



## The Personal Management Contract

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*Editor's Note: Since there are complex legal intricacies within a management agreement, we strongly suggest that you read this content from start to finish the first time, and repeat with subsequent readings for a proper study and deeper understanding. For ease of later reference, however, here is an outline with links to the various subsections.*

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## Introduction

A personal manager plays a key role in the development and maintenance of a musical artist's career. (S)he acts as the principal liaison with the artist's business partners and counsels the artist with respect to engagements and the presentation of his or her services. By engaging another to oversee the business and administrative matters, the artist gains the freedom to focus on his or her songwriting, music and performance. For a complete discussion on the role of the manager, and how/when to find a manager, review the StarPolish section dedicated to [Management](#).

Management relationships based upon trust and comfort are frequently governed by verbal arrangements. Nonetheless, laws provide that oral agreements, which are not guaranteed to be completed within one year, are generally unenforceable; therefore many managers will require a written agreement to preserve his or her right to receive compensation following the termination of the relationship.

Despite the existence of a written agreement, an important consideration, especially in regard to new managers, is the potential partnership with established managers as the artist becomes more successful. My roommate

Andy Mendelsohn has managed the Long Island band Nine Days for more than five years. He partnered with Peter Malkin, who helped manage the careers of Spacehog and the Fugees, and Jonathan Cohen at Cornerstone, an independent radio promotion company, when the band started to gain industry interest. I believe that this partnership has been instrumental to the band's success. The band is currently signed to Epic/550 and Warner-Chappell, has a video in constant rotation on MTV and VH-1, is performing at major venues across the country and has significant national radio airplay. Although the band's talent is at the center of this success, this unique combination of managers is a smart model for presenting the artist to a variety of players in the market and enhancing the respective managers' experience and profiles.

Management agreements contain important exclusivity, length of term and commission requirements. If taken from a formbook or not sufficiently negotiated, the management agreement will likely bind the artist to excessive and perpetual payment obligations. **Therefore, as with all contracts, it is vital that artists seek the advice of an [attorney](#) experienced in the music industry to draft and negotiate the management agreement.** It is also important that the artist fully understand the material terms of the engagement prior to executing (i.e. signing) any management agreement.

In order to foster this understanding, I will excerpt from and analyze a complete [form management agreement](#). I have chosen a form that is extremely favorable to the manager. The manager generally provides the draft agreement to the artist for review and therefore the proposed agreement is likely to be biased in his or her favor. Despite the excerpts, you may want to [print out](#) this agreement for reference while reading the balance of this article, which will loosely discuss and dissect the terms contained in such agreement.

## The Management Agreement

*AGREEMENT made and entered into as of \_\_\_\_\_, 2000 by and between Management Company, Inc., (referred to hereinafter as "Manager") and \_\_\_\_\_ and \_\_\_\_\_, professionally known as "\_\_\_\_\_", c/o \_\_\_\_\_ (individually and collectively referred to hereinafter as "Artist").*

The preamble of this management agreement describes the parties and the general purpose. Note that the members of the artist are listed with the phrase "individually and collectively". The terms of the management agreement thereby apply to all activities rendered by each of the individuals that comprise the artist, including their solo activities and future activities if any member leaves the band.

*WHEREAS, Artist desires to engage Manager to represent Artist and to render services to Artist as Artist's sole and exclusive personal manager, representative and advisor, throughout the world, in all of Artist's affairs in the entertainment industry;*

The first "whereas" clause of the agreement describes the manager as the "sole and exclusive personal manager . . . in all of Artist's affairs in the entertainment industry". The implications of this definition are twofold. First, the artist is not entitled to engage others to perform personal management services for him or her during the term of the management agreement. Second, the manager will commission all of the artist's activities in the entertainment industry, including musical, dramatic (film, theatre, etc.) or literary endeavors. Although an artist may still engage a third party to assist with his or her personal affairs, the salary for such person will not be deductible from the manager's commissions unless the agreement states otherwise.

## I. Exclusivity

### A. Scope of Exclusivity

*NOW, THEREFORE, in consideration of the premises and mutual promises contained herein, and for other good and valuable consideration, the parties hereto agree as follows:*

*1 (a) Artist hereby engages Manager to be the sole and exclusive personal manager,*

*representative and advisor, throughout the world, of Artist (and any company or corporation formed, owned or controlled, directly or indirectly, by Artist) in all facets of Artist's careers in the entertainment industry. Artist shall immediately advise Manager of all offers of employment and of all inquiries concerning Artist's careers.*

The first section of the agreement details the parameters of the manager's exclusivity. The territory of this management agreement is for the world. In circumstances where the territory is for less than the world, the manager's exclusivity rights will be limited to his or her respective territory. Sometimes the manager will engage a local manager to assist the artist in a particular region. In these joint management relationships, the management commissions will usually be split between the managers based upon an estimate of the appropriate market share of each territory or earnings in each party's respective territory.

The exclusivity requirement under the management agreement typically applies to the representation of the artist and any corporate or business entities formed by the artist. The artist may form business entities to "loan out" certain contractual entertainment services for tax or liability reasons. This is commonly seen with respect to touring and live performance services, since many lawsuits arise out of slip and fall cases and other injuries occurring at concerts. By establishing a separate "loan out" touring company, the artist seeks to protect its other assets, such as recording, publishing and personal income, from exposure to liability.

The manager in the referenced agreement is engaged in "all facets of artist's careers in the entertainment industry". As a corollary, the manager will also commission all income earned from the artist's entertainment careers. In certain circumstances, the artist's representative should seek to negotiate exceptions to this exclusive industry role. For example, if an artist has a pre-existing trade, such as a career as a designer, producer, voice-over artist, actor or writer, the manager should not be entitled to commission such activities unless the artist requests services regarding those activities or the manager procures the applicable engagement. The artist may also try to obtain a blanket exclusion regarding all non-musical activities to the extent that the manager does not procure the applicable engagement. However, unless the artist already has a viable career with respect to a particular activity, the manager will usually require complete exclusivity since the artist's opportunities in other entertainment areas will increase proportionately with artist's notoriety as a musical performer.

An artist may also try to limit the manager's exclusivity role to the artist's activities as a band or purely as a solo artist. This exception is difficult to achieve for developing artists unless certain members are the "key" players in the band. If a particular member is the key performer, (s)he may seek a compromise providing that if such member leaves the band, the manager must choose between managing him or her or continuing with the band (with a similar choice with respect to the services of any leaving member if the key member remains with the band).

