administer CXA.

After Operating Fees, the Label will receive 45% and the Comedic Writer will receive 55% of the fee for each comedic cut. If the comedic material does not involve a Label, then the Comedic Writer will receive 100% of the fee. All Comedic Writers and Labels have to be registered with CXA to be compensated for the comedic writing.