

AGENCY APPOINTMENT (NEW MEDIA RIGHTS)

THIS APPOINTMENT is made the _____ day of _____ 200__

BETWEEN:

(1) _____

(the "**Member**")

whose address (which in the case of a company or limited liability partnership must be its registered office) is:

AND

(2) **VIDEO PERFORMANCE LIMITED ("VPL")**

whose registered office is situated at 1 Upper James Street, London W1F 9DE

IT IS AGREED:

1. Definitions and Interpretation

1.1 In this Appointment the following words or phrases have the following meanings:

"**1988 Act**" means the Copyright, Designs and Patents Act 1988 or any relevant statutory modifications or re-enactment thereof for the time being in force.

"**Articles of Association**" means VPL's articles of association in force from time to time.

"**Film**" means a recording on any medium from which a moving image may by any means be provided.

"**Music Video**" means a Film or extract from a Film made, used or supplied at any time for the purposes of accompanying or being in any way associated with a discrete work of music, whether with or without any speech or singing.

"**New Media Dubbing Right**" means the exclusive right under the 1988 Act or otherwise to copy or to authorise the copying of any Music Video (including without limitation the right to make, or to authorise the making of, a Transient Copy of any Music Video) in or on the United Kingdom, the Channel Islands, the Isle of Man and all additional territories to which the 1988 Act shall extend whether for the purpose of exercising (or authorising the exercise of) the New Media Communication Right or for other commercial purposes.

“New Media Communication Right” means the exclusive right under the 1988 Act or otherwise to do, or to authorise another to do, the following acts or any of them in or on the United Kingdom, the Channel Islands, the Isle of Man and all additional territories to which the 1988 Act shall extend, namely to communicate any Music Video to the public whether via the Internet or otherwise, including without limitation to broadcast any Music Video and to make available any Music Video to the public in such a way that members of the public may access it from a place and at a time individually chosen by them, but in each case excluding the Primary Rights.

“Non-Exclusive Agent” means an agent authorised on a non-exclusive basis to exercise a right which would otherwise be exercisable exclusively by the copyright owner and/or its licensees.

“Primary Agreement” means the agreement from time to time in force between the Member and VPL under which VPL is assigned (and/or, as applicable, is appointed as exclusive agent to exercise) certain rights in respect of, inter alia, the playing in public or public performance of the Member’s Music Videos and the inclusion of the Member’s Music Videos in Standard Broadcasts.

“Primary Rights” means such rights as are granted to VPL in respect of Music Videos pursuant to the Primary Agreement.

“Standard Broadcast” means a broadcast as defined under the 1988 Act (but excluding all Internet transmissions).

“Transient Copy” means a temporary copy of a Music Video that is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable:

- (a) a transmission of a Music Video in a network between third parties by an intermediary; or
- (b) a lawful use of the Music Video

and which has no independent economic significance.

“United Kingdom” means the United Kingdom of England, Wales, Scotland and Northern Ireland including its territorial waters, structures and vessels on its sector of the continental shelf and British ships, aircraft and hovercraft as provided by Sections 161 and 162 of the 1988 Act.

- 1.2 Unless the context otherwise requires, words denoting the singular shall include the plural and vice versa and words denoting persons shall include bodies corporate unincorporated associations and partnerships.
- 1.3 Where expressions used in this Appointment are expressions used in the 1988 Act, they shall have the same meaning in this Appointment as in the 1988 Act unless the context otherwise requires.
- 1.4 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended extended or re-enacted.
- 1.5 In this Appointment references to the word “including” do not imply any limitation.

2. Appointment as Non-Exclusive Agent

- 2.1 The Member, for and on behalf of:
 - (i) itself; and

- (ii) the relevant copyright owner (if and to the extent that at any time during the subsistence of this Appointment, the Member does not own but is the exclusive licensee of the New Media Communication Right and/or the New Media Dubbing Right in any Music Video),

HEREBY APPOINTS VPL TO ACT as Non-Exclusive Agent for the exercise, subject to Clause 2.3, of the New Media Communication Right and/or the New Media Dubbing Right for the full term of their respective protection (including all extensions and renewals thereof) in any Music Video now in existence or subsequently created in respect of which the Member or any relevant copyright owner pursuant to (ii) above (as the case may be) owns (or shall during the Member's membership of VPL own) any New Media Communication Right or New Media Dubbing Right (the "Member's Music Videos").

