

**MANAGEMENT AGREEMENTS –
THE PRENUPTIAL AGREEMENT
BETWEEN ARTISTS AND MANAGERS**

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CHAPTER 11

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BACKGROUND

As an entertainment lawyer, professor, concert promoter and professional musician, Buck McKinney has over twenty-five years experience in the music business. McKinney's current law practice focuses on entertainment matters and litigation with an emphasis on the music industry. His clients include recording artists, songwriters, composers, independent labels, publishers, concert promoters, film producers and authors.

Before establishing his law practice, McKinney served as General Counsel in the Business and Legal Affairs department of A&M Records, a division of PolyGram International. In that capacity, McKinney maintained responsibility for the negotiation of recording, licensing and related agreements for A&M Records and its affiliated labels Polydor Records, 1500 Records, Rocket Records, DV8 Records and Perspective Records.

Prior to serving as general counsel at A&M, McKinney co-owned and operated Houston live music venue and concert production company Rockefeller's. During his tenure at Rockefeller's, McKinney and his business partners produced over 340 concerts by artists such as Dave Matthews, Dixie Chicks, Pat Metheny, Buddy Guy and Joe Satriani, winning numerous critical accolades and awards, including "Best Live Venue" in Houston, Texas.

Prior to operating Rockefeller's, McKinney was an associate attorney at Houston firm Bell & Murphy, concentrating in the areas of maritime law, commercial litigation and insurance defense.

A frequent lecturer, McKinney has spoken on copyright law and related issues at conventions and seminars around the country, and written several published articles on entertainment law. McKinney also serves as adjunct professor of music law at Austin Community College.

McKinney received his B.A. in History (with High Honors) and J.D. from the University of Texas. He is a member of the Texas State Bar, Texas Entertainment and Sports Law Section of the Texas State Bar (Councilmember and former chair of the Federal Legislative Committee), the National Academy for the Recording Arts & Sciences, Austin Lawyers and Accountants for the Arts (Former Board Member), and the Texas Accountants and Lawyers for the Arts.

MANAGEMENT AGREEMENTS:
THE PRENUPTIAL AGREEMENT BETWEEN ARTISTS AND MANAGERS

I. THE MAJOR DEAL POINTS

- A. Term
 - (i) Length
 - (ii) Options
 - (iii) Benchmarks
 - (a) Record deal?
 - (b) Minimum earnings?

- B. Services / Duties:
 - (i) Get Concrete Points

- C. Commissions
 - (i) During the “Term”:
 - (a) Based on “Net” or “Gross”?
 - 1. Definition of “Net Income”
 - 2. Definition of “Gross Income” and traditional “carve-outs”
 - (ii) “Post-Term”:
 - (a) “Income derived from all contracts entered into during the Term”
 - (b) The problem of “Multiple Manager Commissions” when changing managers
 - (c) Sunset Provisions
 - 1. “Term-Created Products”
 - 2. “Post-Term-Created Products”

II. PSYCHOLOGY OF THE NEGOTIATION

- A. Artist:
 - (i) Setting goals
 - (ii) Politely demanding accountability and flexibility

- B. Prospective Manager:
 - (i) Accepting responsibility to achieve goals
 - (ii) Demonstrating the manager’s ability to negotiate

SAMPLE NEGOTIATED PROVISIONS
PERSONAL MANAGEMENT AGREEMENT

1. TERM WITH “BENCHMARKS”:

TERM:

(a) This Agreement shall commence upon the date hereof, and shall continue in force for a term (the “Term”) which shall consist of a period of one year from such date (the “First Year”). Manager shall have four (4) separate consecutive options to extend the Term for a period of one (1) year. The option periods shall hereinafter be referred to as the “Second Year,” “Third Year,” “Fourth Year” and “Fifth Year,” respectively. Said options shall be deemed automatically exercised unless Manager shall give Artist written notice to the contrary at any time prior to the date that the then-current contract period would otherwise expire;

(b) Notwithstanding the foregoing, Artist shall have the right to terminate the Term of this Agreement under any of the following circumstances:

(i) If Artist has not entered into or substantially negotiated the terms of an agreement for Artist’s recording services with a Record Company within (i) sixteen (16) months from the date hereof, or (ii) for any twelve (12) consecutive month period during the Term (subsequent to the termination of a recording contract), Artist shall have the right to terminate the Term by serving written notice to Manager. For the purposes of this Agreement, the term “Record Company” shall mean a record company owned or distributed by one (1) of the major branch-based distributors, namely Sony/BMG, WEA, EMI, UMVD, or a record company owned and/or distributed by a significant independent distributor, such as Koch, Alliance, Navarre, or any other recognized national distribution company;

(ii) If at the end of any one (1) of the contract periods set forth below Artist does not achieve the gross income set forth below from personal appearances, and provided further that Artist was ready, willing and able to perform as a musical artist, Artist shall have the right to terminate the Term by serving written notice to Manager.

<u>Contract Period</u>	<u>Gross Income</u>
Year 1:	\$75,000
Year 2:	\$150,000
Year 3:	\$250,000
Year 4:	\$400,000

2. ADDITIONAL PROVISIONS REGARDING MANAGER’S SERVICES AND DUTIES (i.e., IN ADDITION TO TYPICAL “BOILERPLATE”):

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(c) In addition to the foregoing, Manager agrees to make himself available at reasonable times and no less than once per week to meet with Artist in order to discuss goals, business objectives and any issues related to the performance of Manager’s duties hereunder. It is the intent of the parties that such meetings occur in person. However, in the event that Artist is traveling, or an in-person meeting is otherwise impracticable, Manager shall make himself available for such meetings by telephone conference. In addition, during the first sixteen (16) months of the term, or until such time as Artist enters into an agreement with a Record Company, Manager shall provide monthly written reports advising Artist as to the status of so-called “shopping efforts” on Artist’s behalf, including a list of Record Companies contacted, and the status of any discussions;

(d) Manager acknowledges and agrees that he shall use his best efforts in connection with the foregoing, and that he acts as Artist’s fiduciary in all respects in connection with his performance hereunder. Notwithstanding, Manager shall not be required to undertake long-distance travel to meet with Artist at any particular place other than at Manager’s discretion and following prior arrangements - mutually satisfactory to Manager and Artist - for reimbursement of Manager’s costs and expenses of such travel; and

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3. CORRESPONDING PROVISIONS REGARDING ARTIST’S OBLIGATIONS:

ARTIST’S OBLIGATIONS: During the Term, Artist agrees:

(a) To seek the advice and counsel described herein primarily from Manager;

(b) Not to engage any other person or entity to render service similar to those to be provided by Manager under this agreement;

(c) To consult with Manager regarding all offers of employment and inquiries concerning Artist’s services and not to negotiate, accept or execute any agreement, understanding, or undertaking concerning Artist’s career, services, or creative works without consulting Manager;

(d) To cooperate with Manager to the extent reasonably possible to assist Manager in promoting Artist’s career; and

(e) To refer to Manager all verbal or written leads, communications or requests for renditions of Artist’s services in the entertainment industry.

4. CALCULATION OF COMMISSIONS BASED ON ARTIST'S "GROSS EARNINGS," WITH TYPICAL NEGOTIATED "CARVE-OUTS" (IN BOLD):

COMMISSIONS: As compensation for Manager's services, Artist shall pay Manager, as and when received by Artist, the following commissions (hereinafter referred to as the "Manager's Commission"):

(a) During the Term, Artist shall pay to Manager a sum equal to fifteen percent (15%) of Artist's Gross Earnings (as defined below);

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(c) For the purposes of this Agreement, the term "Gross Earnings" shall mean the total of all earnings, whether in the form of salary, bonuses, royalties (or advances against royalties), settlements, payments, fees, interests, property, percentages, shares of profits, stock, merchandise, or any other kind or type of remuneration - unless otherwise noted in this Agreement - related to Artist's career in the entertainment industry in which Artist's artistic talents or services are exploited that is received at any time by Artist, or by any person or entity (including manager) on Artist's behalf. Without in any manner limiting the foregoing, the matters on which Manager's Commission shall be computed shall include any and all of the Artist's activities in connection with the following matters: motion pictures, televisions, radio, music, theatrical engagements, personal appearances, public appearances in places of amusement and entertainment, records and recording, songwriting and music publishing and in the use of Artist's name, likeness and talents for the purposes of merchandising, advertising, or trade;