## **B. The Manager Is Not Exclusive to the Artist**

*(b) Manager hereby accepts such engagement and agrees to advise and counsel Artist regarding Artist's careers in the entertainment industry and to use its reasonable efforts to promote, develop and advance Artist's careers. Manager's services hereunder are not exclusive to Artist and Manager shall be permitted to perform the same or similar services for other artists or persons during the Term. Manager shall also be permitted to devote such time and efforts to other business activities as Manager may deem necessary or desirable in Manager's sole discretion.*

While a manager acts as the artist's exclusive entertainment representative, the manager is not similarly restricted. The manager may simultaneously handle other clients and responsibilities. Notwithstanding the foregoing, the manager should be contractually required to provide a reasonable amount of time and effort toward the furtherance of artist's career. The manager and the artist should also be mutually required to advise each other of all offers of employment and inquiries concerning the artist's career.

## **C. The Manager Is Not a Licensed Talent Agent**

*(c) Artist hereby acknowledges that Manager is not licensed under the Labor Code of the State of California as a talent agent or employment agent or otherwise under the Business and Professions Code of the State of California or as a theatrical employment agency or other employment or booking agency under the General Business Law of the State of New York or as any of the foregoing under the laws of any State; that Manager has not offered or attempted or promised to obtain, seek, or procure employment or engagements for Artist; and that Manager is not authorized, licensed or expected to do so. Therefore, Artist shall not look to Manager to procure or provide engagements or employment; provided, however, that Manager shall select, negotiate with and otherwise represent Artist to such agencies and other third parties that seek and procure employment and engagements for artists.*

One key element in the development of the artist is the building and maintenance of an audience base. Since it is difficult to obtain a booking agent prior to establishing a fan base, the manager will frequently book gigs for the artist during the early stages of his or her career. A problem with this practice is that statutes in New York and California, the two major states where the music industry is concentrated, forbid the manager from acting as a talent agent unless licensed by the state.

Although these licensing requirements are bureaucratic and extremely impractical, a manager's breach of these statutes is commonly raised by artists seeking to invalidate unfavorable management contracts. In 1999, the Deftones' manager filed a claim in a California appellate court to recover recording commissions under his management agreement. The Deftones responded that the contract was unenforceable because the manager procured gigs for the band and was not a licensed talent agent. The court agreed with the band and denied the manager's claim based upon a finding that he solicited and secured certain engagements on the Deftones' behalf. The court further held that it was of no bearing that the manager did not seek a commission for those services.

A recitation that the manager is not a licensed talent agent is commonly found in management agreements as a result of these statutes. Paragraph 1(c) of the referenced agreement cites this restriction and provides that the artist should not look to the manager to obtain employment. This paragraph also provides that the manager will negotiate with third parties (e.g. a booking agent) on the artist's behalf. In response to this clause, the artist should require the right to approve all third parties engaged on its behalf and be aware of all material terms of the underlying negotiations.

## **II. Term**

### **A. Length of Term**

*2. The initial term ("Initial Term") of this agreement shall be for a period of two (2) years from the date first above written. Manager shall have the right to extend the Initial Term for three (3) consecutive one (1) year option periods ("the Option Periods"). The first Option Period shall commence immediately upon conclusion of the Initial Term and each successive Option Period shall commence immediately upon conclusion of the preceding Option Period unless Manager gives Artist written notice of its intention not to exercise such option prior to the expiration of the Initial Term or the then-current Option Period. The Initial Term and the Option Periods are collectively referred to hereinafter as the "Term".*

The second section of this management agreement sets forth the length of the term. The term of a management agreement usually consists of an initial contract period and one or more option periods. These periods may comprise either a number of years (as in the above referenced excerpt) or "album cycles". In rare circumstances, the term of a management agreement will be "at will" and each party will be entitled to terminate the agreement upon thirty days prior written notice.

An "album cycle" usually refers to the period between pre-production and the last promotion date of an artist's studio album. This definition is often further restricted by the requirement that the album be released or distributed by a major record label (i.e., WEA/CEMA, Sony, Universal, BMG). Since there are fewer major labels, if applicable, this definition should include nationally recognized independent labels which have had at least one album certified "gold" (500,000 units) in the United States during the prior 3 year period, such as

Artemis Records, Koch Records or Epitaph Records.

The initial contract period under a management agreement is generally for 3-5 years or 2 album cycles. Option periods, which are exercisable in the manager's sole discretion, are usually 2 years or 1-2 additional album cycles. Since a term defined by album cycles is indefinite, the artist should request a maximum term for each contract period; for example, a proviso that the initial term will in no event exceed 5 years.

## **B. Performance Criteria**

*[Variation: Notwithstanding anything to the contrary contained herein, if the recording agreement between Artist and a Major Record Company (as defined below) shall expire or otherwise terminate during the Term and if Artist thereafter does not have an opportunity to enter into another recording agreement with a Major Record Company (the terms of which provide that Artist shall record and deliver to that Major Record Company one (1) or more Album(s), each with a minimum recording fund of One Hundred Fifty Thousand Dollars (\$150,000.00)) prior to the date nine (9) months after the date of that expiration or other termination, Artist shall have the right to notify Manager of Artist's desire that this Agreement be deemed terminated if a replacement recording agreement with a Major Record Company shall not be offered to Artist prior to the date ninety (90) days after Manager's receipt of that written notice. As used herein, the term "Major Record Company" shall refer to BMG, Sony Music, CEMA, Universal, any of the so-called "WEA" record companies, any other record company in the United States which is distributed exclusively by any of the foregoing distributors through normal retail distribution channels in the United States.]*

*[Variation: Notwithstanding the foregoing, Manager shall not have the option to renew and extend the Term for the Option Period unless all accounting statements rendered to Artist by a Major Record Company for any accounting period ending prior to the expiration of the Initial Period indicate that aggregate net sales of Albums worldwide during the Initial Period equal or exceed five hundred thousand (500,000) units.]*

Regardless of whether the management agreement is for a term of years or album cycles, the artist should retain the right to terminate the agreement if a recording agreement is not obtained within 6-12 months following the execution of the management agreement. The same standard should apply for obtaining a successor agreement in the event that an existing recording agreement is terminated during the term of the management agreement. The manager's rights to exercise his or her option(s) should also be contingent upon satisfying certain performance criteria within a stated time period. Standard performance criteria includes the artist's achievement of certain monetary or sales levels during the initial period of the term; for example, the artist earning commissionable income of at least \$500,000 or achieving aggregate album sales of at least 500,000 units during the initial term of the agreement.

## **III. Commission**

### **A. Rate of Commission**

*3. (a) In consideration of Manager's services hereunder, Artist hereby irrevocably assigns to Manager and shall pay Manager or cause Manager to be paid, as and when received by Artist or applied on Artist's behalf, a sum ("Commission") equal to twenty percent (20%) of any and all Gross Compensation.*

The manager generally receives a commission (as opposed to a base salary) in consideration for his or her management services. The standard commission ranges from 10% to 25% of gross entertainment income, with 10-15% being the range for an established artist and 20% for a developing artist (as in the referenced agreement). The commission range will also vary based upon the profile and experience of the manager. LeAnn

Rhimes is currently suing her father and lawyer for taking commissions of up to 30%. She claims that this commission is excessive and that managers of celebrity acts should get no more than 10% of the artist's gross income. There is no specific legislation regulating management commissions, which are subject to general contract rules. In fact, such lack of regulation permitted Elvis' manager, the Colonel, to receive 50% of the monies payable to Elvis during his career.

