Music Touring and Music Festivals

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By Serona Elton

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Licensing considerations for Concerts & Festivals
Prepared By Serona Elton, Associate Professor
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University of Miami | Frost School of Music

1. Public performance right
   a. US Copyright Law, §106(4) and §106(6)

2. Public performance licensing
   a. Dramatic versus non-dramatic performance
   b. Working with ASCAP, BMI, and SESAC
      • BMI
         ▪ Festival and Special Event Licenses and Reporting Forms:
           http://www.bmi.com/licensing/entry/533028?q=Festival+Presenter%2FPromoter
         ▪ Concert Venue Facility Licenses and Reporting Forms
           • Over 10k seats:
             http://www.bmi.com/licensing/entry/547950?q=Concert+Venue+Facility
           • Under 10k seats:
             http://www.bmi.com/licensing/entry/538740?q=Concert+Venue+Facility
      • ASCAP:
         ▪ Licenses and Reporting Forms: http://www.ascap.com/licensing/licensefinder
         See Concerts, and Festivals
      • SESAC:
         ▪ License Forms: http://www.sesac.com/Licensing/GenLicenseDL.aspx Select Concert Promoters, or Festivals, Special Events
   c. Live streaming
      • Increasingly, a Jazz Stage Is Digital, article found at: http://www.nytimes.com/2013/07/13/arts/music/smalls-and-other-clubs-are-webcasting-concerts.html?_r=0

3. Reproduction right, Distribution right
   a. US Copyright Law, §106(1) and §106(3)

4. Recording the performance for future use
   a. Audio only, permanent and on-demand streaming: mechanical licensing
i. HFA rate charts: [https://www.harryfox.com/find_out/rate_charts.html](https://www.harryfox.com/find_out/rate_charts.html)

b. Audiovisual, permanent and on-demand streaming: sync + reproduction licensing

c. Anti-bootlegging

d. Interesting sites & reading
   i. Concert Vault ([www.concertvault.com](http://www.concertvault.com))
   ii. Music Vault ([https://www.youtube.com/user/musicvault](https://www.youtube.com/user/musicvault))
Financing Music Festivals: Joint Ventures, Private Placements & Other Financing Tools

Initial Overview

Margaret R. Marshall
Greenberg Traurig, LLP

I. Joint Ventures:

- **Partnering** by a would-be festival promoter with one or more “strategic partners” to produce new music festivals and/or to expand existing music festivals, domestically and/or globally.
  
  - “Strategic Partners” – broadly speaking, they are third parties that have experience and/or money that your would-be festival promoter does not have.

- **Initial Thoughts** - when you are looking to partner with strategic third parties:
  
  1. **Equity is the most expensive form of money.** By issuing equity in your project to a strategic partner, you are:
     - giving away ownership of your project;
     - giving away some level of control of your project;
     - giving this away, very typically, for the life of your project largely for money that is often times just start-up capital to buy you time hopefully until you can sell enough tickets to cover costs, unless the strategic partner has material and significant festival operation know-how your promoter does not possess.
  
  2. **Time is your enemy** – the closer you get to your proposed festival date, you start losing leverage rapidly.

- **Steps to Successful Joint Venturing:*

  1. **Create, Produce and Assemble “Assets”:**
     
     - **Experience** – if you have significant experience as a promoter of live music events (e.g., club events for a few years), this is a tremendous “asset.” As a result, your promoter hopefully (a) has a good relationship with talent agents, who are the “gatekeepers” of talent, and (b) knows how to curate a festival of interest.
- **Novel Idea** – interesting locale (Havana, Cuba or Catalina Island).

- **Venue/Permit** – in hand, very helpful.

- **Direct Access to media** – to promote ticket sales.

- **Infrastructure** – particularly important for ex-US expansion – grounds, production, security, ticketing, etc.

- **Capital** – not in itself enough likely, but helpful.

2. **Budget** – based on your “assets” - put together a tight, defensible budget (that the experts won’t crush). Strategic partners will walk if your budget is too high or you are not flexible on the scope of your project.

3. **Identify Best Strategic Partners** – 4 key things you will be looking for from strategic partners.

   (1) **Know-How** – avoid huge mistakes that can completely erode your profitability.

   (2) **Capital** – $.

   (3) **Talent** – festivals with multiple properties are still able to somewhat negotiate bulk talent buying and you may be able to take advantage of that savings or it may afford you better payment terms (e.g., not all upfront).

   (4) **Data** – access to customer lists – imagine access to Coachella’s list of festival goers to which to market a new festival.

4. **Approach and Start Putting Together Deal:**

   - **Multi-Year Deals/Lengthy Terms** – 20 years or for however long that the festival exists (caution – ex-US – if festival is conducted under a license, could be a shorter period (e.g., 3-7 years)).

   - **Funding by Partner** – happens in tranches. The partner will likely only fund, at any given time, the delta between ticket and sponsorship revenue against needed actual cost and expense drawdowns.

   - **Creative Control and Deadlock** – huge issues, negotiated extensively.

   - **Content Ownership** – huge issue, negotiated extensively (for ex-US - can be divided in-territory and ex-territory).

   - **Tail Periods** – mostly ex-US deals.
- **Waterfall** – all revenue (including ancillaries), first to cover expenses/liabilities, then [50/50] if anything is left after paying expenses covering liabilities.

- **Deficit** – if expenses exceed revenue, try and get that rolled-over into the next festival so your promoter does not come out of pocket.

- **Insurance** – liability, cancellation, etc. – who pays and who is primary?

- **Billing** – contested, ego driven – who gets first position on posters, etc.

- **Overhead/Production/Coordination Fees** – try to limit.

- **Non-Competition** – limit to competitive festivals (must define scope, time period and radius).

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**II. Private Placements**: – seeking money from largely non-strategic sources (e.g., business contacts, others).

- A private placement is the sale of securities to a relatively small number of select investors as a way of raising capital that, if done properly, does not have to be registered with the Securities and Exchange Commission.

- Most private placements are offered under the Rules known as Regulation D, to accredited investors (generally, those with a net worth in excess of $1 million or annual income exceeding $200,000, or $300,000 combined with a spouse); however, in most cases, all investors must have sufficient financial knowledge and experience to be capable of evaluating the risks and merits of investing in a company. Reg. D offerings are advantageous to any private company or entrepreneur because they allow an entity to obtain funding faster and to avoid the costs associated with a public offering but regardless they are still very lengthy to conduct (5+ months).

- Even if the transaction only involves one or two investors, the company or entrepreneur wanting to raise capital still needs to provide the proper framework and disclosure documentation.

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**III. Sponsorships; Media Opportunities**:  
-typically, partial funding only.

- **Sponsorship Dollars** – hugely important. Make or break the profitability of a festival – costs are very high and you’d be surprised at the margins.
LIVE PERFORMANCE AGREEMENTS

Janine Small, PLLC

TYPES OF PERFORMANCE AGREEMENTS

• One-Off
• Festival
• Private Dates
• Foreign Dates
• National Tour
• Charitable/Benefit Shows
• Sponsored Shows and Ancillary Rights
BASIC DEAL TERMS OVERVIEW

- Parties
- Compensation
- Performance Basics
- Production Responsibilities
- Name and Likeness Rights
- Cancellation
- Insurance/Indemnity
- Ancillary Rights

BASIC DEAL TERMS: PARTIES

- Promoter/Venue Entity
  - Direct with Venue
    - Private Entity
    - Public/Gov’t Entity
  - Direct with Promoter
    - Stature in the Industry
    - How Financed?

- Agent/Artist/Artist Entity
**BASIC DEAL TERMS: COMPENSATION**

- **Performance Fee**
  - Flat fee
  - Flat fee with bonus
  - Guarantee vs. split of revenue

- **Items to Consider in Determining Fee:**
  - Capacity issues; typical sell-out
  - Gross potential
    - Ticket price, seating schematic and scaling
  - What goes into the “Pot” if revenue split
    - Show costs, insurance, marketing, local promoter
    - Artist reserved rights: recording, artist merchandise, existing artist sponsorships
    - Purchaser reserved rights: concessions, parking, rebates, venue merchandise, facility sponsorships, season holders/boxes

**BASIC DEAL TERMS: COMPENSATION (CONT’D)**

- **Amount of deposit**
  - Known buyer; first time buyer
  - Required before announcement?
  - Escrow

- **Form of Payment**
  - Company check, cashier’s check, certified check, wire, letter of credit

- **Balance of Payment**
  - Release of escrow
  - Day of show, during show

- **Settlement**
  - Right to review box office receipts
BASIC DEAL TERMS:
PERFORMANCE BASICS

- Performance Requirements
  - Length of set
  - Sound-check
  - Creative control
    - Song selection
    - Intermisions: announcements
    - Sound engineers
    - Support Acts
  - Artist Rider
  - Staging/Technical Rider
- Exclusivity
  - Radius
  - Time Period
  - Exclusions
- Ticket Comps

BASIC DEAL TERMS: PRODUCTION RESPONSIBILITIES

- Backline: Sounds and Lights
  - Who provides
  - Pyrotechnics and special effects
    - Local ordinances
    - Security
    - Insurance
- Transportation and lodging
- Security/staging
- Permits
  - Event Permits
  - Artist Visas
  - Union Fees
- Catering
BASIC DEAL TERMS: NAME AND LIKENESS RIGHTS

- Promotions / Advertising
  - Billing
  - Ad matte/radio/publicity
  - Meet and greets
- Sponsors
  - Signage
  - No direct endorsements implications
- Merchandise
  - Hall fees
  - Who sells
  - Number of items
  - Multi-artist festival merchandise
- Most Favored Nations issues

BASIC DEAL TERMS: CANCELLATION

- Reason
  - Promoter Cancellation
    - Cause: force majeure
    - Without Cause: Poor ticket sales, failure to get permits
  - Artist Cancellation:
    - Cause: disability, death, illness
    - Without cause: Date conflict
  - Default/Breach
  - Inclement Weather/Dangerous Conditions
  - Morals Clauses

- Remedies
  - What happens to deposit?
  - What happens with balance of fee?
  - Lost costs: profits?
  - Mitigation requirements?
BASIC DEAL TERMS: INSURANCE AND INDEMNIFICATION

• Type of Carrier
  • AM Best Rated A- or better
  • Licensed to do business in state of performance
• Types of Insurance and Levels of Coverage
  • Comprehensive and General Liability
    • Per event vs. Occurrence vs. Aggregate
    • What if Artist doesn’t have insurance?
  • Worker’s Compensation
  • Property Damage Insurance (Equipment)
  • Cancellation Insurance
  • E&O
• Indemnification

BASIC DEAL TERMS: ANCILLARY RIGHTS

• Ancillary Rights Becoming More the Norm
• Webcasts/Video on Demand/Television Rights
• CDs/DVDs

Issues to consider
  Origination Fees
  Ownership
  Content Licensing
  Approvals
TOUR AGREEMENT

THIS TOUR AGREEMENT ("Agreement") is executed and entered into as of the ___

day of _______________, ____ between __________________ ("Promoter")

and________________ ("Company") furnishing the services of Artist.

W I T N E S S E T H:

Recitals

A. Company and Promoter wish to create, promote, produce, present and exploit a

series of live musical concert events (each, a "Show"), tentatively agreed to be

entitled____________ (the "Tour") featuring the live performances of ____________ ("Artist")
in various arenas, stadiums and/or other venues throughout _______________ (the "Territory").

B. In order to evidence the parties' understandings and agreements concerning the

relative rights, obligations and responsibilities in respect of the creation, promotion, production,
presentation and exploitation of the Tour, the parties desire to enter into this Agreement.
(Definitions to certain capitalized words and phrases used in this Agreement are attached as
Exhibit A or are as commonly understood in the industry.).

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements
contained herein, the parties hereto do hereby agree as follows:

ARTICLE 1

Section 1.1 Grant of Rights. Upon the terms described herein Company hereby grants

to Promoter for the Term (A) the Rights, and (B) the non-exclusive right, only in connection with

the promotion and advertising of the Tour and the exploitation of the Rights, to use and

reproduce and to authorize the use and reproduction of the Artist Identification. Use by

Promoter of the Artist Identification shall in each instance be subject to Company’s prior written

approval which may be given or withheld in Company’s absolute discretion. All rights not

specifically granted to Promoter herein are expressly reserved to Company, Artist and their

Affiliates.

