

## **PUBLISHING AGREEMENT [EXAMPLE]**

**THIS AGREEMENT** d.d. \_\_\_\_ - \_\_\_\_ - 2022

### **BETWEEN**

(1) [PUBLISHER] of [ADDRESS]  
( "the Publisher" )

and

(2) [WRITER] of [ADDRESS]  
( "the Writer" )

### **WHEREAS**

- (A) The Writer is a composer and arranger of music and/or author and arranger of lyrics of musical Compositions
- (B) The Publisher is engaged by itself and by its sub-publishers and licensees in the business of publishing and exploiting songs music and other literary dramatic and artistic property
- (C) The Publisher wishes to have the benefit of the exclusive services of the Writer as a writer and/or composer of musical Compositions during the Term.

### **NOW IT IS HEREBY AGREED** as follows:

- 1. In this agreement the following expressions shall have the following meanings:
  - 1.1. "Act" shall mean the Copyright Designs and Patents Act 1988 and any statutory re-enactment or modification thereto and any future legislation passed for the protection of performers.
  - 1.2. "Album" shall mean a Record containing not less than ten (10) Compositions and with a playing time of not less than thirty five (35) minutes comprising recordings of Compositions by the Writer
  - 1.3. "At Source/At Source Revenue" shall mean gross monies arising "at source" in any part of the Territory directly and identifiably from the Compositions after allowing for the following deductions only:
    - 1.3.1. VAT and any other similar sales taxes required to be deducted in any part of the Territory;
    - 1.3.2. commissions deducted by mechanical rights societies, performing right societies or other such societies or collection agencies in any part of the Territory and
    - 1.3.3. amounts payable to arrangers, adaptors and translators by way of remuneration or to any co-writer where Compositions are not wholly written by the Writer.
  - 1.4. "Composition" shall mean the whole or (when the Writer has co-written or co-arranged the same) the Writer's entire contribution to each of those musical works including but without limit the music lyrics and arrangements thereof written or composed prior to the date of this Agreement (which for the avoidance of doubt shall not include works previously assigned or licensed to third parties SAVE in so far as such works may revert to the Writer during the Term) or during the Term of this Agreement.
  - 1.5. "Contract Period" shall mean the Initial Period or (if applicable) any of the Option Periods
  - 1.6. "Cover" shall mean a recording of a Composition (performed by an artist other than the Writer or group in which the Writer performs) which has been procured by the sole and direct endeavours of the Publisher its sub-publishers or licensees in any part of the Territory
  - 1.7. "Major Record Company" shall mean one of the following record companies or their wholly owned subsidiaries or such other record company as may be approved by the Publisher (such approval not to be unreasonably withheld or delayed). [Names of Record Companies]

- 1.8. "Minimum Commitment" shall mean in the Initial Period and in each of the Option Periods (if applicable) the delivery to and commercial release by a Major Record Company of one (1) Album wholly written by the Writer (or the aggregate equivalent thereof)
- 1.9. "Name" shall mean [" "] or such other name as the Writer may use from time to time.
- 1.10. "Record" shall mean a carrier of sound only recordings
- 1.11. "the Rights Period" shall mean a period equal to the Term and the period of ten (10) years thereafter
- 1.12. "the Territory" shall mean [the World and its solar system]
- 1.13. "the Term" shall mean the Initial Period (as defined in this Agreement) together with each (if any) successive Contract Period in respect of which the Publisher shall have exercised its option including any extension or continuation of any period pursuant to the provisions of this Agreement.

## **2. TERM**

- 2.1. The Initial Period of this Agreement shall be a period commencing on the date of this Agreement and expiring twelve (12) months after such commencement or if later one hundred and twenty (120) days after the fulfilment of the Minimum Commitment for the Initial Period.
- 2.2. The Writer hereby grants to the Publisher [three (3)] separate consecutive options to extend the Term for further periods commencing upon the expiry of the then current Contract Period and expiring twelve (12) months after such commencement or, if later, one hundred and twenty (120) days after the fulfilment of the Minimum Commitment for the applicable Contract Period (the "First Option Period", "Second Option Period", and "Third Option Period" respectively and collectively referred to as the "Option Periods") provided that no Contract Period shall in any event last more than two (2) years
- 2.3. Each option referred to in clause 2.2 above shall be exercised by the Publisher serving upon the Writer written notice at any time prior to the expiry of the then current Contract Period. Notwithstanding any of the foregoing if at the date when the then current Contract Period would otherwise have expired the Publisher has neither exercised its option to extend the Term for a further Contract Period nor notified the Writer that it does not wish to exercise such option then the following provisions shall apply:
- 2.3.1. The Writer shall forthwith notify the Publisher in writing that its option has not yet been exercised ("an Option Warning")
- 2.3.2. The Publisher shall be entitled to exercise its option to extend the Term for a further period as set out above at any time before receiving the Option Warning or within five (5) business days thereafter.
- 2.3.3. The then current Contract Period shall be deemed to have continued until the Publisher either exercises its option or gives notice to the Writer that it does not wish to exercise its option or until the end of such period of five (5) business days (whichever shall first occur) provided always that in the event that the Publisher exercises its option to extend the Term then the commencement date of the relevant Contract Period shall be deemed to be the date such Contract Period would have commenced had the Publisher exercised its option in a timely fashion without regard for the provisions of this clause.