An artist may seek to negotiate a reduction of the base commission rate upon the achievement of certain sales or gross compensation levels during the term of the management agreement. Other possibilities include a sliding scale or varied commission arrangement for different types of income under the agreement. For example, commissions on live performances may start at a lower rate and escalate with increased earnings. Additionally, an artist who has continuing obligations to a prior manager may seek to reduce the new manager's commission on certain product to avoid dual obligations.

## **B. Definition of "Gross Compensation"**

*(b) For the purposes of this Agreement, "Gross Compensation" shall include, without limitation, all forms of income, consideration and compensation relating to Artist's endeavors in the entertainment industry, including, salaries, advances, earnings, fees, royalties, partnership interests, shares of stock, bonuses, shares of profits, shares of receipts, music publishing income, recording funds, tour support received from record companies, gifts, income in kind, and other considerations of any kind or nature whatsoever earned or received directly or indirectly by Artist, individually or as a member of a group or by any party or entity on Artist's behalf or by any party or entity which has furnished Artist's services in the entertainment industry, regardless of by whom procured.*

The manager's commission is generally calculated on artist's "gross compensation" from all sources in the entertainment industry. As set forth in paragraph 3(b) of the referenced agreement, the definition of "gross compensation" is extremely broad and includes salaries, advances, shares of stock, profits, gifts and any other consideration received by or on behalf of the artist or its entertainment business entities. The artist should seek to exclude personal or holiday gifts from this definition and make the manager's participation in entertainment business ventures or stock packages contingent upon the payment of a pro-rata share of any acquisition costs.

*(e) Any and all agreements between Artist and any corporation, partnership, trust and/or other business entity which furnishes Artist's services or which is owned (in whole or in part) or controlled (directly or indirectly) by Artist or Artist's family shall provide that such entity shall only furnish Artist's services subject to the terms and conditions of this Agreement. Any such entity shall become a party to this Agreement.*

If the artist has created a business entity to "loan out" its services, the manager will commission the monies payable to the business entity prior to the payment of taxes and other deductions or distributions. Paragraph 3(e) of the referenced agreement supports this arrangement by providing that the terms of the management agreement will apply to all contracts entered into by the artist or any entity furnishing artist's services. The agreement should further provide that the manager is not entitled to commission the artist's share of such monies.

If the manager plays a dual role in the artist's career, the manager should not commission the monies payable to the artist for such activities since he or she will be participating in the profits of the venture. Some examples are where the manager acts as the producer, record label, publishing administrator or packager of tours, such as Horde and Lollapalooza. The artist should also require that the manager disclose any joint involvement in a particular activity and obtain the artist's prior approval thereof.

## **C. Deductions From "Gross Compensation"**

*Notwithstanding the foregoing, Manager shall not be entitled to Commission with respect to the following:*

It is standard to deduct certain expenses from the calculation of "gross compensation" since many monies are never received by the artist but are paid directly to third parties for recording, promotion and marketing services. Frequently excluded expenditures include monies payable to third parties for recording and audio-visual costs, as well as recoupable independent publicity, promotion and marketing expenses. Although the manager may agree to exclude certain expenditures from commissions, creating an "adjusted gross income" figure, the manager is not a net participant. For example, potentially significant personal artist expenditures, including attorneys, accountants and agency fees, are not traditionally excluded from this calculation.

*(i) any actual bona fide recording costs (not including personal advances or wages paid to Artist) paid to Artist or on Artist's behalf pursuant to an agreement for Artist's recording services, up to a maximum of One Hundred Thousand Dollars (\$100,000) per album;*

The referenced management agreement sets ceilings on the amount of recording expenses that will be excluded from gross commission. An artist should reject the insertion of this ceiling since both parties will benefit equally from the engagement of reputable production personnel. Alternatively, the artist could propose that the management commission payable for a particular recording project will be no less than 2.5% - 5% of the applicable recording fund. If the manager's commission includes session fees payable to the artist in connection with a recording project, the artist should seek to exclude per diems paid for general food and transportation needs during performance dates.

*(ii) Monies payable to unrelated third party authors, composers and/or co-publishers to the extent that such monies are deducted from monies otherwise payable to Artist;*

Monies paid to third party songwriters, administrators or publishers should also be excluded from the definition of "gross compensation". This exclusion may be expanded to include fees payable to third parties in connection with the securing and/or negotiation of motion picture and television synchronization licenses since these are direct costs affiliated with the project. Although sometimes received as an additional exclusion, the manager will generally require participation in the songwriter's share of public performance income that is paid directly to the artist.

*(iii) all monies paid to Artist as reimbursement for so-called "sound and light" expenses, incurred by Artist in connection with live concert appearances; and*

*(iv) all monies received by Artist as so-called "tour support" to the extent such monies are recoupable and specifically designated as deficit financing and not used by Artist as a personal advance or for any other purpose.*

The concept that the manager is not a "net income" participant is most apparent with respect to the artist's touring activities. A manager will frequently exclude monies paid by the record company for deficit tour support, monies paid to opening acts and for sound and light personnel and equipment. However, all other expenses incurred in connection with touring activities, including musician fees, accommodations, bus rental and insurance costs are not similarly excluded. Therefore, the artist may find him or herself paying a commission to the manager when a tour did not generate a profit or operated at a loss. This inconsistency may create ill will as the artist starts to achieve a certain level of popularity and realizes that the manager is making more money on the tour than (s)he is.

There are certain compromises that may be proposed to remedy this situation. Some established artists will

require that the management commission will not exceed 50% of the net receipts from a specific tour. Live performance commissions may also be based upon a sliding scale schedule, whereby the commission will either increase or decrease based upon income levels. A sample arrangement for a developing artist may be where the manager agrees to waive his or her commission with respect to the first \$250 received in connection with any show; increasing to 10% for monies up to \$1000, 15% up to \$2000 and 20% thereafter. In contrast, a celebrated artist may seek to reduce the commission payable to the manager upon the achievement of certain sales levels.