2.2 In respect of the New Media Communication Right and New Media Dubbing Right in relation to which VPL is appointed Non-Exclusive Agent pursuant to Clause 2.1 above, the Member for itself and its successors and assignees HEREBY MAKES, CONSTITUTES AND APPOINTS VPL true and lawful attorney for and in the Member's name, place and/or stead, for the period until the expiry and/or termination of the appointment as Non-Exclusive Agent:-

- (i) to bring, prosecute, defend and appear in lawsuits, actions and proceedings of any kind or nature, whether commenced before or after the date of this Appointment before any court or tribunal in the United Kingdom or elsewhere, under or concerning or relating to or arising out of the New Media Communication Right and New Media Dubbing Right and/or any elements thereof whether or not arising under copyright (including their infringement), in VPL's own name or in the name of, or as a co-party with the Member;
- (ii) to adjust, settle, compromise, obtain damages or other relief of whatever nature, contest, appeal or satisfy judgments in connection with the above and to distribute all and any sums so recovered

and the Member gives and grants to VPL, as the Attorney of the Member, full power and authority to do and perform each and every act and thing whatsoever necessary or appropriate to be done as fully as if done by the Member itself.

2.3 Where VPL wishes to exercise (and where VPL's Board resolves to exercise) the New Media Communication Right and/or the New Media Dubbing Right in respect of any particular class or category of service via which Music Videos may be communicated to the public (each, a "**New Service Category**"), VPL shall notify the Member of the New Service Category and shall provide the Member with reasonable supporting information about such New Service Category (and, for the avoidance of doubt and without limitation, VPL may provide any such notification and/or supporting information via email). Following any such notification by VPL, the Member shall have the right to elect that VPL may not exercise the New Media Communication Right and/or the New Media Dubbing Right in respect of the Member's Music Videos in respect of such New Service Category, any such election to be made by the Member by notice to VPL within thirty (30) days after VPL's notification in respect of such New Service Category. If VPL fails to receive notice of any such election from the Member within such thirty (30) day period then VPL shall be free to exercise the New Media Communication Right and/or the New Media Dubbing Right in respect of the Member's Music Videos in respect of the relevant New Service Category.

3. Effect of previous assignments and agencies

- 3.1 Save for any rights granted under the Primary Agreement, where this Appointment purports to grant any rights in Music Videos which have already been granted to VPL under any previous assignments or other agreements entered into by the Member, those rights shall remain vested in VPL and their continued exploitation, exercise and administration shall, with effect from the commencement of this Appointment, be upon the terms set out in this Appointment. For the avoidance of doubt, those rights shall remain vested and VPL shall remain permitted to exploit the same to the same extent as immediately prior to the date of this Agreement without the need to undertake the process set out in Clause 2.3.
- 3.2 Save as set out in Clause 3.1 (and save for any rights granted under the Primary Agreement), any prior assignment or licence of rights to VPL by the Member, or appointment of VPL as agent of the Member, shall cease to have effect and any such rights as are not purported to be granted under this Appointment are hereby reassigned to the Member to hold absolutely.

4. Further Assurance

- 4.1 The Member hereby agrees with VPL that the Member will at the expense and cost of VPL do all such further acts, deeds and things and execute all such further documents and instruments as may from time to time be necessary to give effect to this Appointment.
- 4.2 The Member for itself and its successors and assignees HEREBY MAKES, CONSTITUTES AND APPOINTS VPL its true and lawful attorney to execute and deliver such documents and instruments as may from time to time be necessary to give effect to this Appointment in the name and on behalf of the Member and this appointment shall be deemed to be a power coupled with an interest and shall be irrevocable.