## **3. DURATION OF RIGHTS**

- 3.1. Notwithstanding the expiry or termination of the Term howsoever, all the rights, title and interest of the Publisher in each and all of the Compositions shall remain with, belong to and be vested in the Publisher for the Rights Period. If the date of the re-assignment of rights does not fall on a 30th June or 31st December the Rights Period shall be extended to the next following such date. Notwithstanding the foregoing the Publisher shall have the right to grant a perpetual synchronisation and/or mechanical licence in respect of any Composition hereunder.
- 3.2. Upon the expiry of the Rights Period above the Publisher shall hereby re-assign to the Writer all rights and interest in the Compositions as are granted hereunder to the Publisher and shall (at the Writer's sole cost and expense) sign any documents and do any acts reasonably requested of the Publisher by the Writer to further assure or give effect to this provision.

- 3.3. Notwithstanding the foregoing provisions of this clause, the Publisher shall (subject to accounting to the Writer for royalties as provided for herein) have the non-exclusive right to distribute and sell and authorise the further distribution and sale of any printed editions then printed by or on behalf of the Publisher containing solely Compositions for a period of six (6) months after the expiry of the Rights Period hereunder. In respect of "mixed folios" containing Compositions together with other musical works the Publisher shall have the non-exclusive right to sell such folios for the full period of time as the same may be printed by or on behalf of the Publisher.
- 3.4. The Publisher shall be solely and exclusively entitled to collect and to be paid and retain (subject to accounting to the Writer for royalties as provided for herein) all monies, royalties and fees derived from the use and/or exploitation of the Compositions during Term and Rights Period in the Territory and prior thereto even though such monies, royalties and fees are collected by the Publisher or its agent after the expiry of the Rights Period but only for a period of two (2) years after such expiry.
- 3.5. In the event that, notwithstanding the expiry of the rights of the Publisher hereunder (including the right to collect referred to in sub-clause 3.4 above), the Publisher shall continue, through no fault of the Publisher, to receive fees and royalties derived from the use and/or exploitation of the Compositions after the Rights Period whenever paid the Publisher shall account to the Writer for one hundred per cent (100%) of such sums without any deductions therefrom.

#### **4. ENGAGEMENT**

- 4.1. The Publisher hereby engages and in consideration of the advances payable to the Writer by the Publisher as provided in Clause 5 and the royalties payable to the Writer by the Publisher as provided in Clause 6 the Writer hereby agrees to render to the Publisher the Writer's sole and exclusive services as a composer writer and arranger of Compositions during the Term.

#### **5. ADVANCES**

- 5.1. The Publisher shall make the following payments to the Writer in advance of and recoupable from the royalties and fees payable to the Writer pursuant to Clause 6:
- 5.1.1. Initial Period [        ]
- 5.1.2. First Option Period [        ]
- 5.1.3. Second Option Period [        ]
- 5.1.4. Third Option Period [        ]
- 5.2. The advance for the Initial Period shall be payable as to one half (1/2) upon signature and one half (1/2) upon fulfilment of the Minimum Commitment for the Initial Period. The advances for the First to Third Option Periods (if applicable) shall be payable as to one half (1/2) upon commencement of the relevant Option Period and one half (1/2) upon fulfilment of the Minimum Commitment for the relevant Option Period.
- 5.3. The advance payments set out above shall be non returnable but recoupable by the Publisher out of any and all fees and royalties (but not advances) at any time payable to the Writer pursuant to this Agreement to the extent that no royalties shall be payable until all previously paid advances shall have been recouped in full from the Writer's share of fees and royalties shown to be due and owing. In the event of termination of the Term (howsoever caused) no further advance payments shall become payable to the Writer under this Agreement.
- 5.4. The Publisher may (but shall not be obliged to) at the written request of the Writer bring forward the payment of any or any part of the advance payments set out above.