*[Additional Variations:*

*(v) Royalties, advances or other payments actually made to any producer, mixer or engineer (other than Artist) of master recordings embodying Artist's performances as a featured recording artist payable as a result of the reproduction or other exploitation of those master recordings;*

*(vi) Monies actually paid by or on behalf of Artist (in connection with personal appearances by Artist) to opening acts, and for sound and light equipment and technicians, and all sums paid to Artist as actual reimbursement by a concert promoter for the cost of sound and light equipment and technicians or similar reimbursement in connection with a concert appearance by Artist;*

*(vii) Monies payable to or on behalf of Artist and actually paid for independent promotion and marketing by the Major Record Company with which Artist is a party to a recording or similar agreement, by a person, firm or corporation with which Artist is a party to a co-publishing, administration or similar agreement, or by a third party. [To the extent that Artist has or shall have the right to approve such expenditures, such expenditures shall be subject to Manager's prior approval, which approval shall not be unreasonably withheld by Manager];*

*(viii) Monies paid by or on behalf of Artist to any third party and actually expended for production costs of a film or video or other filmed performance embodying Artist's performances (other than fees, including union session fees, paid to Artist in connection with the foregoing) including, without limitation, by the Major Record Company with which Artist is party to a recording or similar agreement;*

*(ix) Performance guarantees (as that term is generally understood in the recording industry) payable to Artist which are less than One Thousand Dollars (\$1,000);*

*(x) So-called "financial investment income" or "passive investment income" earned by Artist which is not otherwise attributable to the results and proceeds of Artist's services in the entertainment field.]*

Other exclusions from "commissionable gross income" include the following:

- Bonafide loans that are evidenced in writing and passive investments that are made with the artist's independent monies;
- Overhead monies expended in connection with the creation, manufacture, sale, purchase and/or distribution of product where the artist acts as its own merchandiser or record label;
- Attorney and/or legal fees paid in connection with collecting outstanding payments and/or auditing third parties;
- Monies received by the artist from the sale of musical instruments to the extent that the instrument was initially purchased with the artist's personal monies; and
- Monies received by the artist as compensation for an injury or as punitive damages, such as for a libel or defamation case or personal injury claim.

Although more difficult to obtain, an artist may also seek an exclusion for monies paid to third party talent agents or paid to the manager as reimbursement for management expenses. Note the specific *inclusion* of these monies in the definition of gross compensation set forth in paragraph 3(b) of the referenced management agreement. A reputable artist may also seek to reduce the commission paid to a manager in connection with third party "cover" versions of musical compositions originally written by the artist.

#### **D. Commissionable Product**

*(c) Manager's Commission shall be payable upon all Gross Compensation as and when such Gross Compensation is paid to Artist or to any third party on Artist's behalf, during the Term or after the Term, as a result of and/or pursuant to:*

*(i) any and all engagements, contracts, commitments and agreements now in existence or entered into or negotiated during the Term;*

*(ii) any and all engagements, contracts, commitments and agreements negotiated and entered into after the expiration of the Term to the extent such contracts, commitments and agreements pertain to master recordings and/or musical compositions recorded and/or written and composed, in whole or in part, by Artist during the Term;*

*(iii) any and all extensions, renewals, substitutions, replacements, amendments, additions and modifications of all such contracts, engagements, commitments and agreements referred to in (i) and (ii) above; and*

*(iv) any and all judgments, awards, settlements, payments, damages and proceeds relating to any suits, claims, actions or proceedings arising out of alleged breach, non-performance or infringement by others of any of the contracts, engagements, etc., referred to in (i), (ii) and (iii), above.*

One of the most heavily negotiated provisions contained in a management contract relates to the definition of "commissionable product". Under paragraph 3(c) of the referenced agreement, the manager is entitled to commission all gross compensation paid to or on behalf of the artist, whether before or after the term of the management agreement, to the extent that such commissions are payable pursuant to:

(i) engagements and agreements previously in existence or entered into during the term of the management agreement;

(ii) engagements and agreements negotiated and entered into after the term to the extent they pertain to master recordings and/or musical compositions recorded and/or written and composed, in whole or in part, by artist during the term;

(iii) extensions of these engagements; and

(iv) all judgments, awards, settlements and damages arising out of a breach or infringement by others of any of the referenced agreements.

Under this agreement, the manager would commission all monies paid to the artist under any and all existing or term agreements as well as with respect to product created during the term of the management agreement at a rate of 20% in perpetuity (i.e. forever). This is extremely unfavorable to the artist and could severely curtail his or her ability to hire a subsequent manager. Since a recording agreement can continue for more than 6 album cycles, the manager under the referenced agreement will be entitled to commission all product created during the term of such recording agreement (and any renegotiations thereof) even though his or her relationship with the artist may terminate prior to the expiration of such recording agreement. Particular attention should therefore be paid to the negotiation and comprehension of this provision.

*[Variations:*

*Notwithstanding the foregoing, Manager shall be entitled to receive the Commission set forth in subparagraph (a) above in perpetuity only with respect to property initially exploited during the Term. For purposes hereof, master recordings embodying Artist's featured performances and those musical compositions embodied thereon shall be deemed initially exploited during the Term if recording sessions for those masters shall have commenced prior to the end of the Term. Notwithstanding the foregoing, "property" shall not include master recordings embodying Artist's featured performances which were released prior to the Term.*

The artist's representative should seek to limit the application of management commission to gross compensation payable with respect to "Term Product". "Term Product" is commonly defined as product initially exploited during the term of the management agreement or created during the term of the management agreement and initially exploited within 4 months thereafter. The definition of "initially exploited" varies, with commercial release being the best definition from the artist's point of view and commencement of recording being favored from the manager's perspective. Regardless of the definition, if the manager does not perform services during the entire period of promotion for a particular project, then the artist should seek to pay a reduced commission to the manager with respect to such product.

*In lieu of the amount set forth in subparagraph 3(a) above, Manager shall be entitled to receive the following percentages of Gross Compensation earned by Artist at any time as a result of the exploitation during the following periods:*

*(a) Ten percent (10%) for the period commencing upon the last date of the semi-annual accounting period ending immediately after the Term and ending on the date two (2) years after that date ("First Post-Term Period");*

*(b) Seven and one-half percent (7½%) for the period commencing upon the expiration of the First Post-Term Period and ending on the date two (2) years after that date ("Second Post-Term Period"); and*

*(c) Two and one-half percent (2½%) for the period commencing upon the expiration of the Second Post-Term Period and ending on the date one (1) year after that date ("Third Post-Term Period");*

*Notwithstanding anything to the contrary contained herein, no Commission shall be payable to Manager pursuant to this subparagraph on Post-Term property after the expiration of the Third Post-Term Period. For purposes hereof, master recordings embodying Artist's featured performances shall be deemed initially exploited during a particular Post-Term Period if recording sessions have commenced with respect thereto prior to the expiration of that Post-Term Period.]*

Some managers will require that the commission also include payment for "Post-Term Product", which is customarily defined as product created or initially exploited after the term of the management agreement pursuant to agreements entered into by the artist during the term of the management agreement. At the artist's request, a manager should agree to limit the application of the post-term commission to Post-Term Product created within several years following the expiration of the term and also accept a declining commission rate. The latter arrangement is crucial to alleviate the dual payment obligations that will arise following entry of a successor management agreement. For example, the artist's representative may seek to restrict payment for Post-Term Product to a period of 5 years following the expiration of the management agreement at a rate of 50% for the 1st half of the post-term period and 25% for the balance of the post term period. An example of this is set forth as a variation under the referenced agreement. Additionally, if an artist does not have obligations to a prior manager or is seeking to re-establish his or her career and has a valuable catalog (such as Meatloaf, Yes or Steely Dan), the new manager may also seek to commission gross compensation received from the continuing exploitation of pre-existing or "Pre-Term Product" since the renewed image of the artist will arguably improve

catalog sales.

