

**BEA
BOUSIE'S
EXPLOITATION
AGREEMENT**

This Agreement is the first modified version of the agreement according to the open source model developed by Bousie advocaten, media and entertainment lawyers based in Amsterdam, hereinafter referred to as 'Bousie's Exploitation Agreement' (BEA). New BEA versions, which may be consulted and downloaded from www.bousie-advocaten.nl free of charge, will be drawn up on a regular basis. Bousie advocaten retains full copyrights to BEA but everybody is entitled to use this Agreement at no cost. The users are not permitted to exploit this Agreement commercially. The users may designate this Agreement only as Bousie's Exploitation Agreement or BEA if they adopt it without any changes (or have the changes approved by Bousie advocaten) and explicitly mention the relevant BEA version used.

BEA has been developed to meet market demand for new, balanced and suitable models for the exploitation of music in particular. In it, distinct types of exploitation are incorporated into a single agreement as much as possible, where the Artist assumes the creative role and the Exploiter looks after the business aspects. The Exploiter's role may be played by each of the parties currently active in the music market, including but not limited to the current record company, the current music publisher, the current manager, the current booking agent, the current producer and the current retailer (situation as at March 2004).

To prevent the Artist from being at the mercy of only one business service provider, we have explicitly chosen to keep the notice of termination periods as short as possible. In this way, both Parties benefit from their relationship being healthy, but they may go their separate ways if further cooperation turns out impossible. The Exploiter's justified interest in recouping its investments has been taken into consideration by making termination dependent to a certain extent on whether investments have been recouped. In addition, the Agreement provides that both Parties will remain co-owners of the intellectual property rights developed during the term of the Agreement even after the expiry thereof. Since it is not to be expected in general that the Artist will want to exploit the intellectual property rights after the termination of the Agreement, exploitation rights will continue to be vested in the Exploiter in principle. However, the Agreement includes a safety net arrangement for the benefit of the Artist's position after the termination of the Agreement in case the Exploiter fails to initiate Exploitation activities or ceases the Exploitation at any time. In that case, the Exploiter will

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have to comply with any request of the Artist for transferring the Exploitation to a third party. This will be without prejudice to each party's right to 50% of the net income, as both Parties will benefit from the best possible Exploitation.

In this modified version, existing practices at Sena and Buma/Stemra have been taken into account in particular. Even though the Artist and the Exploiter are co-owners of the relevant intellectual property rights, neither Sena nor Buma/Stemra allows a juristic person to register as a performer or author to this day. Hence we have chosen, merely for administrative reasons, to have the Artist register as a performer and author and the Exploiter as phonogram producer and publisher. Subsequently, the income generated by the Parties will be transferred to the Parties' account through Sena and Buma/Stemra and divided between the Parties on a 50%-50% basis, as agreed between the Parties.

Since BEA has been developed in anticipation of developments in the music industry and it is hard to predict the future (as opposed to the past), Bousie advocaten does not accept any liability for the users' adoption of this model without any changes. This model serves only as a basis for a potential agreement between parties and will from time to time be modified.

In drawing up each and every provision of this Agreement, we have made choices that seek to maintain a balance between the interests of the Artist and those of the Exploiter, which choices do not necessarily conform to a user's individual needs. This means that a rock-solid agreement between parties can never be a model but should always be tailor-made.

Every BEA user is invited to send suggestions for amendments to this Agreement to Bousie advocaten through info@bousie-advocaten.nl; in this context, it is not possible to make a reservation in respect of any copyright, because it is intended to release new BEA versions whenever it becomes clear that any existing model needs to be amended. Every new version, too, will be freely accessible to individual users.

Bousie advocaten

March 2004

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THE PARTIES:

1. XXXXXX B.V., a private company with limited liability incorporated and organized under the laws of the Netherlands, trading under the name XXXXXXXX, having its corporate seat under its articles of association and its principal place of business at [street] number [#], ([postcode]) [locality], duly represented in this matter by [name of the person authorized to contract];

hereinafter referred to as the 'Exploiter';

and

2. [name of the artist], residing at [street] number [#], ([postcode]), [locality];

hereinafter referred to as 'the Artist' (if the Artist is a minor, a statutory representative must also sign) (in the case of Groups, each member of the Group must sign);

the parties are collectively referred to as 'the Parties';

WHEREAS:

- I. the Artist is an author of works within the meaning of the Copyright Act;
 the Artist is a performer within the meaning of the Neighbouring Rights Act; *
- II. the Artist wishes to enter on or continue a career as an artist in the broadest sense of the word;
- III. the Exploiter wishes to assist the Artist in arranging the business affairs of his or her career;
- IV. the Parties enter into this Agreement on a basis of equality and they agree to share responsibilities;
- V. all intellectual property rights that arise under this Agreement during the term of the Agreement belong to the Parties on a 50%-50% basis. If either Party acquires intellectual property rights under this Agreement, this Party will also acquire these rights for the benefit of the other Party;
- VI. the Parties will therefore share the income, less the costs, on a 50/50 basis;
- VII. the Artist has been given the opportunity to seek independent legal or other advice before (s)he has signed this Agreement. If the Artist has failed to seek independent legal or other advice, (s)he has refrained from doing so voluntarily;
- VIII. the Parties wish to lay down their arrangements regarding the manner of exploitation and the terms and conditions governing the exploitation of the Artist in this Agreement as follows;

* Tick where appropriate.

DECLARE THAT THEY HAVE REACHED THE FOLLOWING AGREEMENT:**Clause 1 Definitions**

- Agreement:** This Agreement is named Bousie's Exploitation Agreement, BEA. The annexes to this Agreement form an integral part thereof. In the event of any conflict between the provisions of the general part and the Annexes, the general provisions take priority, unless the relevant provisions in the Annexes expressly derogate therefrom.
- Album:** a Reproduction of a collection of musical works produced or to be produced and performed by the Artist for the purposes of the Recording(s) to be made under this Agreement, consisting of at least 8 Tracks with a playing time of at least 35 minutes, or consisting of a lower number of Tracks with a shorter playing time; a different number of titles or a different playing time may be agreed upon only in writing.
- Artwork:** all (photo)graphical designs produced for the purpose of and/or suitable for being used in the context of sales promotional or other messages in the broadest sense possible, including but not limited to messages in daily and other newspapers, radio, television and the Internet, flyers, inlay cards, sleeves, boxes and packaging.
- Compilation:** a Reproduction consisting in a collection of Tracks from different albums and/or different artists.
- Costs:** all reasonable direct and/or indirect overhead or other costs incurred by the Parties as a result of the execution of this Agreement, with or without the engagement of third parties, including but not limited to those relating to the production of Masters and/or Recordings and/or Reproductions, and/or Artwork, performances, Merchandising and sponsoring, which have been approved by the Parties by mutual arrangement. On entering into this Agreement, the Parties will reach an arrangement on the percentage to be charged by the Exploiter in relation to the latter's overhead, in accordance with the provision of Clause 8 in conjunction with A.11, which percentage the Exploiter will be able to account for as well.
- Exploitation:** any use of intellectual property or other rights, including but not limited to the Artist's name or stage name, his or her portrait, trademarks,

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Recording(s), Artwork or any adaptations thereof, including the production, reproduction, sale or lease or the offer for sale and lease thereof, the keeping in stock thereof, the performance or any other manner of communication or distribution thereof, as well as the broadcasting or re-broadcasting thereof on radio and television, cable, satellite by means of any currently known technology or through any medium whatsoever; worldwide and in any language or digital or other form whatsoever, including CD-Rom, CD-i, CD-video, DVD, video disk, floppy disk, diskette, hard disk, game console carriers, including the right to exploit the relevant Recording – from a databank or otherwise – in a digital, electronic or optical form, either on physical information carriers or by means of on-line availability on the Internet, Intranet, GSM, GPRS, UMTS or in any mobile or other network, or on any image, sound and/or information carriers that are currently unknown and/or used, including the right to have Recording(s) translated or adapted.