5. Warranty and Undertaking

- 5.1 The Member hereby warrants and undertakes to VPL that the Member (i) has the right, power, and authority to enter into this Appointment and to grant all the rights specified in this Appointment and (ii) has obtained all necessary consents (if any) so as to permit VPL freely to exercise the New Media Communication Right and the New Media Dubbing Right in respect of the Member's Music Videos.
- 5.2 The Member shall indemnify on demand and hold harmless VPL from and against any and all losses, demands, claims, damages, costs, expenses (including reasonable legal costs and expenses and VAT thereon) and liabilities suffered or incurred by VPL in consequence of any breach by the Member of Clause 5.1.

6. VPL's Rights

- 6.1 The Parties hereby agree that the rights herein granted to VPL may be exercised by VPL as it so determines in its absolute discretion subject only to the Articles of Association and the provisions of Clause 2.3.
- 6.2 VPL shall not be liable, in any way for any economic losses (including, without limitation, loss of revenues, profits, contracts, business or anticipated savings); or any loss of goodwill or reputation; or any indirect or consequential losses in any case whether or not such losses were within the contemplation of the parties at the date of this Appointment, suffered or incurred by the Member arising out of or in connection with this Appointment.

7. Commencement and Duration

7.1 This Appointment shall take effect on the date on which it is counter-signed on behalf of VPL.

7.2 For the avoidance of doubt, save as otherwise provided in this Appointment VPL's appointment as Non-Exclusive Agent hereunder shall, subject to Clause 7.3 and Clause 7.4, continue until such appointment is expressly terminated by VPL or by operation of law.

7.3 Where:

- (i) VPL's Board resolves to exercise the New Media Communication Right and/or the New Media Dubbing Right in respect of a New Service Category, and
- (ii) the Member does not elect, in accordance with Clause 2.3, that VPL may not exercise the New Media Communication Right and/or the New Media Dubbing Right in respect of the Member's Music Videos in respect of such New Service Category, but
- (iii) the Member subsequently wishes VPL to cease to exercise the New Media Communication Right and/or the New Media Dubbing Right in respect of the Member's Music Videos in respect of such New Service Category,

then, provided that the Member gives three months' written notice of its wishes to VPL, VPL shall so cease (such cessation to take effect on the expiry of such notice).

For the avoidance of doubt, withdrawal of the Member from a particular New Service Category under this Clause 7.3 shall not affect the exercise of the New Media Communication Right and/or the New Media Dubbing Right by VPL in respect of:

- (a) that particular New Service Category in respect of any other VPL member; or
- (b) the Member, in respect of any other New Service Category.

7.4 At any time during this Appointment the Member may give six months' written notice to terminate this Appointment. For the avoidance of doubt, on expiry of such notice, VPL's appointment as the Member's Non-Exclusive Agent hereunder shall cease.

7.5 For the avoidance of doubt and without limitation, VPL shall at all times retain the right to collect monies (including royalties and fees) relating to the exploitation of the New Media Communication Right and New Media Dubbing Right in respect of the Member's Music Videos to the extent that such exploitation occurs prior to the expiry or termination of the agencies granted by the Member to VPL whether pursuant to this Appointment or otherwise.

8. Clause headings and guidance notes

8.1 The clause headings in this Appointment, and any guidance notes issued to the Member in relation to this Appointment, are for information only and do not form part of this Appointment.

8.2 In the event of any inconsistency between the terms of this Appointment and the content of such guidance notes, the terms of this Appointment shall prevail.

9. Jurisdiction

- 9.1 All rights and obligations hereunder shall be construed and interpreted in accordance with the law of England and Wales, the Courts of which shall have the exclusive jurisdiction in all matters concerning the same.

EXECUTION:

The Member has executed this document as a deed the day and year first before written, by completing the appropriate box below.

VPL has signed this document on the date shown below in accordance with Clause 7.1.

EXECUTION CLAUSE DELETED FOR WEBSITE FAQ VERSION