Another heavily negotiated provision in management agreements is the length of time of commissions. It used to be the standard that a manager received a full commission with respect to "Term Product" in perpetuity. The argument for this arrangement is that the manager often loans monies to the artist and works for a substantial period without pay to support the artist during the initial years. Accordingly, the manager should be entitled to reap the benefits from any success relating to such employment for the same period of time as the artist.

The artist will often seek to cap the length of the post-term period by applying a formula based upon a multiple of the number of years that the parties worked together. An example is allowing the manager to receive a post-term commission equal to 3 years for every 1 year of the term of the artist agreement. Like post-term product, an artist may also seek a declining commission arrangement with respect to the post-term commission payable for Term Product. For example, the management commission may be at a full rate for a certain portion of the post term period, declining to 75%, 50%, 25% and 0% at set dates thereafter. This post-term commission may also be subject to a minimum and maximum number of years. To reduce the effect of dual obligations, the application of the provisions relating to post-term commission should be different with respect to Term Product and Post-Term Product, if applicable.

#### E. Expenses

*(d) No expense, cost or disbursement incurred in connection with receipt of Gross Compensation, including, without limitation, salaries, professional fees and booking agency fees shall be deducted therefrom prior to calculation of Commission. In addition to the foregoing, Artist shall reimburse Manager for any and all reasonable bona fide expenditures incurred by Manager on Artist's behalf or in connection with Artist's career or in the performance of Manager's services hereunder within thirty (30) days of such expenses being incurred [variation: provided, however, that Manager shall not incur any single expense in excess of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) nor aggregate monthly expenses in excess of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) without Artist's consent.] It is agreed and understood that Artist will be responsible for all booking agency fees and commissions, union dues, publicity and promotion costs, legal fees and accounting fees and any and all taxes due with respect to Gross Compensation. In the event Manager advances any of the foregoing fees, costs or expenses on Artist's behalf, Artist shall reimburse Manager for such advances within thirty (30) days of Manager's payment and/or in the event Manager does not take or withhold its Commission from Gross Compensation for any reason, such amounts shall be deemed a loan from Manager to Artist. Artist hereby authorizes and empowers Manager to deduct the amount of any such loans and advances from any sums received by Manager for Artist's account.*

Paragraph 3(d) of the referenced agreement provides that the artist will reimburse the manager for all "reasonable bona fide expenditures incurred by Manager on Artist's behalf". This is a common provision in management agreements since the manager will incur telephone, facsimile, mail and travel charges in the performance of his or her duties. However, the artist should put specific limitations on these expenditures in addition to the "reasonableness" standard set forth in the referenced agreement. Common restrictions include placing a ceiling on the amount of monthly and individual expenditures, such as \$500 for individual expenses and \$1,500 for aggregate monthly expenses; requiring consent over travel expenditures; and the appropriate allocation of expenditures if manager's travel includes other business or clients. The type of travel (coach, business or first class) should be in the same manner as the artist and overhead costs should be specifically excluded. The manager should also be required to provide receipts and detailed accountings regarding such expenses.

This paragraph further provides that the manager may deduct any loans or advances made on the artist's behalf from any sums received by the manager for the artist's account. This provision raises the question as to which party should be entitled to collect the monies payable to the artist during the term of the management agreement. The best solution is for the artist to engage a third party business manager, in consultation or with approval of the manager, to collect monies on his or her behalf and pay the necessary commissions to the manager. If the manager insists upon collecting the monies prior to engagement of an accountant, then the agreement should

include a specific recitation that the manager is acting as a "fiduciary", will maintain detailed records and will retain artist's monies in a separate account which is not "commingled" with any other monies. However, whenever possible, the artist should try and retain collection rights and agree to keep reasonably detailed records for manager's review.

#### **IV. Accountings and Audit Rights**

*4. (a) Artist shall notify and irrevocably direct and cause any and all third parties for whom Artist renders services in connection with the entertainment industry to pay directly to Manager the Commission due to Manager hereunder, and such Commission shall be payable to Manager immediately upon payment or credit to Artist or to any person on Artist's behalf of the Gross Compensation upon which such Commission is based. The aforesaid direction to any such third party shall be included in any and all agreements of every kind and nature in respect of Artist's activities in and throughout the entertainment industry, including, without limitation, recording agreements, publishing agreements and agency agreements and shall be substantially as follows:*

*"Artist hereby irrevocably authorizes and directs you to pay to Management Company, Inc. or its assignee, a sum equal to twenty percent (20%) of all sums due to, or paid on behalf of, the undersigned hereunder. Such payment shall be made at the same time that payments are due to the undersigned hereunder. Each payment shall be accompanied by a duplicate of the statement rendered to the undersigned."*

*(b) The interest and compensation set forth hereinabove which shall be paid to Manager shall be a continuing interest, and shall not be revocable at Artist's pleasure. It is intended by Artist to create an agency coupled with an interest and the appointment and engagement of Manager and Manager's right to receive the Commission as provided for herein are the inducements for Manager to enter into this Agreement.*

*(c) In the event Artist receives Gross Compensation with respect to which Manager's Commission has not been paid pursuant to paragraph 4(a), above, Artist shall, within fifteen (15) days after the close of each monthly period during the Term of this Agreement and thereafter so long as Artist collects or receives such Gross Compensation hereunder, render a written accounting statement to Manager setting forth all Gross Compensation received by Artist hereunder during the preceding month, specifying the source thereof and Manager's Commission hereunder and including the amount of any expenses and any loans or advances paid by Manager to Artist or on Artist's behalf. Each such accounting statement shall be accompanied by payment to Manager of the sum thereon shown to be due to Manager for such accounting period.*

*[Alternate to paragraphs 4(a)-(c): Artist and Manager shall select an accountant or business manager ("Accountant") who shall have the right to collect and receive, on Artist's behalf, all of Artist's Gross Compensation hereunder and deposit such Gross Compensation in one or more segregated bank accounts. Manager shall have the right to approve Artist's selection of an Accountant, it being understood and agreed that Manager approves \_\_\_\_\_, the accountant presently engaged by Artist. Artist shall notify and direct any and all third parties to pay all Gross Compensation directly to Accountant and shall authorize, direct and cause Accountant to pay Manager all Commission due hereunder as well as any reimbursement or payment for expenses pursuant to paragraph 3(d), above, from the first monies received within each month during the Term. Such payments shall be accompanied by a written accounting statement setting forth all Gross Compensation received by the Accountant on Artist's behalf during the preceding month and specifying the source thereof.]*

Paragraph 4(a) of the referenced agreement requires the artist to send a "letter of direction" to all third parties (including labels, publishers, merchandisers and tour packagers) for whom artist renders contractual services instructing them to pay the management commission directly to the manager prior to distributing the monies to the artist. The agreement further provides that the commission arrangement under the agreement is the inducement for the manager to enter into the agreement and is not revocable by the artist. Accordingly, a third party is not authorized to vary or terminate the payments to the manager without the manager's prior approval.

An artist should reject this requirement wherever possible since third parties who are not specifically engaged

for accounting purposes are unlikely to appreciate the nuances of the manager's "gross compensation" package and the allocation of income between different managers, if applicable. At most, the artist should agree to send a letter of direction following the expiration of the management term since the manager will have a less intimate involvement with the artist at that time. Also, the artist should only be required to use reasonable efforts to cause third parties to comply with this request since it is unlikely that such third parties will agree to contractual obligations requiring them to make such payments on the artist's behalf if the artist's account is in an unrecouped position.

*(d) Artist agrees that Manager and Manager's representatives may inspect and audit Artist's books and records to ascertain the amounts due Manager hereunder. The aforementioned audits and/or inspections, if any, shall be conducted upon reasonable notice to Artist. "Books and records" as used hereunder shall include ledgers, journals, receipt books, checks and all other records concerning financial matters.*

Each party should be required to account to the other or the approved accountant if they receive commissionable monies under the agreement. The parties should also have a mutual right to review and audit each other's books and records relating to product covered by the agreement. The audit and inspection right should be restricted to a period of 2 years following the rendering of a particular statement.

## **V. Breaches**

*5. No breach of this Agreement on the part of Manager shall be deemed material, unless Artist shall have given written notice specifying the nature of such breach to Manager and Manager shall have failed to cure such breach within thirty (30) days after receipt of such notice or, if such breach is not capable of being cured within such thirty (30) day period, if Manager commences reasonable efforts to cure, and proceeds with reasonable diligence to complete the curing of such breach.*

Most contracts contain a provision requiring that written notice be provided before a party is deemed in breach of the agreement. The notice must detail the nature of the breach and the receiving party usually has 30 days to cure the breach. This agreement further states that if the breach is not capable of being cured within 30 days, then the manager's cure period will be reasonably extended. This contractual provision should be mutual. It is also standard for an artist to request a "key person clause" whereby the artist can terminate the agreement upon 30 days notice if an individual manager is not reasonably available on a daily basis to supervise his or her career.

## **VI. Power of Attorney**

*6. Artist hereby irrevocably authorizes and appoints Manager as Artist's true and lawful agent and attorney-in-fact to execute for Artist in Artist's name and on Artist's behalf, any and all agreements, documents, and contracts for Artist's services. Artist hereby ratifies and affirms all acts performed by Manager pursuant to this power of attorney and confirms that this power is coupled with an interest. Notwithstanding the foregoing, Manager shall not execute for Artist in Artist's name and on Artist's behalf any major agreement committing Artist's time, services and/or artistic and musical materials, the terms of which Agreement shall not have been previously approved by Artist.*

A manager will seek the ability to sign documents and enter into engagements on the artist's behalf. Although this is helpful to the manager since the artist is not always readily available, the artist has to be careful of relinquishing too much control to the manager. The referenced agreement reasonably protects the artist since it states that the manager will not execute any major agreement, such as a recording or publishing agreement, which commits the artist's time, services and artistic and musical materials, if such agreement has not been previously approved by the artist. However, an artist should also have the full right to approve publicity materials and general licensing agreements. In order to retain appropriate control, the standard negotiated "power of attorney" provision is generally limited to the right to execute live performance engagements for 3 days or less, the material terms of which are previously approved by artist.

## VII. Assignment

7. (a) *Manager shall not assign this Agreement or any rights or obligations hereunder without Artist's consent, except that Manager may assign this Agreement without Artist's consent to any parent, subsidiary or other related or affiliated company or to any other person, firm or corporation acquiring a significant portion of Manager's stock or assets or entering into a merger or joint venture with Manager.*

(b) *Artist may not assign this Agreement or any of Artist's rights hereunder and any such attempted assignment shall be void. This Agreement shall be binding upon Artist and Manager and shall inure to the benefit of Artist's and Manager's successors. This Agreement shall also be binding upon any entity (including, without limitation, any loanout company which furnishes Artist's services) which directly or indirectly, in whole or in part, through one or more intermediaries, owns or controls, or is under common ownership or control with, Artist. Accordingly, this Agreement is hereby accepted by Artist on Artist's behalf and on behalf of any such entity.*

In paragraph 7 of the referenced agreement, the manager is entitled to assign or transfer the entire agreement or the rights thereunder to a parent, subsidiary or related company. The artist is not entitled to assign the agreement to any party. Since the management agreement is entered into based upon personal relationships, both parties' rights to assign the agreement should be restricted so that they each remain obligated thereunder. Accordingly, the manager's assignment right should be conditional on the manager retaining a key role in the artist's career as discussed in section V above. The artist's right of assignment should likewise permit the artist to assign the agreement to an entity wholly owned by him or her.

## VIII. Warranties and Representations

8. *Artist hereby jointly and severally warrants and represents that:*

(a) *Artist is free to enter into and to perform under this Agreement and is not a party to any presently existing contract which would interfere with the full performance of the terms and conditions of this Agreement.*

(b) *Artist is over eighteen (18) years of age and has retained thoroughly experienced and knowledgeable attorneys in the entertainment industry to advise and counsel Artist with regard to this Agreement.*

(c) *Artist will at all times during the Term devote himself to his career in the entertainment industry and do all things necessary to promote such career.*

The warranties and representations set forth the promises and understandings between the parties. The first warranty in the referenced agreement states that the artist has the right to enter into the agreement and is not a party to a pre-existing contract which would interfere with his or her performance under the agreement. This provision should apply equally to the manager. The next warranty provides that artist is over 18 years of age and has retained an experienced and knowledgeable attorney to advise and consult him or her with respect to the agreement. If the artist is under 18 years of age it is important to have the document "court" approved. In the United States, contracts entered into by a minor are voidable at the minor's sole discretion. This approval process necessary to protect the manager's rights when contracting with a minor is both expensive and extensive. However, a mere statement in the warranty section will probably be insufficient to protect the manager from an unjustified termination of the agreement.

Finally, the agreement has a warranty that the artist will at all times devote him or herself to his or her career in the entertainment industry and do all things necessary to promote such career. Although it may be difficult to require the artist to comply with this warranty, the artist's failure to do so will entitle the manager to suspend the term of the agreement as set forth in section X below. Potential additional warranties not incorporated into the sample agreement, include a guarantee that the artist's name and materials will not infringe upon the rights of any third parties and a provision that the artist will indemnify the manager from any third party claims in connection with any breach of this warranty.

## IX. Artist's Assets

*9. Artist agrees that during the Term Artist will not assign, sell, convey, pledge or otherwise dispose of any property rights in Artist, his trade or personal name, by stock interest, wage assignments, partnerships or percentage or otherwise, without the prior written consent of Manager.*

Paragraph 9 of the referenced agreement provides that the Artist will not assign, sell, convey, pledge or otherwise dispose of any rights in his or her name, stock, percentages or otherwise without the manager's prior written consent. This provision would prevent the artist from accepting a modification of an existing agreement if it would affect the participation previously allocated to the manager for such activities. This provision further recognizes that the artist's name is an important asset (see our section on [Names](#) for more details). The consumer will often expect a certain quality affiliated with products created by a particular artist based upon his or her prior experiences with such artist. A change in the official band name may not be widely known to the band's former audience. For example, the records under the new artist name may be filed separately in record store bins and therefore overlooked by certain fans. The confusion surrounding Prince's name change almost 7 years ago to an unpronounceable symbol, and the desire to preserve the goodwill attached to this name, resulted in the media's need to dub him the "Artist Formerly Known As Prince". The consumer may also be less interested in the new artist's venture if they anticipate that the recordings will be substantially different than the artist's existing recordings. For the same reasons discussed above, a band will often seek to retain their name despite a change in membership, such as seen with Little Feat despite the death of their primary singer and songwriter, Lowell George, and with Lynyrd Skynyrd and Van Halen, both of whom continued their success under the same name but with different lead singers. An understanding between band members regarding name change issues should be outlined in an "internal band contract" prior to any provisions in the management contract (There will be a StarPolish section on internal band contracts coming soon, click [here](#) to sign our mailing list and be informed when new content is added). But a manager who has invested substantial time and/or money in support of the artist's career may be reasonable in seeking the right to approve any change in the artist's name (subject, of course, to the artist's decision to change his or her name as a result of a third party legal claim; review our section on [Registering and Keeping a Name](#) for a discussion of when and why that might happen).

## X. Remedies

### A. Specific Performance

*10. (a) Artist hereby acknowledges and agrees that Manager's right to represent Artist as Artist's sole and exclusive personal manager and Artist's obligation to solely and exclusively use Manager in such capacity are unique, irreplaceable and extraordinary rights and obligations and that any breach or threatened breach by Artist thereof shall be material and shall cause Manager immediate and irreparable harm to its reputation and goodwill in the entertainment industry, and other immediate and irreparable harm which cannot be adequately compensated for by a money judgment. Accordingly, Artist agrees that, in addition to all other forms of relief and all other remedies which may be available to Manager in the event of any such breach or threatened breach by Artist, Manager shall be entitled to specific performance, an injunction or other equitable relief against Artist to enforce Manager's exclusive rights hereunder.*

In paragraph 10(a) of the referenced agreement, the artist acknowledges that his or her services to the manager are "unique and irreplaceable" and that any breach of the agreement by the artist would cause the manager irreparable harm which cannot be compensated by money damages. This provision thereby enables the manager to immediately obtain equitable or injunctive relief from the courts requiring the artist to continue to perform under the contract. This "specific performance" requirement may be difficult to enforce since involuntary servitude (even if voluntary as a result of contractual terms) is often deemed illegal as a form of "slavery". Notwithstanding the foregoing, failure to perform under the terms of the management agreement may result in legal battles thereby inhibiting the artist's future relationships, as well as creating obligations to pay continuing commissions. The artist may try to limit the manager's remedy to "seeking" equitable relief as opposed to the automatic right set forth in the agreement. Alternatively, the agreement should provide that the artist will not be prevented from raising any fact-based defenses to the manager's application for injunctive relief.

## B. Suspension

*(b) If at any time Artist fails, for any reason whatsoever, to fulfill or perform any obligation assumed by Artist hereunder, or engages any other person or entity to perform any services which Manager is entitled to perform exclusively on Artist's behalf hereunder, then, without limiting Manager's rights, Manager shall have the right, exercisable at any time by notice to Artist, to extend the expiration date of the then-current period of the Term. Such extension shall continue until Artist has fully cured such failure or engagement or terminated any engagement which is in violation of this Agreement and the then-current period of the Term shall be extended for a period of time equal to the duration of any such failure or engagement. Artist hereby acknowledges that Manager's exercise of its rights hereunder shall not in any way affect or diminish its right to equitable relief under this paragraph 10.*

Paragraph 10(b) of the referenced agreement permits the manager to suspend the agreement if the artist fails to perform his or her required services or engages a third party to perform management services on his or her behalf. This provision further provides that the manager's exercise of his or her suspension rights will not affect his or her rights to seek equitable relief as discussed above. Under this provision, the manager may therefore exercise his or her right of suspension if the artist does not devote himself or herself to his or her career as set forth in the warranty section, or if the artist engages a managerial assistant, regardless of whether such assistant commissions the artist's activities. Since the latter result is probably not intended, the right of suspension should specifically exclude circumstances where the artist is still paying the full commission to the manager. The artist should also try to limit any suspension to a 6-month period. This may be more difficult to achieve since the suspension right arises as a result of the artist's breach of the agreement and is therefore within the sole control of the artist. Nonetheless, the artist should be able to limit this suspension if the underlying circumstance is beyond his or her control, such as disability or illness.

## XI. Group Members

*11. As used herein, the term "Artist" shall be deemed to refer to the entertainment unit presently known as " \_\_\_\_\_ " (the "Group"), as well as to each individual member of the Group who is a signatory hereto. In the event any such member should leave the Group or pursue a solo career while remaining a member of the Group, this Agreement shall continue to be binding with respect to such member during the Term hereof. In the event Artist wishes to add a new or additional member to the Group, Artist shall cause such member to accept the terms and conditions of this Agreement and such member shall be deemed a signatory hereto. This Agreement shall be binding jointly and severally upon said persons and the Group. Wherever required, the singular shall include the plural and, unless the context otherwise requires, the masculine gender includes the feminine and the neuter.*

*[Variation: If the individual members of Artist shall cease to record together as the group currently, collectively and professionally known as " \_\_\_\_\_ " ("Group") or to perform live together as a Group or to engage in other professional activities together as a Group, Artist shall promptly give to Manager written notice thereof. Manager shall have the irrevocable option to continue to furnish Manager's services as a sole and exclusive personal manager to each member of the Group on the same terms contained in this Agreement and as if each member was Artist hereunder. Manager shall exercise that option independently with respect to each member of the Group not later than thirty (30) days after Manager's receipt of Artist's written notice described above. If Artist fails to so notify Manager, Manager shall be deemed to have exercised Manager's option referred to above for each member of Group.] .*

As discussed in Section I above, the manager will seek to sign all members of the band irrespective of whether the individual artist's services relate to his or her group or solo endeavors. The rationale is that an artist's successful solo career often follows the artist's success as a member of a group, such as Sting of the Police, Paul Westerberg of the Replacements, RZA of the Wu Tang Clan and Lauryn Hill and Wyclef Jean of the Fugees. The artist may seek to include a provision agreeing to notify the manager of any termination of an individual's services with the group and requiring the manager to officially notify such member within 60 days following receipt of the artist's notice of his or her decision to continue the management relationship with such individual. The manager may require that the notice be accompanied by new demo recordings and that the manager be entitled to see a live performance prior to making this decision.

The referenced agreement, as is standard, also provides that the terms of the agreement will apply to any new or additional members of the artist's band. This protects the manager's ability to commission the aggregate monies payable to the group prior to distribution to the individual members. Since the new member may be party to a pre-existing management contract, the artist should seek to change this obligation to one of "reasonable efforts." This request is often denied and the artist will therefore not be permitted to engage any new member unless these preconditions are satisfied or the manager agrees otherwise. Alternatively, the artist can employ a third party as an independent contractor without making him or her an official member.

This paragraph also provides that the agreement binds the members "jointly and severally". Accordingly, each member will be fully liable to the manager for the obligations of the other members. The group artist should try to exclude a particular member's solo or non-group activities from this requirement since the group has no involvement in such activities. Although the joint and several liability provision will not prevent the individual members from seeking contribution or indemnification from the other members, this right may be irrelevant if a particular member has no material assets.

## **XII. Notices**

*12. All notices hereunder shall be in writing and shall be given by mail, postage pre-paid or by facsimile transmission with all charges pre-paid at the addresses first indicated above, or such other address as either Artist or Manager may designate by notice to the other and date of such mailing or facsimile transmission shall be the time of the giving of notice. A copy of all notices to Manager shall concurrently be addressed to: \_\_\_\_\_.*

Most contracts outline the formalities that must be followed with respect to the providing of official notices under the contract. These formalities will apply to provisions which specifically state the word "notice". For example, in the referenced agreement, notice is required with respect to the manager's decision not to exercise his or her option to extend the term under paragraph 2, audit rights under paragraph 4(d), allegations of breach under paragraph 5 and suspension under paragraph 10(b). The notice requirements set forth in paragraph 12 are in accordance with the industry standard that the notice be in writing and delivered by a method which provides a proof of receipt, such as overnight courier, certified or registered mail and personal delivery. If facsimile transmission is included as an accepted delivery method, as in the referenced agreement, there should also be a requirement that an original copy of the facsimile notice be simultaneously delivered by regular mail. If either client has an attorney, the contract will also generally include a requirement that copies of notices be forwarded to such attorney in the same manner.

## **XIII. Interpretation of the Agreement**

The last section of the referenced agreement sets forth the rules that will be applied in interpreting the contract. These provisions are generally included in all legal contracts, whether they relate to the entertainment industry or otherwise.

*13. (a) This Agreement sets forth the entire understanding between the parties with respect to the subject matter thereof, and no modification, amendment, waiver, termination or discharge of this Agreement or any provisions thereof shall be binding upon either party unless confirmed by a written instrument signed by Manager and Artist. No waiver of any provision of, or default under this Agreement shall affect either party's rights thereafter to enforce such provision or to exercise any right or remedy in the event of any other default whether or not similar.*

Paragraph 13(a) is commonly referred to as the "integration clause". This clause states that the contract represents the entire understanding between the parties. The agreement will therefore be deemed to supersede all prior correspondence and discussions between the parties with respect to the underlying subject matter. This clause also provides that no changes to the agreement will be binding upon the parties unless confirmed in a subsequent writing signed by both parties. If requested, it is generally sufficient and more realistic for revisions to be signed solely by "the party to be charged". For example, a manager's agreement to take a reduced commission with respect to a particular activity would solely need to be approved in writing by the manager since the manager is the party negatively affected by such decision. Finally, the last sentence of paragraph 13(a) provides that a waiver or default of a particular provision will not affect a party's right to rely on such a provision in the future. For example, a manager may not commission an artist's tour earnings if they are

insubstantial or used in their entirety to pay third parties, even if the written agreement permits otherwise. The referenced language protects the manager from later allegations by the artist that this activity constituted a waiver of his or her future rights to collect commissions on tour earnings, and will also alleviate the prospect of lawsuits based upon a claim of "waiver" under the agreement.

*(b) This Agreement and all of its provisions shall be interpreted and construed everywhere in accordance with the Laws of the State of California applicable to contracts executed and to be performed therein.*

*(c) If any part of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction or by any other legally constituted body having jurisdiction to make such determination, the remainder of this Agreement shall remain in full force and effect.*

Paragraph 13(b) is commonly known as the "choice of law" provision. In the event of a legal dispute, this language will help prevent protracted litigation regarding the appropriate state law to be applied to the interpretation of the agreement. Based upon the same rationale, it is also wise to include a "choice of forum" provision, for example, requiring that all disputes be brought in the state courts located in Los Angeles County, California or be subject to arbitration. Arbitration is sometimes viewed as more favorable to the "underdog" and is often less expensive than litigation. However, one should note that arbitration judgments are made by 1-3 chosen disinterested parties (as opposed to a 6-12 person jury) and are generally non-appealable unless related to a breach of arbitration regulations. Finally, paragraph 13(c) protects the parties from having the entire contract being deemed invalid as a result of a particular provision being determined unlawful.

### **Conclusion**

The provisions contained in the referenced agreement are common to all management agreements. Although the provisions in this agreement are clearly biased toward the manager, I have addressed standard variations throughout this article. Following a review of these provisions, one realizes that while the management agreement may be important to protect the manager's rights, it affords little protection to the artist with the exception that it commits the manager to use his or her reasonable efforts to further the artist's career. Accordingly, the artist should not feel that (s)he needs a written management agreement if the same is not required by the manager. As a corollary, the artist should not sign a management agreement without requiring the inclusion of certain minimum protections discussed above, including reasonable deductions from the definition of gross compensation, restrictions on post-term commissions, performance criteria related to the length of the term and limitations on the manager's power of attorney. The expectation is that the agreement will merely memorialize the parties' verbal understanding and will not otherwise be taken "out of the drawer" to address disputes. However, one should always keep in mind that the management agreement is an official document which will have important legal and financial ramifications if consulted after a relationship is terminated.

**VIEW/PRINT FORM MANAGEMENT [AGREEMENT](#)**