Section 1.2 Appearance Agreement. Company agrees to furnish the services of the

Artist to perform the Shows determined in accordance with Section 1.3 below, including as

further described in Section 1.2(b) below. Artist shall perform for a minimum of ___ minutes at

each Show. There shall be ___ opening act for each Show unless otherwise determined by

Company. The identity of the opening acts shall be subject to Company’s absolute approval

provided that the cost of the opening acts, which shall be a Show Cost, shall be subject to

Promoter’s approval, not to be unreasonably withheld. Promoter shall obtain any curfew details

and arrange the start and completion times of each Show with the venue and relevant local

officials, subject to Company’s approval. Company will use its best efforts to comply with all local curfew requirements to

the extent that Promoter has provided prior notice thereof to Company.
Section 1.3  **Scheduling.** As soon as reasonably possible after execution of this Agreement, the parties hereto shall work together in good faith to determine the itinerary for the Tour. Company shall have absolute approval over the venues, dates and routing of the Tour, provided that it may not exercise such approval in a manner that would frustrate the purposes of this Agreement. Once the routing is approved, Promoter shall not unreasonably withhold its approval of any changes to same requested by Company, giving due consideration for the reasons for the changes proffered by Company. The first ___ Shows put on-sale to the public, or in the case of Private Shows contracted by Promoter with the approval of Company, shall be referred to herein as the “Initial ___ Shows”. If Company, in its sole and absolute discretion, determines to add and authorize Promoter to put on-sale to the public (or in the case of Private Shows, contract) (and cause Artist to perform) additional Shows in excess of the Initial ___ Shows in the Territory during or after the Term as part of the touring cycle which are intended to be a continuation of the Tour (“Additional Shows”), the same shall be considered “Shows” and shall be promoted by Promoter on the same terms as the Initial ___ Shows, subject to Section 4.1 below.

Section 1.4  **Term.** The term (“Term”) of this Agreement shall commence upon the effective date set forth above and continue through and until the conclusion of the last Show to be promoted by Promoter in accordance with the above, provided that the Retail Merchandise Rights shall continue for the Retail Rights Period and the A/V Rights shall continue for the A/V Rights Period.

Section 1.5  **The Production.**

(a) **Musicians, Crew and Musical Equipment.** Company shall be solely responsible for providing at its sole cost and expense (i) all accompanying musicians and back-up vocalists performing with the Artists (collectively, the "Musicians"), (ii) back line and technical production crew (the "Crew", and together with the Artists, the Support and the Musicians, collectively the "Tour Party") and (iii) musical instruments as may be necessary to perform each of the Shows in a first-class, professional manner. In addition, Company shall be responsible for overseeing, directing and implementing the transportation, lodging and storage logistics for the Tour Party and all musical instruments as may be necessary to cause the Tour Party and all such musical instruments to be timely available for each Show. Company shall also be responsible for arranging and paying for the personal travel and lodging for each Artist and their respective entourage.

(b) **Sound, Lights, Video, Stage and Production Crew.** Company shall be responsible for arranging and providing at its sole cost and expense the main stage sound, light and video systems and related equipment ("Production System"), the stage [if applicable], and the production crew required for the assembly and disassembly of the Production System (the "Production Crew") at each Show and the transportation, storage and lodging of the Production System and Production Crew as may be necessary to cause the Production System and the Production Crew to be timely available for each Show.

Section 1.6  **Separate Agreements.** Where Company enters into a Separate Agreement with a local promoter of a Show to provide the services of Artist, the provisions of this Section 1.6 shall apply. Company shall be entitled to retain any non-returnable Separate Amounts it receives, which amounts shall be treated as payments to Company under Sections 4.1 and 4.4(c) below and subject to settlement under Sections 4.4(b) and 4.7(d) below. Company shall not be
Section 1.7 Venue Logistics. Subject to Company’s approval, Promoter shall be responsible for overseeing, directing and implementing in a first-class professional manner all logistics at the venue for each Show such as installation and set up of the production, provision of venue security, ticket takers and other necessary venue staff and fulfilling the technical production requirements of, and providing all equipment and other items required in, the Tour Rider. In this regard, Promoter shall be responsible for providing as Show Costs for each Show all necessary local personnel, services and operations which are customarily furnished by promoters of first-class live in-concert productions involving a performance by an artist of Artist’s stature, including, without limitation, all ushers, security, local personnel, Artist and backstage catering, venues (including for normal sound check/day of rehearsals, load in and load out) and obtaining all licenses, permits, authorizations, etc., required to be obtained from all union, guild and public authorities having jurisdiction.

Section 1.8 Promotion and Advertising. Promoter shall be exclusively responsible, subject to the approval of Company, for overseeing, directing and implementing in a first-class professional manner all promotion and advertising for each Show included in the Tour; provided, that Company shall be responsible for providing advertising and promotion materials approved by it for use in connection with the preparation of advertising layouts. On the mutual agreement of the parties, Company shall cause each member of Artist to attend one (1) press conference to announce the Tour on a date, at a location and in a format and the content of which shall be subject to Company’s absolute approval. Company shall consider additional publicity activities of Artist as proposed by Promoter to promote and publicize the Tour and the exploitation of the Rights in the best interests of the Tour and in order to maximize ticket sales and Net Pot Revenue, provided that Artist shall have no obligation to render any personal services or to make public appearances (the same being subject to Company’s sole discretion and absolute approval).

Section 1.9 Venue Arrangements, Local Promoters and Sell-Offs. Promoter shall be responsible for making arrangements to obtain the right to use each venue for the purpose of presenting the Shows. Promoter shall be authorized to negotiate the terms at each venue in which the Shows are to be presented, subject to meaningful consultation with Company throughout the negotiation process with each Venue and Company’s prior approval of all material terms of each such agreement. In the event Promoter desires to “Sell-Off” any Shows, same shall be subject to the prior written approval of Company, it being understood that if Company approves the concept of a Sell-Off, all of the terms of such Sell-Off will be subject to Company’s approval. Any fees retained by any local promoter (excluding promoters of approved Sell-Offs) shall be borne entirely by Promoter and shall not apply in reduction of Pot Revenues. The decision as to whether to use local promoters shall be in Promoter’s sole discretion, provided that Company shall have approval over the local promoters to be used (all Promoter Affiliates are hereby approved as local promoters). All agreements made by Promoter in connection with the Tour with Affiliates shall be on “arms length” terms and are subject to the approval of Company. When seeking such approval, Promoter will advise Company that it is
dealing with an Affiliate, and will advise Company of the amounts to which such Affiliate will be entitled as a result of such agreement.

Section 1.10 Ticket Prices/Scaling. The scaling and ticket prices at each Show shall be established by Promoter with the approval of Company, provided that Company agrees to a scaling for the Tour that will include at least _________ sellable seats at an average ticket price net of Ticket Charges of no less than $__________, with a production that allows for sellable seats within a ___ degree “site line” from the center of the stage at each venue with an end stage configuration, and a “normal” site line configuration for stadiums, subject to the requirements and configurations of the specific venues. For the avoidance of doubt, sellable seats are full price unobstructed view seats and are exclusive of comps and kills.

Section 1.11 Complimentary Tickets & Holds. Neither party may issue, or authorize the issuance of, any complimentary tickets for any Shows without the express prior consent of the other party or except as provided in a Sponsorship Agreement. Each party hereto shall have the right to buy an agreed number of holds to each Show, at regular prices including Ticket Charges (provided that each of Company and Promoter shall be entitled to purchase tickets for the personal use of the immediate family members of their principles without paying the Tour VIP service charge or a ticket agent service charge, provided it is understood that Ticketmaster’s current policy is to allow promoters to sell holds without a service charge payable to Ticketmaster, but certain Venues may charge a service charge/booking fee on all tickets including holds and fan club tickets). For the avoidance doubt, service charges on Company or Promoter holds not charged by Ticketmaster or another ticket agent, less the reasonable and actual third party out-of-pocket cost of processing such holds, shall be Pot Revenues (such net amount being referred to herein as “Pot Service Charges”). Company shall have the Fan Club Pre-sale Right (as hereinafter defined).

Section 1.12 No Scalping. Neither party hereto shall “scalp” tickets or knowingly sell or authorize the sale of tickets to so called ticket “scalpers” or “brokers”. Each party shall be obliged to advise the other of any actual or suspected scalping activities of which it has knowledge or information of any kind.

ARTICLE 2

Merchandising Rights

Section 2.1 Licensed Products. Company shall have the right to approve or disapprove each particular item of Licensed Products in its sole discretion, provided that Promoter shall furnish Company with a sufficient quantity of designs to choose from, and Company shall approve sufficient and customary categories of first class Licensed Products in order for Promoter to exploit the Merchandising Rights.

Section 2.2 Advertising. Any advertising campaign or marketing program concerning the Merchandising Rights shall be subject to Company’s approval.

Section 2.3 Licenses. All licenses to be entered into by Promoter in connection with the Merchandise Rights shall be subject to Company’s absolute prior written approval.
Section 2.4 Exclusivity. Company shall not, and will ensure that Artist and any affiliate of Company will not, sell or authorize any third party (save where such third party is approved by Promoter in writing) to sell any merchandise bearing the Artist Identification at or in the vicinity of Shows or through retail methods. Notwithstanding the foregoing, Promoter acknowledges and agrees that (A) Affiliates of Artist and Company are party to the existing merchandising licenses described at the end of Exhibit F annexed hereto, pursuant to which Artist branded merchandise (but not Tour specific merchandise) is produced and sold through all methods of retail merchandising and that such sales shall continue throughout the Term; and (B) no amount of the monies deriving from the sale of such merchandise shall be Pot Revenues and same shall be the sole property of Company.

Section 2.5 Premiums. As between Company on the one hand, and Promoter, on the other, Promoter shall have the exclusive right to manufacture any premiums or other merchandise rights which are granted to any sponsor or official supplier of the Tour. All premiums (and deals therefore) shall be subject to Company’s prior written consent.

Section 2.6 Merchandising Costs. Subject to Section 2.7 below, Promoter shall be solely responsible for and shall pay all Merchandising Costs; provided that, Promoter shall not be obligated to pay for the services of any designer other than those designers on the staff of Promoter or any affiliate of Promoter or otherwise engaged by Promoter. Any use of album cover or other art which carries an additional payment or royalty shall be paid as a Merchandising Cost by Promoter. Promoter shall obtain customary levels of product liability insurance for Licensed Products (of no less than $1,000,000 (US) per occurrence and $2,000,000 (US) in the aggregate), the cost of which shall be a Merchandising Cost.

Section 2.7 Artwork. Company shall cause Promoter to be furnished (without further consideration payable by Promoter to any person or entity except as may be required pursuant to any agreement between Company and a third party) with artwork owned or controlled by Artist containing the Artist Identification for use on the Licensed Products, including a selection of photographic negatives or equivalent artwork elements for use in the Tour program book and all other Tour merchandise. The contents of the Tour program book, including, without limitation, all advertising contained therein, shall be subject to Company’s approval. Promoter shall assign to Company at the end of the Term all necessary rights it may have in any artwork, designs or other property created pursuant to the exploitation of the Merchandise Rights at Company’s request.

Section 2.8 Intentionally deleted

Section 2.9 Remaining Inventory. At the end of the Rights Period, Company may by written notice to Promoter elect to purchase, at cost, Promoter's inventory of Artist merchandise remaining at the end of the Rights Period; provided, however, that (A) Promoter shall not manufacture excessive quantities of Artist merchandise in anticipation of the end of the Rights Period; and (B) whether or not Company so elects, Promoter and its Affiliates shall (and shall cause all such Person(s) to) cease exploiting any Merchandising Rights upon the conclusion of the Rights Period.

Section 2.10 Additional Terms. Additional terms regarding the Merchandising Rights are set forth in Exhibit F attached hereto, provided that to the extent the terms set forth in Exhibit F are contrary to or inconsistent with the terms set forth in this Agreement, the terms of this Agreement shall control.
ARTICLE 3

A/V Rights

Section 3.1 Exclusivity. Neither Company nor Artist nor any affiliated companies or persons may exploit, release or broadcast or authorize the exploitation, release or broadcast of any recording of any live performance of Artist (including without limitation, of a Show) in the Territory (nor announce, advertise or promote the exploitation or broadcast thereof), whether on television, radio, cybercast or by way of home-video, theatrical film release or otherwise (and whether on a live or delayed basis), until expiration of the A/V Rights Period, with the exception of Current Programs, save for the release of audio only sound carriers (eg. records, cd’s, cassettes) containing Artist’s live performances at Shows or otherwise.

Section 3.2 Company Approval. Promoter shall not engage in any proposed form of exploitation of the A/V Rights without the prior approval of Company. Promoter shall not engage any agents to license any of the A/V Rights without the prior approval of Company. All aspects of Promoter’s exploitation of the A/V Rights, including the dates of broadcast, shall be subject to Company’s approval. Without limiting the generality of the foregoing, Company shall have the right to approve in its sole discretion any and all creative elements embodied in the programs produced pursuant to the A/V Rights.

Section 3.3 Terms of Agreements. Promoter shall have the right to propose agreements to exploit the A/V Rights only during the A/V Rights Period, provided that such agreements may extend beyond the A/V Rights Period if approved by Company.