#### **6. ROYALTIES**

- 6.1. In consideration of the rights granted under this Agreement the Publisher shall pay to the Writer royalties as follows:
- 6.1.1. *SHEET MUSIC ROYALTIES*
- 6.1.1.1. Twelve per cent (12%) of the marked retail selling price (after deduction of taxes) of all printed copies of the Compositions or part thereof sold in the Netherlands and paid for and not returned but so that no royalty shall be payable on sample or professional copies.
- 6.1.1.2. Seventy per cent (70%) of all royalties received at source from the sale of printed copies of the Compositions outside the Netherlands

- 6.1.1.3. The Publisher shall have the right to include the Compositions or part thereof in any album folio newspaper or other printed material and to license others to do so and the Publisher shall pay to the Writer that proportion of such royalties as each Compositions contained therein shall bear to the total number of all royalty bearing musical works contained therein.
- 6.1.2. **MECHANICAL AND VIDEO ROYALTIES**  
Seventy five per cent (75%) of At Source Revenue in respect of mechanical and audio-visual reproductions of the Compositions manufactured or sold in the Territory by the Publisher or its licensees.
- 6.1.3. **COVERS**  
Seventy per cent (70%) of At Source Revenue in respect of Cover mechanical and audio-visual reproductions of the Compositions manufactured or sold in the Territory.
- 6.1.4. **SYNCHRONISATION FEES**  
Seventy per cent (70%) of At Source Revenue in respect of synchronisation rights in the Compositions licensed by the Publisher or its licensees and procured by the Publisher's or its licensees sole and direct endeavours for productions originating in the Territory
- 6.1.5. **OTHER FEES**  
Seventy five per cent (75%) of At Source Revenue (excluding Performance Income defined in sub-clause 6.2 below) in respect of any actual sale or use of the Compositions not referred to above which has taken place.
- 6.1.6. **COLLABORATION**  
Notwithstanding anything to the contrary herein contained if any musical composition lyric or arrangement (the Writer's entire contribution thereto being the subject of this Agreement) shall have been or shall be created by the Writer in collaboration with any other person then the Publisher shall pay to the Writer in respect of one hundred per cent (100%) of such musical composition lyric or arrangement the fraction of the royalties herein provided of which the numerator is one (1) and the denominator is the total number of persons collaborating in the composition of such musical composition lyric or arrangement or such other division as shall appear to the Publisher appropriate and reasonable save that if the Writer provides the Publisher with an agreement signed by all such parties establishing a different division then the Publisher shall account in accordance with such agreement.
- 6.2. **PERFORMANCE INCOME**
- 6.2.1. Monies fees and royalties arising out of the administration of the rights vested in the Performing Right Society Limited ("PRS") and its affiliated societies for collection of performance income from time to time in respect of the Compositions (including without limitation those monies arising from the performance or broadcasting of the Compositions) are referred to in this Agreement as "Performance Income" and are collected by the PRS and paid direct to its members in accordance with the rules laid down by that Society. It is agreed that the Publisher's share of Performance Income (and where applicable that of its sub-publishers and licensees) shall be 6/12ths of all monies collected by PRS or by its affiliated societies in respect of each Composition and that the PRS and its affiliated societies shall be so instructed by the parties hereto.
- 6.2.2. This Agreement shall be deemed the Writer's certificate for the purpose of Paragraph (ii) of Rule 1(o) of the rules of the PRS authorising it to treat the Publisher as exploiting the Compositions (other than by publishing) for the benefit of the persons interested therein
- 6.2.3. The Publisher shall account for and (subject to recoupment of advances) pay to the Writer sums equal to fifty per cent (50%) of the Publisher's said share of Performance Income distributed by the PRS and received by the Publisher from the PRS and of the Publisher's share received from its sub-publishers and licensees (after deduction of any amounts due to or properly retained by such sub-publishers or licensees)
- 6.2.4. In the event that the Writer is not a member of the PRS or any other equivalent collection society or some or all of the Performance Income is not collected and/or distributed by the PRS or any other equivalent society the Writer hereby grants to the Publisher the right to collect the Writer's share of all Performance Income from the PRS (and its affiliated societies) or from any other entity as well as the Publisher's said share pursuant to the rights granted hereunder subject to the payment to the Writer by the Publisher of the same share of all fees

received by Publisher as the share which would have been payable to the Writer by the PRS in respect thereof in accordance with the provisions hereof.

Met opmerkingen [VdH1]: PRS is een Engelse CBO.

