

Ancillary rights agreement

by *Practical Law Media & Telecoms*, reviewed by *Julia Montero*

Standard documents | Law stated as at 30-Jan-2020 | United Kingdom

An agreement between a music production company and a musical artist in which the artist agrees to pay the company a share of income from activities other than recording, to be used in conjunction with a recording (production) agreement.

About this agreement

This agreement is a companion agreement to a recording (production) agreement between a production company and an artist, drafted in favour of the production company. A production company would not issue this sort of agreement unless it had also issued a recording agreement to the artist. For a suitable form of recording production services agreement, see *Standard document, Recording (production) agreement*.

This type of agreement has come about in recent years as revenues from recording have fallen, with the record companies arguing that the return from record income alone is no longer sufficient to justify the large upfront investment required to launch an artist. Major record companies led this change by replacing their artist agreements with "360-degree" deals, entitling the company to take an interest (either financial or rights-holding) in the artist's activities other than just recording. Although not welcomed by the artist community, this is now part of the fabric of recording agreements worldwide.

The percentages of income paid to the Company are drafted so that they include the share required by the third-party record label. The way in which these tripartite arrangements are made are still in relative infancy, and typically the third-party label may make a direct agreement with the artist at the same time as the recording deal is being put together. However, increasingly this leaves the Company with an inability to conclude the Label Agreement because the Artist has a "ransom strip" of rights that the Company needs. This gives the Artist leverage to demand changes to its existing arrangements.

This agreement is dated [DATE]

PARTIES

(1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Company**)

(2) [ARTIST MEMBER 1 FULL NAME] of [ARTIST MEMBER 1 ADDRESS], [ARTIST MEMBER 2 FULL NAME] of [ARTIST MEMBER 2 ADDRESS], and [ARTIST MEMBER 3 FULL NAME] of [ARTIST MEMBER 3 ADDRESS] (**Artist**)

BACKGROUND

(A) Artist is a musical artist currently professionally known as "[ARTIST'S PROFESSIONAL NAME]".

(B) Company and Artist have on or around the date of this agreement entered into a production services agreement in respect of Artist's recording and performing services and the products of those services (**Recording Agreement**).

(C) Company wishes to receive a share of Artist's so-called live performance, merchandising, brand and website income and Artist has agreed to provide Company with a share of such income on the terms set out in this agreement.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

Brand Rights: all rights of sponsorship, advertising and endorsement in and to the Non-Record Assets.

Branding Revenue: gross income and/or benefits in lieu of income paid or credited to Artist or on Artist's behalf from all activities relating to the exploitation of the Brand Rights after deduction of all actual, out of pocket, bona fide, non-overhead, third-party costs and expenses reasonably and necessarily incurred directly and identifiably by Artist in connection with such activities, excluding management commission.

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Commission Period: a period commencing on the date of this agreement and expiring on the date which is [12] months after the date of expiry or earlier termination of the Term.

Commission Period

The Commission Period is the period during which the Artist must account to the Company for its activities. It is negotiable but generally lasts for a year after expiry or termination of the Recording Agreement.

[**Contract Period:** each Contract Period as defined in the Recording Agreement.]

[**Data Protection Legislation:** Data Protection Act 2018, General Data Protection Regulation (2016/679) as amended and that regulation as retained in UK law (UK GDPR).]

Digital Distribution: any transmission, distribution, dissemination and/or making available of Recordings or Films (or their digitised content) by any means now or in the future known, including via telecommunication networks, satellite, broadcast, wireless, cable or the internet whether or not a direct or indirect charge is made including streams, limited downloads, permanent downloads and the use of Recordings or Films in mobile applications, but excluding the manufacture, distribution and sale of Records.

Film: an audio-visual recording containing still and/or moving images made before or during the Term which embodies a Recording or a performance, or both, by Artist with other non-musical material and which is not a so-called promotional music video whose primary purpose is to promote the track featured in it.

Film

Non-musical material would include, for example, stills, moving images and audio recordings that do not contain music.

Film Costs: all costs that do not constitute Recording Costs and are incurred in the course of making, acquiring, clearing or exploiting any Film.

Live Activities: live performing and touring activities (both with and without the physical presence of an audience, and using live or recorded sound) and personal appearances.