- Exploiter: the person who is in charge of the Artist's business affairs.
- Income (Gross): all income derived from the Exploitation of the Artist under this Agreement.
- Income (Net): Gross Income minus Costs.
- Master: analogue or digital image and/or sound and/or information carrier (data) consisting of one or more Tracks (OPTIONAL: of which the Title and the Artist are specified in the Annex(es) to this Agreement) containing the original Recording(s).
- Merchandising: the commercial Exploitation of the Artist's name, stage name, voice, portrait, pictorial and word marks and likeness as well as any artistic representations thereof, the Artist's biographical details and the logo, if possible protected by trademark rights. All forms of Merchandising, including but not limited to clothes, diaries, jewellery, perfumes, posters and postcards, mugs, cosmetics, watches, photo books.
- Recording: (a) any registration of sound for the purpose of or suitable for making Reproductions thereof, unless otherwise indicated.
- (b) any registration of images, information, sound, data or any combination thereof for the purpose of or suitable for making linear

and/or digital and/or interactive Reproductions thereof, which are capable of reproducing information, image and sound simultaneously.

Release: the beginning of the Exploitation by bringing one or more Reproductions of the Recordings into circulation in any way in a specified configuration.

Reproduction: any reproduction for Exploitation purposes of one or more Recordings or any parts thereof contained on the Master, including records, music cassettes, compact discs and similar laser-read carriers, mini discs and other MO discs, DCC, CD-i, CD-Rom, CD video, video, sound and/or video, or video tapes and discs, floppy, diskette and hard disk and any other sound and/or image and/or information carrier produced by means of currently known recording technologies as well recording or reproduction technologies that are not known yet at present.

Sponsoring: the exclusive right to use the Artist's name, stage name, portrait, pictorial and/or word marks or likeness, including any artistic representation thereof used by the Artist, the Artist's biographical details and the logo, if possible protected by trademark rights, and to use the person of the Artist for the purpose of promoting trademarks, products, services, businesses, institutions and persons in any way whatsoever.

Territory: worldwide.

Title: a work produced or to be produced that is performed by the Artist for the purposes of Recording(s) during the term of this Agreement.

Track: a Recording of a specific performance by the Artist of a specific Title, either produced by way of a trial, incomplete, disapproved or otherwise.

Clause 2 Duration & Termination of the Agreement

2.1. This Agreement will take effect on the date it is signed and is entered into for an indefinite period.

2.2. Each Party will at any time be entitled to terminate this Agreement subject to three months' notice. If the Exploiter has not yet recouped its investment, termination will be subject to nine months' notice or so much shorter as is necessary for recouping

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the investment. The termination options will be without prejudice to the provision of subclause 3 of this Clause.

- 2.3. This Agreement must be terminated by registered letter and the date of the postmark will be deemed the commencement date of the notice period referred to in subclause 2.
- 2.4. Without prejudice to the provision of subclause 2 of this Clause, the Parties will be under a duty to fulfil all the obligations assumed during the term of this Agreement to the best of their abilities after the termination thereof as well. The Parties' secrecy obligations laid down in Clause 10 will also apply after the termination of this Agreement.
- 2.5. In addition to the statutory grounds of termination, the Parties will be entitled to terminate this Agreement prematurely, without any intervention of third Parties being required and with immediate effect, in the following circumstances:
- (a) if the counterparty applies for a moratorium on payments order or is granted such a moratorium;
 - (b) if the counterparty applies for his/her or its bankruptcy or insolvent liquidation (or a debt rescheduling arrangement) or if third parties apply for the counterparty's bankruptcy, insolvent liquidation (or a debt rescheduling arrangement), or if the counterparty is declared bankrupt, insolvent (or is subject to a debt rescheduling arrangement);
 - (c) if the counterparty is in default after (s)he/it has received a written warning to remedy his/her/its failure in the performance within a reasonable period, unless this failure, considering its nature or minor significance, does not justify rescission and its consequences;
 - (d) if the counterparty is a legal entity and this legal entity is dissolved.
- 2.6. If the Artist is unable to fulfil his or her obligations arising under the Agreement owing to illness, the Artist must notify the Exploiter thereof immediately.
- 2.7. In case of the Artist's illness, the Exploiter will be entitled to arrange for its medical examiner to contact the Artist's medical examiner for the purpose of ascertaining whether the Artist's failure is justified in the light of the nature of the illness. If it is sufficiently plausible that the Artist's failure was not justified, this means that the Artist will be in default vis-à-vis the Exploiter without any further notice of default being required, in which event the Agreement may be terminated with immediate effect.

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- 2.8. Any failure to meet the obligations under this Agreement will constitute a breach that justifies rescission only if the counterparty is warned in writing to fulfil his/her/its obligations after all and is given a reasonable period to do so. If performance has become permanently impossible, the Agreement may be rescinded with immediate effect.
- 2.9. If the Artist should end his or her artistic career or change the nature or style of his or her performances fundamentally, the Exploiter will be entitled to terminate this Agreement with immediate effect without being liable to pay any compensation to the Artist, without prejudice to all of the Exploiter's other rights, including its right to claim damages (including but not limited to direct and indirect costs and lost profits).

Clause 3 Cooperation

- 3.1. The Parties will cooperate with each other in the area of the Exploitation (in the broadest sense possible) of the Artist's artistic career.
- 3.2. The Artist undertakes to fulfil all obligations arising under this Agreement as well as all contracts made pursuant to this Agreement properly and to the best of his or her ability, which includes being punctual and in a good physical and mental state for all appointments made for the benefit of the Artist, except in cases of force majeure.
- 3.3. The Artist acknowledges that (s)he must pay the turnover tax on the Income earned to the tax authorities. Further, (s)he is aware that (s)he must arrange for the filing of his or her own wage tax returns independently and fulfil the corresponding obligation of paying any relevant personal taxes that may be due. The Artist guarantees that (s)he will take out proper health and occupational disability insurance and a professional indemnity policy within one month of the date at which this Agreement is signed. The Artist is aware that this Agreement is not a contract of employment within the meaning of Book 7, title 10, of the Dutch Civil Code.
- 3.4. The Parties agree that they will share the responsibility for making this cooperation a success. Together they will endeavour to achieve this goal. They consider themselves partners in this process rather than parties with conflicting interests. To the extent possible and necessary, they will cooperate with each other on a basis of equality. If there are any problems during the term of this Agreement, the Parties will seek a solution by mutual consultation and in doing so, they will take their shared interests into account as much as possible.

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- 3.5. For the purposes of ensuring successful cooperation, the Parties will hold a progress meeting periodically – once a week as a general rule – about the practicalities relating to the Artist's career (such as the Artist's agenda), during which the Parties may make arrangements and, if necessary, discuss any points which can be improved. The Exploiter will see to it that minutes will be kept of these meetings, which will be signed by the Parties for approval.
- 3.6. At least once a quarter, but so much more often as desired, the Artist's artistic progress will be discussed in the manner described in subclause 5.