## 7. ASSIGNMENT OF RIGHTS

- 7.1. The Writer now assigns to the Publisher (by way of present and future assignment) with full title guarantee the whole and entire copyright making available right and all right title or interest of the Writer in each of the Compositions and any and all renewals and extensions thereof throughout the Territory for the Rights Period free from all claims.
- 7.2. The rights assigned in this Agreement shall include (without limitation):
- 7.2.1. The sole and exclusive right to print, copy and otherwise graphically reproduce and to publish the Compositions in any form and by any means whatsoever (including album, song-books, folios or in other compilations together with any other musical Compositions) and the sole and exclusive right to sell, distribute, hire, lend to the public or otherwise dispose of such reproductions and copies;
- 7.2.2. The sole and exclusive performing rights, including the "grand performing rights" (such grand performing rights not to be exercised without the Writer's prior written approval) in the Compositions and the sole and exclusive rights to make a dramatico/musical work of the Compositions and the sole and exclusive right subject to the rights of the "PRS" or other performing right society of which the Writer is a member to broadcast or re-broadcast the Compositions by means of radio or television and by any other means whatsoever, including broadcasts transmitted from transmitters situated in the Territory wherever the same may be received and to transmit the Compositions to subscribers to a diffusion service by any means whatsoever, whether with or without visual images and for all purposes including without limitation, advertisements;
- 7.2.3. The sole and exclusive right to reproduce and exploit the Compositions by means of mechanical reproduction by way of record or any other sound bearing contrivance and/or visual image producing contrivance now known or hereafter developed subject always to the terms of any recording agreement entered into by the Writer.
- 7.2.4. Following consultation with the Writer and having taken full regard of the Writer's wishes the sole and exclusive right to make adaptations and arrangements of and alterations and additions to the Compositions at the discretion of the Publisher, including the right to add lyrics or new lyrics thereto, to provide translations of the Compositions or new lyrics in other languages or to add music and to authorise others so to do provided that no adaptation, arrangement, alteration or addition of a material nature shall be made nor any changes to the English lyrics of any Composition without the prior written approval of the Writer. The copyright in all such adaptations, arrangements, alterations, additions, translations, lyrics, new lyrics and music shall, subject always to the applicable laws and rules of mechanical and performing right societies in each country of the Territory be owned by the Publisher but shall be assigned to the Writer on the expiry of the Rights Period or upon earlier termination of the Publishers' rights pursuant to the terms of this Agreement.

The remuneration of any arrangers, adapters and translators shall be governed by the relevant rules of the performing right societies, mechanical right societies and other bona fide collection agencies to which they and/or the Publisher, or its agent or licensee, shall belong. If no such rules are applicable then their remuneration shall be at the reasonable discretion of the Publisher, subject to the approval of the Writer;

- 7.2.5. The sole and exclusive right subject to the Writer's written approval to reproduce and exploit the Compositions by means of synchronisation with any cinematograph film, television film or production, video cassette or disc or any other visual image producing device now known or hereafter to become known and with any commercial or advertisement. The Publisher agrees to issue synchronisation licences in respect of promotional videos free of charge other than for advertisements for records and/or videos embodying Compositions;
- 7.2.6. The sole and exclusive right to use and licence others to use the title or titles of the Compositions for all purposes provided that the Publisher shall not without written consent of

the Writer use and licence others to use any title or titles separately from the rest of the Composition;

- 7.2.7. The sole and exclusive right to lease, hire or lend to the public copies of the Compositions, whether printed copies, mechanical reproductions or other copies or reproductions;
- 7.2.8. The sole and exclusive right to exercise all other rights of whatever nature, whether now or hereafter known or created or arising, in respect of the Compositions and to use and to promote the same in and by means of all existing and new and undiscovered methods;
- 7.2.9. The right to use and to authorise or permit others to use the Name the Writer's name and professional name and to the extent that they have been approved by the Writer, the Writer's photographs, likenesses, portraits, images, autograph facsimiles and biographical material in connection with the use and/or exploitation of the Compositions hereunder and in publicity and/or advertisements for the Writer and/or Publisher and/or any relevant record company provided always that any such materials supplied by the Writer to the Publisher shall be deemed approved;
- 7.2.10. The right to collect and receive one hundred per cent (100%) of the total income, royalties and fees (including where applicable performance fees) but subject to the terms of this Agreement arising from the exercise of the rights in the Compositions referred to hereunder. The Writer undertakes to take any action reasonably necessary to facilitate the above and to do nothing which would or might prejudice such right;
- 7.2.11. The right to authorise or license others to exercise any or all of the above rights subject to the Writer's approval where such approval is required under the terms of this Agreement, provided that the Publisher shall remain responsible to the Writer for the payment of advances and royalties hereunder;
- 7.2.12. The Writer grants to the Publisher, its licensees and/or assignees all consents required by the Act to enable the Publisher, its licensees and/or assignees to use and exploit recordings of performances by the Writer in all media throughout the Territory, provided that no such use or exploitation shall be authorised unless there is in place a contract with the Writer governing the terms of such use or exploitation;
- 7.2.13. The Writer hereby grants to the Publisher an irrevocable Power of Attorney in respect of the Compositions, for the sole purpose of authorising the Publisher, its licensees, successors and assigns, to file applications for copyright registration and/or renewal and to renew and extend the copyrights and execute proper and formal assignment thereof in the Writer's/Publisher's names, so as to secure to the Publisher, its licensees, successors and assigns, the copyright to the Compositions and all renewals and extensions thereof, subject to the terms and conditions of this Agreement. Re-assignment of the Compositions at the end of the Rights Period or under clause 13 hereof shall nullify this sub-clause;
- 7.3. The so called "writers' share" and so called "publishers' share" of broadcast/public performance income shall be six twelfths (6/12ths) in each case throughout the Territory and each party agrees not to do or omit to do anything to change such splits and otherwise the rights above are subject to the rights and rules of any recognised performing rights society to which the Writer belongs.
- 7.4. All the rights granted to the Publisher by the Writer pursuant to this Agreement are subject to the rules of any performing rights society to which the Writer belongs. However, if such rights become no longer subject to such rules then they shall revert to the Publisher for the Rights Period.

