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ATT: Mr Songwriter

Dear Mr Songwriter

REPORT ON THE RECORD LABEL 360° CONTRACT

I have studied the contract provided to you by **The Record Label** and by way of introduction, I wish to inform you that this is what the industry refers to as a 360° contract. This simply means that this contract is not only a record label and artist contract. The days of a label only taking on one responsibility have mostly gone away. Labels nowadays generally take on more responsibility which ordinarily they did not have before, including publishing and management. The three most important 'people' in an artist's career are a label, publisher and manager, hence by **The Record Label** taking all three roles, they have now completed the circle (that is where the reference to a 360° derives from).

360° contracts can be both positive and negative. The contracts have been beneficial to many artists before in that there is one institution that deals with everything, but on the other side of the coin, one company is in control of everything (which should alarm you somewhat). There is also a very important and necessary separation between the manager, publisher and label. They all keep each other in line and accountable. For example, if the record label wants more royalties from album sales, then the manager will usually fight against this so as to ensure that it does not happen. But if the manager and label are from the same company, then there will be no 'fighting' for the artist's rights.

It is not possible to discuss the entire contract in detail as you would have noticed that the contract is more than 60 pages. However, I have identified the most important clauses which

in my opinion deserve more attention (the material clauses), and which should either be deleted or renegotiated. Please note that I have spotted many other points (albeit less significant) that should be addressed in negotiation but which are not mentioned in this report.

Unfortunately, and which is true for the majority of big label contracts, this is a one-sided contract wholly in favour of **The Record Label**. It strips the artist of many rights in relation to their music. Given the size of this contract, I will break up the discussion of this contract into three main categories; recording, publishing and management.

Recording Contract

Firstly, this contract is an exclusive contract, meaning that you will not be able to sign with any other labels for the duration of this contract.

Duration of contract

The term (duration) of this contract is one year after the first album is released. Although this is common, it is concerning in that if you do not release an album due to whatever reasons (perhaps the label is preventing you), then you will be bound to the contract for a very long time. This is unlikely as the label has nothing to gain from doing this.

The term may also be extended should **The Record Label** exercise options. An option means that they can extend the contract by another year and/or for another album release at the end of the contract. For example, when you release an album, then a year after that the contract will end. But if **The Record Label** elects to use their option, then the contract will extend for another 12 months after you release your second album, then third album and so forth. You will have no say in whether they choose to extend the contract or not. They have not specified how many options they are entitled to yet. This is a big point for negotiation, as this could mean you will be bound to the contract for an incredibly long time. I would say two options is reasonable.

If **The Record Label** should suspend the contract for reasons outlined in clause 1(a), then the contract will automatically extend for that period which it was suspended for. i.e. if it is suspended for a month due to you being ill, then it will extend for another month at the end. This is fair, except if **The Record Label** suspend it on unreasonable grounds. My concern is specifically with 1(b) and how broadly framed it is.

Minimum Commitment (clause 2(c))

In order to meet your obligations, you will have to release at least one album (this is called a minimum commitment). But there are very specific requirements on what counts towards this minimum commitment and what does not. For example, if you release a live album, a sound track or B-side tracks and so forth, then that will not count towards satisfying the minimum commitment. I mention this because if you want to get out of the contract, then you will not be able to rely on doing any of the above in the hopes of meeting the minimum commitment. You will have to release new material. **The Record Label** may also insist that you record B-side tracks in addition to the minimum commitment.

The Record Label requires that the recordings be “artistically, technically and commercially satisfactory” (clause 7(d)). This is very narrow, and should **The Record Label** think that the recorded songs are artistic and technical (whatever that might mean), but not necessarily ‘commercial’, then they do not have to accept the recordings – and you will not meet the minimum commitment.

Re-recording restriction (clause 4(f))

You may not re-record the songs you have previously recorded whilst signed with **The Record Label** and for five years after the contract has terminated.