Clause 4 Intellectual Property Rights

The undivided ownership in respect of all intellectual property or other rights arising under this Agreement during the term of this Agreement will at all times rest with the Parties equally (on a 50-50 basis). If either Party acquires any intellectual property or other rights under this Agreement, (s)he or it will acquire these rights for the benefit of the other Party as well.

Clause 5 Exploitation

Copyrights / Neighbouring Rights

- 5.1. The Exploiter is granted the perpetual, exclusive, worldwide, unrestricted, non-assignable and sub-licensable right to the Exploitation of:
- (a) all works of the Artist as an author that are created during the term of the Agreement;
 - (b) all performances or Recordings of the Artist as a performer that are produced during the term of the Agreement.
- Additional provisions relating thereto and the method of Exploitation will be laid down in Annex A to this Agreement.

Merchandising / Sponsoring

- 5.2. For the duration of the Agreement, the Artist agrees to grant to the Exploiter the exclusive (*i.e.* to the exclusion of all others, including him or herself), worldwide, non-transferable but sub-licensable unrestricted right to the commercial Exploitation of his or her portrait and trademark rights – including but not limited to Sponsoring and Merchandising – in the context of sales promotional messages in the broadest sense possible, or otherwise. Additional provisions relating thereto and the method of Exploitation will be laid down in Annex B to this Agreement.

Management / Bookings / Performances

- 5.3. The Artist agrees to entrust the management for the Territory to the Exploiter to the exclusion of all others including himself or herself, and the Exploiter agrees to represent all of the Artist's business interests in relation to all of his or her creative activities and in relation to his or her career as an Artist to the best of its ability for the duration of this Agreement. At the same time, the Artist instructs the Exploiter to arrange performances and all other public appearances for the benefit of the Artist on an exclusive basis, all of which is to be taken in the broadest sense possible. Additional provisions relating thereto and the method of Exploitation will be laid down in Annex C to this Agreement.

Clause 6 Sublicensing

- 6.1. If the Exploiter does not want to exploit any of the rights arising under the Licences itself, the Exploiter will do its utmost to conclude a contract, after having obtained the Artist's written permission for that, with an enterprise specialised in exploiting these rights, and in doing so, the Exploiter will at all times attempt to stipulate the best possible terms and conditions during its negotiations with this enterprise. The Exploiter will at all times attempt to conclude a contract with this enterprise that is in line with the provisions of this Agreement as much as possible. All Income raised under the contract with this enterprise will be shared on the basis of the provisions of Clause 8.
- 6.2. The Exploiter will be expressly entitled to the Exploitation of the Artist and the Licences through online or digital media and distribution channels, including but not limited to the Internet, mobile telephone, gsm, gprs, umts. For this purpose, the Exploiter will be entitled to use all domain names and/or digital information sources, figures and signs relating to the Artist's name, including all domain names and/or digital information sources that deviate from these names only slightly but could be associated therewith, as well as all domain names relating to the Artist's activities.
- 6.3. The Exploiter will take all appropriate measures that are justified from an economic perspective in order to promote the Exploitation of the jointly held rights and Licences and in addition, the Exploiter guarantees that it will exploit the jointly held rights and Licences in a commercially sound manner.
- 6.4. The Exploiter will take pains to ensure that the Artist's rights and/or reputation will not be damaged in any way as a result of the Exploitation of the jointly held rights and Licences.

Clause 7 The Artist's Guarantees

- 7.1. For purposes of the Exploitation of all jointly held rights arising under this Agreement and the Licences, the Artist will permit the Exploiter to use the Artist's portrait rights on a basis of exclusivity for the duration of this Agreement. In this context, portrait rights mean all rights relating to the use of specified features concerning or in connection with the person of the Artist, including but not limited to the Artist's name, stage name, portrait, voice, features and statements/slogans. After the termination of this Agreement, the Exploiter will have the non-exclusive right thereto in the context of the Exploitation.
- 7.2. The Artist guarantees that (s)he is fully entitled to enter into this Agreement. The Artist guarantees that (s)he has the full intellectual property rights referred to in this Agreement with Annexes. The Artist also guarantees the unencumbered use of, *inter alia*, the copyrights, trademark rights, the stage name, biographical details and all the other material made available to the Exploiter by the Artist. A copy of the relevant trademark registrations is attached as Annex X.
- 7.3. The Artist guarantees that (s)he is the owner of all rights to be granted to the Exploiter for the duration of this Exploitation Agreement and any extensions thereof.
- 7.4. The Artist agrees to indemnify the Exploiter against all claims of third parties with regard to the rights granted, including but not limited to claims arising under copyright, trademark and portrait rights, including claims of the author of a portrait.
- 7.5. The Artist guarantees that, with the exception of the works the Artist has notified to the Exploiter on signing this Agreement, none of the works to be performed by the Artist under this Agreement has previously been performed by the Artist for the purpose of recordings produced by third parties.
- 7.6. The Artist undertakes not to change his or her stage name and image, which includes the nature or style of singing, playing music and performing, as well as the appearance, styling and clothing, without the Exploiter's prior permission in writing.
- 7.7. The Artist declares that (s)he will see to it that (s)he will remain the original owner of any relevant trademark rights, and (s)he will do everything that may be necessary in this context, for example in a legal or paperwork sense; any costs incurred as a result thereof will be deemed Costs within the meaning of this Agreement.

- 7.8. To the extent that domain names are to be used, all domain names relating to the Artist's name, including all domain names that slightly deviate from these names as well as all domain names relating to the Artist's activities will be registered in the name of the Artist.
- 7.9. If the Exploiter has registered a domain name as referred to in the preceding subclause in its own name, the Exploiter will upon a request to that effect by the Artist render its cooperation in effecting the transfer of the relevant domain name to the Artist upon the termination of the Agreement.

Clause 8 Income & Expenses & Accounting

- 8.1. The Parties agree that they will share the Income derived from the Exploitation. The financial risk in respect thereof will be borne by the Exploiter. The Exploiter agrees to pre-finance the Exploitation activities. Any proceeds are first used to recoup the costs incurred.
- 8.2. All Net Income of the Artist and all Net Income of the Exploiter derived from the Exploitation of the Artist will be divided equally between the Parties (50/50 basis). For the purposes of this Agreement, Net Income means all Gross Income, including but not limited to:
- (a) income from the Artist's performances and all other public or media appearances that have taken place during the term of this Agreement or that arise under contracts concluded during the term of this Agreement;
 - (b) income from the Exploitation of image or sound or data carriers and all other online or digital image or sound or data carriers and similar distribution methods of the Artist that have been produced during the term of this Agreement or that arise under this Agreement;
 - (c) income derived from the Exploitation of the Artist's works;
 - (d) income from promotional activities and from advertising (including Sponsoring and Merchandising) relating to the Artist that have taken place during the term of this Agreement or that arise under contracts concluded with third parties during the term of this Agreement;
 - (e) royalties from the Exploitation of neighbouring or copyrights, paid through collecting rights societies such as BUMA/STEMRA or SENA, or otherwise, that are generated by the Parties during the term of this Agreement or that arise under this Agreement;