Section 3.4 Ownership. Subject to Promoter’s rights as provided herein, and subject to any rights which may be granted to a third party in an agreement approved by Company with respect to the exploitation of the A/V Rights, Company shall own all right, title and interest, including copyrights, in and to any productions produced pursuant to the exploitation by Promoter of the A/V Rights and shall be free to exploit the same.

ARTICLE 4

Section 4.1 Company's Fee. Subject to Section 8.3 below, the fee ("Company's Fee") for the obligations to be performed by Company pursuant to this Agreement including the performance of all Shows and for the rights granted pursuant to the provisions hereof shall be equal to:

(a) a guarantee (the “Guarantee”) for the Initial ___ Shows completed by Artist equal to $______________ (US) which shall be payable in accordance with Sections 4.2(a) and (b) below; plus

(b) 85% of Net Pot Revenue in excess of $_____________ (US) [Guarantee divided by .85] (the “Split Point”), subject to Section 4.1(c) below. The amount, if any, payable to Company in excess of the Split Point shall be referred to herein as “Company’s Overage”; plus
(c) the Per Show Guarantee Amount for each Additional Show and a commensurate increase in the Split Point equal to the applicable Per Show Guarantee Amount for each Additional Show divided by .85.

Section 4.2 Advances Against Company’s Fee. Promoter shall pay to Company the following advances against the Company's Fee (herein called the "Tour Advances"): 

(a) $_____________ (US) on or before execution hereof, subject to Section 5.2 and the second sentence of Section 5.6(d) below; 

(b) $_____________ (US) on or before the date of the first Show, subject to Section 5.2 and the second sentence of Section 5.6(d) below; and 

(c) 50% of the applicable Per Show Guarantee Amount (if any) for each Additional Show on or prior to the date of ticket on-sale for each Additional Show.

If the Tour should be canceled or terminated, or does not commence by _____________, 200_, for any reason other than a material default by Promoter hereunder, Promoter may terminate this Agreement by written notice to Company, in which event Company shall immediately repay to Promoter the Tour Advances it had received prior to receipt of Promoter’s termination notice. Upon such repayment by Company, Company shall have no further obligation or liability to Promoter with respect to the Tour, subject only to the following sentence. If such cancellation, termination or failure to commence is the result of a material default by Company or Artist, Promoter shall have, as its sole remedy, the remedies specified in Section 8.1(a) below.

Section 4.3 Payment of Guarantee Amount. Promoter shall pay the applicable Show Payment Amount to Company upon completion of each Show.

Section 4.4 Settlement of Company’s Fee.

(a) Preliminary Statement. No later than 20 business days after completion of the final Show of the Tour, Promoter shall provide Company with a detailed preliminary consolidated statement (the "Preliminary Statement") reflecting an initial calculation of Net Pot Revenue (with appropriate details and break-down) If the Preliminary Statement should reflect that the amount of the Company's Fee, as calculated pursuant to Sections 4.1 and 8.3(d) hereof, is greater than the aggregate amount of all payments received by Company pursuant to Sections 4.2, 4.3 and 4.4(c) hereof (less any amounts paid by Company to Promoter pursuant to Sections 8.1(a)(ii)(A) and 8.3(d) hereof), then the Preliminary Statement shall be accompanied by a payment to Company of the balance of Company’s Fee owing for the Tour, less a holdback equal to ten percent (10%) of the aggregate estimated Company’s Fee.

(b) Final Statement. No later than sixty (60) days after the last Show included in the Tour, Promoter shall provide the Company with a detailed final consolidated statement (the "Final Statement") reflecting a final calculation of Net Pot Revenue (with appropriate details and break-down). If the Final Statement should reflect that the amount of the Company's Fee, as calculated pursuant to Sections 4.1 and 8.3 hereof, is greater than the aggregate amount of all payments received by Company pursuant to Sections 4.2, 4.3 and 4.4(a) and (c) hereof (less any amounts paid by Company to
Promoter pursuant to Sections 8.1(a)(ii)(A) and 8.3(d) hereof), then the Final Statement shall be accompanied by a payment to Company in an amount equal to such excess. If the Final Statement should reflect that the amount of Company’s Fee, as calculated pursuant to Sections 4.1 and 8.3 hereof, is less than the aggregate amount of all payments received by Company pursuant to Sections 4.2, 4.3 and 4.4(a) and (c) hereof (less any amounts paid by Company to Promoter pursuant to Sections 8.1(a)(ii)(A) and 8.3(d) hereof), then Company shall promptly refund to Promoter the overpayment. The above-noted payment and/or refunds are subject to any necessary adjustments to be made on account of late bills/required adjustments to the Final Statement, and further subject to the obligations of the parties to continue to thereafter settle-up with each other in the event of late bills and necessary adjustments to the Final Statement.

Section 4.5 Artist Specific Costs. Company shall be responsible for payment of all Artist Specific Costs at its sole cost and expense, as incurred, and Promoter has no obligation to pay for same. Any Artist Specific Costs paid for by Promoter, with Company's prior consent, shall be reimbursed to Promoter by Company in accordance with Section 4.7(e) below (and which amounts, for the avoidance of doubt, are subject to offset against any amounts owing hereunder to Company).

Section 4.6 Responsibility for Pot Costs. Promoter shall be responsible for the timely payment of all Pot Costs at its sole cost and expense, as incurred, subject to Section 4.6(b) below. Any Pot Cost paid for by Company, with Promoter's prior consent, shall be immediately reimbursed to Company by Promoter upon written notice thereof to Promoter.

Section 4.7 Accounting Matters.

(a) Daily Ticket Sales Reports/Pot Calculations. Promoter shall provide Company with daily ticket sales reports following the first on-sale of tickets for a Show and weekly summaries of the calculation of Pot Revenues and Pot Costs until the end of the Tour, and quarterly thereafter (March 31, June 30, September 30, December 31), within 30 days of the end of each calendar quarter (provided there is Net Pot Revenue for which to account).

(b) Attendance at Settlements. Promoter shall cause an individual who is knowledgeable of such matters and who is reasonably acceptable to Company to attend and settle all of the Shows included in the Tour. The Company shall have the right to require one or more of its designated representatives to attend the settlement of all Shows included in the Tour.

(c) Concert Settlements. Upon the conclusion of each Show, Promoter shall provide Company with a detailed settlement statement consistent with industry practices setting forth a calculation of the amount of gross ticket revenues and Net Ticket Revenue and the amount of Show Costs for that Show (with appropriate details and break-down of the calculation) and including revenues received from the sale of Licensed Products and related Merchandising Costs. The Company shall be given access to all of Promoter's written and computerized records relating to the settlement of each Show including a right to review invoices, receipts and other accounting back-up material relating to the Pot Costs for such Show.
(d) **Books and Records.** Promoter shall keep complete, detailed and accurate books and records relating to the calculation of Pot Revenues and Pot Costs for the Tour (the "Tour Accounts"). Company shall have the right to audit the Tour Accounts at its expense by an independent auditor who is not then currently auditing Promoter or a Promoter Affiliate, which audit must be commenced before the date that is eighteen (18) months after Company's receipt of the Final Statement. Such audit shall be conducted during normal business hours and at Promoter's regular place of business in the United States or Canada where Promoter keeps the Tour Accounts. Promoter shall pay to Company the amount, if any, shown to be owing in the audit report issued by the auditor, such amounts to be paid, if any, within ten (10) days of receipt of such audit report.

(e) **Company Recharges.** Weekly during the Tour, Promoter shall provide Company with an accounting of amounts paid by Promoter but for which Promoter is not responsible for paying as part of Pot Costs or for which Company is responsible for paying to Promoter (such as Artist Specific Costs or ticket purchases), and Company shall reimburse Promoter therefor within five (5) days of receipt by Company of the accounting (and which amounts, for the avoidance of doubt, are subject to offset against any amounts owing hereunder to Company).

Section 4.8 **Collection of Pot Revenues.** Company agrees that Promoter shall have the exclusive right to collect and retain for its own account (subject to its payment and withholding obligations contained in this Agreement) all Pot Revenues, and if Company or any Affiliate thereof receives any Pot Revenues, it shall promptly remit same to Promoter.

Section 4.9 deleted

Section 4.10 **Show Completion.** For purposes of this Agreement, a Show shall be deemed to have been completed if: (a) Artist performs such Show for a minimum of 90 minutes, or (b) Artist was ready, willing and able to perform at such Show, but such Show was cancelled other than as a result of a material default by Company under this Agreement or a Force Majeure Event and which Show has not been rescheduled or replaced by the mutual agreement of the parties hereto.

**ARTICLE 5**

**Other Matters**

Section 5.1 **Exclusivity.** Except as provided for in this Agreement, Artist shall not perform or advertise, directly or indirectly, live musical concert events (whether before paying or free, general public, private or corporate audiences) either alone or with any other artists in the Territory after the date hereof until the end of the Term. Notwithstanding anything to the contrary contained herein, Artist has the right to perform up to 3 songs at promotional appearances, charity shows and television (or other media) shows where Artist does not receive compensation materially greater than their out-of-pocket expenses (and Artist shall also have the right to have such performances taped, exhibited and/or transmitted) (provided such shows or any broadcasts do not or will not interfere with the performance or promotion of any Shows or the scheduling of the Tour as contemplated herein).
Section 5.2 Inducement/Guarantee Indemnity Agreements. The Company shall cause to be executed and delivered to Promoter, simultaneously with the execution of this Agreement (and in any event prior to payment of any Tour Advances), the Inducement Agreement and Guarantee Agreement in the forms annexed hereto as Exhibits C and D respectively.

Section 5.3 Sponsorships Rights. Promoter shall have the exclusive right, and shall use commercially reasonable efforts consistent with reasonable business judgment exercised in good faith, to secure one or more Tour sponsors and/or official suppliers. All sponsors/official suppliers and sponsorship/official supplier agreements shall be subject to the mutual approval of Company and Promoter, and all such agreements shall be executed by both Company and Promoter. Except as provided in an approved sponsorship agreement or as otherwise mutually agreed by Promoter and Company, neither Promoter nor Company nor their respective Affiliates shall distribute tickets for any Tour Event in such a manner as to imply an endorsement of any product, service, or person, and there shall not be any “give-aways,” promotional programs, premiums, or other incentives without the mutual approval of Promoter and Company.

Section 5.4 Controlled Compositions. Company and Artist agree to use their reasonable best efforts to cause Artist’s publishing company, record company and performing rights society (as applicable) to grant to Promoter the right to use songs to be performed by Artist at the Shows in Tour advertisements and promotions free of charge, and for use in the live performance of songs at Shows at the most favorable rates. In this regard, to the extent Promoter or any local promoter is able to negotiate a reduction to the “rate card” performing rights society fees in a particular country, Company and Artist shall use their reasonable best efforts to cause Artist’s publishing company or performing rights society, as the case may be, to agree to such reduced rates, acknowledging Company’s and Artist’s mutual obligation with Promoter to ensure that Pot Costs are as low as reasonably possible.

Section 5.5 Future Tours. If the Tour does not commence by _____________, 200_ for any reason other than a material default by Promoter hereunder and Promoter terminates this Agreement pursuant to Section 4.2 above, the following shall apply. Company agrees to endeavor to discuss in good faith with Promoter the terms, if any, upon which Company might grant to Promoter the right to promote Artist’s next concert tour in the Territory, provided it is understood that Company shall not be obligated to grant Promoter the right to promote such tour and provided further that the failure to have such discussions will not be a breach by Company of this Agreement.

Section 5.6 Insurance.

(a) Promoter's Insurance. Throughout the Tour, Promoter shall keep in effect and maintain at all times relevant hereto, as a Pot Cost, the following insurance coverage:

(1) Liability Insurance. (A) Commercial general liability insurance (including a contractual liability endorsement) with (i) per occurrence limits of not less than $10,000,000 with respect to bodily injury or death to any number of persons in any one accident or occurrence and with respect to property damage in any one accident or occurrence and (ii) an aggregate limit of no less than $10,000,000, and (B) business automobile liability insurance covering all owned, non-owned and hired vehicles in the protection of Promoter with coverage in the
minimum combined bodily injury and property damage liability limits of $1,000,000 per occurrence (such auto liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried or required to be carried by Promoter) (consisting of automobile liability insurance of $2,000,000 combined single limit, and excess umbrella coverage increasing such insurance to $10,000,000 per claim and in the aggregate). Promoter’s insurance shall be primary and non-contributing with respect to any insurance carried by Company to the extent of the liability assumed by Promoter herein, and shall have a separation of insureds provision. Promoter shall add the following parties to the above insurance as additional insureds:

(2) Workers’ Compensation Insurance and Employers’ Liability Insurance. Workers' Compensation Insurance (including stop gap liability in applicable States), Employers' Liability Insurance and all other insurance of similar or equivalent character applicable or relating to the employment by Promoter of any of its employees, servants, or agents if, and to the extent, required by applicable law (such insurance consisting of liability limits of $1,000,000 per claim and in the aggregate.