Grant of Rights (clause 6(a))

All rights in respect of the recordings and videos go to **The Record Label**. “All rights” is very broad and most certainly includes copyrights, which are any artist’s greatest asset. The labels specifically want the copyrights as they cannot make money without having them.

The Record Label's obligation to release the contract (clause 5(a))

This clause ensures that **The Record Label** do what they are supposed to. I am delighted to see a quasi-reversion clause (5(b)) which states that you can terminate the contract if **The Record Label** does not do anything with the recordings. What puzzles me however is the part that says “the Artist shall have the option to the Master in question on such unreleased Album or Single”. I am not sure what they mean by option in this context. It is my hope that they mean the copyright in all unreleased songs are assigned (transferred) to you, but the contract does not specifically mention copyrights or assignment, which is concerning. I would therefore insist that they clarify that clause to address my concerns above.

Advances (clause 11)

This clause, particularly clause 11 is very important to understand. All advances (money) that is given to you **must be paid back**. **The Record Label** will claim the amount back by taking all royalties owed to you until the debt has been repaid. Only after the advance has been repaid will you then start to see income from album sales. This is very important, as it could take months or even years before you start seeing money from your albums. Please note however that **The Record Label** will only claim money from royalties, and not from personal income you receive.

The Record Label is not giving you any amount upon signing this contract (usually referred to as a signing bonus). They will pay for the recording costs, and it would appear that they are not insisting that you pay those costs back. Clause 11. states "All monies excluding marketing, recording and video costs shall be treated as advances". **The Record Label** will come up with a recording budget – this amount has not yet been disclosed in the contract. To my understanding, if the album is released without exceeding the budget, then you will not be liable to pay those amounts. But should it go over budget, then any amounts over will be regarded as being an advance, which must be paid back in the form of royalties (clause 11(b)).

I am troubled by clause 12(a). It seems that any money (other than mechanical royalties) paid to your publisher will be regarded as an advance. I would clarify this clause to say that any money paid to the publisher, provided it is regarded as being an advance in terms of subsequent contracts entered into between **The Record Label** and the publisher, may be recouped against your royalties. Another troubling aspect is that **The Record Label** is quite insistent on being the publisher (will discuss this in detail below), so I am uncertain what the consequences would be if **The Record Label** should pay its publisher (who are also part of **The Record Label**), and then count that as an advance. The lines are being far too blurred for my liking.

Clause 12(d) states that if **The Record Label** arranges for video shoots, that you must be present. That is fair. But they go on to say further that if you do not attend "for whatever reasons including but not limited to illness and Force Majeure" then all those amounts **The Record Label** paid, will now be regarded as an advance which they will recoup from you. My biggest issue with this is that if you quite literally cannot attend the shoot because there is a riot, or weather storm (for example), then you will still have to pay the costs. This must be deleted.

Royalties

In terms of Schedule A, you are only entitled to **10% of each album sale**. Keep in mind that it is not 10% of the retail value, but 10% of the “royalty base price”. The royalty base price is the published price to dealer (PPD). PPD is the amount **The Record Label** sells the album to the retailers, and it is usually 130% less (if not more) than what the retailers sell it for. It is common (although not necessarily fair) for artists to get around 10% – 13% in royalties for album sales. To put this into perspective, if Musica sells your album for R150, that could mean the PPD value is somewhere between R100 – R120 (depending on the retail increase), therefore you will get around R10 to R12 per album sale. The difference of a few Rands might seem insignificant, but as you will see below, every Rand can make a big difference.

You will not receive royalties if any of the albums are returned or given away as free copies. The free or “promo copies” is also an important consideration as **The Record Label** has quite a wide discretion to give away as many promo copies as they think is appropriate. You will receive less royalties in respect of albums sold at discounted prices (also within **The Record Label’s** discretion). The royalties you receive will also be taxed, so **The Record Label** will withhold a portion for tax purposes. They will also keep a reserve of 15% of the total royalties owed to you as a ‘backup’ in case any albums are returned.

The Record Label can still claim royalties after termination of the contract (clause 11(g)).