## **8. WRITER'S WARRANTIES**

The Writer hereby warrants to the Publisher that:

- 8.1. The Writer is and will be the sole composer and writer of the Compositions and the sole owner thereof (subject to the terms of this Agreement) and that none of the Compositions is or shall be criminally obscene or defamatory or infringe the copyright or any other rights of any third party and that each of the Compositions is and shall be wholly original to the Writer except that if the Writer does collaborate with any third party in the creation or arrangement of any musical composition or lyric during the Term then part of the musical composition lyric or arrangement created or arranged by the Writer shall not be criminally obscene or defamatory or infringe the copyright or any other rights of any other party and shall be original to the Writer

- who shall be the sole owner thereof and the Writer shall inform the Publisher of the identity of such collaborator upon creation and upon Delivery of each such composition or lyric to the Publisher
- 8.2. to the best of the Writer's knowledge and belief copyright in the Compositions shall subsist or may be acquired in all countries of the world whose laws provide for copyright protection and that he will not at any time hereafter do authorise or omit to do anything relating to the Compositions or any of them whereby the subsistence of copyright therein or any part of such copyright may be destroyed or otherwise impaired.
- 8.3. There are no musical Compositions by the Writer prior to the date hereof other than as set forth in Schedule A or as otherwise notified by him to the Publisher in writing prior to the execution hereof and that he will immediately following the execution of this Agreement for all Compositions existing at the date hereof and forthwith upon the creation of each Composition during the Term deliver to the Publisher a letter agreement in the form annexed hereto and marked "Exhibit A" together with all relevant and correct copyright information relating to that Composition (including without limitation the full names and addresses of all other writers and (if applicable) their music publishers and performing right society and their shares in that Composition) together with either a legible lead sheet or clearly audible recording together with a lyric sheet
- 8.4. The Writer will not during the Term render on his own behalf or to any third party his services as a composer and writer of Compositions except with the prior written consent of the Publisher Provided that if the Writer is commissioned during the Term to compose musical Compositions for synchronisation in films, advertisements or interactive devices ("Commissioned Compositions") then the Writer shall use his reasonable endeavours to procure that the Commissioned Compositions are assigned to the Publisher in accordance with and subject to the provisions of the Agreement, but if it is a condition of such commission that the copyrights in the Commissioned Compositions shall be assigned to a third party nominee of the commissioner [ ] then the Writer shall not be regarded as being in breach of this Agreement if they are so assigned provided that the Publisher is promptly notified in writing of such assignment and provided that the Writer does not agree a royalty split of less than fifty per cent (50%) of all income generated by the Commissioned Compositions concerned and that the Writer shall have irrevocably authorised and instructed the commissioner or the commissioner's nominee to account for and pay directly to the Publisher and not to any sub publisher or licensee any and all publishing fees and royalties (but not bona fide commissioning fees or the Writer's share (not exceeding 6/12ths of performance and broadcast fees) otherwise payable to the Writer in respect of earnings by the Commissioned Compositions in the Territory during the Rights Period. All such fees and royalties so paid to the Publisher shall be deemed to be income pursuant to this Agreement and shall be treated in accordance with the provisions of Clause 6.1.5 hereof. For the avoidance of doubt any sum the Writer receives pursuant to any such commission which is recoupable from any fees and royalties payable to the Publisher as aforesaid shall be promptly notified but need not be paid by the Writer to the Publisher.
- 8.5. The rights hereby granted and assigned are or will be vested in the Writer absolutely and that (save as disclosed to the Publisher in writing before the signing hereof) the Writer has not previously assigned licensed granted any interest in or in any way encumbered the same so as to derogate from the grant and assignment hereby made and that the Writer has a good title and full right and authority to enter into this Agreement
- 8.6. Save as may have been disclosed in writing to the Publisher prior to signature of this Agreement the Writer has not made and will not hereafter without the prior written consent of the Publisher make any representation to or agreement with any third party as to the terms upon which any mechanical licence in respect of any of the Compositions might be available in any country in the Territory. If the mechanical royalty rate in respect of the United States of America and or Canada is equal to or greater than seventy five per cent (75%) of the full statutory mechanical royalty rate the Publisher shall not penalise the Writer.
- 8.7. The Writer will not during the Term consent to or permit the use of his name or the Name as the composer or writer of any musical composition or lyric of which he is not the composer or writer and that the Writer will not without first notifying the Publisher in writing compose write