Master: a finished master stereo tape recording made before and/or during the Term embodying Artist's sole, featured performance of musical compositions.

Merchandising Revenue: gross income, and benefits in lieu of income, paid or credited to Artist's account from all activities relating to the exploitation of the Merchandise Rights after deduction of all actual, out of pocket, bona fide, non-overhead, third-party costs and expenses reasonably and necessarily incurred directly and identifiably by Artist in connection with such activities, excluding management commission.

Merchandise Rights: the right to exploit the Non-Record Assets by way of merchandising, including by way of the manufacture, distribution, promotion and sale of goods, articles, items, products and other merchandise in physical and digital form, excluding Records, Digital Distribution and literary works and, for the avoidance of doubt, all Brand Rights.

Non-Record Assets: all names and professional names of Artist and all of Artist's characters, symbols, logos, designs, artwork, likenesses, biographical material, images, interviews, voices, signatures, photographs and representations, Artist's fame and reputation, the product of Artist's activities in the entertainment business and all Artist's intellectual property rights and related rights of every type and nature.

Record: a physical carrier of sound recordings either alone or with audio-visual material.

Recording: any recording of sound whether or not coupled with visual images by any method and on any substance or material, whether now or hereafter known or invented.

Recording Costs: all costs of and incidental to the recording and production of Masters up to and including the cutting of the production Master including producer advances, royalties and any mixing, remixing and similar costs, digital conversion costs and editing costs.

Territory: the world.

Net Tour Revenue: gross merchandising, sponsorship, advertising and endorsement income (and benefits in lieu of such income) paid, credited or given to Artist or on Artist's behalf] for undertaking Live Activities net of bona fide non-overhead arm's-length out-of-pocket payments made to third parties such as booking agents' fees that Artist has reasonably and necessarily incurred directly and identifiably in connection with Live Activities, but not excluding expenses of a capital nature such as the purchase of equipment.

Video: a Record which reproduces audio recordings in synchronisation or in conjunction with visual images.

Website Revenue: Company's actual receipts (if any) solely, directly and identifiably attributable to the sale of concert tickets through orders placed on Artist Websites and all other ancillary flat fee income arising from Artist Websites, excluding:

- a. income derived from the exploitation of Recordings and Films and from Digital Distribution, less any rights-management costs, commissions, discounts, rebates, referral fees, credit card charges, taxes, levies or similar charges paid by or levied upon Company in respect of such revenue; and
- b. income derived from the exploitation of Recordings and Films (whether by means of physical fulfilment of orders for Records or Videos placed on an Artist Website or Digital Distribution).

1.2 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. TERM

This term of this agreement shall be a period commencing on the date of this agreement and continuing until the expiry or earlier termination of the Recording Agreement (**Term**).

3. GRANT OF RIGHTS

Grant of rights

Generally speaking this is an income participation agreement. It is generally accepted that a label may take a share of the income from brand rights, merchandising and live performance. More controversially, and aggressively, labels may ask for participation in publishing rights, but this is often resisted.

In addition to income participation it is sometimes necessary for those rights to be upstreamed to the ultimate record label so that the label can exploit those rights directly. Other than in relation to rights in websites, this is still controversial and resisted by the artist community. An artist would be even less likely to agree to grant such rights to a production company. Accordingly, this agreement only requires the Artist to grant to the Company those additional rights to the extent required to fulfil the onward licence deal.

If this agreement is entered into at all, it is generally for the entire Term of the Recording Agreement. If the production company's share of any type of income is to vary over the Term (for example, with the percentage increasing as time goes on), this can be achieved by reference to those contract periods defined in the Recording Agreement.

Non-Record Assets (NRA) are the physical embodiment of what might sometimes be called the "image rights" of the Artist, rather than the rights themselves. In other words, the NRA are the names, images and recordings actually used to create merchandise or to create a sponsorship campaign. Typically the Company will have created some of its own assets under the recording agreement, but will not have any right to use them other than for the exploitation of records.

This agreement is primarily granting the Company an income share in the artist's other areas of business, rather than custody of the image rights. However, with an income share the Company now has a vested interest in promoting these other areas of the Artist's business. Clause 3.2 is therefore a licence to use the NRA for promotional usage only. As noted, it is not a grant of the Brand Rights or the Merchandise Rights; these remain with the Artist except in the limited circumstances where those rights are required to be granted in order for the Company to enter into a Label Agreement (see clause 3.3). Note also that in clause 8 the Company has the right to use the NRA in the Artist Websites.