You will only receive **11% of the royalty base price for videos** that are sold, i.e. live DVD’s and so forth.

To illustrate the significance of these percentages, if **The Record Label**, for example, spends R100 000 on recording costs (non-recoupable), and an additional R50 000 for other costs which are regarded as advances (recoupable), then you will not see a single cent until the R50 000 is paid off. Which means at best, at least 4100 albums must be sold before you start getting money. Now keep in mind, that if 4100 albums have been sold, and the PPD value is at R100, then **The Record Label** would have made R410 000 which is nearly triple the amount than what they spent on you in the first place. Of course, these figures are somewhat jaded as they do not take into consideration other expenses or promo copies, but **The Record Label** still stands to make much more income.

The Record Label will pay 50% of all net proceeds it receives to you from selling merchandise. This only applies to merchandise sold at gigs or on tour. **The Record Label** will only pay 15% for merchandise sold elsewhere (i.e. not mentioned in the list above) and

which would include retail stores. **50% is a satisfactory amount but 15% is not.** Merchandise offers big rewards for artists, as it is a large income stream. I must also ask, what does **The Record Label**, as a record label know about merchandising? Merchandising is quite often outsourced to companies who deal specifically with merchandising.

Publishing

Clause 16, specifically 16(c) must be deleted. This current contract does not deal with publishing per se, and **The Record Label** acknowledge that they must enter into a separate publishing contract with you. My biggest issue is that if you find another publisher that you likes, then you cannot sign with them without first giving **The Record Label** an opportunity to match the terms that the other publisher has offered. If **The Record Label** decides to match the terms, then a **contract is automatically entered into** between you and **The Record Label**. This is outrageous. You should be given freedom to sign with any publisher you feel comfortable with.

Clause 16(d) is even more absurd in that if you should sign with another publisher and not **The Record Label**, then **The Record Label** is still entitled to 10% of whatever money the publisher pays you..

Management

If the manager finds and enters into deals for you, then the manager will take **20%** of all money they get for the artist. This is reasonable. If they do not facilitate contract negotiations, but you secure your own contracts, then **The Record Label** will take **10%** for all monies you receive and which they did not facilitate or cause to happen. In other words, they will get 10% for doing nothing. This worries me, as you could merely sign the agreement, and **The Record Label** already stands to benefit 10% from all money, despite not doing anything. If they facilitate a prospective deal, but the deal is only signed once the contract with the manager has ended, then **The Record Label** will get **15%** of all money received. This is problematic, as it could be something as simple as **The Record Label** inadvertently introducing you to a booking agent, and if that booking agent arranges a show for you, then **The Record Label** will want to claim 15% of the contract fee you got for up to three years.

Except for my concerns above, I do not have any other real issue with this contract. The language of the contract is less 'one-sided' meaning that it does not quite obviously favour

The Record Label. My thoughts on this could be that **The Record Label** have limited experience in managing artists and hence have no right to make certain demands.

Conclusion

Now that the harsh realities of these typical 360° contracts have been canvassed, it is important to decide what steps to take next. I would advise that you do not enter into these contracts without at least negotiating on certain key points. Although you will not have to pay any money up front, you would likely receive far less than what you could potentially gain for album sales as well as the other income streams if you were to do it yourself. Another option is to sign with a smaller label who offers more fair terms.

The reason people still rely on record labels is that the labels have the infrastructure and means to record and distribute an album. If you were to try record the album yourself and distribute it, you could make much more money, but it would most certainly be difficult. Labels have the necessary connections to get artists places, but at a cost.

Please rely on this report as a guideline, and I do not recommend you send this directly to the label, as it might diminish your bargaining power. I understand that many people working in the record labels might appear to be approachable and want to ensure the wellbeing of their newly signed artists, but should things go sour, then they can rely on this contract much to your detriment.

Feel free to contact me should you have any queries or concerns.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Adrian Rogowski', with a large, stylized initial 'A'.

Adrian Rogowski