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- (f) all income derived from the Exploitation of the Artist and the Licences of the Exploiter achieved during the term of this Agreement or that arise under contracts concluded during the term of this Agreement;
reduced by all reasonable direct and indirect Costs incurred by the Parties. Annexes A, B and C to this Agreement contain a separate specification of the Costs of the Parties that are subtracted from the Gross Income as meant herein.
- 8.3. The Exploiter will keep sound financial records in respect of the Exploitation of the Artist. The Artist will be entitled to have these records audited by a *Registeraccountant* ('Registered Accountant') at his or her own expense, subject to at least five (5) business days' notice. If the audit shows a discrepancy of more than 5% against the Artist, the reasonable audit costs will be borne by the Exploiter. The foregoing will not affect the Artist's full responsibility for his or her own accounting records, which (s)he must maintain independently or through an auditor to be designated by him or her.
- 8.4. The Artist and the Exploiter further agree that under the power of attorney set out in Clause 11, the Exploiter will be obligated to collect all possible income and make payments on behalf of the Artist. To the extent possible, the Exploiter will arrange for monthly invoices for the purpose of collecting these moneys. The Exploiter will also calculate the Net Income once a month. It will send the Artist a statement in respect of the preceding month before the 15th day of each month, which statement will include the part thereof that the Artist is to receive. Thereupon, the Artist will submit an invoice and the Exploiter will pay the relevant amount into a bank account to be indicated by the Artist within 14 days of the date of receipt.
- 8.5. Before paying any amounts owed to the Artist, the Exploiter will be entitled to deduct the Costs and set off these amounts with all debts still owed to the Exploiter by the Artist.
- 8.6. The Artist agrees to subscribe to the association Buma and the Stichting Stemra immediately. Further, the Artist agrees to register works still to be produced with the aforementioned institutions as soon as these works are finished. Any costs incurred in this context will be deemed Costs within the meaning of this Agreement. Even though the Artist and the Exploiter are co-owners of the copyrights in respect of the musical works created under this Agreement, the Parties will, purely for administrative reasons, register with Buma/Stemra as follows: (1) the Exploiter, or a third party to be designated by the Exploiter, will register as publisher and (2) the Artist will register as author. The income derived therefrom will be divided between

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the Parties on a 50%-50% basis, both during the term of this Agreement and upon the expiry thereof.

- 8.7. The Artist agrees to subscribe to Stichting Sena immediately. Even though the Artist and the Exploiter are co-owners of the neighbouring rights in respect of the Recordings made under this Agreement, the Parties will, purely for administrative reasons, register with Sena as follows: (1) the Exploiter will register as phonogram producer with Sena and (2) the Artist will register as performer with Sena. The income derived therefrom will be divided between the Parties on a 50%-50% basis, both during the term of this Agreement and upon the expiry thereof.
- 8.8. [OPTION] The Parties agree that the Exploiter will pay an offsettable but not reclaimable advance to the Artist amounting to € _____ (in words: _____ euros) within 10 business days of the date at which this Agreement is signed. This advance will be fully chargeable against the Artist's part of the Net Income, as referred to in Clause 8 (2).

Clause 9 Ensembles / Groups

If the Artist is a member of an ensemble or group of performers (hereinafter referred to as 'the Group'), the following provisions will also be applicable.

- 9.1. Each Artist will be bound by all provisions of this Agreement, both individually and collectively. In that case, the rights and obligations of the Parties under this Agreement will apply both to the Exploitation of the Artist and the Exploitation of the Group.
- 9.2. The Group will not change or transfer its name to third parties without the Exploiter's prior consent in writing.
- 9.3. The Group will do everything possible to promote the Group's continued existence in the same make-up as the one existing at the time of the conclusion of this Agreement.
- 9.4. As soon as any member leaves the Group, both the Artist and the remainder of the Group will notify the Exploiter thereof by registered letter.

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- 9.5. The Group may not add other artists to the Group until the Exploiter has been notified thereof and has granted its written consent. Any new artist wishing to join the Group must co-sign this Agreement before joining it.
- 9.6. Within two months of the date of receipt of the notice as referred to in subclause 4, the Exploiter will be entitled to terminate this Agreement with immediate effect, without prejudice to its right to demand the complete performance of this Agreement and without being liable to pay any kind of damages, and it will continue to be entitled to claim damages.
- 9.7. Any Artist leaving the Group may not engage in activities that are identical or similar to those of the Group under any name or a name similar to the one the Group uses or has used.
- 9.8. The Group will designate a bank account into which the Exploiter may pay the amounts owed under this Agreement. Payments in the aforementioned manner will release the Exploiter from its payment obligation vis-à-vis the individual members /artists of the Group as well as towards the Group.

Clause 10 Secrecy

- 10.1. The Parties agree to guarantee the observance of secrecy in respect of the information relating to one another for the purposes of the execution of this Agreement and they undertake to guarantee the observance of secrecy by the employees of the Parties, or any third parties engaged by them, who have access to data, information or computer programs that may be necessary for the proper execution of these services.
- 10.2. In the context of subclause 1, the Parties will not be under a duty to observe secrecy in respect of data that:
1. are already known to the receiving Party, unless these data have been supplied subject to the duty to observe secrecy;
 2. have been collected by a Party independent of the counterparty;
 3. have already been made public by the Party entitled thereto;
 4. constitute general ideas, concepts, knowledge or techniques relating to the rendering of the services agreed upon.
- 10.3. Without prejudice to subclause 2, the Parties will be under an obligation to observe secrecy in respect of:

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1. the source of the data;
 2. financial, statistical or personal data;
 3. business data relating to the counterparty's internal management.
- 10.4. The Parties will be under a duty to observe secrecy both during the term of this Agreement and after the termination thereof.

Clause 11 Damage & Loss and Force Majeure

- 11.1. Each Party will be liable for all damage or loss suffered by the other Party arising from any failure to meet any guarantee or obligation set out in this Agreement in whole or in part.
- 11.2. The Parties will not be liable to each other if and to the extent that they are unable to perform the Agreement in whole or in part as a result of any non-imputable failure in the performance. Such failure cannot be imputed to a Party in the event of force majeure.
- 11.3. If the non-imputable failure is only temporary, the relevant Party will reserve the right to suspend the performance of the Agreement until the circumstances causing the force majeure no longer prevail.
- 11.4. If the non-imputable failure is permanent, the Agreement will be rescinded with effect from the date at which the permanent failure commenced. In this case, neither Party will be liable to pay any kind of damages.

Clause 12 Power of Attorney

- 12.1. For the duration of the Agreement, the Artist agrees to grant the Exploiter a full external power of attorney to act as an intermediary between the Artist and third parties in matters having a bearing on the Artist's artistic activities, which power of attorney will be on a worldwide and exclusive basis, with the exclusion of all others including the Artist himself or herself. For the purposes of this Agreement, these activities include without limitation the following intermediary services:
1. the conclusion of contracts relating to the Artist's appearances as a performer;
 2. the conclusion of contracts with third parties relating to the works of the Artist as an author;

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3. the conclusion of contracts with third parties relating to the Exploitation of the Artist's personal name, stage name, likenesses, portraits, trademark rights etc.;
 4. the conclusion of contracts with third parties relating to the Recordings produced under this Agreement;
 5. the collection of money on behalf of the Artist;
- and in addition, all intermediary services arising under this Agreement and any contracts made in pursuance thereof.
- 12.2. The Parties may agree on restrictions on the power of attorney set out above. These restrictions will then be specified explicitly in Annexes A, B and C to this Agreement.
- 12.3. The Artist hereby irrevocably authorizes the Exploiter to exercise the intellectual property rights and powers, which expressly include the power set forth in Section 27a of the Copyright Act 1912, for the purpose of protecting and asserting the rights and powers granted to the Exploiter under this Agreement towards third parties and to institute legal and other proceedings to this end for joint account and risk and, if necessary, in the Artist's name. The Parties agree to render each other all assistance and provide all information that may be necessary if any such measures need to be taken. All legal and other costs incurred in this context will be charged to the Gross Income, in accordance with Clause 8. Whenever any relevant act performed by third parties is observed, the Parties will consult with each other about whether to take any measures against these third parties, in which event the Exploiter will take the final decision about whether the Parties will actually proceed to assert or protect their rights.