3.1 In consideration of £1 paid from Company to Artist (receipt of which Artist hereby acknowledges) Artist grants to Company the rights set out in this agreement.

3.2 Company shall have the right during the Term and throughout the Territory to use the Non-Record Assets for promotion of:

- (a) Artist's live performances;
- (b) Merchandise Rights;
- (c) Brand Rights; and
- (d) Artist Websites.

3.3 Without limitation to the rights granted to Company under this agreement, if pursuant to the Recording Agreement Company enters into a licence agreement (**Label Agreement**) with a third-party record label (**Third-Party Label**) which requires Company to license to the Third-Party Label any of the Brand Rights or the Merchandise Rights, then Artist shall be deemed to have granted Company a licence of those rights for the duration of the Term solely to the extent necessary to sublicense those rights to the Third-Party Label as required by the Label Agreement. Artist agrees to enter into a written licence to this effect if requested to do so by Company. If the Label Agreement is terminated during the Term then those rights shall revert to Artist at the end of the then current Contract Period (subject always to the continuing obligation to pay Company the share of Branding Revenue and Merchandising Revenue due to it under this agreement).

4. NET TOUR REVENUE

Net Tour Revenue

Net Tour Revenue is defined to include not just tours and concerts, but also personal appearances such as opening ceremonies and book signings. For many artists this can be the single largest source of income. However, touring is very costly and it is important to ensure that the costs do not reduce the income share to nothing, hence this agreement has two alternative formulas of a share of gross versus a share of net. The rate of 20% is generally regarded as typical for a first proposal but lower rates are often negotiated.

From the artist's perspective, profits from one tour may be intended to offset costs from another, so the definition of tour leg is important to establish how far a series of performances may be cross-collateralised. For more established artists, you may have what is sometimes called a "shelter", a level of income which is not subject to live income share at all. This will typically be assessed by reference to how much the artist is already earning in live income (the argument being that the Company has done nothing to contribute to this). At this level, where the Artist is not signing directly to a major label, the production company is very unlikely to agree to a shelter.

4.1 Subject to [Clause 4.2](#), Artist shall (acting in good faith at all times) pay Company [20]% of Artist's Net Tour Revenue arising from activities that Artist carried out during the Commission Period and activities for which Artist entered into a legally binding set of principal terms or memorandum of principal terms with a third party during the Commission Period, subject to a minimum of [10]% of gross income in respect of the activities described in [Clause 4.5](#) below.

4.2 In relation to Net Tour Revenue for which Company is required under the Label Licence to account for a share to the Third-Party Label, the percentages payable to Company under this clause shall be 30% for activities carried out during the Commission Period and 15% for activities for which Artist entered into a legally binding set of principal terms or memorandum of principal terms with a third party during the Commission Period.

4.3 For the avoidance of doubt, commissions payable to any manager shall not be taken into account in calculating Net Tour Revenue.

4.4 For the purposes of [Clause 4.1](#) and [Clause 4.2](#):

- (a) Artist shall account to Company on a tour-by-tour basis within sixty (60) days of the last date of each tour with a detailed written account of all Net Tour Revenue received in respect of each such tour together with the sum due to Company;
- (b) the cost of preparing such written account and accounting to Company shall be Artist's and shall not be a deductible cost for the purpose of calculating Net Tour Revenue; and
- (c) a separate account shall be prepared for each tour and no account shall be cross-collateralised with the revenue from any other tour.

4.5 For the purposes of this [Clause 4](#) a "tour" shall include:

- (a) one-off performances; and
- (b) any series of connected live performances presented as one continuous tour.

5. MERCHANDISING REVENUE

Merchandising Revenue

The rate of 20% is generally regarded as typical for a first proposal but lower rates are often negotiated. The Artist may ask that the merchandising income from any tour is treated as Net Tour Revenue rather than Merchandising Revenue, so that it can be used to offset costs.