(3) E & O Insurance. Errors and Omissions liability insurance with a limit of liability of no less than $5,000,000 per occurrence and in the aggregate, covering all forms of media in which Promoter may operate. Company and Artist shall be added as additional insureds on such insurance policy.

All insurance described in this Section 5.6(a) may at Promoter’s option be obtained by Promoter by endorsement or equivalent means under any blanket insurance policies maintained by Promoter or by obtaining separate stand-alone policies for the Tour, provided that the coverage and other terms of such insurance comply with this Section 5.6(a). If such insurance is provided under blanket insurance policies maintained by Promoter, Promoter shall charge $.49 per attendee (but not in connection with any Sell-Off where the Sell-Off Promoter has assumed the obligation to obtain promoter liability insurance) for such insurance as part of Show Costs; otherwise the actual cost of the insurance obtained shall apply. Promoter shall assume and be responsible for any deductible or self insured retention if blanket insurance policies maintained by Promoter are used.

(b) Company's Insurance. Throughout the Tour, Company shall keep in effect and maintain at all times relevant hereto, as an Artist Specific Cost, the following insurance coverage:

(1) Liability Insurance. (A) Commercial general liability insurance (including a contractual liability endorsement) with (i) per occurrence limits of not less than $10,000,000 with respect to bodily injury or death to any number of persons in any one accident or occurrence and with respect to property damage in any one accident or occurrence and (ii) an aggregate limit of no less than $10,000,000, and (B) business automobile liability insurance covering all owned, non-owned and hired vehicles in the protection of Company with coverage in the minimum combined bodily injury and property damage liability limits of
$1,000,000 per occurrence (such auto liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried or required to be carried by Promoter) (consisting of automobile liability insurance of $2,000,000 combined single limit, and excess umbrella coverage increasing such insurance to $10,000,000 per claim and in the aggregate). Company’s insurance shall have a separation of insureds provision. Company shall add the following parties to the above insurance as additional insureds:

(2) Workers' Compensation Insurance and Employers' Liability Insurance. Workers' Compensation Insurance (including stop gap liability in applicable States), Employers' Liability Insurance and all other insurance of similar or equivalent character applicable or relating to the employment of Artist, if, and to the extent, required by applicable law (such employer’s liability insurance consisting of liability limits of $1,000,000 per claim and in the aggregate).

All insurance described in this Section 5.6(b) may be obtained by Company by endorsement or equivalent means under any blanket insurance policies maintained by Company, provided that the coverage and other terms of such insurance comply with this Section 5.6(b). Company shall assume and be responsible for any deductible or self insured retention under any of the above-noted insurance policies.

(c) Proof of Coverage and Other Insurance Matters. All insurance provided for in this Agreement shall be effected under valid and enforceable policies, in such forms and issued by financially sound and responsible insurance companies authorized to do business in the states and countries in which the Shows are being performed and which have been approved (which approval shall not be unreasonably withheld provided such companies have a Best Policyholder Rating of not less than A minus or better) by Company (in the case of insurance required to be maintained by Promoter) and by the Promoter (in the case of insurance required to be maintained by Company). Promoter and Company shall each furnish to the other, no later than the first date that tickets for any Show are placed on sale to the general public, a certificate or certificates reflecting all insurance policies required to be maintained by such party under this Section 5.6 and shall furnish and maintain with such other party, at all times, a certificate certifying that such insurance shall not be canceled without at least thirty (30) days advance written notice to such other party. If either party hereto fails to maintain insurance required of it pursuant to the provisions of this Section 5.6, the other party, at its election but without obligation to do so, may procure such insurance as may be necessary to comply with these requirements, and the failing party shall repay the cost of same to the other party on demand, with interest thereon at the Agreed Interest Rate from the date of expenditure until paid.

(d) Non-Appearance Insurance. Company shall acquire a non-performance/cancellation policy of insurance to cover its risk of loss of expenses and/or profits in the event of cancellation of Shows for insurable reasons. The limit of cover of Company’s insurance shall be for at least the amount of the Tour Advances provided for under Sections 4.2(a) and (b) above and must be bound with the Artist medicals having been taken and any pre-existing medical exclusion waived prior to payment of any such
Tour Advances. The terms of Company’s policy and any claims made thereunder shall be subject to Promoter’s approval, acting reasonably. Promoter shall acquire a non-appearance insurance policy to cover the reasonably estimated risk of loss of Pot Costs and, at Promoter's option, Promoter's profits. The terms of Promoter's policy and any claims made thereunder regarding Pot Costs shall be subject to Company’s approval, acting reasonably. For the purposes of clarity, (i) each party shall be responsible for the respective cost of its own policy, provided that the portion of the premiums of Promoter’s policy related to covering Pot Costs shall be a Pot Cost; (ii) the net claim proceeds, if any, received by Promoter in reimbursement of Pot Costs shall be included in Gross Income, and (iii) subject to the foregoing, each party shall be entitled for its own account to the payment of any claim proceeds under its own policy, provided that Promoter shall be added as a loss payee under Company’s policy with respect to its interest in the repayment of the Tour Advances as required herein. In light of the foregoing, Company shall, after the date hereof in order that the insurance will be in place as soon as possible but in any event prior to public announcement of the Tour, cause Artist and any key members of the band to submit to a confidential medical examination (with a doctor and at a convenient time and place approved by Artist and Promoter’s insurer) in order to acquire the above-described policies, as well as in the event of any medical condition that may cause or threaten the cancellation of a Show. Artist shall disclose in any such medical examination any pre-existing medical conditions or disabilities of Artist. If the parties are unable to obtain the above described policies without pre-existing medical exclusions for reasonable premiums and deductible (taking into account similar such policies) in accordance with the above requirements, Promoter shall have the right to demand that Company promptly repay the Tour Advances to Promoter and upon repayment (but not before), this Agreement shall terminate. The parties agree to cooperate with each other with respect to claims made under their respective policies, including without limitation, providing each other relevant documents and medical information and documents (including allowing Promoter’s insurers access to the attending doctor(s) of Artist and directing Artist’s normal doctor(s) to provide relevant medical history and records of Artist) as reasonably requested by their respective insurance carriers. The above cancellation policies shall not reduce, limit or lessen the right of either party to pursue any rights or remedies which it may otherwise have under this Agreement for any default or alleged default of the other party hereto.

Section 5.7 Approvals. All approvals granted to either party in this Agreement shall be exercised reasonably, unless otherwise specified or indicated by such terms as “absolute” approval.

Section 5.8 Credits. All Tour credits shall be determined by Company; provided that Company agrees that (A) Promoter shall receive credit substantially in the form of “Produced by ____________”, with its logo, and (B) it will endeavor to provide that such credit shall appear or otherwise be accorded on any and all records containing recordings from Shows, any and all television, radio, cybercast or other broadcasts or films of a Show, and in those materials in which concert promoters or exclusive concert promoters customarily receive credit, such as tour books, tickets, advertisements, and press releases. The placement, style and size of such credit shall be determined by Company. Company shall instruct third parties to accord such credit, but will not be deemed in breach of this Agreement due to the failure of a third party to accord such credit. However, Company agrees to use reasonable efforts to cause such third party
to prospectively correct such failure (e.g., on subsequent runs, if any) upon notice from Promoter of such failure.

Section 5.9 Merchandise Rent. Promoter shall use its reasonable best efforts to negotiate the most favorable merchandise rent (including vending costs) terms at each venue and best booth locations available.

Section 5.10 Tour Rider. The obligations of Promoter under this Agreement are conditioned upon the Promoter having reasonably approved the tour rider specifying the technical production requirements for each Show ("Tour Rider"). The Tour Rider to be proposed by the Company must be consistent with the requirements of production riders of similar concerts in the concert industry.

Section 5.11 Tour Website. Subject to the below terms, during the Retail Rights Period (but not thereafter), Promoter shall have the exclusive right to host the official Tour Website. All elements related to the foregoing, including any advertising or promotions on the Tour Website, as well as any other content on the Tour Website, shall be subject to Company’s approval which may be granted or withheld in its sole discretion. Company or its designee shall have the right to approve or reject in its sole discretion any and all Internet domain names to be used in connection with the Tour Website or the Merchandise Rights. All such Internet domain names shall be registered in the name of Company or its designee. In connection with the Tour Website, Company and Promoter shall use reasonable best efforts to enter into "The [Artist] Online Fan Club" arrangements on mutually agreed terms.

ARTICLE 6

Representations, Warranties, Covenants and Indemnification.

Section 6.1 Promoter. Promoter hereby represents, warrants and covenants unto Company as follows:

(a) Binding Obligation. This Agreement is a valid obligation of Promoter and is binding upon it in accordance with the terms hereof, and no joinder, consent or approval of any other person or entity (which has not yet been obtained) is required to properly consummate the transactions herein contemplated.

(b) Indemnification. Promoter will reimburse, indemnify, defend and hold Company, Artist and their respective directors, officers, employees and Affiliates harmless from and against:

(1) any and all liabilities, penalties, damages, claims, costs, charges and expenses from third party claims for personal injury, death or property damage which may be imposed upon, incurred by or asserted against Company or the Artist which relates to or arises out of the performance or presentation of the Shows (except for those liabilities, penalties, damages, claims, costs, charges or expenses caused in whole or in part by the negligence or willful misconduct of Company or its employees including Artist or by virtue of a breach by Company of its representations, warranties or covenants hereunder);
(2) any and all damages, losses, deficiencies, liabilities, costs and expenses resulting from, relating to or arising out of any false or misleading representation made by Promoter in this Agreement or the breach of any covenant or obligation of Promoter contained in this Agreement; and

(3) any and all actions, suits, claims, proceedings, investigations, demands, assessments, audits, fines, judgments, costs and other expenses (including, without limitation, reasonable attorneys' fees) incident to any of the indemnified claims referred to in clauses (1) and (2) above or to the enforcement of the provisions of this Section 6.1(b).

(c) Maximize Net Pot Revenue. Promoter shall use commercially reasonable efforts consistent with reasonable business judgment exercised in good faith in accordance with the terms of this Agreement to maximize Net Pot Revenue.

Section 6.2 Company. Company hereby represents, warrants and covenants to Promoter as follows:

(a) Binding Obligation. This Agreement is a valid obligation of Company and is binding upon it in accordance with the terms hereof, and no joinder, consent or approval of any other person or entity (which has not yet been obtained) is required to properly consummate the transactions herein contemplated.

(b) Rights.

(1) Company will at all relevant times have the full right, power and authority to enter into and perform this Agreement and will, at all relevant times hereunder, have the full right, power and authority to grant all rights (including the Rights) granted to Promoter under this Agreement. Pursuant to valid binding employment agreements between Company and each member of Artist, Company (i) will at all relevant times hereunder remain entitled, on an exclusive basis, to sufficient rights to the services of the members of Artist and all other necessary rights to enable Company to grant the rights herein granted to Promoter, including the Rights; and (ii) will at all relevant times hereunder have sufficient rights to the Artist Identification required to be provided by Company and its Affiliates hereunder, free and clear of claims by any third party.

(2) At all relevant times hereunder, the Rights granted to Promoter hereunder are and will be valid, binding and enforceable according to the terms of this Agreement.

(3) The acquisition hereunder by Promoter of the Rights will not require the payment of any additional consideration by Promoter or any Affiliate thereof other than that which is required or expressly provided in this Agreement.

(4) The rights granted in this Agreement by Company, including the Rights, do not and will not infringe the rights of any third party.

(c) Performing Artist's Unions. Company represents that Artist is, or shall be, a member in good standing of the relevant performing artist union(s) in the Territory and
shall pay any and all such union fees, dues and other costs associated with any such required membership.

(d) **Indemnification.** Company will reimburse, indemnify, defend and hold Promoter and its directors, officers, employees and Promoter Affiliates harmless from and against:

1. any and all liabilities, penalties, damages, claims, costs, charges and expenses from third party claims for personal injury, death or property damage which may be imposed upon, incurred by or asserted against Promoter which relates to or arises out of (i) the negligence or willful misconduct of Company or its employees including Artist, or (ii) breach by Company of its representations, warranties or covenants hereunder;

2. any and all damages, losses, deficiencies, liabilities, costs and expenses resulting from, relating to or arising out of any false or misleading representation made by Company in this Agreement or the breach of any covenant or obligation of Company contained in this Agreement; and

3. any and all actions, suits, claims, proceedings, investigations, demands, assessments, audits, fines, judgments, costs and other expenses (including, without limitation, reasonable attorneys' fees) incident to any of the indemnified claims referred to in clauses (1) and (2) above or to the enforcement of the provisions of this Section 6.2(d).