Clause 13 Miscellaneous

- 13.1. Changes and additions to this Agreement will be binding on the Parties only if they have been agreed in writing and signed by all Parties.
- 13.2. The nullity or nullification, for whatever reason, of any provision – or any part thereof – of this Agreement does not bar the validity of any other provisions thereof. The relevant provision, or part(s) thereof, will be converted by operation of law into the legally valid provision whose content and purport resembles the relevant provision most closely.
- 13.3. The Parties may not assign their rights and obligations under this Agreement without the counterparty's prior consent in writing.

- 13.4. The Annexes to this Agreement form an integral part thereof and there is no separate possibility of termination in respect thereof. In the event of any discrepancy between the provisions of this Agreement and the Annexes to this Agreement, the Agreement takes priority unless the Annexes expressly deviate from the Agreement.
- 13.5. Any disputes between the Parties that arise from the text and the execution of this Agreement and any contracts ensuing thereunder will first be referred exclusively to the competent court in Amsterdam.
- 13.6. The text and the execution of this Agreement and any contracts arising thereunder are governed exclusively by Dutch law.

ANNEX A

CONTAINING ADDITIONAL PROVISIONS ABOUT THE EXPLOITATION OF THE ARTIST'S COPYRIGHTS AND NEIGHBOURING RIGHTS

WHEREAS:

- I. The Parties concluded an Exploitation Agreement on
- II. Clause 5 (1) of the Exploitation Agreement contains a reference to this Annex.
- III. The Artist grants a perpetual, non-transferable, exclusive, unrestricted and worldwide licence to the Exploiter for the duration of the Agreement in respect of:
 - a. the Exploitation of all musical works covered under this Agreement of which the Artist is the author;
 - b. the Exploitation rights of all the Artist's performances and Recordings covered under this Agreement.Additional provisions about the foregoing and the manner of Exploitation will be laid down in this Annex to the Exploitation Agreement.
- IV. The Exploiter is prepared to undertake the Exploitation of the rights mentioned above for the benefit of the Artist under the terms and conditions set out below.

Clause A.1 Neighbouring Rights

- A.1.1. The Artist and the Exploiter will acquire a 50% share each in the neighbouring rights with respect to the Recordings made during the term of this Agreement, which share will continue to exist after the termination of this Agreement.
- A.1.2. By virtue of an irrevocable power of attorney granted by the Artist, the Exploiter will acquire the right to collect all fees from Sena and other organizations for the collective management of neighbouring rights for the duration of the neighbouring right.

Clause A.2 Exclusive License

- A.2.1. The Artist agrees to grant to the Exploiter the exclusive right to exploit the audio or video or digital Recordings, or any parts thereof, that have been produced under the Agreement, to the exclusion of all others, including the Artist himself or herself, perpetually, all over the world and in whatever manner, or to grant sublicences to third parties for Exploitation purposes.
- A.2.2. The Artist hereby declares that (s)he is prepared to reach agreement with the Exploiter on additional provisions for the purpose of enabling the Exploiter to agree on forms of Exploitation relating to the Recordings with any third party, if required, without violating or deviating from the provisions of this Agreement.
- A.2.3. The additional provisions that have been agreed on between the Artist and the Exploiter will be laid down in writing and signed by both Parties; subsequently, they will be attached to this Agreement as Annex Y and will form an integral part of the present Agreement.

Clause A.3 Performances by the Artist

- A.3.1. During the term of the Agreement, the Exploiter will have the exclusive right to make audio Recordings of works to be performed by the Artist. The selection of Titles to be recorded and the number of Titles to be recorded will be determined in mutual consultation. If the Parties fail to reach consensus, the Exploiter will be entitled to take a decision thereon.

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- A.3.2. The Exploiter will have the exclusive right to produce audio-visual Recordings of the Artist in the context of his or her career in the broadest sense of the word, including but not limited to performances of the Artist during meetings and rehearsals as well as of works executed by the Artist in the recording studio or during live concerts, or for radio or for radio or television Recordings, simultaneously or in direct connection with the audio Recordings produced or to be produced in accordance with subclause 1.
- A.3.3. The Artist agrees to grant the Exploiter the right to produce audio-visual Recordings of the Artist's performances of works other than those referred to in subclause 2, if the Exploiter so wishes.
- A.3.4. The Artist will perform the works to be recorded by the Exploiter in a studio to be designated by the Exploiter at a time to be determined by the Exploiter in a well-prepared manner and to the best of his or her ability. The works to be recorded and the producer will be selected by the Artist and the Exploiter in mutual consultation, on the understanding that the Exploiter itself will also be entitled to perform as a producer. If no agreement is reached about the works to be recorded or the producer, the Exploiter's choice will be binding.
- A.3.5. The Artist will endeavour to include the works to be performed in his/her repertoire. The Artist will repeat each work to be recorded until a Recording that is sound in every respect is achieved, in the Exploiter's judgement.
- A.3.6. If any scheduled Recording cannot take place or cannot last as long as had been agreed through no fault of the Exploiter or the Artist, neither the Exploiter nor the Artist can hold the other Party liable for the damage or loss suffered or still to be suffered by them. If the Artist is to be blamed for the foregoing, (s)he will be liable to the Exploiter for that and the Exploiter will be entitled to recover the damage or loss suffered as a result thereof from the Artist and to set off the damage amount against payments owed to the Artist under this Agreement or any other contract for whatever reason, without prejudice to all of the Exploiter's other statutory rights. If the Exploiter is to be blamed for the foregoing, then this provision will apply vice versa.

Clause A.4 Exclusive Rights to the Artist

- A.4.1. During the term of the exclusive contract, the Artist will refrain from

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- I performing for the production of audio or audio-visual recordings by third parties or permitting any third parties to produce Recordings of his/her performances or permitting third parties to exploit such Recordings produced without the Exploiter's written consent in whatever form;
 - II performing for the production of analogue or digital image or audio or information carriers by third parties, or permitting third parties to produce analogue or digital image or audio or information carriers of his or her performances, or permitting any third parties to exploit any such image or audio or information carriers in whatever manner and in whatever form without the Exploiter's written permission;
under any name whatsoever, either alone or in collaboration with any other parties – without the Exploiter's prior consent in writing.
- A.4.2. Notwithstanding the provisions of subclause 1, the Artist will be entitled to perform for purposes of the production of radio or television Recordings provided that the Recordings to be produced for this purpose are not used for the production and Exploitation of Reproductions without the Exploiter's prior written consent and that these Recordings are intended exclusively for radio or television broadcasting purposes as evidenced by a written statement of the broadcast, radio or television organisation. The Artist will be entitled to perform for films only after the Exploiter has been consulted. If the Parties fail to reach agreement, the Exploiter will be entitled to take a decision thereon.
- A.4.3. The Artist will do everything that may be needed to ensure that the Exploiter will acquire the exclusive rights for the production and Exploitation of the Reproductions of the radio and television Recordings as referred to in subclause 2.
- A.4.4. If the Artist intends to take part in radio and television commercials or other commercial radio and television projects, (s)he will always consult the Exploiter in advance. Any use of any part of the Recordings of the Artist made by the Exploiter under this Agreement is always subject to the Exploiter's prior written consent. Any income derived from the foregoing will be divided in accordance with the provisions of this Agreement.