(d) Earnings shall be deemed "earned" by Artist on the date Artist has a non-contingent contractual right to collect such earnings, regardless of whether or not earnings are actually collected by Artist on that date or at any time thereafter. Manager shall receive no Manager's Commission, however, until such earnings have actually been received by Artist, or by any person or entity on Artist's behalf;

(e) Except as otherwise set forth herein, no expense, cost or disbursement incurred by the Artist in connection with Gross Earnings shall be deducted therefrom prior to the calculation of the amount of Manager's Commission. Only the following expenses, costs, or disbursements shall be deducted from Gross Earnings prior to the calculation of Manager's Commission: **(i) actual recording costs; (ii) any fees, royalties, or advances paid to third parties – including producer's fees and points and fees and/or points paid to any mixer or re-mixer; (iii) video production costs, including director's fees; (iv) monies paid to co-writers or co-publishers; (v) costs of independent promotion, marketing and the like; (vi) cost of sound and lights; (vii) fees paid to opening acts; (viii) deficit tour support, including per diems; (ix) musical instruments provided to the Artist pursuant to any endorsement agreements; (x) money received by artist as compensation for personal injury; and (xi) any expenses, including reasonable attorney fees, incurred for the collection of earnings;**

Buck McKinney, PC

MSC/EntmntSptsLaw/MgmntProvisions

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5. SAMPLE "SUNSET PROVISION":

(b) Following the expiration of the Term, Artist shall pay to Manager the following:

(i) With respect to Gross Earnings of Artist after the Term which are derived from phonograph records created during the Term, Manager's Commission shall continue in perpetuity at the rate set forth in subparagraph __ (a) above. For purposes of this subparagraph __ (b)(i), an album shall be deemed to be a Term-created product if its creation was materially commenced during the Term. The recording of an album shall be deemed to have materially commenced if demonstration recordings or finished master recordings of a substantial number of the masters to be embodied on such album have been recorded by Artist during the Term. Notwithstanding anything to the contrary contained herein, in the event that Artist enters into an exclusive recording agreement with a record company during the Term, then the first album recorded by Artist under such agreement shall constitute a Term-created product, regardless of when recorded; and

(ii) With respect to Gross Earnings of Artist after the Term which are derived from compositions created during the Term, Manager's Commission shall continue in perpetuity at the rate set forth in subparagraph __ (a) above. For purposes of this subparagraph __ (b)(ii), a musical composition written by Artist shall be deemed to be a Term-created product only in the event that such composition is actually exploited during the Term, and/or such composition is embodied on an album that would otherwise be considered a Term-created product under subparagraph __ (b)(i) above;

(iii) With respect to Gross Earnings earned by Artist after the Term which are derived from products other than those defined in subparagraphs __ (b)(i) and (ii) above, Manager's Commission shall be as follows:

(1) On earnings derived by Artist during the one-year period immediately following the expiration of the Term ("First Post-Expiration Term"), Manager's Commission shall be ten percent (10%) of Gross Earnings;

(2) On earnings derived by Artist during the one-year period immediately following the expiration of the First Post-Expiration Term ("Second Post-Expiration Term"), Manager's Commission shall be seven-and-a-half percent (7 ½ %) of Gross Earnings;

(3) On earnings derived by Artist during the one-year period immediately following the expiration of the Second Post-Expiration Term ("Third Post-Expiration Term"), Manager's Commission shall be five percent (5%) of Gross Earnings;

(4) On earnings derived by Artist following the expiration of the Third Post-Expiration Term, Manager's Commission shall be zero percent (0%) of Gross Earnings;

(4) The commissions set forth in this subparagraph __ (b)(iii) shall be solely based upon Gross Earnings which Artist receives as a result of engagements, contracts and/or agreements substantially negotiated and entered into during the Term. In this connection, all agreements substantially negotiated during the Term and consummated within three (3) months thereafter shall be deemed entered into during the Term;

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