5.1 Artist shall (acting in good faith at all times) pay Company the following proportions of all Merchandising Revenue arising from activities that Artist carried out during the Commission Period and activities for which Artist entered into a legally binding set of principal terms or memorandum of principal terms with a third party during the Commission Period:

- (a) in relation to such Merchandising Revenue for which Company is required under the Label Licence to account for a share to the Third-Party Label, [30]%; and
- (b) in relation to all other such Merchandising Revenue, [20]%.

5.2 Within [90] days after each quarter year ending on 31 March, 30 June, 30 September and 31 December during the Term, Artist shall send Company a statement of Merchandising Revenue that has accrued to Company during the preceding quarter year and shall concurrently pay to Company the full amount shown to be due to Company. Accounting statements shall indicate the relevant source of income, the precise costs and the amounts received. All payments shall be addressed to Company and sent to Company at the address given at the head of this agreement, or such alternative address as Company has notified to Artist in writing. The cost of preparing such statements and accounting to Company shall be Artist's and shall not be a deductible cost for the purpose of calculating Merchandising Revenue.

6. BRANDING REVENUE

Branding Revenue

The rate of 20% is generally regarded as typical for a first proposal but lower rates are often negotiated. Sometimes an alternate formula is used so that an enhanced rate is given to the Company where the Company procures the opportunity. However, this is more typical where you have a base rate of 15% (so that the enhanced rate would be 10%).

6.1 Artist shall (acting in good faith at all times) pay Company the following proportions of all Branding Revenue arising from activities that Artist carried out during the Commission Period and activities for which Artist entered into a legally binding set of principal terms or memorandum of principal terms with a third party during the Commission Period:

(a) in relation to such Branding Revenue for which Company is required under the Label Licence to account for a share to the Third-Party Label, [30]%; and

(b) in relation to all other such Branding Revenue, [20]%.

6.2 Within [90] days after each quarter year ending on 31 March, 30 June, 30 September and 31 December during the Term, Artist shall send Company a statement of Branding Revenue that has accrued to Company during the preceding quarter year and shall concurrently pay to Company the full amount shown to be due to Company. Accounting statements shall be reasonably detailed and shall indicate the relevant source of income, the precise costs and resulting receipts. All payments shall be made to Company's order and sent to Company at the address given at the head of this agreement, or such alternative address as Company has notified to Artist in writing. The cost of preparing such statements and accounting to Company shall be Artist's and shall not be a deductible cost for the purpose of calculating Branding Revenue.

7. ARTIST'S ACCOUNTING RECORDS

Artist agrees to maintain full and accurate books and records in relation to Branding Revenue, Merchandise Revenue and Net Tour Revenue and Company shall have the same audit rights in respect of such books and records as Artist has under [Clause 9](#), the necessary changes having been made.

8. ARTIST'S WEBSITES

Artist's Websites

These are generally established practices and found within the Recording Agreement, but it also makes sense to deal with these here as the crossover with Artist Brand Rights is becoming more prevalent (for example, a brand deal will typically require promotion across the Artist's social media platforms as well).

Although there is an argument that these revenues should not be crossed with the Recording Agreement income, current practice is to treat this as a cost to the Recording Agreement. While Website Revenues in isolation remain low, the 50% royalty remains largely unscrutinised, and reflects industry norms. With social media sites becoming the more valuable platforms, this is unlikely to change in the immediate future.

8.1 Company shall have the exclusive right (but not the obligation) during the Term to create, design, set up and maintain, host and control one or more websites for Artist (each an **Artist Website**), or to arrange for a third party to do so. Artist Websites include Artist's official website for the Territory (the **Official Website**). Company shall exclusively own the copyright and all other right, title and interest in and to Artist Websites and its contents and any data derived from Artist Websites. On expiry of the Term, all rights in and to the domain name and URL of the Official Website shall be assigned to Artist and Company shall complete all documents reasonably necessary to effect such assignment.

8.2 Company shall have the right to incorporate into Artist Websites and administer an online shopping facility through which Company shall have the right to advertise, promote and sell directly to members of the public in the Territory items including Records and Videos embodying Recordings (solely to the extent to which Company has the right to sell such products under the Recording Agreement) and to establish links to other commercial websites. Company shall further have the right to create and administer a fan club as part of Artist Websites.

8.3 Company shall pay to Artist [50]% of Website Revenue at the same time as Company accounts to Artist under [Clause 9](#).

8.4 In relation to costs incurred in building, hosting, developing, serving and maintaining an Artist Website that do not constitute Recording Costs or Film costs, Company may recoup:

- (a) up to 50% of such costs from royalties and fees payable to Artist from the exploitation of Recordings and Films under the Recording Agreement; and
- (b) the remainder of such costs from Website Revenue.

9. ACCOUNTING

Accounting

Accounting here generally only applies to the Website Revenues but may also apply to income where the Company takes a grant of rights rather than a mere income interest.

9.1 Company shall calculate the share of Website Revenue due and owing to Artist as at each quarter calendar year ending on 31 March, 30 June, 30 September and 31 December during the Term and shall provide a statement to Artist within 90 days of each such date, following which Company shall pay Artist's share of Website Revenue owing (if any) within 30 days of receipt of a valid invoice for them. Company shall be required to account to Artist for sales and other exploitation by Company's licensees only insofar as Company has received payment from Company's licensees in the UK.

9.2 Company shall be entitled to deduct from the payments due to Artist any sums (such as withholding taxes) which Company or Company's licensees or sub-licensees are obliged to pay or withhold in any country in respect of Artist's royalties by reason of any law, statute or decree. Company shall be entitled to maintain reasonable reserves against future product returns, which reserves shall be liquidated within two accounting periods.

9.3 If Company requires the grant of Merchandise Rights or Brand Rights under [Clause 3](#), then Company shall also account for Artist's share of Merchandising Revenue and Branding Revenue (as applicable) received by Company during the applicable accounting period, at the same time and in the same manner as Company shall account for Website Revenue.

9.4 Artist shall have the right at Artist's sole cost and expense to appoint a firm of chartered or certified accountants to inspect Company's books and records relating to Artist's account once per calendar year upon not less than 30 days' prior written notice during normal business hours at Company's normal place of business. Such inspection shall take place within three months of Company's receipt of such notice. No statement of account shall be inspected more than once. Notwithstanding the foregoing, all royalty statements under this clause shall be binding on Artist and not subject to objection unless Artist gives Company written notice of objection stating the basis thereof within two years of such statements being rendered.

9.5 If such an inspection does take place and an underpayment is proven in any period of inspection which exceeds 10% of sums due to Artist in such period (being not less than £5,000), Company shall pay the reasonable costs of such inspection (excluding travel, accommodation and subsistence) subject to Artist's provision of reasonable evidence of such costs up to a maximum of £5,000, together with the amount of such underpayment.

10. PROMOTIONAL MATERIALS AND FILMS

Promotional materials and films

Generally, in the interests of cost saving, the Company will want to reuse the artwork created under the Recording Agreement but certain assets may need to be created for the fullest exploitation of certain categories of rights, notably Merchandise Rights. Often the responsibility for creating those new materials will be passed along to the ultimate party exploiting those rights but occasionally the Company will want to originate those materials itself. It is arguable whether the costs should be borne by the Company, the Artist or shared. On the basis that the Company is intending to fund

these assets in order to generate income opportunities for the Artist, this agreement entitles the Company to recharge those costs.

For details of BAFTA's albert project (the industry authority on sustainability for the screen industries) and its suggested provisions to minimise the environmental impact of arrangements for energy use, transport arrangements, dressing room/trailer set up, catering and the like, see [Article, BAFTA's albert project and the Green Rider campaign](#).

10.1 As reasonably requested by Company from time to time, Artist shall deliver to Company all available artwork, photographs and other promotional materials (including any promotional videos) for use by Company free of charge in relation to the exploitation, marketing and promotion of Artist's live performances, merchandise, branding and Artist Websites by any and all means and in any and all media in accordance with the terms of this agreement. Without limiting the foregoing, Artist shall ensure that such promotional materials made by Artist's licensees or assignees outside of the Territory shall be available to Company free of charge for the Territory and free of any and all encumbrances. Company shall be entitled to re-edit any such promotional videos delivered to Company in accordance with the above.

10.2 Company may (at Company's discretion) originate and organise any artwork, photographs and other promotional materials in relation to the promotion of Artist's live performances, merchandise, branding and Artist Websites, such materials to be owned by Company. During the Term Company shall consult with Artist in relation to the concept of any such artwork, photographs and promotional materials.

10.3 Company shall also have the exclusive right (but not the obligation) to produce Films in the Territory solely for use by Company in the promotion of Artist Websites, and all rights in such Films shall be owned by Company. Subject to reasonable prior notice, Artist agrees to be available for the filming of such Films. Company shall mutually agree with Artist (acting reasonably and in good faith) a budget for any such Film, with Company's decision being final in the event Company and Artist fail to reach agreement. If Artist or any licensee of Artist's wishes to exploit outside the Territory a Film paid for by Company then Artist (or such licensee, as applicable) shall be entitled to do so subject to the payment by Artist (or such licensee, as applicable) to Company of an agreed contribution (with Company's decision being final in the event Company and Artist fail to reach agreement) towards the costs so incurred by Company.

10.4 All Film Costs incurred by Company or on Company's behalf in the course of activities undertaken under [Clause 10.3](#) shall be recoupable against Artist's share of Website Revenue.

10.5 Unless and until Artist appoints a third-party live performance promoter, merchandiser or a brand design agency in respect of Artist's activities in the music industry Company shall in each case have the right (but not the obligation) to promote and advertise Artist's live performances, merchandise, branding and Artist Websites, subject to Company and Artist mutually agreeing the design and the "look and feel" of any such promotional and advertising materials on a case-by-case basis. Artist agrees to appear for photography, artwork and similar requirements and Artist shall be freely available for all promotional activities arranged by Company and approved by Artist all for the purpose of promoting and advertising Artist's live performances, merchandise, branding and Artist Websites during the Term. Company shall (subject to Company's prior written approval of such costs) pay any travel, subsistence and accommodation costs in relation to such activities and those costs shall be recoverable from Artist's share of Branding Revenue, Merchandising Revenue or Touring Revenue. In the event that Company requires Artist to do a full day (being no more than eight hours in any 24-hour period) of promotional activities where Artist is not also performing either during the day or that night Company shall also pay Artist so-called "per diems". Company shall in each case have the right to recover such costs and "per diems" from any appearance fees that are paid for the promotional activity in question.

11. WARRANTIES

11.1 Artist warrants that:

- (a) Artist has the right to enter into this agreement;
- (b) all materials delivered to Company by Artist under this agreement will be neither defamatory nor obscene and will be available to Company free of charge for use in connection with the advertising and promotion of Artist's live performances, merchandising, branding and Artist Websites (including via Company's website);

(c) Artist shall be responsible for any payment which may be due to those producers, remixers, session musicians and other third parties (if any) whose performances are embodied on the Recordings and Films or who otherwise assisted in the creation of any materials delivered to Company by Artist under this agreement, in respect of Company's use and exploitation of such materials on Artist Websites;

(d) the sums payable to Artist under this agreement constitute fair and equitable remuneration for the services (and the products and results of the services) to be rendered and rights granted under this agreement by Artist including all rental and lending rights;

(e) Artist is solely entitled to deal with the rights in and to the Non-Record Assets and collect 100% of all income they generate, and that any exploitation of the Non-Record Assets by Company under this agreement shall not infringe the rights of any third party;

(f) all of Artist's arrangements with third parties with regard to Artist's live performance, merchandise and branding activities will be on bona fide arm's length terms and will not be conducted or constructed with the intention or effect of artificially reducing the income due to Company under this agreement. Accordingly, to the extent that Artist may use a production company associated with, appointed by or nominated by Artist in respect of Artist's live performance, merchandise and branding activities, any monies paid or credited to such production company or to any third party on its behalf shall be deemed to be gross income with respect to such activities. The manner in which Company's share of Net Tour Revenue, Merchandising Revenue and Branding Revenue are calculated shall be no less favourable to Company than the way in which any management commission on the same activities is calculated;

(g) Artist has taken independent legal advice in relation to this agreement from an expert in agreements of this nature before the date of this agreement;

(h) Artist shall be responsible for Artist's own tax and National Insurance contributions; and

(i) Artist is at least 18 years of age.

11.2 Artist warrants and undertakes to indemnify Company and hold Company harmless from and against any costs, losses, damages and expenses including reasonable legal fees that Company or Company's licensees may suffer or incur by reason of any breach or alleged breach by Artist of any representations, warranties, grants, undertakings, covenants or agreements contained in this agreement. If Company has any claim against Artist, Company shall be entitled to withhold from any sums payable to Artist under this agreement an amount sufficient to meet such claim or potential claim and shall liquidate such withholding if proceedings on such claim have not been issued within 12 months of such withholding.

12. APPROVALS AND NOTICES

Approvals and notices

Where the Company actually takes a grant of rights, the approvals clause may also cover whether or not the Company is entitled to enter into third-party agreements such as a licence, income participation agreement or (less commonly) assignment (this will vary from label to label). In this agreement, those rights are only granted to the extent that they are required by the record label, and the terms of any such licence are limited by the reference to the "same terms" as required by the Third-Party Label. Any Label Agreement will include robust approval procedures.

12.1 Where Artist's approval is required under this agreement and Artist fails to give or withhold such approval (giving reasonable grounds) within seven working days of receipt of a request for it, then Artist's approval shall be deemed given. Artist shall not unreasonably withhold or delay such approval. Any right of approval shall be deemed waived where Artist is not contactable by reasonable efforts. Where Artist's approval is given or is made conditional upon receiving or if Artist seeks improved commercial terms then Artist's approval will be deemed given unconditionally.

12.2 Any notice required to be given under this agreement shall be in writing and shall be sent to each party required to receive the notice by prepaid first-class post, to the address of the relevant party set out in this agreement, or by email to the email

address of the relevant party set out in [Clause 12.3](#) or to such other postal or email address as such party may have notified to the other for such purposes. Such notice shall be deemed to have been given:

- (a) if sent by first-class prepaid post, two Business Days after the date of posting; or
- (b) if sent by email, on the first Business Day after the date on which the email was sent.

12.3 For the purposes of [Clause 12.2](#), Company's email address is [COMPANY'S EMAIL ADDRESS] and Artist's email address is [ARTIST'S EMAIL ADDRESS].

13. MISCELLANEOUS

13.1 Without prejudice to Company's legal or equitable rights, Company may terminate this agreement on [seven] days' written notice if:

- (a) Artist breaches any of its material provisions and Artist fails to remedy such breach within seven days after Company requires Artist in writing to do so; or
- (b) Artist repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that Artist's conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement.

13.2 [Where Artist is a group, any notice or approval given by or to any member of the group shall be deemed to have been given by or to all members of the group respectively, save that any notice served under [Clause 9.4](#) shall require service by or on behalf of all members of the group.]

Approval where Artist not a single individual

This clause need only be included if Artist consists of more than one person.

13.3 All payments to Artist under this agreement are expressed exclusive of VAT, which shall be payable in addition to those payments on receipt of a valid VAT invoice.

13.4 Artist shall not disclose without Company's prior written consent any confidential information that Artist may receive as a result of Artist's engagement under this agreement save as required in legal proceedings or to Artist's professional advisers. A disclosure by Artist's professional advisers shall be deemed to be a disclosure by Artist:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising Artist's rights or carrying out its obligations under or in connection with this agreement. Artist shall ensure that its employees, officers, representatives or advisers to whom it discloses Company's confidential information comply with this clause; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.5 The Artist consents to Company holding and processing data relating to the Artist for legal, administrative and management purposes and in particular to the processing of any sensitive personal data as defined in the Data Protection Legislation relating to the Artist solely for the purposes of performing services under this agreement. Company confirms that all such personal data as defined in the Data Protection Legislation shall be processed and stored by the Company as data controller on behalf of the Artist in full compliance with the Data Protection Legislation.

13.6 Company will collect and process Artist's personal data in accordance with the privacy notice annexed to this agreement. Artist will sign and date the privacy notice and return it to [NAME].

13.7 No one other than a party to this agreement shall have any right to enforce any of its terms.

13.8 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

13.9 Artist shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of Company.

13.10 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that, in entering into this agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) that is not set out in this agreement. Nothing in this clause shall limit or exclude any liability for fraud.

13.11 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.12 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

13.13 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

13.14 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

13.15 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

13.16 Each party irrevocably agrees that the courts of England and Wales shall have [exclusive **OR** non-exclusive] jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF
COMPANY] Director

Signed by [NAME OF ARTIST]

Signed by [NAME OF ARTIST]

Signed by [NAME OF ARTIST]

ANNEX
PRIVACY NOTICE
[TEXT OF PRIVACY NOTICE]

END OF DOCUMENT