Clause A.5 The Exploitation Rights of the Exploiter

- A.5.1. To the exclusion of all other persons, including the Artist him or herself, the Exploiter will have exclusive, unrestricted and perpetual Exploitation rights in respect of the Recordings made under this Agreement or any parts thereof, on a worldwide basis

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and in whatever manner and form, including the production, reproduction and sale of Reproductions, the playing or showing or in any way broadcasting of these recordings in public, *inter alia*, on television, the Internet, cable or satellite, and similarly, the Exploiter will be exclusively entitled to start or cease the Exploitation of these Recordings at its own discretion, and to determine the manner, prices and trademarks used for this Exploitation.

- A.5.2. The Exploiter will be entitled to grant full or partial sublicenses in respect of rights and obligations regarding the Artist's Exploitation to third parties, including the Exploitation through online or digital media and distribution channels, including but not limited to the Internet, mobile telephone, gsm, gprs, umts.
- A.5.3. In the aforesaid case, the Exploiter will remain liable to the Artist for its obligations arising under this Agreement.
- A.5.4. If the Exploiter ceases the Exploitation of a specific Recording after the termination of this Agreement, the Exploiter will comply with any request of the Artist to transfer the Exploitation of the relevant Recording to a third party. As co-owners of the neighbouring rights, the Parties will continue to be entitled to 50% of the Net Income concerned.

Clause A.6 Title Exclusivity

- A.6.1. For as long as the Parties exploit a Recording of a work of the Artist in a normal manner, the Artist may not, without the Exploiter's prior written consent, perform this work or adaptations thereof for purposes of the production of recordings by third parties or the Artist himself or herself, and nor may (s)he permit the production of recordings of his or her performances by third parties or by the Artist himself or herself, or permit third parties to exploit these Recordings produced without the Exploiter's written consent in whatever manner or form.
- A.6.2. The provision of subclause 1 will not apply to the Artist's performances for the purposes of radio and television Recordings, provided that the condition set out in Clause A.4 (2) is met.

Clause A.7 Right of First Refusal re Copyrights and Music Publishing Rights

- A.7.1. For the duration of this Agreement, the Artist agrees to grant the Exploiter a right of first refusal in respect of the works created or to be created in whole or in part by the Artist as composer and/or lyricist either under his or her own name or under any pseudonym. If the Exploiter wishes to use these works, it will notify the Artist thereof within 30 business days of the date at which the works have been delivered to the Exploiter. If the Exploiter has failed to accept the works offered within the aforementioned period of 30 business days, the Artist will be entitled to transfer these specific works to a third party.
- A.7.2. The Artist and the Exploiter will acquire a joint copyright in respect of the works created by the Artist during the term of the Agreement and accepted by the Exploiter in accordance with the provision in the preceding subclause, which joint copyright will continue to exist after the termination of the Agreement. The Artist will retain his or her moral rights. If, in the judgement of the Exploiter, additional documents must be drawn up and signed by the Parties for the purpose of effecting and exercising the joint copyrights, the Artist will, on first demand, lend every cooperation required, also after the termination of the Agreement.
- A.7.3 The Artist agrees to grant a worldwide exclusive licence concerning his or her publication rights relating to the works accepted by the Exploiter during the term of the Agreement to the Exploiter or a music publisher to be determined by the Exploiter in consultation with the Artist for the duration of the copyright.
- A.7.4. By virtue of an irrevocable power of attorney granted for the duration of the copyright, the Exploiter will receive the Artist's share of the royalties from the performance rights and mechanical reproduction rights in respect of the works produced during the term of this Agreement direct from the copyright office which the Author has joined. In this event, the Parties will conclude a fund agreement, which will comprise all musical works created during the term of the Agreement. The Parties will stipulate in the fund agreement that the Artist will be entitled to 50% of all Net Income from the fund, which will include not only the author's share but also the publisher's share.
- A.7.5. If and to the extent that the works referred to above were or are to be created in collaboration with a third party, the Artist will promote the transfer of the third party's rights to the Fund.

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- A.7.6. The Parties will be entitled to retain their share in the Fund after the termination of this Agreement or to sell the same to the counterparty, or to a third party, should the other Party expressly indicate that it is not interested therein.
- A.7.7. If the Exploiter or the music publisher, depending on the circumstances, have not initiated the Exploitation of the music publishing rights within two (2) years after the delivery of the musical works, the Exploiter will comply with any request made by the Artist to transfer the music publishing rights, to which they hold joint copyrights, to a third party. If the Artist wishes to exercise this right, (s)he will notify the Exploiter thereof by registered letter after the expiry of the aforementioned period. In that case, each Party will continue to be jointly entitled to a proportionate part (50%-50%) of the income derived from the Exploitation of the music publishing rights.

Clause A.8 The Artist's Right to Oppose Changes

The Artist will retain his or her moral rights and will, under the Copyright Act, the Neighbouring Rights Act or other relevant laws or regulations, be entitled to oppose changes in the Recordings of his/her performances, or any form or mode of Exploitation of these Recordings, which are produced in accordance with this Exploitation Agreement, on reasonable grounds. In particular, the Artist will be entitled to resist the production of a separate mix as a single, Dance version, Club version or other version in which the Recording is adapted in whole or in part for the purposes of the Release.

Clause A.9 The Artist as Session Musician

- A.9.1. Following the Exploiter's prior written consent, the Artist will be entitled to take part in Recordings produced by and with third parties; all income the Artist earns as a result thereof will be considered Income within the meaning of Clause 8 of this Exploitation Agreement. The reasonable costs the Artist must incur for the purposes of these Recording(s) produced by and with third parties will be considered Costs within the meaning of Clause 8 of this Exploitation Agreement.
- A.9.2. The Exploiter will not unreasonably withhold its consent as referred to in subclause 1 of this clause. If the Artist takes part in any such session, (s)he will always stipulate in all agreements that mention must be made of the fact that the Artist takes part 'by courtesy of the Exploiter (NAME)'.

Clause A.10 Backing Tapes

- A.10.1. The Exploiter's original Recordings of the Artist's performances (including the 'backing tapes') will be made available to the Artist by the Exploiter for the benefit of public performances following the Artist's request to this effect.
- A.10.2. The Artist will not be permitted to alienate or reproduce these backing tapes or to make them available to third parties or to exploit them in any manner. The Exploiter will always be entitled to demand the immediate surrender of the tapes during the term of this Agreement on reasonable grounds.
- A.10.3 After the termination of this Agreement, the Exploiter will upon the Artist's first demand make a copy of the backing tapes for the latter's benefit. The costs relating thereto will be for the Parties' joint account unless the investments made by the Exploiter have not yet been recouped. In the latter case, the costs relating thereto will be borne by the Artist.