or arrange any musical composition or lyric under any name other than the Writer's own name or the Name.

- 8.8. The Writer is a "qualifying person" as that expression is defined in the Act and that he is a British subject resident in the United Kingdom for the purposes of the Income Tax Acts and will remain so resident and so qualified during the Term
- 8.9. The Writer will at the request and expense of the Publisher do all such further things and execute all such further instruments as the Publisher may from time to time reasonably require including without limitation all directions to the PRS and other documents for the purpose of confirming the Publisher title in any part of the Territory to the rights hereby granted to the Publisher and the payment to the Publisher of all monies which it is entitled to collect hereunder
- 8.10. Prior to signature hereof the Writer has taken independent advice from a solicitor specialising in music industry contracts and understands and intends to be bound by the provisions of this Agreement
- 8.11. In the event that the Writer receives any monies which the Publisher is properly entitled to collect hereunder the Writer shall forward them promptly and in full to the Publisher to be dealt with in accordance with Clause 6.

## 9. PUBLISHER'S RIGHTS

- 9.1.1. The Publisher shall have the right (in full consultation with the Writer where available) to take all steps which it may in its discretion and at its reasonable expense elect to protect defend or maintain the rights and interests intended by the Publisher to be acquired hereunder including such action as it deems necessary either in the Writer's name or in its own name against any person to protect or enforce all such rights and interests. The Publisher shall have the right in its absolute discretion to engage solicitors and the right to institute or defend any action or proceeding and to take any other steps to protect or enforce all such rights and interests and in that connection but only with the Writers consent to settle compromise or in any other manner dispose of any matter claim action or proceeding and to satisfy any judgment that may be rendered in any manner. Any legal advice sought or action brought by the Publisher in respect of any alleged infringement of any such rights or interests shall be initiated and procured by the Publisher and if the Publisher retains any proceeds therefrom then the amount of such proceeds after deduction of the Publisher's bona fide liabilities and legal expenses shall be divided as between Publisher and Writer as if they were royalties received in accordance with Clause 6 hereof. For the avoidance of doubt the costs and expenses of any action the Publisher may take is non returnable and unrecoverable against the Writer unless the Writer has instructed the Publisher in writing to take such action.
- 9.1.2. In the event that the Publisher elects not to institute a claim then the Writer shall have the right to bring any such proceedings in his own name and solely at his own expense and in such event any sums recovered by the Writer shall be retained in their entirety by the Writer.
- 9.2. The Publisher may with the Writer's prior written consent assign the benefit of this Agreement or any of its rights or benefits hereunder in whole or in part to any associated company or to any person firm or company who owns or hereafter acquires a substantial portion of the Publisher's stock or assets or with whom Publisher may merge who is actively engaged or intends immediately to be engaged in music publishing and who may in each case agree in writing with the Writer to observe and perform the Publisher's obligations hereunder and who shall then be entitled to the rights and benefits to which the Publisher is entitled hereunder or such of them as are also assigned and all the representations warranties and undertakings of the Writer herein contained shall to the extent of such assignment thereupon enure for the benefit of such assignees.

## 10. ACCOUNTING PROVISIONS

- 10.1. Publisher shall account to the Writer half-yearly in the form of a detailed royalty statement within ninety (90) days of 30th June and 31st December in each year for all sums received/accrued to Writer's account with Publisher. Publisher will forward any payment due to the Writer with such statement.

Met opmerkingen [VdH2]: Of andere CBO's

- 10.2. All such statements shall be binding upon the Writer unless specific objection thereto is made within four (4) years after the date upon which they are rendered.
- 10.3. The Writer may appoint a representative to examine the books and records of the Publisher but only once in any calendar year. The Writer shall give notice in writing of intent to examine and the Publisher shall arrange for such examination to take place within 30 days of said notice and the Publisher will co-operate with any representative conducting such examination and make available all relevant copy documentation. In the event of any such examination revealing an under payment in excess of 10% or € 2,000 (whichever is greater) of the monies shown due to the Writer on statements (or any of them) rendered and the subject of the examination the Publisher will forthwith pay the Writer's reasonable costs of examination together with the outstanding sum and interest thereon at 3% above the Publisher's banker's published base rate from time to time.
- 10.4. The Publisher shall not be required to account in respect of any sums not actually received by the Publisher in the Netherlands.

## **11. INCOME / WITHHOLDING TAX**

- 11.1. In the event that the Publisher shall be obliged by the laws of the Territory or any part of the Territory to deduct and withhold income or other similar tax from royalties or advances payable to the Writer under this Agreement the Publisher shall provide the Writer with a certificate of such deduction/withholding. In respect of any deduction/withholding required to be deducted in respect of payments by third parties to the Publisher, the Publisher undertakes to complete, execute and deliver all double taxation exemption documentation or other clearances as are available to prevent such deduction/withholding SAVE THAT where such exemption is not available but the Publisher receives a tax credit in respect of such deduction or withholding the Publisher shall account to the Writer for the Writer's share of all sums earned gross of any deduction/withholding.

## **12. PUBLISHER'S OBLIGATIONS**

- 12.1. The Publisher shall use its best commercial endeavours to:
  - 12.1.1. Ensure the collection promptly and in full of all earnings in respect of the Compositions during the Rights Period and to maximise the income due to the Writer from the exploitation of the Compositions and
  - 12.1.2. Ensure that all Compositions are notified to its sub-publishers agents licensees and associated companies and all relevant royalty collecting and licensing societies and
  - 12.1.3. Exploit the Compositions by such means as shall be customary in the music publishing business in the United Kingdom and in particular where the Publisher deems it necessary the Publisher shall arrange and pay for:
    - 12.1.3.1. The preparation of copy tapes for the purposes of such exploitation
    - 12.1.3.2. The submission of Compositions to artists producers and other interested parties with a view to obtaining cover recordings
    - 12.1.3.3. Any other acts and deeds as may be necessary in the reasonable and commercial opinion of the Publisher adequately to exploit the Compositions.
- 12.2. The Publisher shall if so requested by the Writer in writing grant to any record company a mechanical licence at MCPS standard rates in respect of any of the Compositions. Notwithstanding the foregoing it is hereby agreed that during the period of nine (9) months after the Writer has written any Compositions the Publisher shall not without prior written consent of the Writer grant a first mechanical licence in respect of that Compositions which would enable recordings embodying performances of that Compositions rendered by someone other than the Writer to be released on Records.
- 12.3. If any of the Compositions has been specially written for a film the Publisher shall use its best endeavours to exploit that Compositions for the benefit of the Writer by means additional to the inclusion of that Compositions in the soundtrack of that film and the public performance or broadcast of that film or its communication to the public.
- 12.4. The Publisher agrees to make available to the Writer the services of the relevant member(s) of its staff of creative personnel, professional manager and copyright and royalty personnel,

at suitably agreed times for the purpose of assisting the Writer in the Writer's activities and for rendering advice and consultation in matters concerned with this Agreement including (where relevant) advising the Writer on the choice of producers, co-writers, managers, songs and assisting the Writer (where applicable) to obtain a recording agreement.

- 12.5. For the avoidance of doubt the Publisher shall have no right to participate in merchandising income in respect of the Writer or the Compositions nor may any grant of so called "merchandising" or "endorsement" rights be presumed from the grants made herein and the same are specifically reserved to the Writer in their entirety.

### **13. RE-ASSIGNMENT**

- 13.1. NOTWITHSTANDING anything herein contained if in the case of any Composition there shall not have taken place in any part of the Territory at any time before the expiration of the period of two (2) years immediately following the date of expiration of the Term either:
- 13.1.1. A recording of such Composition by a bona fide recording artist and not solely for purposes of this Clause 13 for the purpose of reproducing the same on a record or any other sound bearing device or visual image producing device for sale to the public in reasonable commercial quantities.
- 13.1.2. The grant of a licence at a reasonable fee for the synchronisation of such Compositions with any motion picture or television film or production or any other visual image producing device
- THEN the Writer shall be entitled to give notice of such fact to the Publisher at any time after the date of the expiration of such period of two (2) years
- 13.2. If none of the uses referred to in sub-clause 13.1 has taken place in any part of the Territory in respect of such Composition within a further period of three (3) months after the date of receipt by the Publisher of such notice then at the expiration of such further period of three (3) months all rights hereby assigned to the Publisher in respect of such Compositions are hereby automatically re-assigned to the Writer (subject always to the provisions of paragraph 13.3 of this clause) and the Writer shall have no further recourse whatsoever against the Publisher in respect of such Composition.
- 13.3. Any such re-assignment shall be subject to all rights in such Composition for any country of the Territory as may have been vested by the Publisher in any sub-publisher or licensee by virtue of any agreement made before the date of receipt of such notice by the Publisher but so that the Writer shall be entitled to be informed of all such arrangements and be entitled to copies of such agreements and to receive all royalties earned by such Compositions under such agreements after the date of such re-assignment.

### **14. INDEMNITY AND REMEDIES**

- 14.1. The Writer and the Publisher (along with the Publisher's agents licensees and associated companies) shall indemnify each other and hold each other harmless from and against any and all bona fide legal demands liabilities costs and expenses including reasonable legal fees arising out of or by reason of any breach by the Writer or Publisher of any representations undertakings warranties or agreements herein contained but unless otherwise hereafter agreed to the extent only of a settlement with the Writer's written approval or the adjudication of a court of competent jurisdiction. Upon notice of any such bona fide legal claim against the Publisher the Publisher upon written notice to the Writer shall be entitled to withhold from the amounts payable to the Writer under this Agreement such amounts as may reasonably represent the value of such claim including reasonable legal fees incurred in connection therewith provided however that any such withholding by the Publisher in accordance with the foregoing shall be released to the Writer in respect of any particular claim unless litigation is instituted in connection therewith within six (6) months after the withholding is first made. The Writer shall have the right to participate in the defence of any such claim at the Writer's own cost and expense
- 14.2. If either party shall commit any breach of any material term of this Agreement and shall where such breach is capable of remedy by that party acting alone fails to cure such breach within thirty (30) days after receiving written notice specifying the breach and the steps required to cure the same ("the cure notice") by the party having served that cure notice may (without

prejudice to any other rights or remedies to which that party may be entitled under the terms of this Agreement or otherwise howsoever) within thirty (30) days thereafter terminate the Term forthwith by further written notice. In the event a cure notice is served by the Publisher then the Publisher may elect by that or any later written notice to extend the cure period and to suspend the Term and any payment due hereunder and its right of termination but not for longer than six (6) months unless the Publisher shall within that time have commenced proceedings against the Writer in respect of that breach

- 14.3. If the Publisher or the Writer is unable for any reason beyond its or his reasonable control (including but not limited to war invasion or act of foreign enemy hostilities whether war be declared or not civil war or strife rebellion strikes lock-outs or other industrial disputes or acts of God acts of governments or other prevailing authorities or defaults of third parties) to fulfil any of its or his respective obligations hereunder then such inability shall not constitute a breach and either the Publisher or the Writer may by written notice suspend the Term until such obligation is fulfilled but no one such period of suspension shall be for a period of more than six (6) months and the total period of suspension shall be for no more than one (1) year during the Term unless formal court proceedings are instituted
- 14.4. In the event the Publisher shall during the Term enter into liquidation then save where it does so following a permitted assignment of its rights hereunder or does so for purposes of amalgamation or reconstruction the Writer shall be at liberty by service of notice pursuant to this sub-clause 14.4 to terminate the Term forthwith and all rights in the Compositions shall automatically revert to the Writer

15. **MISCELLANEOUS**

- 15.1. No waiver of any breach of any term hereof shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other term.
- 15.2. All notices or payments which either party shall deliver to the other shall be sent by pre-paid letter post addressed to the other at the address set forth herein or at such other address as may be communicated in writing from time to time. All such notices shall be deemed served at the date three (3) days after the date of said mailing or upon actual receipt by the addressee whichever is earlier.
- 15.3. Nothing in this Agreement shall be construed so as to imply a partnership between the parties
- 15.4. Without prejudice to the Publisher's right to sub-licence as set out above neither party shall have the right to assign the benefit of this Agreement without the prior written consent of the other party.
- 15.5. This Agreement contains all of the terms agreed between the parties and replaces all previous agreements written or oral and may not be varied except in writing signed by the parties hereto.
- 15.6. A person who is not a party to this Agreement shall have no rights under the Contract to enforce any term of this Agreement.
- 15.7. This Agreement shall be governed and construed in accordance with Dutch Law and the Courts of Amsterdam shall be the Courts of sole jurisdiction.
- 15.8. The Clause headings do not form part of and shall not be read into the construction of the Agreement

**If the above correctly reflects your understanding of our agreement please sign where indicated below. By signing you confirm that you have been advised by us and have also taken independent legal advice from an entertainment industry lawyer.**

IN WITNESS whereof a duly authorised officer of the Publisher has hereunto set his hand and the Writer has executed this Agreement as his Deed the day and year first above written

SIGNED by the Writer

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Date: \_\_\_\_\_

SIGNED by the Publisher

\_\_\_\_\_

Date: \_\_\_\_\_

[muziekcontract.nl](http://muziekcontract.nl)