Management agreement: group

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A short-form agreement setting out the terms on which a group appoints a manager.

About this document

This standard document is intended for use where a group wants to enter into an agreement with a manager. The agreement is a short form. We have found that the overwhelming preference of our manager clients is to use a short-form template. Frequently they want to sign the agreement without lengthy negotiations, and this can be critical if there is an impending record deal.

Legal issues

Undue influence

Equity will set aside a contract between parties who are in a relationship of trust and confidence if the contract is entered into as a result of an abuse of that relationship. A contract entered into under undue influence is voidable, not void. The party alleging undue influence can affirm the contract or rescind it, provided there are no equitable bars to rescission, such as acquiescence or *laches*. (For further information on undue influence in a general commercial context, see *Practice note, Contracts: invalidity: Duress and undue influence*.)

Whether a transaction was brought about by the exercise of undue influence is a question of fact. However, proof that the complainant placed trust and confidence in the other party in relation to the management of the complainant's financial affairs, coupled with a transaction which is not readily explicable by ordinary motives, will normally be sufficient, failing satisfactory evidence to the contrary, to give rise to a presumption of undue influence (*Royal Bank of Scotland v Etridge (No 2) [2002] 2 AC 773*). A presumption of undue influence may be rebutted. Proof that the complainant received independent advice before entering into the transaction may be sufficient to rebut the presumption. However, the weight attributed to such advice depends on the circumstances (*Royal Bank of Scotland v Etridge (No 2)*).

The relationship between an artist and a manager is generally one of trust and confidence by which one party manages the other's affairs. Accordingly, it may give rise to a presumption of undue influence if the terms of the management agreement are such as to call for an explanation. To try to avoid any risk of a contract being set aside for undue influence, the manager should seek to ensure that the artist takes legal advice on the agreement from an independent solicitor, ideally one who is experienced in the area.

Each case will turn on its facts. The fairly limited case law regarding undue influence in the context of management and recording agreements provides some examples of how it applies in practice:

- In *Armatrading v Stone and another (17 September 1984) (unreported)*, the High Court considered a management agreement which included a term that the manager should be entitled to 20% commission on the artist's professional activities carried on after the termination of the agreement if those activities:
    - had been negotiated by the manager;
    - arose at any time from agreements made during the management agreement; or
    - arose from agreements in substitution, extension or renewal of agreements made during the management agreement.

- The court held that the agreement should be set aside for undue influence because the artist had not received any independent legal advice regarding the agreement before signing it. (The court also found that the agreement was unenforceable as being in restraint of trade (see *Drafting note, Restraint of trade* below).)

- In *Elton John and ors v Richard Leon and ors [1991] FSR 397*, Elton John and his lyricist sought to set aside, on the basis of undue influence, various publishing and recording agreements they had entered with companies controlled by a music publisher (D). The High Court found that most of the agreements had been entered into as a result of undue influence, including, for example, a publishing agreement by which the claimants were tied to D's company for six years and assigned to it, for all time, full copyright in works produced in that period, in return for a right to royalties. The judge, while accepting that it took time for new writers to succeed, considered that a six-year agreement on such terms was an unacceptably hard bargain and that D had a dominating influence over the claimants, who were inexperienced minors starting out in the music industry at the time, and who had not taken independent advice. However, the court ruled that one later agreement had not been procured by undue influence because, among other things, the claimants had more awareness and experience of long-term contracts and their implications, and the agreement was on more favourable terms. (On the facts, the court did not set aside the agreements it found had been entered into under undue influence, finding that the balance of justice was against setting them aside because, among other things, of the amount of time which had elapsed before the claimants brought the claim; the work the publisher had carried out in exploiting the copyright in the works; and the financial benefits the claimants received.)

- A provision in a management agreement allowing the manager perpetual post-term commission on recordings made, compositions written, or performances given or negotiated during the period of the agreement was held to require explanation so as to give rise to a presumption of undue influence in *Wadlow v Samuel (p.k.a. Seal) [2006] EWHC 1492 (QB)*, as was a "double-dipping" provision which entitled the manager to be paid commission on income accruing to the artist under a previous publishing agreement the manager had entered into with the artist (see *Legal update, High Court rules in favour of former manager in dispute with artist Seal*). The court accepted that, in view of expert evidence, the post-term commission was unusual when the agreement was signed, and that, while much turned on the manager's status and experience, the manager in this case had little, if any, previous experience before acting for the artist. It also found the double-dipping clause to be unreasonable. It held that the presumption of undue influence had not been rebutted because, although the artist took independent legal advice which advised him against accepting the double-dipping provision, his manager nevertheless persuaded him to accept it.

Restraint of trade

Certain contracts are unenforceable for reasons of public policy, including those that are in restraint of trade. The doctrine of restraint of trade provides that individuals and organisations should be free to carry on their trade or business in whatever manner they see fit. To be enforceable, a contractual provision which is regarded as a restraint on this freedom must be reasonable, in reference to the interests of the parties concerned and the interests of the public (*Nordenfelt v Maxim Nordenfelt Guns [1894] AC 535*). A contract that is deemed to be in restraint of trade is voidable or unenforceable. However, it may be possible to sever the offending part of the contract.

Case law suggests that whether an agreement will be deemed to be unenforceable as being an unreasonable restraint of trade will turn on its facts, including the terms of the agreement (for example, the size of the consideration, the duration of the agreement, and the relative obligations of the parties); whether the agreement is in standard form or has been the subject of negotiation; and the experience and age of the person arguing that the contract is in restraint of trade.

A key case in terms of setting out the principles regarding how the doctrine of restraint of trade applies in the field of entertainment contracts is *Schroeder Music Publishing Co v Macaulay [1974] 1 WLR 1308*. In this case, the House of Lords considered whether a publishing agreement entered into between a young, unknown songwriter and a music publisher was in restraint of trade. It approached the question by asking:

- Were the terms of the agreement so restrictive that either they could not be justified at all, or they had to be justified by the party seeking to enforce the agreement?
- If there was room for justification, had that party proved justification (normally by showing that the restrictions were no more than what was reasonably required to protect his legitimate interests)?

The agreement was for a five-year period, extending to ten years if the royalties for the first five years exceeded £5000 (an amount the court commented was a modest sum). Under the agreement, the composer assigned to the publisher for all time copyright in all the work he composed, during the period, receiving no payment (apart from an initial £50) unless the work was published by the publisher. The House of Lords commented that there was no evidence as to why such a long period was necessary. Other factors it highlighted were that the agreement was in a standard form, the publisher was under no obligation to use the composer's material, the composer also had no right to terminate the agreement (the existence of which might have given the agreement a different appearance), and he had no right to have his copyrights reassigned to him. It concluded that the agreement was an unreasonable restraint of trade because it tied the composer for a period of years so that his work would be sterilised and he could earn nothing from his abilities as a composer if the publisher chose not to publish the work.

Other examples of cases which provide further illustrations of how the doctrine of restraint of trade has been applied in the entertainment context include:

- *Silvertone Records Ltd v Mountfield and others [1993] EMLR 152*, in which the High Court held that an exclusive worldwide recording agreement entered into by the Stone Roses for (up to) a seven-year period was unenforceable as being in restraint of trade. The court held that the agreement was an unreasonable restraint of trade because of, among other things:
    - the one-sided nature of the terms, which put the minimum commitment and release entirely within the record company's control, so that the band could be sterilised for seven years; and
    - the immense inequality in bargaining power and negotiating ability between the parties, in particular, the band had no legal or business experience, little income, and were represented by a lawyer with no experience in the music industry.

- *Wadlow v Samuel* (see *Drafting note, Undue influence* above), in which the High Court rejected the artist Seal's argument that an agreement under which his manager was entitled to post-term commission on monies arising, recordings made, compositions written and residual fees arising from performances given or negotiated during the period of the agreement, was unenforceable as being in restraint of trade. The court held that it was counter-intuitive to describe an obligation to pay money as a restraint of trade, even where it continued after the end of the management agreement. The judge distinguished *Armatrading v Stone*, in which such a term had been held to be in restraint of trade. He considered that the manager's contract in that case was materially different, with a wide-ranging entitlement to post-term commission which could potentially cover virtually all the artist's earnings for many years after the termination. This might well make it very difficult for the artist to engage a new manager (since the artist might be unable to afford to pay commission to two managers on the same income stream). Further, the judge said that the term in issue in *Wadlow v Samuel*, while unusual, was not unreasonable. (Such a term may, however, be deemed disadvantageous so as to give rise to a presumption of undue influence (see *Drafting note, Undue influence* above).)

See also *Practice note, Restraint of trade outside employment: Media and entertainment contracts*.

Negotiating and drafting issues

The agreement has been primarily drafted from the point of view of the manager. However, the agreement has been drafted using a fair and balanced approach with regard to the obligations it imposes on the group, in order to attempt to ensure that the agreement does not contain provisions which might be argued either to require explanation so as to give rise to a presumption of undue influence, or to be an unjustifiable restraint of trade. These drafting notes include some guidance as to when the group might seek to negotiate alternative or additional wording.

Other boilerplate

Other boilerplate provisions could be added. In particular:

- A confidentiality clause could also be included in the agreement. See *Standard clause, Confidentiality* (specifically, the short-form wording) for a clause which could be adapted for this purpose. The provision could be drafted to apply to the manager and/or the artists. From the group's perspective, it is certainly desirable that the manager is not at liberty to discuss business dealings or agreements concerning them with the general public. However, the manager may also want to ensure that the provisions of the management agreement, for example, provisions regarding commission, are kept confidential.
- The parties may wish to consider alternative methods of dispute resolution. For more information in this area, see *Standard clause, Mediation*.

This agreement is dated [DATE]

PARTIES

Manager

The parties clause should be amended depending on whether the manager is an individual or a management company.

Artists

The members of the group who are signing the agreement are defined as "jointly and severally, the Artists". This has the effect of making them jointly and severally liable under the agreement. Where two or more parties assume liability jointly and severally to a third party in relation to a matter (for example, the performance of an obligation), each is treated as having assumed the obligation both collectively (on behalf of all those bound) and also individually. The third party may then choose to proceed against any one or more of the parties assuming liability, irrespective of which of them caused the breach.

In the absence of an express term that the parties are jointly and severally liable, two or more parties who undertake the same obligation together will be considered to have assumed liability jointly (*White v Tyndall [1888] 13 App Case 263*). The position is, in many respects, the same as if the parties were jointly and severally liable. However, if one party who is jointly liable with others dies, the deceased party's personal representatives are generally released from liability. Further, in order to bring proceedings, the third party would generally need to issue proceedings against all the members, not just the easiest target. For more information, see *Standard clause, Joint and several liability*.

The band members may seek to delete the words "together, jointly and severally". However, for the reasons discussed above, even where this wording is not included, parties who undertake the same obligation together will be considered to have assumed liability jointly. Accordingly, band members may also try to include an express provision that members are only severally liable, which means that each of them is treated as having assumed liability solely for their own performance, so that each individual will be responsible only for their own failure to perform and for the loss or damage resulting from their own breach. (See *Standard clause, Joint and several liability* for suitable wording.) In practice, band members may not be able to win this point in negotiation. Even if they do, they are likely to be jointly and severally liable under other agreements they enter into, such as a recording agreement. Accordingly, it is important that the band members enter into an agreement between themselves (a Band Agreement) dealing with their liability to each other.

(1) [MANAGER NAME] of [HOME OR BUSINESS ADDRESS] OR [FULL COMPANY NAME] incorporated and registered in [COUNTRY OF INCORPORATION] with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] **(Manager)**

(2) [ARTIST NAME] of [HOME ADDRESS], [ARTIST NAME] of [HOME ADDRESS] and [ARTIST NAME] of [HOME ADDRESS], jointly and severally **(the Artists)**

BACKGROUND

(A) The Artists wish to appoint the Manager to be the Artists' exclusive manager within the entertainment industry on the terms set out in this agreement.

Background

The background or recitals to the agreement simply set out the background to the transaction (see *Practice note, Contracts: structure and terms of commercial contracts: Background, recitals, or preamble*). If the parties make significant changes to the provisions of the standard document (for example, if they agree that the appointment is non-exclusive, or exclusive only for musical activities (see *Drafting note, Activities*)) in order to ensure that the background and substantive provisions are consistent, the wording of the background should be amended to reflect these changes.

AGREED TERMS
1. INTERPRETATION

Interpretation

Clause 1.2 to *Clause 1.10* deal with the general interpretation of the document and certain expressions used in it.

For more information, see the integrated drafting notes to *Standard clause, Interpretation*.

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

1.1 Definitions:

Activities: all of the Artists' activities within the entertainment industry throughout the world, including all commercial endorsements, merchandising and sponsorship activities.

Activities

The definition of "Activities" is drafted to cover all of the group's activities within the entertainment industry. Some artists will insist that the activities covered by the agreement are limited to music activities. In this case it would become important to ensure that the definition is amended to include a list of those non-musical activities that artists often undertake, for example, sponsorship and television appearances. A half-way position is to provide that the management appointment is exclusive for music and, in respect of other areas, exclusive until such time that the artists appoint an agent in those areas (in which case the manager would typically deduct those agents' fees from the manager's own commission).

The definition covers activities worldwide. Co-management arrangements do occur, but they are difficult. Typically such arrangements would involve a home territory for the worldwide manager and a major overseas territory for the co-manager, with a costs and fee-sharing arrangement in place. The recommendation is, wherever possible, to avoid this.

Artist Group: the group of which each of the Artists is currently a member at the date of this agreement, and any future incarnation of that group.

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

Commission: the percentage of earnings set out in *Clause 6.1*.

Data Protection Legislation: all data protection legislation from time to time in force in the UK including the Data Protection Act 2018 and the retained version of the General Data Protection Regulation (*(EU) 2016/679*).

Definition: Data Protection Legislation

From the end of the UK-EU transition period at 11.00 pm on 31 December 2020, the retained version of the General Data Protection Regulation (*(EU) 2016/679*) (UK GDPR) applied in the UK, along with the Data Protection Act 2018. See *Drafting note, Data protection* for more detailed information on relevant data protection legislation.

Expenses: all third party costs (other than the Manager's own overhead costs as set out in *Clause 7.1*) reasonably incurred by the Manager on the Artists' behalf or in the performance of the Manager's obligations under this agreement.

Gross Earnings: all income, fees, advances, royalties and other consideration arising from any of the Activities received by or credited to the Artists or any person on the Artists' behalf:

a. during the Term; or

b. after the Term if arising from Activities performed during the Term, or from Activities performed within six months of the expiry of the Term pursuant to an arrangement made by the Manager during the Term,

excluding the following:

a. VAT;

b. monies advanced for third party recording costs or tour support and used as such;

c. income arising from recordings and compositions made during the Term but not released within six months of the expiry of the Term;

d. credits used to recoup advances which the Manager has subjected to commission;

e. any portion of the Artists' so-called ancillary income (including live, merchandise, sponsorship, branding and website income) which is payable by or on behalf of the Artists to any arm's length third party pursuant to an agreement entered into by or on behalf of the Artists.

Gross Earnings

The definition of "Gross Earnings" has been drafted to cover consideration received by "or credited to" the artists. In particular, this is intended to cover royalty credits, that is, royalties credited to the artist for accounting purposes but that the artist does not receive. However, the artist never actually receives this income and so it is arguable whether commission on credits can be justified. The reason the artist often never receives this income credited to it is due to the way in which artist royalties are recouped against prior advances and expenses. Artists are usually paid an advance when they sign a recording deal, which is debited to the royalty account and recoupable against future royalties. In addition to the advance, certain other costs are also recoupable, principally recording costs. So, for example, an artist may receive £50,000 in advances, and incur £75,000 in recording costs, and therefore have an artist account that is £125,000 "unrecouped" (in the red). The next £125,000 of royalties which are credited against the royalty account will therefore not be received by the artist.

For instances where credits are commissioned (industry shorthand for "subject to commission"), one would expect to see the provision confirming that royalties used to recoup such advances would not be commissioned. By a similar principle, the list of exclusions might also confirm that monies used to recoup recoupable sums not actually paid to the artist would not be commissioned, for example, the artist's share of television advertising spend by the record label.

The list of items excluded from "Gross Earnings" is often much longer, citing producer fees or recording costs, for example. One arguable addition to the list is legal fees. Where an artist has their legal fees paid then it is difficult to justify the manager taking a commission on the amount. The counter-argument to this is that, usually, the legal fees money will be deducted from the total fees otherwise payable to the artist.

Many record labels now participate in income earned by their artists other than with regard to recordings, for example, live, merchandising, endorsement and even music publishing income ("so-called ancillary income") (the qualifier "so-called" is used because "ancillary income" is an industry-recognised term that for someone outside of the industry would have no apparent meaning). Accordingly an artist's lawyer will generally insist that such monies paid to the label are deemed excluded from gross earnings. It may however be that any share of ancillary income received by the record label is itself calculated net of management commission in which case a manager may well argue that the same provision cannot be included in both the recording agreement and management agreement as otherwise the calculation of management commission would itself become a circular exercise.

One item included in the list is any share of the artists' ancillary income which is payable to third parties (for example, record labels). It is increasingly usual for record labels, in particular, to take a share of an artist's ancillary income (for example, live, merchandise, sponsorship, branding and website income), which is either paid to such third party directly (and therefore the artist never sees that portion of the money) or is paid by the artist on receipt. The justification for excluding the item is that the artist never really sees that portion of its ancillary income (that is, receives the income into their pocket) in either scenario.

Net Earnings: Gross Earnings (including, for this calculation, all relevant tour support) arising from the relevant live performance(s), less:

a. all fees payable to the relevant live agent;

b. the cost of hire of any PA and other equipment; and

c. all other reasonable costs other than the Artists' expenses incurred in respect of such live performance(s).

Net Earnings

Tour support is included in the definition of Gross Earnings for the purpose of calculating Net Earnings. Although tour support is not income per se, it is necessary to include it in this calculation in order to assess whether the live event made a profit.

This definition excludes fees payable to the relevant "live agent", meaning the person appointed to procure bookings for live performances. (It is generally accepted that this is a separate role from that of a manager, requiring separate expertise, and being subject to different payment terms.)

The definition provides for deduction of other reasonable costs. This provision is not always included. Some managers limit the deductible costs to the live agent's fees and the cost of PA hire. Providing for a definition of Net Earnings according to which only certain items are deductible may be a midway position for assessing how much commission the manager receives for live performances. (For further discussion regarding the alternative basis for calculating commission on live events, see *Drafting note, Commission on live performances*.)

Net Record Earnings: all income, fees, advances, royalties and other consideration arising from the release by the Manager of a Released Recording received by or credited to the Manager less:

a. all costs and expenses incurred by the Manager in relation to the recording, release, promotion, exploitation and/or distribution of the Released Recording (including all recording costs);

b. any fees, payments and royalties due to third parties in relation to the Released Recording (including payments due to producers, mixers and session musicians).

Net Record Earnings

This concerns earnings from Released Recordings, that is, recordings released by the manager on behalf of the artists. It has been increasingly common for managers to independently release recordings of their artist in the early stages of the artist's career. See also *Clause 6.1*.

Released Recording: a recording embodying the musical performances of the Artists that is released, exploited or distributed by the Manager.

Released Recording

Released Recordings are recordings released by the manager on behalf of the artists. It has been increasingly common for managers to independently release recordings of their artist in the early stages of the artist's career. See *Drafting note, Released Recordings*.

Term: the period set out in *Clause 2.1*.

VAT: value added tax [or any equivalent tax] chargeable in the UK [or elsewhere].

1.2 Clause headings shall not affect the interpretation of this agreement.
1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
1.5 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
1.6 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
1.7 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
1.9 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.

1.10 References to clauses are to the clauses of this agreement.

2. TERM

2.1 The term of this agreement shall commence on the date of this agreement and shall, subject to *Clause 2.2*, *Clause 10* and *Clause 11.2*, continue until terminated by either party serving [60] days' written notice on the other. Such notice may be served at any time after the earlier of:
(a) six months following the initial release of the Artists' second studio album released after the commencement of the Term; or
(b) five years from the commencement of the Term.

Album cycles and termination by either party

The "old-style" management term would typically run for a fixed period of three or five years, depending on the amount of development needed. More modern management agreements measure the term in album cycles. Despite the erosion of the album in the digital era, the album cycle is still the basic unit of time for most record contracts, and using this model benefits the artist with a continuity of management throughout each of those periods. The structure used in *Clause 2.1* presumes that the artists are recording artists producing product in album formats. Where this is not the case, *Clause 2.1* should be amended to revert to a fixed period of three or five years or, exceptionally, a rolling term terminable by notice.

Clause 2.1 is drafted so that the term starts on the date of the agreement. Backdating the contract is an option. It would shorten the remaining Term, but would also retroactively affect which activities are treated as occurring during the Term. This is relevant in the calculation of post-Term commission.

Some management terms expire automatically when written notice is served. Others continue subject to notice periods like the notice period provided for in *Clause 2.1*, varying from 30 to 90 days.

The standard document provides that notice of termination can be served after the initial release of the group's second album or after five years. Exceptionally, the agreement could be amended to provide that notice may only be served after the release of three albums. However, in the current climate the development time required to get an artist a record deal is substantial, and it would be unusual to complete this and also three albums within five years.

It is generally accepted that five years is a benchmark beyond which a management agreement should not continue except with the assent of the artist. Unfortunately this means that an album cycle could be interrupted.

Possible additional provisions

The parties should also consider including clauses providing for a right for one or both of them to terminate the agreement where:

- There is a material breach of the agreement and/or repeated breaches of the agreement. Under common law, breach of a *condition*, or a fundamental breach of an *innominate* term would amount to a *repudiatory breach* of contract, entitling the innocent party to treat themselves as discharged from further obligations under the contract, instead of or as well as claiming damages (see *Practice note, Contracts: Discharge of contracts* and *Article, Great escapes: terminating a contract for breach, PLC Magazine, May 2006*). The question of what amounts to a repudiatory breach in the context of a management agreement is hotly debated. From the group's point of view, it may be preferable to include express provisions in a contract setting out the circumstances in which a right to terminate arises and how it may be exercised, rather than relying on common law, both for certainty and because, broadly speaking, common law only permits termination of a contract in relatively narrow circumstances.
- One of the parties becomes insolvent.

For suitable possible wording to terminate for material breach or insolvency, see *Standard clause, Termination*.

A force majeure provision could also be included in the agreement. Such a provision suspends performance of obligations where a party is prevented from performing them by events outside its control. However, it can provide an unduly wide escape route for the party invoking it if not carefully thought through. Another approach is to omit such a provision and rely instead on the application of the law of frustration, but this has considerable uncertainties. See *Standard clause, Force majeure*.

2.2 Notwithstanding *Clause 2.1*, if within 12 months of the commencement of the Term the Manager has not secured for the Artists a recording agreement or publishing agreement with a bona fide third party record company or publisher respectively, then the Artists may terminate the Term by serving 30 days' written notice after the expiry of that 12-month period. Such notice shall be of no effect if prior to the expiry of the 30-day period the Manager secures for the Artists either of the foregoing agreements.

Termination by the artist

The period after which artists may give notice to terminate a management agreement if no recording or publishing agreement has been secured has, in recent years, been extended to as long as 18 months due to the high burden of development required before an artist is likely to be signed to a record label. Certainly anything less than 12 months would be seen as highly ambitious. Allowing the contract to run for an extended period of time without showing any results may be regarded as an unfair restraint of trade (entitling the artists to walk away from the contract) (see *Drafting note, Restraint of trade*). Accordingly, a meaningful commitment to produce certain results after a reasonable period of time is recommended. For a time it was fashionable to put financial targets in the contract, but the fragile earning potential of an artist even once signed has led to financial targets falling out of favour.

Clause 2.2 provides that the manager must have "secured" a recording or publishing agreement, instead of providing that the artists must be a party to such an agreement. This is to allow a manager to get a firm offer "on the table" but not to be prejudiced by the artists' refusal to sign it.

Clause 2.2 provides that an agreement with a "bona fide third party" record company or publisher must be secured. The group may want to stipulate that it is entitled to serve notice if the manager has failed to procure an offer with a major label or publisher. Further, sometimes an offer from a publisher may be seen to be inadequate. Certainly, if no advances were payable, a publishing offer with a small independent publisher is unlikely to have anything like the justification implied by *Clause 2.2*. Accordingly, the group may also want to further refine the wording of this clause to ensure that publishing agreements meet certain criteria, for example, with regard to advances payable.

The final sentence of *Clause 2.2* is included to protect the manager by ensuring that, where the manager continues to work to secure agreements after the 12-month period, they will not have their appointment terminated at the eleventh hour having generated sufficient interest for a deal to be forthcoming.

3. APPOINTMENT

Appointment

Non-exclusive appointments are virtually unheard of and fairly unworkable.

The Artists hereby appoint the Manager to be the Artists' sole and exclusive manager during the Term in respect of the Activities.

4. MANAGER'S OBLIGATIONS

Manager's obligations

The manager also has accounting and money-handling obligations, detailed later (see *Clause 7* and *Clause 8*).

4.1 During the Term, the Manager shall use all reasonable endeavours to advance the Artists' career in connection with the Activities and generally render all services customarily rendered by a manager within the entertainment industry. The Manager shall act in good faith at all times in the performance of such services and keep the Artists reasonably informed of the Manager's activities on the Artists' behalf.

Services to be provided by manager

This clause provides for the manager to use "reasonable endeavours" to advance the artists' career. This is preferable to "best endeavours". Case law has given some guidance as to what "best endeavours" to advance an artists' career might entail, and it is (perhaps unsurprisingly) onerous. (For a discussion of the legal definition of "best endeavours" in a general commercial context, see *Practice note, Best or reasonable endeavours?*.)

Some contracts go to great lengths to describe the services to be rendered by the manager, including negotiating contracts, liaising with record labels and the like. However, it is unclear what this adds contractually, since the role of a manager is a fairly well-trod path.

Reference should also be made to the scope of the Activities, which sets out the extent of the managed activities.

4.2 During the Term the Manager shall negotiate all offers in respect of the Activities, save that the Manager shall not conclude any agreement on the Artists' behalf without the Artists' prior written consent, other than in respect of one-off live appearances that have been approved by the Artists in principle.

One-off appearances

This clause deals with the limits of the manager's authority to act as, in legal terms, the group's agent. It gives the manager authority to negotiate agreements for the group, but makes it clear that the manager cannot finalise agreements without the artists' prior written consent. For practical reasons it is often preferable to allow the manager to conclude agreements in respect of one-off appearances, usually television and radio promotion, but some artists will want to control this process more tightly.

4.3 The Manager shall not be obliged to provide the services of a live agent. If the services of a live agent are reasonably required in the furtherance of the Artists' career, the Manager may appoint a live agent on the Artists' behalf, subject to the Artists' reasonable approval of the identity of, and commission payable to, such agent.

4.4 The Manager must obtain the Artists' prior written consent to create each Released Recording on a case-by-case basis. The Manager will be entitled to distribute and otherwise exploit each Released Recording during the Term.

Released Recordings

It has been increasingly common for managers to independently release recordings on behalf of their artist in the early stages of an artist's career. This has the dual benefit of giving the artist a chance to release and promote recordings before they have been signed to a record label as well as giving the manager an opportunity to exploit new avenues of income. A manager should only have the right to release any such recording if the artist has given their prior written consent and the manager's right to release recordings should not extend beyond the term of the management contract.

5. ARTISTS' OBLIGATIONS

Artists' obligations

The artists are also obliged to pay the manager's commission and expenses (see *Clause 6* and *Clause 7*).

5.1 During the Term, the Artists shall not engage any person other than the Manager to act as the Artists' representative in respect of any of the Activities without the Manager's prior written approval, save that the Artists shall not be prohibited from appointing a legal representative and financial adviser from time to time.

Specialist agents

If specialist agents (for example, film, television or modelling agents) are also a permitted exception to the Manager's exclusivity, this would be provided for in *Clause 5.1*.

5.2 The Artists shall promptly refer to the Manager all enquiries in connection with the Activities received by the Artists, or received by another person on the Artists' behalf, during the Term and the Artists shall not attempt to negotiate or conclude any agreement offered pursuant to such enquiries without the Manager's involvement.

All enquiries to be referred to the Manager

This closes a possible loophole towards the end of the Term, where an artist might otherwise "blacklist" the manager to prevent certain agreements from falling under the agreement and becoming subject to commission under it.

5.3 The Artists shall perform to the best of the Artists' abilities all engagements that the Manager has arranged on the Artists' behalf that, subject to *Clause 4.2*, the Artists have approved.

Obligation to perform to best of Artists' abilities

This provision seeks to prevent the group from "downing tools" on a deal in which the manager has invested on the understanding that the group is willing to proceed. It is not designed to enable the manager to dictate which activities the group pursues.

6. COMMISSION

6.1 Subject to *Clause 6.3*, the Artists shall pay the Manager the following:
(a) 20% of Net Earnings in respect of live performances; and
(b) 20% of Gross Earnings in respect of Activities other than live performances.

Commission on live performances

Some managers include a provision that they receive the higher of 20% of Net Earnings for live performances or 10% of Gross Earnings, the rationale being that they do as much work, usually, as the live agents who are also paid on gross. The difficulty with this basis is that many live performances do not make a profit, putting the Manager in profit where the Artists are in loss. A midway position is to have an "adjusted gross" where only certain items (PA hire and live agents fees) are deductible. See further *Drafting note, Net Earnings*.

6.2 In respect of Released Recordings the Manager shall pay the Artists 50% of Net Record Earnings. No Commission shall be payable by the Artists on the Artists' share of Net Record Earnings.

Commission for recordings released by the Manager

If the manager releases any recording on behalf of the artists then the agreement proposes that the artists will receive 50% of the manager's net receipts. The precise income split is open to negotiation. The manager forgoes their right to charge commission on the artists' 50% share.

6.3 The Commission on Gross Earnings arising after the expiry of the Term, but before the date ten years after the expiry of the Term, shall be at full rate. The Commission on Gross Earnings arising after the date ten years after the expiry of the Term, but

before the date 20 years after the expiry of the Term, shall be at 50% of the rate that would otherwise apply. No Commission shall be payable on Gross Earnings arising after the date 20 years after the expiry of the Term.

Post-Commission period

There are various formulations of this post-term commission period. This is probably the most common, but some managers use a shorter period (7.5 years at full commission, 7.5 years at half rate); others use the same 20-year period but with a sliding scale (dropping to 15% after five years, 10% after ten, 5% after 15). In perpetuity post-term commission periods have all but been eroded, but there are some managers who still advocate this, sometimes on a half-rate basis.

7. EXPENSES

7.1 The Manager shall be responsible for the Manager's own office expenses and the payment of any employees engaged by the Manager, except for persons engaged with the Artists' prior approval (not to be unreasonably withheld) solely in respect of the Activities, or a pro rata share of persons so engaged in respect of one or more other artists. Domestic landline telephone charges and reasonable mobile phone charges shall be deemed to be office expenses.
7.2 Subject to providing reasonable supporting documentation, the Manager shall be entitled to be reimbursed for all Expenses only from Gross Earnings from which Commission is payable.

Live income

This clause has been drafted to make it clear that Expenses may only be paid from Gross Earnings which are subject to commission pursuant to *Clause 6.2*, to ensure that the manager cannot seek to claim expenses from Gross Earnings after the commission period.

One could argue that in respect of live income, Expenses should be deducted from Net Earnings only.

In rare instances, the manager will require that expenses are repayable as a debt. Such a provision is generally frowned upon.

7.3 The Manager shall obtain the Artists' approval for any single Expense or series of related Expenses in excess of [£500] and any Expenses in excess of [£1,000] in any calendar month. The Artists shall from time to time as requested by the Manager review these limits in good faith to reflect any success in the Artists' career.

8. ACCOUNTING

Accounting

In relation to auditing accounts, other restrictions beyond that specified in *Clause 8.2(e)* may be asked for by the artists, such as that the manager may only audit the same records once or only within three to four years of receipt of the statements.

The obligations set out in *Clause 8.3* are essentially the same obligations, in respect of the manager, as are expected from the artists in *Clause 8.2*.

8.1 The Artists shall, as soon as practical, appoint an accountant with music industry experience to receive all Gross Earnings on the Artists' behalf.

8.2 The Artists shall direct the accountant to:

(a) invoice Gross Earnings promptly and pay them into a bank account set up for the Artists, and ensure that the Manager receives monthly bank statements for the account;
(b) make suitable provisions to pay the Manager the Commission and the Expenses in accordance with this agreement and, subject to funds being available, to settle all invoices for such Commission and Expenses within 14 days of receipt;
(c) maintain a reasonable float account for the Manager's use in the payment of Expenses at such time as Gross Earnings permit;
(d) keep accurate, up-to-date and reasonably detailed books of account in respect of Gross Earnings and Net Earnings and provide the Manager with a statement showing the calculation of Gross Earnings and Net Earnings at regular intervals and no less frequently than [each calendar quarter]; and

(e) allow the Manager to audit the books of account once per year on reasonable notice.

8.3 Until the appointment of an accountant for the Artists, the Manager shall collect Gross Earnings on the Artists' behalf and pay the Gross Earnings into a separate account set up in the name of the Artists, after deducting any outstanding Commission and/or Expenses due to the Manager. During any period during which the Manager collects Gross Earnings, the Manager shall:

(a) maintain reasonable books of account and provide statements of them at regular intervals; and
(b) allow the Artists to audit those books of account once per year on reasonable notice.

9. WARRANTIES AND INDEMNITY

Warranties and indemnity

A warranty is a contractual promise that, if breached, gives rise to a right to sue for damages for breach of contract.

An indemnity is an express obligation to compensate, by making a money payment, for some defined loss or damage. If the artists are prepared to accept the inclusion of an indemnity in the agreement, this would significantly reinforce the effect of the warranties by putting the artists under an express obligation to compensate the manager for loss or damage arising out of breach of the warranties.

Even if no indemnity is given, the manager could still sue for damages for breach of contract against any warranties given by the artists under *Clause 9*. However, in practical terms, this is less desirable since, in order to be able to enforce

the promise given by the artists, the manager would have to commence legal action for breach of contract, which can be time-consuming and costly, and the manager could only claim damages under the usual breach of contract rules.

See *Practice note, Contracts: conditions, warranties and intermediate terms* for a general discussion of categories of contractual terms, including warranties.

Negotiating and drafting issues

In *Clause 9*, only the artists are providing warranties and an indemnity. The artists may also seek to obtain warranties from the manager on specific points, for example, a warranty that the manager has power and authority to enter into the agreement. The artists may also contend that the manager should also give an indemnity. The manager will resist providing warranties and will certainly resist providing an indemnity. If the manager does provide an indemnity, they are likely to seek to confine it to loss arising from breach of warranties given by them.

9.1 The Artists warrant that the Artists may enter into and perform this agreement.

9.2 The Artists warrant that none of the Artists are minors.

Minors

If any of the artists are minors (that is, under 18 years old), a separate parental guarantee letter is recommended in respect of those artists (see *Practice note, Contracts: capacity: Minors* for further information regarding minors' contractual capacity) and *Clause 9.2* should be modified to provide for a warranty that "none of the Artists except [NAME(S) OF MINOR(S)] are minors".

9.3 The Artists indemnify the Manager against all liabilities, costs, expenses, damages and losses (including legal fees) that the Manager may suffer as a result of the breach of any warranty contained in this agreement.

Indemnity

Clause 9.3 provides that the artists will indemnify the manager for losses the manager incurs due to breach of the warranties in *Clause 9.1* and *Clause 9.2*.

See *Standard clause, Indemnity* for full drafting notes regarding indemnities.

10. [KEY PERSON

Key person (optional clause)

This clause is optional. It is not a provision that is usually offered unless specifically requested. Where the manager is a management company, a key person clause is more common, particularly if the management company has more than one manager.

Some contracts like to quantify the amount of time allowed off for holiday and sickness, or to set a cap, such as eight weeks in any year or four consecutive weeks.

If, at any time, the Manager is unable or unwilling to provide on an ongoing basis, allowing for reasonable periods of absence for holiday and sickness, the personal services of [NAME] to supervise the management of the Artists' career under this agreement, the Artists may serve 30 days' written notice on the Manager requiring the Manager to provide those services. If, after the expiry of the 30-day period, the Manager has not provided those personal services, the Artists may terminate the Term by notice in writing provided that such termination notice is served within a further 30 days of the expiry of the first notice. For the avoidance of doubt, the Manager may provide the services of other personnel for all administrative functions of the Manager's services under this agreement, and may provide such personal services to the Manager's other artists.]

11. [GROUP PROVISIONS

Group provisions (optional clause)

Clause 11.1 and *Clause 11.2* are optional. In particular, *Clause 11.2(b)* may not always be considered desirable. Arguably, there are dubious benefits in such a provision as the terms of the current agreement allow the manager to continue to manage all the members anyway. However, having two separate contracts would make it easier to vary one and not the other in the future.

Clause 11.3 is also optional. However, from the manager's point of view, it may be useful to include it, even *Clause 11.1* and *Clause 11.2* are not included. Its effect is that notices served by, or approval given by, one group member will be deemed to be served or given the whole group, and notices can be served on, or approvals given to, a group by serving it on one member of the group (unless notice is served under clause 2.2 (notice served by the artists terminating the agreement) and *Clause 10* (notice by which the artists require provision of services by a key person)). This is likely to be of considerable practical importance, for example, it would mean that the manager does not need to send letters or emails to all members of the group every time the manager wants to serve notice under the agreement. Additionally, approval given to the manager by one member of the group will be deemed to amount to approval by all members of the group. While this may not be necessary in smaller groups, it may be useful for larger groups. Some larger groups will prefer that two members receive notices and provide approvals, and may seek to amend *Clause 11.3* to this effect. They might also seek to specify the particular members who should receive such notices.

11.1 If, during the Term, one or more of the Artists cease to be a member of the Artist Group, or if the Artist Group disbands, the Manager may serve written notice on the Artists referring to such events and requiring the Artists to confirm the status of the members of the Artist Group. For the avoidance of doubt, none of the foregoing events shall entitle any member of the Artist Group to terminate this agreement.

11.2 The Manager shall have the right, within 30 days of the later of notice served under *Clause 11.1* or the Artists' reply to such notice, to:

(a) terminate the Term by notice in writing in respect of one or more members of the Artist Group; and

(b) require any of the Artists who are no longer a member of the Artist Group to enter into a new management agreement, replacing this agreement, on the terms of this agreement for the balance of the Term.

11.3 Any notice or approval given by or to any of the Artist Group shall be deemed to have been given by or to all of the Artist Group respectively save that any notice served under *Clause 2.2* [or *Clause 10*] shall require service by or on behalf of all of the Artists.]

12. [**NOTICES**

Notices (optional clause)

Clause 12 is optional. However, given the importance of written notice in exercising various rights under the agreement (such as termination, suspension, or the rights under *Clause 11*), it may be prudent to include this provision in order to determine how notices are to be delivered. While notice provisions often provide that notice cannot be served by email, in view of the general informality and uncertainty of email, in practice, in the context of management agreements, notices are most likely to be served by email. Accordingly, *Clause 12* permits service in this manner. However, in order to reduce the risk that emails are overlooked (for example, because they are sent to an account which is no longer used), *Clause 12* is drafted to allow the email addresses which should be used for the purpose of serving notices to be specified. It is important for both parties that they ensure that the addresses are checked regularly or, where an address changes, that the change is notified to the other party.

For more information, see *Practice note, Notice clauses*. For an alternative clause, see *Standard clause, Notices*.

12.1 Any notice required to be given under this agreement shall be in writing and shall [subject as provided in *Clause 11.3*] be sent to each party required to receive the notice by pre-paid 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 as set out in *Clause 12.2*, 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, if sent by first-class pre-paid post, two Business Days after the date of posting or, if sent by email, the first Business Day after the date on which the email was sent.

12.2 For the purposes of *Clause 12.1*, the Manager's email address is [EMAIL ADDRESS] and the Artists' email addresses are [EMAIL ADDRESSES].]

13. DATA PROTECTION

Data protection

The *General Data Protection Regulation ((EU) 2016/679) (GDPR)* became applicable in EU member states on 25 May 2018 (see *Practice note: overview, Overview of EU General Data Protection Regulation*). The GDPR imposes increased obligations on data controllers as well as new direct obligations on data processors, and it continues to apply in the UK until the end of the ***UK-EU transition period***, alongside the *Data Protection Act 2018* (DPA 2018). For further information on the GDPR and the DPA 2018, see *Practice notes, Overview of GDPR: UK perspective* and *Data Protection Act 2018: overview*.

From the end of the UK-EU transition period, the retained version of the GDPR (UK GDPR) applies in the UK, along with the DPA 2018. For the background to UK data protection law during and after the transition period, see *Practice note, Brexit: implications for data protection* and *Practice note, Brexit post-transition period: data protection (UK)*. For information about retained EU law, see *Practice note, European Union (Withdrawal) Act 2018: legislating for Brexit: Conversion and preservation of EU law*.

A data controller is defined as a natural or legal person which alone, or jointly with others, determines the purposes and means of personal data processing (*Article 4(7), GDPR and UK GDPR*). A data processor is defined as a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller" (*Article 4(8), GDPR and UK GDPR*).

“Personal data" is defined as "any information relating to an identified or identifiable living individual" (the data subject), meaning a living individual who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data or an online identifier; or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual (*Article 4(1), GDPR and UK GDPR*). See *Practice note, Overview of EU General Data Protection Regulation: Personal data and data subjects*.

“Processing" is widely defined and includes, among other things, obtaining, recording, holding or disclosing personal data (*Article 4(2), GDPR*). In effect, any activity involving personal data will fall within its scope. For more information, see *Practice note, Overview of EU General Data Protection Regulation: Processing of data*.

Most obligations under the GDPR fall on the data controller. These include obligations relating to, for example, data security, personal data breach notification, recording data processing activities, individuals' rights and the lawful, fair and transparent collection of personal data. For more information on what it means to be a data controller, and the obligations imposed on data controllers under the GDPR, see *Practice note: overview, Overview of EU General Data Protection Regulation*.

For further information on what it means to be a data processor, see *Practice note, Data Processor Obligations Under the GDPR*.

For information about UK data protection obligations after the end of the Brexit transition period, see *Practice note, Brexit: implications for data protection*.

In the UK, the *Data Protection Act 2018* repealed and replaced the *Data Protection Act 1998* with effect from 25 May 2018. See *Practice note, Data Protection Act 2018: overview* for more information.

An important first step when sharing personal data is to establish early on which of the parties is a controller (determining the means and purposes of the processing) and which (if any) is a processor (acting on the instructions of the controller). This will have to be assessed based on the facts. In the context of the standard document, the Manager will be a data

controller in relation to the Artists' personal data. However, the Artists would appear to be data controllers insofar as they have the power to appoint an accountant to receive Gross Earnings and give the accountant directions under *Clause 8*. Therefore, and for the avoidance of doubt in any event, *Clause 13.1* imposes obligations on both parties to comply with Data Protection Legislation (as defined earlier in the agreement).

Since the Manager is likely to be controlling and processing a significant level of personal data about the Artists under the agreement, such as details of travel arrangements and accommodation, earnings and information regarding all contracts being negotiated and entered into, we have included *Clause 13.2* annexing a privacy notice. The privacy notice should be tailored to set out the personal data about the Artists which will be processed by the Manager, how it will be collected and how it will be used, including the lawful bases on which processing takes place – for example, in order to perform the contract which has been entered into. For a standard form of privacy notice which includes integrated drafting notes on the issues to be considered, which can be used as a basis for drafting, see *Standard document, GDPR Privacy notice for employees, workers and contractors (UK)*.

The standard privacy notice is drafted on the basis that consent will not generally be relied on as a lawful basis for processing, due to the difficulties of use of consent in an employment context. However, even in other contexts, it is unwise to rely on consent as a basis for processing unless there is no other option, as this can cause difficulties if consent is withdrawn at a later date. It is therefore advisable, if possible, to rely on another basis such as the performance of the agreement itself or pursuit of a legitimate interest. However, the legal bases available for processing certain special category personal data, relating for example to ethnic origin or health, are more limited, and processing of such data may require the data subject's explicit consent. For more information on consent to processing, see *Practice note, Overview of EU General Data Protection Regulation: Consent requirements*.

13.1 Each party shall, at its own expense, ensure that it complies with and assists the other party to comply with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data, including (without limitation) the Data Protection Legislation. This clause is in addition to, and does not reduce, remove or replace, a party's obligations arising from such requirements.

13.2 The Manager will collect and process the Artists' personal data in accordance with the privacy notice annexed to this agreement. The Artists will each sign and date a copy of the privacy notice and return it to the Manager.

14. VAT

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

15. SUSPENSION OF MANAGER'S OBLIGATIONS

Suspension of manager's obligations

The effect of this clause is that the manager can suspend the agreement where the group is unable or unwilling to perform its obligations under the agreement. Essentially, this clause is included to ensure that the artists cannot down tools to "wait out" the remaining term of the management agreement without performing the obligations arranged for them. (The group might do this between albums, or if it had appointed a new manager with effect from the end of the term of the current management agreement, for example.) The clause could be amended to provide that the suspension only comes into operation if the artists do not perform its obligations within a specified period of being provided with written notice. The manager might also want to include a provision that the manager can, alternatively (instead of invoking the

suspension clause) terminate the agreement on giving a certain amount of notice if the artists are unable or unwilling to perform their obligations.

In the event that the Artists are unable or unwilling to perform the Artists' obligations to the Manager under this agreement then, without prejudice to any other remedies that may be available to the Manager, the Manager may suspend the Manager's obligations to the Artists by written notice until the Artists resume the Artists' obligations to the Manager and confirm in writing that the Artists have done so. The Term shall be extended by a period equal to the period of suspension, provided that no such period of suspension shall exceed 12 months.

16. THIRD PARTY RIGHTS

Third party rights

The *Contracts (Rights of Third Parties) Act 1999* (1999 Act) applies to contracts entered into on or after 11 May 2000, and enables the parties to a contract to confer enforceable rights on third parties to that contract. It provides a statutory exception to the doctrine of privity of contract.

In the standard document, in order to remove any doubt on the point, the option of excluding third party rights, however they may arise (whether under the 1999 Act or otherwise), has been chosen. If a third party is to be granted rights under the 1999 Act, *Clause 16* would need to be revised. Reference should be made to *Standard clause, Third party rights* for integrated drafting notes.

This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

17. NO PARTNERSHIP OR AGENCY

No partnership or agency

For information on the use of this clause and *Clause 17.2*, see the integrated drafting notes to *Standard clause, No partnership or agency*.

17.1 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, nor authorise any party to make or enter into any commitments for or on behalf of any other party except as expressly provided in *Clause 4*.

17.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

18. ENTIRE AGREEMENT

Entire agreement

For more information on the use of this clause, see the integrated drafting notes to *Standard clause, Entire agreement*.

18.1 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.
18.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.
19. VARIATION

Variation

For drafting notes, see *Standard clause, Variation*.

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

Waiver

For drafting notes, see *Standard clause, Waiver*.

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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
21. SEVERANCE

Severance

For more information, see the integrated drafting notes to *Standard clause, Severance*.

21.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
21.2 If any provision or part-provision of this agreement is deemed deleted under *Clause 21.1* the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

22. GOVERNING LAW

Governing law

See *Standard clause, Governing law* and *Practice note, Governing law and jurisdiction clauses*.

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

23. JURISDICTION

Jurisdiction

See *Standard clause, Jurisdiction* and *Practice note, Governing law and jurisdiction clauses*.

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

THIS IS AN IMPORTANT DOCUMENT AFFECTING YOUR CAREER ON A POTENTIALLY LONG-TERM BASIS. YOU MUST THEREFORE TAKE ADVICE FROM AN INDEPENDENT LAWYER BEFORE DECIDING WHETHER TO SIGN IT.

Wording regarding legal advice

The manager is assumed to have a relationship of trust and confidence with the artists and, as such, "undue influence" may operate here. This wording in bold capitals has been included to try to avoid any arguments regarding undue influence, by clearly advising artists to seek independent legal advice. See further *Drafting note, Undue influence*.

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 MANAGER]	..... Director
OR	
Signed by [NAME OF MANAGER]	.....
Signed by [NAME OF THE ARTIST]	.....
Signed by [NAME OF THE ARTIST]	.....
Signed by [NAME OF THE ARTIST]	.....

Execution

The execution clause should be amended according to whether the manager is an individual or a management company.

For a detailed discussion of the execution of deeds and documents, including specimen execution clauses for the execution of documents by companies, see *Practice note, Execution of deeds and documents*.

END OF DOCUMENT