Clause A.11 Costs

For purposes of the present Agreement, Costs within the meaning of Clause 6 of this Agreement include costs incurred for the following reasons:

- the production of Masters; including all production and technical costs, costs of the audio and other equipment and the costs of the relevant staff;
- the making of Recordings; including all production and technical costs, costs of the audio and other equipment and the costs of the relevant staff;
- the making of Reproductions of Recordings, including packaging costs and the Artwork belonging to the Reproductions;
- distribution costs;
- the engagement of additional musicians, singers, dancers, stylists, instruments and backing and audio tapes;
- the production of promotional material for purposes of the Exploitation of the Recordings; these costs are limited to an amount to be agreed on and specified in Annex IA;
- the production of video clips, the costs of which are limited to an amount to be agreed on by the Parties and specified in Annex IA;

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- radio or television performances, including travelling or hotel expenses, or representation expenses, provided these are not reimbursed by the Producer or the broadcasting body for whose benefit performances are given;
- stage clothing, the costs of which are limited to an amount to be agreed on by the Parties and specified in Annex IA;
- the artist's security, including but not limited to bodyguard expenses;
- the marketing of the Artist for the purpose of promoting new albums or any parts thereof, the costs of which are limited to an amount to be agreed on by the Parties and specified in Annex IA;
- the granting of sublicenses to third parties for Exploitation purposes;
- legal and tax assistance costs incurred for Exploitation promotion purposes or for purposes of protection against any relevant infringements;
- the conclusion of Agreements with copyright organisations such as BUMA/STEMRA, or SENA;
- the taking out of insurance policies against the risk of the Artist's prolonged occupational disability – limited, however, to the term of this Agreement;
- an as yet unspecified percentage of the Exploiter's overhead costs, which percentage will be related to the turnover achieved by the Artist in a calendar year in proportion to the total turnover achieved in that calendar year by the Exploiter.

This list of costs is not exhaustive, which means that the Parties may decide to include additional costs in Annex Z or make further arrangements in this area during the consultations provided for in Clause 3 (5) of the present Exploitation Agreement.

Clause A.12 Guarantee Obligation & Breach of Contract

A.12.1. The Parties will make arrangements about the number of Recordings or Titles in a specific contract year during the consultations that will take place between the Exploiter and the Artist under Clause 3 (5) of the Exploitation Agreement.

A.12.2. If, during the execution of this Agreement, it turns out that the number of Recordings delivered cannot be deemed sufficiently suitable from an artistic or commercial point of view, the Exploiter will have the right not to accept these Recordings or not to exploit them. The Parties will decide on whether substitute Recordings will be delivered by mutual arrangement.

A.12.3. If the Exploiter does not wish to exercise this right, the Artist will not be entitled to claim any compensation in respect thereof from the Exploiter. Recordings that are

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sung again in a language different from the one in which the song was originally sung or that are rearranged are not taken into account in the processing of the number of Recordings agreed on.

- A.12.4. If no or less than the agreed number of audio or audio-visual Recordings/Titles are recorded as a result of intent or negligence on the part of the Artist, the Exploiter will have the right, without prejudice to all its other statutory rights and without prejudice to Clause 2 of the Exploitation Agreement, to extend the term of the Agreement until the number of titles agreed on has been recorded. If the Exploiter wishes to exercise this right, it will notify the Artist thereof in writing prior to the expiry of the contract period originally agreed on.

Clause A.13 Use of Samples & Works of Third Parties

If the Artist wishes to use a 'sample' or a work of third parties which is protected by copyright, the Artist will inform the Exploiter of the use and origin of the aforesaid 'sample' or work in order to enable the Exploiter to obtain the consent of the relevant copyright holder(s) and – if needed – agree on an appropriate user fee. The Artist will not be permitted to use the sample before this consent has been given.

ANNEX B

CONTAINING ADDITIONAL PROVISIONS ABOUT MERCHANDISING AND SPONSORING

WHEREAS:

- I. the Parties have concluded an Exploitation Agreement on ... ;
- II. the Artist wishes to use his or her name and portrait for Merchandising and Sponsoring purposes, for which reason (*inter alia*), (s)he wishes to enter into an Agreement with the Exploiter;
- III. the Artist grants the Exploiter the exclusive right to exploit the foregoing for Merchandising and Sponsoring purposes for the duration of the Exploitation Agreement;
- IV. the Exploiter is willing to engage in Merchandising and Sponsoring activities for the benefit of the Artist under the terms and conditions set out below;
- V. Clause 5 (2) of the Exploitation Agreement contains a reference to this Annex; and all provisions of the Exploitation Agreement are fully applicable to this Annex; and in the event of any conflict between the provisions of this Agreement and the provisions of the Exploitation Agreement, the provisions of the Exploitation Agreement will always take priority unless this Annex deviates from the foregoing Agreement explicitly.

THE PARTIES DECLARE THAT THEY HAVE AGREED AS FOLLOWS:**Clause B.1 Merchandising**

- B.1.1. The Artist hereby grants an exclusive licence for the Exploitation of the Artist by means of Merchandising in the Territory for the duration of the Exploitation Agreement.
- B.1.2. The Exploiter's Exploitation by means of Merchandising will include but not be limited to the retail and wholesale trade, distribution, sale of products during the Artist's performances and in clubs and festivals and at all other conceivable events, mail orders and orders through the Internet, all of which is to be taken in the broadest sense possible.
- B.1.3. The Exploiter will be entitled to grant sublicences to third parties.

Clause B.2 Sponsoring

- B.2.1. The Artist hereby grants an exclusive licence for the Exploitation of the Artist in the Territory by means of Sponsoring for the duration of this Agreement.
- B.2.2. The Artist agrees to render his or her cooperation in sponsor activities by means of his or her personal presence and commitment if this has been agreed in the Sponsoring agreement with a sponsor. Before the Exploiter and the sponsors agree on such contractual provisions, they will be submitted to the Artist for approval. The Artist will not withhold his or her approval on unreasonable grounds.
- B.2.3. The Exploiter will be entitled to grant sublicences to third parties.

Clause B.3 Income and Costs

- B.3.1. Gross Income from Merchandising includes the following:
- (a) all income from the sale of Merchandising products to end users by mail order and the Internet;
 - (b) all income from the sale of Merchandising products to retailers and wholesalers;
 - (c) all income from the sale of Merchandising products to end users during concerts and festivals and all other conceivable events;

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- (d) all other income from Merchandising products, irrespective of how it has been generated.
- B.3.2. Gross Income from Sponsoring includes the following:
- (a) all fixed sponsor fees, both lump sum and periodic payments;
 - (b) all variable sponsor fees;
 - (c) all other Sponsoring income, irrespective of how it has been generated.
- B.3.3. Costs within the meaning of the Exploitation Agreement will include without limitation any costs relating to:
- the execution of these Agreements, including but not limited to travelling and accommodation expenses.
- B.3.4. The Exploiter will advance these costs and will be entitled to set off the amounts advanced against all debts owed to the Artist by the Exploiter under the Exploitation Agreement or any other contract made in pursuance thereof.

Clause B.4 Merchandising Designs

- B.4.1. The Exploiter will show the Artwork and the designs used for Merchandising purposes to the Artist before the production of the Merchandising begins. The Artist will report any comments and suggested improvements to the Exploiter within the space of a week. Thereupon, the Exploiter will be free to use the Artwork and the designs for Merchandising purposes.
- B.4.2. The Exploiter will draw up a list of the products used for Merchandising purposes in consultation with the Artist. This definitive list of Merchandising products will be signed by the Exploiter and the Artist in witness of their approval. After having obtained the Artist's approval of both the Artwork and the designs, the Exploiter will be free to use the products mentioned on the list for Merchandising purposes. Provided that the Artist's prior consent has been obtained, other materials and products can be used for Merchandising purposes as well or additions may be agreed upon.
- B.4.3. The Exploiter will show the Artwork and the designs for sponsor campaigns to the Artist before the production of any items by or on behalf of the sponsor begins. The Artist will report his or her comments and suggested improvements to the Exploiter within the space of one week. Subsequently, the Exploiter will approve the Artwork

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and the designs for Sponsoring and notify the sponsor thereof; the Exploiter will be free to determine the terms and conditions the sponsor campaign must satisfy.