(e) **Maximize Net Pot Revenue.** Company shall use commercially reasonable efforts consistent with reasonable business judgment exercised in good faith in accordance with the terms of this Agreement to maximize Net Pot Revenue, but only to the extent consistent with its sphere of responsibilities hereunder, it being understood and agreed that nothing herein shall be construed as causing Company to be responsible for the earning of interest on Net Tour Cash or otherwise shifting any responsibility for the promotion of the Tour and any of the Shows from Promoter to Company.

(f) **Duly Incorporated.** Company is duly incorporated and in good standing in its jurisdiction of incorporation.

(g) **Not An Agent.** Company is not an agent for any of the members of Artist and has entered into this Agreement, and will receive all payments hereunder, for its own account as principal.

**ARTICLE 7**

**Withholding Taxes**

Section 7.1 (a) **General.** Promoter shall be entitled to deduct and withhold from any payments due to Company hereunder any and all taxes or other amounts required to be withheld therefrom by any country, state, local or other applicable taxing or revenue authority pursuant to any law, regulation, statute or order. If Promoter intends to deduct or withhold any such taxes, it shall advise Company of such determination prior to actually deducting and withholding such taxes.
If Promoter shall so deduct or withhold any taxes from amounts payable to Company hereunder, Promoter (i) shall pay to or deposit with the appropriate taxing authority in a timely manner the full amount of taxes it has deducted or withheld, (ii) shall provide to Company, within thirty (30) days of the payment or deposit of such taxes, evidence of payment or deposit of such withheld taxes to the appropriate taxing authority and a statement setting forth the amount of withheld taxes deducted or withheld, the applicable rate, and any other information or documentation reasonably requested by Company for the purposes of (x) assisting Company in obtaining any applicable credits or deductions for such withheld taxes in any jurisdiction in which Company is subject to tax or (y) satisfying any information reporting requirements, and (iii) shall forward to Company as soon as possible any official tax receipts or other documentation with respect to the payment or deposit of the deducted or withheld taxes as may be issued from time to time by the appropriate taxing authority.

(b) US Taxes: Subject to Section 7.1(c) below, Promoter shall not withhold any U.S. Federal income taxes (or, where appropriate, shall withhold at a permissible rate lower than that generally applicable) from amounts payable hereunder to or for the benefit of Company if Promoter has been provided with the Prescribed Forms (as defined below) for the applicable period and either: (i) a copy of a Withholding Agreement as defined below, and/or (ii) evidence to the reasonable satisfaction of Promoter that the Company is a US resident for US federal tax purposes (and the members of Artist are US residents for US federal tax purposes if determined necessary in the reasonable opinion of Promoter) and will remain so for the currency of any payments hereunder. The term "Prescribed Forms" shall mean such duly executed form(s) or statement(s) as may, from time to time, be prescribed by applicable law and which, pursuant to the applicable provisions of (A) any applicable income tax treaty, (B) the Internal Revenue Code of 1986, as amended, or any successor statute or regulations promulgated pursuant thereto (the "Internal Revenue Code"), or (C) any other applicable rule or regulation, permit Promoter to make payments of amounts required to be paid hereunder to Company free of withholding (or subject to withholding at a lower rate than is generally applicable). For the avoidance of doubt, until Promoter receives the Prescribed Forms and the items referred to in this Section 7.1(b)(i) and (ii) above, Promoter will withhold and deposit U.S. Federal income taxes at the legally required rate. For the purposes hereof, a “Withholding Agreement” shall mean a written agreement between the Internal Revenue Service ("IRS") and a party recognized by the IRS as an authorized withholding agent incorporating one or both of the following provisions: (I) a provision precluding the IRS from issuing a Notification (as defined in Section 7.1(c) below) to any person such as Promoter or a Third Party Payor (as defined in Section 7(c) below) making payments to Company in connection with the Tour; and/or (II) a provision obligating the IRS to provide written notification to persons making such payments to Company that such payments are not subject to U.S. federal income tax withholding.

(c) IRS Notifications. Notwithstanding anything contained herein, if the IRS issues to Promoter or a third party payor of Gross Income (including a Venue or ticket agent) (a “Third Party Payor”) written notification pursuant to the Internal Revenue Code to the effect that Promoter or such Third Party Payor is required to withhold U.S. federal income tax on payments made to Company hereunder (a "Notification"), then from and after the date Promoter or the Third Party has received a copy of, or other notice of such Notification, Promoter and/or such Third Party Payor shall be entitled to withhold US
taxes in accordance with such Notification until such time (if any) as the IRS has withdrawn such Notification in writing.

Section 7.2 Responsibility. All taxes withheld by Promoter on payments to Company in accordance with the above, or withholding taxes paid by Promoter on Company’s behalf, and any taxes withheld by a third party or a Promoter Affiliate on Pot Revenues pursuant to the laws of any national, state, local, or other applicable governmental taxing or revenue authority pursuant to any law, regulation, statute, or order, which are withheld on account of the income tax liability of Promoter or Company/Artist, as deemed calculated by the relevant taxing authority, shall be the sole responsibility of the party to whom the taxes are deemed attributable (under the laws of the taxing jurisdiction) (any such party being hereinafter referred to as the “Taxed Party”) and shall not be Pot Costs. Each party shall promptly reimburse Promoter for any amount of Pot Revenues so withheld against it, which amount shall be deemed Pot Revenues. All other taxes deducted or withheld from Pot Revenues, including withholding taxes where the taxing jurisdiction requires such withholding without regard to which of Promoter or Company (or their respective Affiliates) is the beneficial owner of such Pot Revenues (under Separate Agreements or otherwise), shall be Pot Costs. Any and all legal fees, accounting fees and other out of pocket expenses incurred by a party for tax advisors in any jurisdiction or for entering into Separate Agreements shall be the expense of that party and shall not be Pot Costs, except if the parties engage the same local tax advisor to jointly represent them and their designee companies, in which case the cost of such advisors shall be a Pot Cost. The parties shall cooperate with each other acting reasonably in the reduction of their respective withholding taxes, at the expense of the party seeking to reduce its withholding taxes except as otherwise provided above. In connection with the foregoing, the parties agree to use their reasonable best efforts to cooperate with each other to reduce the impact of any withholding taxes that may be imposed on payments to or for the benefit of the other party, to the extent possible and permissible, and to enable each party to designate, to the extent possible and permissible, whether any withholding taxes that may be required to be withheld will be credited to that party’s own tax account or to the tax account of its designated employees. Notwithstanding anything to the contrary contained in this Section 7.2, U.S. federal, state and local income taxes that are withheld from a source of Pot Revenues shall not be Pot Costs, and all such taxes in respect of which the tax certificates or other similar documents evidencing payment are issued in the name of Company, Artist or any of their Affiliates (but no other U.S. federal, state or local income taxes withheld from a source of Pot Revenues) shall be the responsibility of Company and shall be treated as payments theretofore made to Company pursuant to Article 4 hereof.

Section 7.3 Agreements.

(a) Promoter Affiliates. Upon Promoter's request, Company shall enter into agreements with any non-United States Affiliates of Promoter as Promoter may designate pursuant to which such Affiliate(s) is granted any of the Rights with respect to the exploitation thereof in any country of the Territory outside of the United States; provided, however, that the form and substance of each such agreement shall be subject to Company’s approval and any such agreement shall not alter the respective rights and obligations of the parties hereto, and, without limiting the generality of the foregoing, shall not relieve Promoter of any of its obligations hereunder.

(b) Company Affiliates. Upon Company’s request, Promoter shall enter into agreements with any non-United States Affiliates of Company (or such other person as is
then entitled to grant the Rights) as Company may designate pursuant to which such Affiliate(s) or other person grants any of the Rights with respect to the exploitation thereof in any country of the Territory outside of the United States; provided, however, that the form and substance of each such agreement shall be subject to Promoter’s approval and any such agreement shall not alter the respective rights and obligations of the parties hereto, and, without limiting the generality of the foregoing, shall not relieve Company of any of its obligations hereunder.

ARTICLE 8

Defaults, Remedies, Dispute Resolution, Force Majeure and Cancellation

Section 8.1 Defaults and Remedies.

(a) Company’s Failure. If Company or Artist fail to perform the Tour or any Shows for reasons other than a Force Majeure Event or Promoter’s breach hereof, as Promoter’s sole remedy: (i) if the parties have not by mutual agreement agreed to reschedule or replace the cancelled Shows and notwithstanding Section 4.1 above, the “Company’s Fee” shall be the amount specified in Section 8.3(d) below; and (ii) Company shall promptly pay to Promoter as liquidated damages (in addition to any payments required to be made by Company to Promoter under Sections 4.4(b) and 4.7(d) above) the sum of (A) if the parties have not mutually agreed to reschedule or replace the cancelled Shows, the applicable Cancellation Amount for the Show not performed for such reasons (provided Company has previously been paid the corresponding Tour Advance amount for such Show(s)), plus an amount equivalent to interest at the Agreed Interest Rate on such amount as if such interest accrued from the date the Tour Advances were paid, and (B) the total amount of actual, out-of-pocket Pot Costs incurred by Promoter in connection with the Shows not performed for such reasons which Promoter cannot otherwise recover or mitigate, along with interest on such amounts at the Agreed Interest Rate calculated from the date such amounts were paid by Promoter, provided that in no event will Promoter be entitled to consequential damages (including without limitation, lost profits) or any other remedy except as set forth in this Section 8.1(a).

(b) Promoter’s Failure. If: (i) Promoter fails to pay when due any portion of the Tour Advances or any payment described in Section 4.3 above or any Per Show Guarantee Amount, or Promoter fails to make any payment under Sections 4.4 or 4.7(d) when due, (ii) Promoter willfully cancels any Show other than for the reasons specified in Section 4.10(b) above, (iii) Promoter negligently fails to perform any of its other material obligations hereunder in a recurring or repetitive manner, (iv) Promoter willfully fails to perform any of its other material obligations hereunder, or (v) Company is entitled to payment and demands payment in writing for three (3) Shows for the reason specified in Section 4.10(b) above (and for the avoidance of doubt, excluding for the reasons specified in Section 8.1(b)(ii)), and such breach (if capable of being cured, it being acknowledged that all breaches under Sections 8.1(b)(ii), (iii), (iv) and (v) hereof, are not capable of cure) remains uncured for ten (10) days following written notice thereof from Company, Company shall have the right, by written notice to Promoter (“Termination Notice”), to terminate this Agreement and demand immediate payment of any portion of the Guarantee not yet paid (such amount being referred to herein as the “Termination Payment Amount”), without prejudice to Company’s rights, remedies and/or entitlements
If Company terminates this Agreement in accordance with the above, the Tour shall be deemed completed as between Company and Promoter, and shall be settled in accordance with Sections 4.4 and 4.7 above. At any time within ten (10) days following the date of receipt by Promoter of any such Termination Notice, Company may elect, by written notice to Promoter (a “Takeover Notice”), to require Promoter to assign and/or procure the assignment by Promoter and its Affiliates to Company (and its Affiliates) of: (x) all Pot Revenues then in the possession of Promoter (including any amounts that would be Pot Revenues if they were non-returnable); and (y) all letters of credit, agreements or other documents pursuant to which Promoter and/or its Affiliates are or shall be entitled to receive ticket revenue attributable to Shows still to be performed, and all other agreements or documents pursuant to which Promoter and/or its Affiliates exercise the Rights (collectively, the “Tour Agreements”). If Promoter fails to assign to Company all such Pot Revenues within five (5) days of the date of the Takeover Notice, Promoter shall immediately pay Company liquidated damages equal to the greater of: (a) the amount of Pot Revenues then in Promoter’s possession as of the date of the Takeover Notice (but subject to settlement in accordance with the third sentence of this Section 8.1(b)); or (b) the sum of the remaining Show Costs to be incurred in connection with Shows still to be performed; plus the unpaid portion of the Guarantee (if the same has not been paid in accordance with the first two (2) sentences of this Section 8.1(b)). If Promoter fails to assign any and all Tour Agreements within five (5) days of the date of the Takeover Notice, Company shall be authorized to execute such assignments in Promoter’s and/or its Affiliates’ names, and to take such other steps in Promoter’s and/or its Affiliates’ names as may be reasonably necessary to effectuate such assignments.

Notwithstanding anything to the contrary contained herein, upon the giving of any Termination Notice, the Term and the A/V Participation Period shall end, Promoter shall have no further entitlement to any Pot Revenues earned after the date of the Termination Notice (subject to the balance of this paragraph), and Company shall, subject to the third sentence of this Section 8.1(b) above, have no further obligation or liability to Promoter in connection with the Tour, provided that the following is understood. In the event Promoter entered into an agreement with respect to the exploitation of the A/V Rights and with respect to a Show that occurred prior to Company’s termination of this Agreement in accordance with the above, the revenues and expenses related to the resulting production shall be Pot Revenues and Pot Costs and shall be included in the Tour settlement between Company and Promoter in accordance with the third sentence of this Section 8.1(b) above. However, if Company enters into an agreement with respect to the exploitation of the A/V Rights after Company’s termination of this Agreement in accordance with the above, the revenues and expenses related to the resulting production shall not be Pot Revenues and Pot Costs and shall not be included in the Tour settlement between Company and Promoter in accordance with the third sentence of this Section 8.1(b) above; and further, if Promoter entered into an agreement with respect to the exploitation of the A/V Rights prior to termination of this Agreement in accordance with the above, but with respect to a Show that occurs after such termination of this Agreement, the revenues and expenses related to the resulting production shall not be Pot Revenues and Pot Costs and shall not be included in the Tour settlement between Company and Promoter in accordance with the third sentence of this Section 8.1(b) above.
Section 8.2 Arbitration.

(a) Requirement. All claims, controversies disputes and other matters in question arising out of, or relating to this Agreement, the breach hereof or the rights, privileges, responsibilities or duties between or among any one or more of the parties bound by this Agreement, shall be decided by arbitration in New York, New York in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then existing unless all of the parties to such claim, controversy or dispute or other matter in question unanimously agree to the contrary. The provisions contained in this Section 8.2 shall be specifically enforceable under the prevailing arbitration law.

(b) Timeliness. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

(c) Procedure. The arbitrator or arbitrators for any proceeding conducted hereunder shall be a person with experience in the live entertainment business that is selected in accordance with the commercial arbitration rules of the AAA. The award rendered by the arbitrator or arbitrators shall be final (subject to appeal for errors of law), and judgment may be entered upon it in accordance with applicable law and any court having jurisdiction thereover, the parties here to consenting to the jurisdiction of such courts for this purpose.

(d) Costs. Except as provided to the contrary herein, the fees and expenses related to the services provided by the arbitrators and the AAA in connection with any arbitration proceeding hereunder shall be paid one-half by each party to such arbitration proceeding.

Section 8.3 Force Majeure.

(a) General. If a Force Majeure Event prevents the presentation of one or more Shows in the manner required by the terms of this Agreement, then, absent a mutual agreement to the contrary, (i) such Shows shall be canceled, (ii) neither party hereto shall be in default of its obligations by reason of such cancellation and (iii) both parties hereto shall use all reasonable efforts to reschedule or replace such Shows at a mutually agreeable time and place.

(b) Pot Costs. For the purposes of clarity, with respect to any Show which is canceled as a result of a Force Majeure Event pursuant to the provisions of Section 8.3(a) above, the unavoidable Pot Costs paid by Promoter and incurred in connection with or reasonably allocated to such cancelled Show shall be deducted for purposes of calculating the Net Pot Revenue for the Tour provided, however, that Promoter shall be obligated to mitigate or otherwise recover such Pot Costs to the extent reasonably possible.

(c) Entire Tour. If a Force Majeure Event should result in a cancellation of the entire remaining schedule of Shows in the Tour and the parties are unable to mutually approve the rescheduling or replacement of any portion of such Shows in a mutually
acceptable manner, then either party hereto may, after exercising all reasonable efforts to reschedule such Shows, terminate the Term of this Agreement by providing notice thereof to the other party hereto.

(d) Adjusted Company’s Fee. If any Shows canceled pursuant to the provisions of this Section 8.3 are not rescheduled or replaced, then Promoter shall not be required to make the payment, if any, required under Section 4.3 for such Shows, Company shall pay the applicable Cancellation Amount for each such Show (provided Company has previously been paid the corresponding Tour Advance amount for such Show(s)) to Promoter upon demand (or, at Promoter’s election, such amount shall be offset by Promoter against future payments to Company hereunder) and, notwithstanding Section 4.1 above, “Company’s Fee” shall be the greater of:

(i) the sum of (A) an amount equal to the [Per Show Guarantee Amount] for each of the Initial ___ Shows multiplied by the number of Initial ___ Shows completed by Artist, plus (B) the Per Show Guarantee Amounts for all Additional Shows completed by Artist (collectively, the “Aggregate Minimum Fee”); or

(ii) 85% of Net Pot Revenue.

ARTICLE 9

Miscellaneous Provisions

Section 9.1 Notices. All notices given hereunder shall be in writing and shall be deemed to have been duly given if delivered personally with receipt acknowledged or sent by registered or certified mail or equivalent, if available, return receipt requested, or by facsimile, telex or cablegram, or by recognized overnight courier for next day delivery, addressed or sent to the parties at the following addresses and facsimile numbers or to such other additional address or facsimile number as any party shall hereafter specify by notice to the other parties:

Promoter: [insert]
Attention: 
Telephone No: 
Facsimile No: 

With a copy to: [insert]
Attention: 
Telephone No: 
Facsimile No: 

Company: [insert]
Attention: 
Telephone No: 
Facsimile No: 

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Section 9.2 New York Law to Apply. This Agreement shall be construed under and in accordance with laws of the State of Florida without giving any effect to the choice of law principles in the State of Florida. The parties hereto submit to the jurisdiction of the courts of Florida.

Section 9.3 Other Instruments. The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the provisions of this Agreement.

Section 9.4 Amendment. This Agreement may be amended or modified by the parties hereto from time to time but only upon approval by both of the parties hereto contained in a written instrument.

Section 9.5 Headings. The headings used in this Agreement are used for administrative purposes only and do not constitute substantive matter to be considered in construing the terms of this Agreement.

Section 9.6 Parties Bound. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 9.7 Legal Construction. It is the desire and intent of the parties hereto that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, to the extent that any provision in this Agreement is held to be invalid, illegal or unenforceable in any respect in any jurisdiction in which enforcement is sought, the terms of such provision, for the purpose only of the operation of such provision in such jurisdiction, shall be enforced to the maximum extent possible in such jurisdiction, and such provision shall be deemed to have been revised accordingly herein. Such invalidity, illegality, or unenforceability shall not affect any other provision hereof or render such invalid, illegal, or unenforceable provision invalid, illegal or unenforceable in any other jurisdiction.

Section 9.8 Counterparts. This Agreement may be executed by fax and/or in any number of counterparts and each of such fax signatures and/or counterparts shall for all purposes be deemed to be originals.

Section 9.9 Prior Agreements Superseded. This Agreement supersedes any contemporaneously dated or prior understandings or written or oral agreements between the parties respecting the within subject matter.
Section 9.10 Assignments Prohibited. Neither party hereto may assign, transfer, convey or delegate any of its rights or duties hereunder without the express prior written consent of the other party hereto; provided that Company may assign this Agreement to any party entitled to the Rights upon written notice to Promoter, provided that same shall not relieve Company of its obligations herein and further provided that the Inducement Agreement and Guarantee Agreement referred to in Section 5.2 above shall thereafter apply to the obligations of Company’s assignee under this Agreement as well as Company’s obligations.

Section 9.11 Confidentiality. The terms of this Agreement are confidential to the parties and must not be disclosed to any third parties without the prior written consent of the parties hereto, except as disclosure may be required to professional advisors or by law, or for carrying out the purposes of this Agreement. Breach of this provision could cause the parties irreparable harm which may not be compensable in monetary damages. In this regard, Promoter must treat as confidential: (a) all information, data and documents acquired by Promoter relating to the business affairs of Artist or the financial or personal lives of any of the members of Artist; and (b) all photographs, films, videos or other recordings (unless disclosure of such items has been pre-approved in writing by Artist or is otherwise required for Promoter to comply with its obligations).

EXECUTED effective as of the date and year first above written.

Promoter:

[insert]

By: ___________________________
   Name: _______________________
   Title: _______________________

Company:

[insert]

By: ___________________________
   Name: _______________________
   Title: _______________________
EXHIBIT A

(1) “Affiliate” means, with respect to any person or entity, another person or entity that directly or indirectly controls, is controlled by, or is under common control with such person or entity. Without limiting the generality of the foregoing, any member of Artist and any person or entity controlled by any member of Artist shall be deemed an “Affiliate” of Company.

(2) “Agreed Interest Rate” means the prime rate or the then current equivalent rate announced from time to time by the Bank plus one percent (1%) per annum, provided, however, such rate shall not exceed the maximum rate permitted by law.

(3) “Artist Identification” means the name of the Tour and the name “______________”, the approved name and approved likeness, approved pictures and approved signatures of Artist and all approved service marks, trademarks, logos, and designs that are owned or controlled by Company or Artist or any affiliate of any of the foregoing, solely as they relate to the Tour or “______________”, and solely to the extent designated by Company for use hereunder.

(4) "Artist Specific Costs" means (i) all production costs, including, but not limited to, main stage sound, lights and video, staging (if applicable), travel costs, accommodation costs, payroll and related costs for production crew, design fees and related expenses, (ii) the cost of all musical instruments of the Tour Party and the cost of transporting, storing and insuring all such musical instruments, (iii) personnel costs for production crew, (iv) personnel costs for the Tour Party and other members of Artist’s entourage (including transportation, food [excluding venue catering] and lodging), (v) salaries, wages, union dues and other labor costs and benefits of the Tour Party and other members of Artist’s entourage, (vi) all management and agency commissions or fees and legal fees of Artist and all other members of the Tour Party, (vii) all payments due Company, Artist and any third party whose name(s), likenesses, trademarks, service marks or logos comprise the Artist Identification, and (viii) all such other costs which a producer of a first class touring event is customarily responsible including without limitation adequate worker’s compensation and liability and other insurance with respect to the foregoing.

(5) “Artwork Costs” means all fees and costs incurred by Promoter and mutually approved by the parties (such approval not to be unreasonably withheld or delayed) in connection with the design and origination of the artwork for the Licensed Products, including, without limitation, the costs of film and photographs, monies paid to photographers and designers, separations and other origination costs, copyright clearances, editorial costs, the costs of samples, and all other out of pocket costs reasonably related to the foregoing.

(6) "A/V Rights" means the exclusive rights throughout the world (i) to produce, exploit, distribute, transmit, and promote for live and/or delayed broadcast or transmission (in any forms of such media now or hereafter known): (a) radio broadcasts of Shows or portions thereof, (b) television broadcasts of Shows or portions thereof, (c) internet broadcasts of Shows or portions thereof and (d) broadcasts and/or transmissions of Shows or portions thereof by means of so-called "wireless" devices (e.g., without limitation mobile phones, Blackberry™ devices and similar devices) and/or so-called "podcasts" and/or by any other means now known or hereafter developed, and/or to authorize third parties to do any of the foregoing; and (ii) to produce, manufacture, distribute, transmit and sell home video devices (including VCR’s, DVD’s and
other devices now known or hereafter developed) incorporating Shows or portions thereof and to authorize third parties to do any of the foregoing, excluding for the avoidance of doubt audio only carriers and/or downloads and/or streaming of Artist’s music.

(11) “A/V Rights Period” means the period commencing upon the date of execution hereof and ending on the date one (1) year after final Show of the Tour.

(12) “Bank” means ______________________

(13) “Cancellation Amount” means $__________ (US) [insert the pro rata amount of the Tour Advances for each Show] for each of the Initial ___ Shows and $___________ (US) [insert the Tour Advances for each Additional Show] for each Additional Show for which Company has elected to receive a Per Show Guarantee Amount under Section 4.1(c) above.

(15) “Company’s Overage” has the meaning ascribed thereto in Section 4.1(b) of this Agreement.

(16) "Current Programs" means (i) tapes or films of Artist's substantially similar performances existing as of the date hereof to which broadcast or exhibition rights have heretofore been granted to third parties and which rights currently subsist without further authorization by Company, Artist or any Affiliate thereof; (ii) electronic press kits; and (iii) audio-visual presentations intended primarily to promote the Tour approved by Promoter; and (iv) broadcast news or news magazine stories or news programs concerning the Tour where no actual grant of rights is required from Artist or Company.

(17) "Fan Club Pre-Sale Right” means the right of Artist’s fan club (___________ .com or other Company-approved URL for Artist’s fan club) to sell tickets for Shows only in advance of public on-sale during an agreed number of days, subject to the restrictions imposed on same by Ticketmaster, Promoter’s other ticket agents or the Venues from time to time (including with regards to the imposition of service charges/booking fees), with which Company, Artist and Artist’s fan club must comply. The Fan Club must sell these tickets through Ticketmaster or Promoter’s other approved ticket agents, and in so doing may charge a service charge, the amount of which shall be subject to Promoter’s approval, not to be unreasonably withheld (it being understood that a service charge equal to Ticketmaster’s shall be deemed to be reasonable). Such service charges shall be “Pot Service Charges” calculated in accordance with Section 1.11 above (less any amounts to which Ticketmaster and/or the Venues are entitled), and paid to Promoter on account of Pot Revenues.

(19) “Force Majeure Event” means the occurrence of an event outside the control of Company, Promoter and the Artist such as the illness, injury, disability or death of any member of Artist, accident, an act or regulation of a public authority, fire, riot or civil commotion, lockout or strike or other labor dispute, disease, epidemic (including health epidemic), act of terrorism or imminent threat thereof that affects a Show, substantial interruption in, or substantial delay or failure of, technical facilities, failure or substantial delay of necessary transportation services, inability to obtain necessary visas, war conditions, emergencies, inclement weather, acts of God or any other causes beyond the control of Promoter, Company and the Artist.
(21) “Licensed Products” means merchandise utilizing the Artist Identification.

(22) “Merchandising Costs” means any and all actual, documented costs incurred by Promoter and mutually approved by the parties (such approval not to be unreasonably withheld or delayed) in connection with the design, origination, manufacture, distribution, marketing and sale of Licensed Products, including without limitation the costs of development, procurement and supplying of Licensed Products, Artwork Costs, manufacturing costs, shipping and freight costs, insurance (including product liability insurance), hall and vendor fees and costs, bootleg security, the legal fees and other costs of local and national injunctions, and all other out-of-pocket costs of anti-bootlegging enforcement with respect to the Merchandising Rights, such as costs of marshals, sheriffs, and other on-site security, and custom duties.

(23) “Merchandising Rights” means the Tour Merchandise Rights and the Retail Merchandise Rights.

(24) “Net Pot Revenue” means Pot Revenues less Pot Costs.

(25) “Net Ticket Revenue” means all non-returnable revenue received by Promoter or Company from the sale of tickets to Shows (which for the purposes of clarity, shall not include ticket sales proceeds from Sell-Offs), excluding Ticket Charges.

(26) “Net Tour Cash” means the amount, determined on a daily basis, by which Pot Revenues and all amounts that would be Pot Revenues if they were non-returnable, exceed the sum of: (i) all Pot Costs, and (ii) all payments theretofore actually made to Company under this Agreement including all Tour Advances.

(27) “Per Show Guarantee Amount” means $___________ for each Additional Show.

(28) “Pot Costs” means the aggregate of:

(a) Show Costs, excluding Show Costs to be incurred by the promoter of an approved Sell-Off;

(b) any rebates or returns of Pot Revenues;

(c) all sales or other similar taxes actually paid in respect, and to the extent applicable to, Pot Revenues, unless otherwise specifically deducted from a particular source of Pot Revenues pursuant to the provisions hereof;

(d) all third party costs and expenses incurred by Promoter in connection with ticket auctions, secondary ticket market sales and VIP parties/receptions at, and travel packages to, Shows;

(e) costs of collection, including legal and accounting fees, incurred in connection with any audits or actions for the protection or enforcement of the Rights, and all other costs of collecting, obtaining, preserving, or attempting to collect, obtain, or preserve Pot Revenues;
(f) costs (apart from Show Costs) approved by both parties incurred in connection with the production of any programs permitted under the A/V Rights, but excluding artist performance fees and residuals, re-use payments and guild payments to be made to or for the benefit of Artist (and otherwise reasonably allocated to the A/V Participation Period if paid for a period of time greater than the A/V Participation Period), if any (all of which excluded costs shall be paid by Company), but including fees for publishing rights;

(g) the following costs approved by both parties incurred in exploiting and marketing the A/V Rights: agency fees and/or commissions, sales commissions, advertising, marketing, publicity, tape duplication, home video device costs (including packaging costs), shipping, insurance, editing, any other customary distribution expenses, and all payments made to any person or entity (other than to Company, Artist or an Affiliate thereof or party related thereto in respect of the rights or services to be provided by them pursuant to this Agreement) performing services or granting rights in connection therewith;

(h) the cost of the press conference announcing the Tour if any (such cost to be approved by the parties hereto in advance) and other publicity costs incurred by Promoter in publicizing the Tour;

(i) Merchandising Costs and Artwork Costs;

(j) subject to Promoter's and Company’s approval, any costs of agency fees or commissions incurred in securing one or more Tour Sponsors and/or securing one or more Private Shows;

(k) the costs of performing pursuant to the terms of any Sponsorship Agreement, including, without limitation, the costs of tents and hospitality;

(l) costs and expenses incurred by Promoter in connection with registration of any domain names for any website operated in connection with the exercise of Rights (including any Tour Websites), and otherwise in connection with developing, hosting, maintaining and updating such website or production of content to be hosted, and any so-called "linking" fees and/or other commissions paid to any Person in connection with such website; and

(m) all other third party costs incurred by Promoter related to earning or receiving Pot Revenues.

(29) “Pot Revenues” means the aggregate of the following revenues actually received (and not returnable) by Promoter, Company or their Affiliates unreduced by any withholding tax, tax on net income, franchise tax, branch profits tax, or similar tax relating to income of either party hereto imposed by any governmental authority, whether deducted at the source or otherwise:
(a) Net Ticket Revenue;

(b) the sum of the amounts received by Promoter or Company or any of their Affiliates from the local promoter of any Sell-Off or other Show, including all Separate Amounts, unreduced by the amount of any taxes actually withheld and deducted;

(c) ticketing service charge rebates resulting from an increase to the ticket agents’ and/or the venues’ normal ticket service charges specifically for the Tour, but specifically excluding ticket service charge rebates received under an agreement that relates to shows by artists other than Artist, whether or not the agreement also relates to the Tour, Artist or a Show;

(d) interest earned on Net Ticket Revenue which is paid to Promoter by a third party (other than from the investment of Pot Revenues by Promoter while in its possession, which interest for the avoidance of doubt shall be governed by paragraph 29(i) below). For the purposes of this paragraph 29(d) only, a “third party” shall include a venue owned or controlled by Promoter;

(e) travel package revenues, if any;

(f) VIP parties/receptions revenue, if any;

(g) ticket auction and secondary ticket market revenues, if any, after the deduction of any third party commissions or other expenses in selling same.

(h) all revenues from the exploitation of the A/V Rights, including, all monies earned from the exploitation of the A/V Rights through the full term of any license or other agreement entered into (or the material terms of which were substantially negotiated) during the A/V Participation Period, regardless of whether that revenue is received during or after the A/V Participation Period;

(i) the actual interest income earned by Promoter on any positive balance of Net Tour Cash from time to time (or from the investment of same), reduced (but not below zero) by an amount equal to interest, computed at the Agreed Interest Rate, on any negative balance of Net Tour Cash from time to time;

(j) all net revenues from sales of Licensed Products pursuant to the Merchandise Rights, through the full term of any license or other agreement entered into (or the material terms of which were substantially negotiated) during the Retail Rights Period, regardless of whether that revenue is received during or after the Retail Rights Period;

(k) all revenues received (and not returnable) from Tour Sponsors and Sponsorship Agreements, whether secured by Company, Promoter or any other party, subject to Section 5.3 above;
(l) all revenues (other than any of the foregoing revenues) received solely in connection with the Tour Website (e.g., banner advertisements, linking fees received and similar limited revenues);

(m) all claim proceeds received by Promoter under its cancellation insurance policy referred to in Section 5.6(d) above in reimbursement of Pot Costs, less all reasonable costs incurred by Promoter and approved by Company in collecting such recoveries, including without limitation, legal and accounting costs and fees; and

(n) all other revenues whatsoever received (and not returnable) by Promoter, Company or their Affiliates from the exploitation of the Rights; but excluding for the avoidance of doubt revenues earned in the normal course of business by Affiliates of Promoter in the operation of businesses ancillary to its concert promotion business (such as venue ownership, management and booking business, ticket sales and agency business and e-commerce businesses).

(30) “Preliminary Statement” has the meaning ascribed thereto in Section 4.4(a) of this Agreement.

(31) “Retail Merchandise Rights” shall mean the exclusive rights throughout the Territory to sell and otherwise license Licensed Products through any method of retail merchandising, including, without limitation, retail stores and telephone, mail order and on-line (including Internet) sales, including in conjunction with ticket, program, or other tie-ins or bouncebacks.

(32) "Retail Rights Period" shall mean the period commencing upon the date of execution hereof and ending on the date six (6) months after the final Show of the Tour.

(33) “Rights” means collectively the Tour Rights, the Merchandising Rights, the Sponsorship Rights and the A/V Rights.

(34) “Sell-Off” means a Show for which Promoter has sold off the right to a third party promoter (which for the avoidance of doubt, cannot be an Affiliate of Promoter) to promote the Show and assume Promoter’s obligations hereunder with respect to such Show.

(35) “Separate Agreement” means an agreement directly between a local promoter and any of Company, Promoter or any of their Affiliates whereby such party is required to provide to such local promoter the services of Artist, Tour production services or Tour booking and promotion services, respectively.

(36) “Separate Amount” means the amount to which any of Company, Promoter or any of their Affiliates is entitled to receive from a local promoter pursuant to a Separate Agreement.

(37) “Show” has the meaning ascribed thereto in Recital A of this Agreement (and includes private, corporate and so-called “radio” shows performed [in Artist’s sole discretion] during the Term hereof [such private and corporate shows are sometimes referred to herein as “Private Shows”]).
(38) “Show Costs” means the costs of the items set forth on Exhibit E annexed hereto and including all production and technical requirements of the Artist at the venue in accordance with the Tour Rider, and all other similar charges necessary for providing services and facilities normally provided by promoters of first-class rock concert tours by performers of the Artist’s stature.

(39) “Show Payment Amount” means __________ for each of the Initial ____ Shows and $__________ (US) for each Additional Show.

(41) “Sponsorship Agreement” means, subject to Section 5.3 above, an agreement entered into between Promoter (and/or Company or Artist) and a Tour Sponsor.

(42) “Sponsorship Rights” means, subject to Section 5.3 above, the exclusive right of Promoter to grant to one or more third parties (i) the right to be identified on tickets and in advertising, promotion, posters, flyers and other similar materials in connection with the Shows, meet and greets, ticket pre-sale rights and such other rights as may customarily be granted to tour sponsors all of which are subject to the absolute approval by Company in its sole and unrestricted discretion, and (ii) the right to provide materials and/or services to Promoter in connection with the Tour as an “official supplier” or other similar arrangement; all of which are subject to the absolute approval by Company in its sole and unrestricted discretion.

(45) “Ticket Charges” means (a) admission, sales, VAT, or other similar taxes, (b) service, convenience, handling, mailing or similar charges charged by a seller of tickets, (c) facility maintenance fees, bond service or similar fees charged by a venue, and (d) parking fees.

(48) “Tour Advances” means all advances paid to Company in connection with this Agreement including those provided for in Sections 4.2 and 4.4 of this Agreement.

(49) “Tour Merchandise Rights” means the exclusive rights to sell Licensed Products in and around the concert sites of the Shows and, subject to Company’s absolute approval, the exclusive right to sell advertising in the Tour program book;

(50) “Tour Rider” means the technical rider for the Tour as described in Section 5.10 of this Agreement.

(51) “Tour Rights” means the exclusive rights throughout the Territory: (i) to promote the Shows (including for the avoidance of doubt, any Additional Shows) including the right to sell all tickets for the Shows (including without limitation through ticket pre-sales, auctions and secondary markets) subject to the Fan Club Pre-Sale Right and the other terms hereof, and (ii) to engage in the following activities ancillary to the Tour and the Shows: (A) hosting V.I.P. parties for a limited number of ticket-holders and charging a package price for such parties that includes the price of a ticket to the Show, the details of which shall be subject to Company’s approval, (B) creating ticket packages approved by Company, the details of which shall be subject to Company’s approval, (C) operating, hosting and controlling any Tour Website designated as the
so-called “official” website affiliated with the Tour or Artist, and (D) other activities ancillary to the Tour approved by Company.

(52) “Tour Sponsor” means a sponsor or sponsors of the Tour or a portion thereof that have been granted Sponsorship Rights pursuant to Section 5.3 hereof.

(53) “Tour Website” means any Internet website(s) pertaining solely to the Tour (the “Tour Website”) and/or Artist under a domain names selected by Promoter subject to the reasonable prior approval of Company, it being understood that in view of the Territory covered by this Agreement, Promoter shall have the right of priority [as between Promoter and Company or its designees] in using any domain name that consists of ___________,com or other similar domain name. The Tour Website(s) may include an official fan club component related to the Tour and/or Artist.
EXHIBIT B

SHOWS – CURRENT ITINERARY
EXHIBIT D

ARTIST GUARANTEE AGREEMENT
EXHIBIT E

Show Costs

Advertising materials and marketing costs (inc. radio/TV spots)
Artwork for advertising materials
ASCAP/BMI/SESAC/SOCAN/PRS/SACEM/SAE, etc.
Assigned Police
Backstage Furniture
Barricades
Box Office Charges, Commissions
Building Rent
Catering for Artist and Crew
Chair Rental
Clean Up
Credit Card Costs
Crew Costs
Damage Deposit or actual damage costs
Dressing Rooms and Requirements
Electrical and other Venue Utilities
Electricians
Equipment Rentals
Fire Department
Forklifts/Scissor Lifts/Cranes
Golf Carts
Ice Cover (in arenas)/Field Cover (outdoor venues)
Internal Transportation and Limousines for Artist and Crew (to and from Venue and hotel as reasonably necessary)
Medical
Onsite Offices, Phones, etc.
P.A. Towers
Passes
Permits
Piano Tuner
Promoter’s Liability Insurance (incl. Deductibles)
Runners
Security / Bodyguards at the Venue (incl. Backstage)
Show and Promoter Staff
Spotlights
Stage (existing Venue stages)
Stagehands/Building Trades
Support Act
Telephones
Ticket Commission and credit card fees, if applicable
Ticket Printing
Ticket Sellers
Ticket Takers
Toilets
Tour Rider Items
Tour Web Site
Towels
Trailers, Caravans, and Tents, if applicable
Under-Stage Plywood, if applicable
Ushers
Venue conversion cost (e.g., converting the Venue from a sports facility to a concert facility)
Exhibit F

Merchandise Provisions

The following constitutes those additional terms regarding Merchandising Rights as described in Section 2.10 of the agreement between Promoter and Company to which this Exhibit is attached (the “Tour Agreement”):

1. **Artwork.** If Promoter originates the artwork for Licensed Products in accordance with the provisions hereof, then the costs of that origination shall be Artwork Costs in accordance with the provisions of the Tour Agreement. All such artwork (including copyrights) shall be owned by Company.

2. **Approvals.**

   (a) Any and all designs, pictures, symbols, tags, displays, advertising copy or other materials to be utilized hereunder in any Licensed Products shall be submitted by Promoter to Company for its approval or disapproval prior to any use or release thereof by Promoter. Company represents and warrants that it either has the right to grant or shall have the right to grant, or shall cause the person or entity having such right to grant, to Promoter the right to use all artwork which Company submits to Promoter as “free and clear” and that the use thereof by Promoter hereunder will not violate or infringe upon the rights of any person; provided, however, that Company’s foregoing warranty and representation shall not extend to any elements incorporated in Promoter’s designs which are created by Promoter. Promoter represents and warrants that all artwork which it creates or originates will be original and that the use thereof by Promoter hereunder will not violate or infringe upon the rights of any person; provided, however, that Promoter’s foregoing warranty and representation shall not extend to any elements incorporated in Promoter’s designs which are submitted or authorized by Company for use by Promoter, e.g. trademarks or logos which are part of the Artist Identification.

   (b) Promoter agrees to furnish to Company free of charge for Company’s written approval, samples of each of the Licensed Products before their manufacture, and no Licensed Product shall be manufactured (except for samples), sold or distributed by Promoter without such approval. Once approved, no changes (including, without limitation, design, color, fabric, paper stock or quality) may be made in any Licensed Product without obtaining Company’s prior written approval of such changes, except that Promoter may substitute equivalent quality and style blank T-shirts, sweatshirts, jerseys and other raw goods.

   (c) If agreed by the parties, Promoter agrees to design and produce a full color souvenir program (“Tour Book”) for the Tour. Company shall have the right to approve in its sole discretion the budget for production, and the entire contents of the Tour Book, including, without limitation, all copy, photographs, other artwork, credits and layouts.

   (d) Wherever Company’s approval or consent is required with respect to Promoter’s exercise of Merchandising Rights hereunder and under the Tour Agreement, Company shall give Promoter its notice of approval or disapproval in no less than seven (7)
business days after Company’s receipt of Promoter’s written request therefore (the “Approval Period”), together with those materials, if any, for which Company’s approval is requested. If Company fails to give notice of Company’s approval or disapproval to Promoter within the applicable Approval Period, Company shall be deemed to have disapproved of the matter submitted. Any photographs or artwork delivered to Promoter by Company shall be deemed approved by Company for Promoter’s use only for those purposes designated or approved by Company under the Tour Agreement. Notwithstanding anything contained herein to the contrary, Company’s approval rights hereunder shall not be exercised with the intent or objective to override or delay Company’s obligations pursuant to Section 2.1 of the Tour Agreement to approve sufficient and customary categories of first class Licensed Products.

(e) All approvals on behalf of Company with respect to Licensed Products shall be given by such person as Company may from time to time designate by written notice to Promoter in accordance with the Tour Agreement.

(f) Promoter warrants that the Licensed Products will be of a high standard in style, appearance and quality and will be fit for their purposes. Promoter agrees that all Licensed Products produced and sold hereunder shall be first quality products only and all T-shirts, sweatshirts and jerseys shall be 100% cotton (subject to market shortages) unless otherwise approved by Company. The blank T-shirts, sweatshirts and jerseys used by Promoter hereunder shall be of customary quality, weight and material. Promoter shall indemnify Company for any breach of this paragraph 2(f) on the same terms as contained in Section 6.2(d) of the Agreement.

3. Copyright.

(a) “Notice” as used in this paragraph 3 shall mean the copyright notice and appropriate statutory notice of registration or application for registration of any licensed trademark, or service mark.

(b) Promoter shall print, stamp or mold the Notice on all Licensed Products and on each package or container used in connection therewith and Promoter shall print the Notice on each label, advertisement and promotional release concerning any Licensed Product, all in accordance with reasonable instructions from Company, including, without limitation, instructions with respect to position and letter size. No Licensed Product, package, container, label, advertisement or promotional release upon which the Notice is printed, stamped or molded pursuant to the preceding sentence shall contain any other copyright notice or trademark or service mark notice whatsoever unless Company shall have given Promoter prior written consent thereto. Company may at any time and from time to time, change the form of the Notice by notifying Promoter thereof in writing and Promoter shall implement that change, on a Licensed Product-by-Licensed Product basis, as soon as reasonably practicable (but not more than thirty (30) days) after all inventory bearing the superseded Notice shall have been distributed. Company shall notify Promoter of the initial form of Notice(s) Company desires on or before the date upon which Company’s approval of the artwork for the applicable Licensed Product is required hereunder.
(c) Subject to the rights granted by Company to Promoter under the Tour Agreement, Promoter acknowledges and agrees as follows:

(i) All copyrights, trademarks and service marks and all rights therein and thereto referred to in paragraph 3(b) of this Exhibit in the name of and/or owned or controlled by Company shall be and remain the sole, complete and exclusive property of Company.

(ii) All copyrights, trademarks and service marks and other rights in and to all materials utilized in connection with Licensed Products in the name of or owned by any person other than Promoter or Company shall be and remain the sole and complete property of that person.

(iii) All copyrights, trademarks and service marks which (and/or the right to use which) arise out of the license hereby granted to use the Licensed Products shall be and remain the sole and exclusive property of Company or if such Licensed Product is not owned by Company but is controlled by Company and owned by another Person shall be and remain the sole and exclusive property of that Person.

(iv) Promoter shall not at any time acquire or claim any right, title or interest of any nature whatsoever in any such copyright, trademark or service mark by virtue of the Tour Agreement or this Exhibit or by virtue of Promoter’s uses thereof in connection with the Licensed Products.

(v) Any right, title or interest in or to any such copyright, trademark or service mark which comes into existence by virtue of the exercise by Promoter of any right granted to Promoter in the Tour Agreement shall immediately vest in Company.

4. Trademark Infringement.

(a) When information is brought to Promoter’s attention indicating that any person without license is unlawfully infringing on the Merchandising Rights granted by the Tour Agreement and this Exhibit to Promoter, then Promoter may (subject to its prudent business judgment and the approval of Company) prosecute diligently any alleged infringer, including, without limitation, where appropriate, application for injunctive relief and/or seizure of infringing goods and merchandise. The expenses of same shall be a Pot Cost only if Company has approved same. If necessary in any proceedings which Promoter may institute, Promoter shall have the right to join Company as co-plaintiff only with Company’s prior consent after giving Company reasonable written notice and with the understanding that Promoter shall pay all of Company’s direct, out-of-pocket costs and expenses reasonably and necessarily incurred as a result of being joined as co-plaintiff, all of which shall be Pot Costs pursuant to paragraph (28) of Exhibit A to of the Tour Agreement; and any net revenues obtained from such actions shall be Pot Revenues under paragraph (29) of Exhibit A to the Tour Agreement. Notwithstanding the foregoing, Promoter shall not be obligated to pay the fees of Company’s legal counsel if Company desires to engage its own legal counsel. In connection with such suit, Company agrees
to execute all appropriate papers and to testify in that suit if so required by Promoter and at
Promoter’s expense (which shall be a Pot Expense).

(b) Promoter agrees to take all steps which it deems proper, necessary and/or
appropriate in its prudent business judgment to prevent the sale of unauthorized merchandise at
or in the general vicinity of all concert sites, subject to the approval of Company. Promoter shall
have the right to institute action against all persons infringing upon the rights granted to
Promoter hereunder, subject to the approval of Company, through counsel chosen by Promoter
and Company. The cost of any such action shall be included as Pot Costs pursuant to paragraph
(28) of Exhibit A to the Tour Agreement; and any net revenues obtained from such actions shall
be Pot Revenues under paragraph (29) of Exhibit A to the Tour Agreement. In connection
therewith, Promoter may seek injunctions praying for (in addition to such other relief as is
customarily sought) the right to seize all such unauthorized merchandise. Promoter is authorized
to take such actions in its own name or in the name of Company and/or Artist. If Company or its
representatives incur any expenses (provided those expenses are reasonable and have been
approved in advance by Promoter) in cooperating with Promoter at Promoter’s request in any
anti-bootlegging activities (including through the taking of any such legal actions by Promoter in
Company’s and/or Artist’s names), Promoter shall pay to or reimburse Company for the amount
of those expenses upon Promoter’s receipt of a bill or invoice therefore, and the amount of those
payments or reimbursements shall be Pot Costs pursuant to paragraph (28) of Exhibit A to the
Tour Agreement.

5. **Name And Likeness.** Promoter hereby acknowledges that the Artist Identification has
value. In connection therewith Promoter acknowledges that the Artist Identification is
exclusively controlled by Company, Artist and/or their affiliates and that the Artist Identification
has acquired a secondary meaning to the purchasing public. Promoter agrees that:

(a) Promoter will not attack the right, title or interest of Company, Artist or their
affiliates in and to the Artist Identification, nor any service mark, trademark or copyright
pertaining thereto nor will Promoter attack the validity of the rights granted hereunder.

(b) Promoter shall not willfully harm, misuse or bring into disrepute the Artist
Identification.

(c) Promoter shall sell and advertise the Licensed Products in an ethical manner
and in accordance with the provisions of the Tour Agreement and this Exhibit and agrees that
Company shall have the right to approve the advertising and on-site merchandising booth
displays in connection therewith.

(d) Promoter shall use its reasonable efforts to protect the rights and license
granted herein.

6. **Procedures Upon Expiration of Rights.** The following shall constitute the procedures
pursuant to which Company shall exercise its right to purchase Promoter’s inventory of
merchandise as set forth in Section 2.9 of the Tour Agreement:
(a) Promptly following the expiration of the Retail Rights Period, Promoter shall prepare and submit to Company in writing a complete inventory of Promoter’s entire stock of Licensed Products, which inventory shall be certified by an officer of Promoter or the applicable Promoter Affiliate. All such inventory which is not purchased by Company pursuant to Section 2.9 of the Tour Agreement shall be promptly destroyed by Promoter after expiration of the Sell-Off Period (as defined below), and a certificate of destruction shall be furnished to Company by Promoter;

(b) Upon the expiration of the Retail Rights Period, Promoter immediately shall cease manufacturing Artist merchandise, and subject to Promoter’s Sell-Off Rights specified in paragraph 6(c) below, Promoter shall immediately cease to exploit the Licensed Products and any materials and/or artwork utilized in connection with the Licensed Products, including, without limitation, printing plates, artwork, photographs and any other materials. At Company’s sole option and written instruction with respect to those materials, Promoter shall promptly destroy all tangible materials or that portion as Company designates, all under Company’s supervision. Upon Company’s request therefore, Promoter shall provide Company with a certificate of that destruction or at Company’s further option, Promoter shall make available to Company or its agent any of the aforementioned items, in whole or in part, as requested by Company at a cost to Company or its designee not exceeding the scrap value of the items so requested. The scrap value shall be computed on the salvage price that could be recovered for those items without any consideration for the artistic content thereof. Company shall pay the costs of shipping any of the aforementioned items at Company’s request.

(c) Notwithstanding anything to the contrary contained herein, any Artist merchandise remaining at the end of the Retail Rights Period which is not purchased by Company under Section 2.10 of the Tour Agreement, including returns, may be subsequently sold by Promoter (or its designee) at any time prior to the date six (6) months after expiration of the Retail Rights Period through retail and internet channels (the “Sell-Off Period”). The revenues received (and not returnable) from such sales shall be Pot Revenues pursuant to paragraph (29) of Exhibit A to the Tour Agreement and, the cost of any returns not resold shall be Pot Costs pursuant to paragraph (28) of Exhibit A to the Tour Agreement.