- B.4.4. The Exploiter will draw up a list of the minimum terms and conditions that sponsor campaigns and similar communications must satisfy. The final list of terms and conditions will be signed by the Exploiter and the Artist in witness of their approval. After having obtained the Artist's approval, the Exploiter will be free to negotiate with the Sponsor about sponsor campaigns on behalf of the Artist.
- B.4.5. The Exploiter may not enter into any Sponsor contracts relating to the Sponsor's identity without the Artist's prior written consent, which consent the Artist may withhold only on reasonable grounds.

Clause B.5 Sale Prices & Sponsor Fees

- B.5.1. After consulting with the Artist, the Exploiter will be able to determine the selling prices of the Merchandising products independently. The Exploiter will be free to adjust these prices from time to time for the purpose of selling off the products and to take all other commercial decisions relating to the Exploitation and Merchandising.
- B.5.2. After consulting with the Artist, the Exploiter will determine the fees relating to the sponsor contracts independently. The Exploiter will be free to adjust the sponsor contracts and the terms and conditions thereof from time to time.

Clause B.6 Events

- B.6.1. The Exploiter will to the exclusion of all others be entitled to sell Merchandising products relating to the Artist during concerts, performances, festivals and all other conceivable events.
- B.6.2. The Exploiter will to the exclusion of all others be entitled to undertake every conceivable kind of Exploitation or Sponsoring relating to the Artist during the concerts, performances, festivals and all other events.

Clause B.7 Promotional Items

For each country, the Exploiter will use an unspecified number of Merchandising products as promotional items or giveaways. The costs relating to the production of these items are deemed Costs within the meaning of the Exploitation Agreement. No income will be earned and no payments will be due on these free items.

ANNEX C

CONTAINING ADDITIONAL PROVISIONS ABOUT MANAGEMENT AND BOOKINGS

WHEREAS:

- I. the Parties concluded an Exploitation Agreement on ...;

- II. the Artist wishes to receive the support of a Manager with respect to all of his or her artistic activities for the purposes of the further Exploitation of his or her talents and the Exploitation of his or her reputation, including support in the acquisition and giving of performances;

- III. the Exploiter is able and willing to give this support to the Artist.

DECLARE THAT THEY HAVE AGREED AS FOLLOWS :

Clause C.1 Restriction on Power of Attorney

- C.1.1. The Exploiter agrees to make Mr/Ms (name of the Personal Manager) available to the Artist as Personal Manager.
- C.1.2. The Exploiter has delegated its power to enter into contracts, including bookings, for the benefit of the Artist or itself and/or the Artist, under the terms of this Annex exclusively to the Personal Manager. In the event of special circumstances, the Personal Manager will be entitled to delegate this power, either temporarily or permanently, to another Manager employed by the Exploiter, but only subject to the Artist's permission.
- C.1.3. If the Personal Manager is no longer employed by the Exploiter, the Artist will designate another Personal Manager from among the managers made available by the Exploiter.
- C.1.4. The Personal Manager will always need the Artist's prior consent before making any booking final.

Clause C.2 Management Activities

For the purposes of this Agreement, management activities mean all activities performed by the Personal Manager for the purpose of promoting the Exploitation of the Artist's professional activities, talents and reputation of all over the world.

In particular, these management activities include the following:

- (a) promoting the Artist's reputation and commercial interests all over the world in a manner that is conducive both to the commercial Exploitation and to the Artist's creative development and health; (
- (b) promotion, publicity and public relations for the benefit of the Artist;
- (c) advisory services and support in respect of all the Artist's professional activities, including the giving of media and other training sessions, choice of repertoire, supporting artists, clothing, presentation, stage name, choreography and other design issues;

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- (d) advisory services and support in connection with instruments, sound and lighting equipment and transport;
- (e) keeping the agenda relating to the Artist's professional activities and all that is related thereto in a manner that is transparent to the Artist;
- (f) advisory services and support for the Artist in respect of all conceivable contracts in connection with the Artist's professional activities, including but not limited to contracts in the area of audio or video or other information carriers, performances, radio, television, film, Merchandising, advertising, Sponsoring;
- (g) providing legal and tax advice for the benefit of the Artist;
- (h) maintaining contact with third parties that have been contracted on behalf of the Artist as well as copyright societies such as BUMA/STEMRA and neighbouring rights societies such as SENA.

Clause C.3 Booking Activities

For the purposes of this Agreement, 'booking activities' means the services performed by the Personal Manager for the benefit of the Artist, which means promoting and entering into contracts relating to the Artist's promotional and other performances to the best of his or her ability and performing intermediary services in respect thereof.

In particular, the booking activities will include the following:

- (a) promoting, acting as an intermediary for and entering into contracts relating to the Artist's performances for an audience, radio, television, sound or video Recordings in whatever form, including the worldwide distribution of demos in a manner that is conducive not only to the commercial Exploitation but also to the Artist's creative development and health;
- (b) keeping a booking agenda and all that is related thereto;
- (c) preparing, supporting and keeping records in respect of performances, including tour management, which comprises, *inter alia*, the engagement and hiring of additional musicians, dancers, stylists, security and technical staff in consultation with the Artist, including roadies, good-quality and adequate lighting and sound equipment, including instruments and backing and audio tapes, clothing, as well as arranging good transport and, where the occasion arises, hotel bookings and adequate meals;
- (d) maintaining payroll records in connection with third parties engaged under this Agreement by the Exploiter to the extent that the Exploiter has acted as an employer, fictitious or otherwise;
- (e) producing and distributing sufficient promotional material relating to the Artist's performances;
- (f) consulting with and checking on third parties that have been contracted.

Clause C.4 Costs

Any expenses relating to or arising from the management and booking activities will be borne by the Exploiter. The Parties agree to designate these expenses – in any case including but not limited to the costs arising from the activities specified in Clause C.2., under (a), to (f) (inclusive) and Clause C.3., under (a) to (f) (inclusive) – as Costs within the meaning of Clause 8 (1) of the Exploitation Agreement.

Clause C.5 Obligations of the Artist

- C.5.1. The Artist agrees to fulfil all obligations arising under this Agreement as well as all contracts concluded in connection with the Artist's professional activities properly and to the best of his or her ability, which includes being present punctually and well-prepared in a good physical and mental condition for all appointments which the Personal Manager has made for the benefit of the Artist, except in the case of force majeure.
- C.5.2. For the purposes of this Agreement, force majeure in any case means (in addition to the statutory provisions in respect thereof) illness or an accident affecting the Artist, unless the latter has been caused by intent or gross negligence on the part of the Artist.
- C.5.3. The Artist will at all times inform the Personal Manager immediately if and as soon as the Artist is not available for professional activities on any day. If the Artist is unable to meet the obligations arising under this Agreement, which includes obligations arising under contracts concluded by the Personal Manager with third parties pursuant to this Agreement, the Artist will inform the Personal Manager thereof for the purpose of limiting losses as much as possible. In case of illness, the Artist will also submit a medical certificate to the Personal Manager immediately.
- C.5.4. If the Artist fails to appear at the location, date and time put on the agenda by the Personal Manager without there being any fact of force majeure, all costs and losses incurred and suffered as a result thereof will be fully borne by the Artist, and the Artist will reimburse these costs and losses to the Exploiter, whilst these costs and losses are not deemed reasonable Costs within the meaning of Clause 8 (1) of the Exploitation Agreement. The Exploiter will be entitled to set off these costs and losses against any debts owed by the Exploiter to the Artist.

AGREED, DRAWN UP AND SIGNED IN DUPLICATE IN:

Locality:

Date:

Exploiter:

Locality:

Date:

Artist:
