

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

EIGHT MILE STYLE, LLC; MARTIN  
AFFILIATED, LLC,

*Plaintiffs,*

v.

SPOTIFY USA INC.,

Civil Case No. 19-CV-00736

Hon. Aleta A. Trauger

JURY DEMAND

SPOTIFY USA INC.,

*Third-Party Plaintiff,*

v.

KOBALT MUSIC PUBLISHING  
AMERICA, INC.,

*Third-Party Defendant.*

**SPOTIFY USA INC.'S THIRD-PARTY COMPLAINT**

Defendant and Third-Party Plaintiff Spotify USA Inc. (“Spotify”), by and through its undersigned counsel, brings this Third-Party Complaint against Third-Party Defendant Kobalt Music Publishing America, Inc. (hereinafter “Kobalt”), and alleges as follows:

**NATURE OF THE ACTION**

1. This Third-Party Complaint for indemnification and other relief arises directly out of an action brought by two putative copyright owners, Eight Mile Style, LLC and Martin Affiliated, LLC (collectively, “Eight Mile”), which allege that Spotify infringed their copyrights

in 243 musical compositions (the “Compositions”). Many of the Compositions were written by Eminem (a/k/a Marshall Mathers), who is not a party to this lawsuit.

2. Eight Mile is a sophisticated music publisher that acquired rights in musical works created by others and whose sole business it is to monetize those works. For almost a decade, Eight Mile observed that sound recordings embodying the Compositions were streamed billions of times on Spotify. It received substantial royalty payments from Spotify based on that streaming.

[REDACTED]

[REDACTED] And while it received royalty payments and observed billions of streams, it never once questioned Spotify’s authority to make music embodying those Compositions available on Spotify’s service. Eight Mile instead suggests that it was somehow “duped” by Spotify into thinking the Compositions were properly licensed to explain away why it knowingly accepted and deposited royalty payments while remaining silent for years.

3. Eight Mile’s story defies logic. But its lawsuit fails from the start for an even simpler reason: Spotify was, in fact, licensed by Eight Mile’s agent, Kobalt, to reproduce and distribute the Compositions. Specifically, Kobalt executed a direct “Mechanical License Agreement” with Spotify, [REDACTED] [REDACTED] agreeing to indemnify Spotify for claims by any third party (such as Eight Mile) alleging that Spotify infringed the third party’s rights. Those basic facts are why Spotify is now compelled to bring this third-party complaint against Kobalt.

4. Although the underlying infringement claim by Eight Mile lacks merit, it is Kobalt that bears ultimate responsibility should Eight Mile prevail.

5. For years, Kobalt granted licenses to Spotify for musical compositions allegedly owned by Eight Mile. Kobalt had the express or apparent authority of Eight Mile to do so on Eight Mile's behalf, and certainly (at the very least) led Spotify to believe that it had such authority.

6. Kobalt not only entered into a direct "Mechanical License Agreement" with Spotify for all compositions that Kobalt administered, including the ones at issue in this case, but for years before that:

- accepted statements of account and royalty payments for Spotify's use of the Compositions and, on information and belief, reported and distributed those royalties to Eight Mile; and
- [REDACTED]

7. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. If Spotify were deemed liable to Eight Mile, the responsibility for such liability rests with Kobalt because, through its contractual representations and course of conduct, Kobalt caused Spotify to believe that Kobalt had granted valid licenses to the Compositions, and Spotify made sound recordings available on its service on the basis of that reasonable belief. Kobalt agreed to indemnify Spotify for precisely this type of claim.

9. Particularly in light of Kobalt's words and deeds, it is clear that Eight Mile's claims in this case reflect its cynical strategy to reap the benefits of Spotify's streaming service while lying in wait to later seek (improperly) windfall statutory damages based on allegations that

Spotify was infringing copyrights allegedly owned by Eight Mile. Acting as Eight Mile's agent, Kobalt has participated in that effort, and is liable to Spotify as a result.

10. Accordingly, Spotify has, reluctantly, found it necessary to implead Kobalt into this Action.

### **PARTIES**

11. Defendant and Third-Party Plaintiff Spotify is a corporation organized and existing under the laws of the State of Delaware with its headquarters located in New York, New York. Spotify is a digital music streaming service that allows users to stream music (and other content) over the Internet and through mobile applications.

12. Third-Party Defendant Kobalt Music Publishing America, Inc. is a music publishing company organized and existing under the laws of the State of Delaware with its principal place of business in New York, New York.

### **JURISDICTION AND VENUE**

13. Eight Mile commenced this Action for infringement of its alleged copyright interests in 243 musical compositions (the "Compositions") against Spotify.

14. This Court has subject-matter jurisdiction over the Action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the underlying claims arise under the Copyright Act and Copyright Revision Act of 1976 (17 U.S.C. § 101 et seq.), which is within the exclusive jurisdiction of federal courts pursuant to 28 U.S.C. § 1331.

15. This Court has supplemental subject-matter jurisdiction over the claims set forth in this Third-Party Complaint pursuant to 28 U.S.C. § 1367 because they arise out of the same transaction or occurrence as the copyright-infringement claim asserted by Eight Mile in the Complaint.

16. After this Court determined that the underlying action would proceed in this Court, rather than in federal district court in New York, counsel for Spotify sought to determine whether, if it were to assert a claim against Kobalt, Kobalt would object to such an action being venued in this Court. On April 24, 2020, counsel for Kobalt advised counsel for Spotify that, while Kobalt reserved its rights, it did not intend to raise any such objection.

17. In the event that Kobalt decides otherwise and the Court finds that Kobalt's joinder is infeasible, Spotify reserves the right to move to dismiss the underlying action for failure to join an indispensable party pursuant to Federal Rule of Civil Procedure 19.

### **STATEMENT OF FACTS**

#### **I. KOBALT HAS PUBLICLY TOUTED ITS RELATIONSHIP WITH EIGHT MILE.**

18. Kobalt Music Publishing America, Inc., the third-party defendant here, and Kobalt Music Services America Inc., its affiliate, are both subsidiaries of Kobalt Music Group, Ltd., a London-based independent music publisher and rights administrator founded in 2000.

19. Kobalt Music Group is among the top players in the music publishing and copyright administration business. In 2015, it was deemed "the top independent music publisher in the UK and the second overall . . . in the U.S." Kevin Gray, *Kobalt changed the rules of the music industry using data – and saved it*, WIRED (May 1, 2015), <https://www.wired.co.uk/article/kobalt-how-data-saved-music>. Kobalt Music Group's CEO sits on the Board of Directors of the music publishing industry's principal trade association, the National Music Publishers' Association ("NMPA"). And Kobalt Music Group's Founder and Chairman (and former CEO) previously sat on that same board. Kobalt is an affiliate publisher of The Harry Fox Agency ("HFA"), the leading mechanical rights licensing and administration agency in America.

20. Music publishing administrators are empowered by songwriters, music publishers, and other composition copyright owners to manage their copyrights and account for the income

they earn. They register the copyright owners' compositions, monitor when and where the compositions are used, negotiate and license the compositions for use, collect the royalties that are generated from those uses, and distribute royalties and other licensing fees to the copyright owners. In exchange for these services, publishing administrators typically receive a percentage of the collected royalties and licensing fees.

21. As a publishing rights administrator, Kobalt is responsible for administering, registering, and licensing compositions and collecting publishing royalties on behalf of copyright owners.

22. As the *Wired* article cited above and Kobalt's promotional materials describe, Kobalt established a lengthy roster of artist and publisher clients whose catalogs of musical works it administers by claiming to offer a more direct and transparent platform for tracking usage of the works and collecting royalties owed for such usage. *See, e.g.*, Press Release, Kobalt, *Kobalt Continues Rapid Growth* (Mar. 28, 2019), <https://www.kobaltmusic.com/press/kobalt-continues-rapid-growth>.

23. From September 2004 to after this Action was commenced, Kobalt publicly and continuously listed Eight Mile on its website as a current client whose rights it administers. Kobalt's website included the following statements as of September 2004:

Kobalt Music Group- music publisher offering royalty collection

Kobalt Music Group is an independent music publisher offering global creative and administrative services to writers, publishers and other publishing rights holders. The Kobalt Music Group staff consists of a dynamic combination of music industry professionals, business strategists and technology experts dedicated to providing the highest level of service in the publishing industry.

Kobalt Music Group offer fast, transparent and accurate royalty collection.

Kobalt Music Group has developed a modern centralized royalty collection infrastructure based on direct relationships with collection societies and our own new administration technology that enables us to deliver information and revenues quicker and more efficiently.

Kobalt Music Group creative team works with record labels, film companies and advertising agencies in the US, Europe and Australasia to create maximum opportunities for our client's and their copyrights.

Kobalt Music Group's current Clients include:

- |                            |                      |
|----------------------------|----------------------|
| Sanctuary Music Publishing | Air-Edel Music       |
| B Unique Music             | Ignition Music       |
| Cal IV Music               | La Cosca Music       |
| Badly Drawn Boy            | Beth Nielsen Chapman |
| 8 Mile Style               | Bill Wyman           |
| Noel Hogan (Cranberries)   | Gulp Music           |
| Robert Miles               | Mauro Scocco         |
| Terry Taylor               | Tina Dico            |
| Big Life                   | RG Music             |
| Nicolai Dunger             | Howard Jones         |
| Integrated Copyright Group |                      |

Registrations sent worldwide over the last 6 months : 131094

Kobalt's website included the following information regarding its roster as of November 2019:

INTERNET ARCHIVE <https://www.kobaltmusic.com/roster/all> Go OCT NOV DEC  
 8 captures 29 Jun 2017 - 17 Nov 2019 2018 2019 2020 Services

# Ozuna

VISIT SITE >

## Full Roster

1 2 3 4 5 6 7 8 9 10 11 12 A B C D E F G H I J K L M N

1	120 Music Publishing	
3	3Beat Publishing Publishing	3LAU Publishing
5	50 Cent Publishing	
7	78 Violet Neighboring Rights	
8	8 Mile Style Publishing	808 State Neighboring Rights

24. In 2016, Joel Martin, the sole member of Martin Affiliated, LLC and manager of Eight Mile Style, LLC, filed a declaration concerning Eight Mile’s relationship with Kobalt in another litigation. According to the declaration, Mr. Martin had “negotiated and executed administration agreements” with Kobalt, and “[i]n each instance, the written administration agreement . . . refer[s] to Kobalt US as our ‘agent.’” See Nov. 3, 2016 Declaration of Joel Martin (Doc. 51), *HaloSongs, Inc. v. Edward Christopher Sheeran*, No. 8:16-cv-01062 (C.D. Cal.) (attached hereto as Exhibit A).

25. Mr. Martin’s declaration further explained that Eight Mile “granted to Kobalt US certain rights to administer the compositions and to grant certain licenses to use [its] copyrighted compositions.” In the redacted administration agreement appended to the declaration, Eight Mile “solely and exclusively license[d]” to Kobalt a wide variety of enumerated rights, including the rights to reproduce and distribute, as well as “all other rights of whatever kind and nature in the [c]ompositions.” See Exhibit to Nov. 3, 2016 Declaration of Joel Martin (Doc. 51-1), *HaloSongs, Inc. v. Edward Christopher Sheeran*, No. 8:16-cv-01062 (C.D. Cal.) (attached hereto as Exhibit B).

26. Throughout its dealings with Spotify specifically, Kobalt made similarly overt, as well as implied, representations about its administration of Eight Mile’s catalog of music.

## **II. SINCE BEFORE SPOTIFY’S LAUNCH, KOBALT GRANTED LICENSES AND ACCEPTED ROYALTY PAYMENTS ON EIGHT MILE’S BEHALF.**

27. Through its statements and conduct, Kobalt has for many years demonstrated that it had authority to represent Eight Mile with respect to Eight Mile’s catalog of compositions.

28. Pursuant to Section 115 of the United States Copyright Act, a digital streaming service like Spotify may obtain a compulsory license to reproduce and distribute musical



compositions by following certain procedures, including sending a “notice of intent” (or “NOI”) to the owner or administrator of the mechanical rights to the composition.

29. Even before Spotify launched its U.S. service in 2011, and for several years thereafter, Spotify’s third-party licensing administrator for mechanical rights in the U.S., HFA, issued NOIs to Kobalt that informed Kobalt of Spotify’s intent to obtain a compulsory license covering the Compositions.

30. Many of these NOIs were issued by HFA to “Kobalt OBO EMS” (i.e. “Kobalt *on behalf of* EMS”). Others were issued by HFA to “Kobalt OBO Resto World” and “Kobalt OBO Dirty Steve,” referring to publishing entities that are affiliated with writers of the Compositions other than Eminem (and identified in Exhibit A to Eight Mile’s Complaint).

31. In total, Kobalt received more than 1,900 NOIs relating to the Compositions on Eight Mile’s (or an affiliated publisher’s) behalf over the course of approximately six years.

32. Because Spotify understood that Kobalt administered the compositions for which Kobalt accepted NOIs on Eight Mile’s behalf, Spotify, through HFA, issued regular statements of account to Kobalt for on-demand streams and limited downloads of the Compositions. It also paid royalties owed on account of those streams and downloads to Kobalt on behalf of Eight Mile.

33. Without objection, Kobalt continued to accept royalties from Spotify for streams and limited downloads of sound recordings embodying the Compositions.

34. On information and belief, Kobalt remitted Eight Mile’s share of these royalties to Eight Mile over the course of these approximately six years.

III.

[REDACTED]

35. [REDACTED]

[REDACTED]

[REDACTED]

36. On March 17, 2016, Spotify and the NMPA entered into an agreement (the “2016 NMPA Agreement”) concerning Spotify’s usage of sound recordings embodying musical compositions for which an NOI may not have been issued because, despite Spotify’s commercially reasonable efforts, the owner or administrator may not have been identified and royalties may have been accrued but not disbursed (“pending and unmatched usage”). The NMPA and Spotify publicly announced the deal, the general terms of which were also described in numerous media articles. See Press Release, NMPA, *NMPA and Spotify Announce Landmark Industry Agreement for Unmatched U.S. Publishing and Songwriting Royalties* (Mar. 17, 2016), [http://nmpa.org/press\\_release/nmpa-and-spotify-announce-landmark-industry-agreement-for-unmatched-u-s-publishing-and-songwriting-royalties/](http://nmpa.org/press_release/nmpa-and-spotify-announce-landmark-industry-agreement-for-unmatched-u-s-publishing-and-songwriting-royalties/); Ed Christman, *Spotify and Publishing Group Reach \$30 Million Settlement Agreement Over Unpaid Royalties*, BILLBOARD (March 17, 2016), <https://www.billboard.com/articles/business/7263747/spotify-nmpa-publishing-30-million-settlement-unpaid-royalties>.

37. The purpose of the 2016 NMPA Agreement was to provide participating NMPA member publishers with the opportunity to obtain royalties that they may not have received for “unmatched” compositions they owned, controlled, or otherwise administered, and to resolve any and all claims related to Spotify’s usage of those compositions.

38. By doing so, Spotify would achieve full resolution with respect to any compositions owned, controlled, or administered by each participating publisher: If any sound recordings had

previously been matched to the embodied compositions, the publisher would have received the royalties to which it and its clients were entitled; if any sound recordings had, during any period covered by the agreement, not been matched to the embodied compositions, the publisher would receive accrued royalties and additional payments in return for, among other consideration, a release of all claims (including for copyright infringement) against Spotify associated with Spotify's usage of all compositions embodied in those sound recordings.

39. The 2016 NMPA Agreement covered Spotify's usage of "pending and unmatched" compositions from the launch of the service in the U.S. through June 30, 2017. Spotify created an online portal identifying all such compositions that would be subject to the agreement. [REDACTED]

[REDACTED]

[REDACTED]

40. [REDACTED]

[REDACTED]

[REDACTED]

41. [REDACTED]

[REDACTED]

42. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

43. [REDACTED]

[REDACTED]

44. [REDACTED]

[REDACTED]

[REDACTED]

45. [REDACTED]

[REDACTED]

[REDACTED]

46. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

47. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

48. [REDACTED]

[REDACTED]

[Redacted]

[Redacted]

49. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

50. [Redacted]

[Redacted]

[Redacted]

[Redacted]

51. [Redacted]

[Redacted]

[Redacted]

[Redacted]

52. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

**IV. FOLLOWING THE NMPA AGREEMENT, KOBALT GRANTED SPOTIFY A DIRECT LICENSE TO THE COMPOSITIONS.**

53. [REDACTED]

54. The negotiations were successful, and on December 15, 2016, Spotify entered into a direct mechanical license agreement with Kobalt (the “Mechanical License Agreement”), pursuant to which Kobalt granted licenses to any and all musical compositions that Kobalt owned, controlled, or administered.

55. Specifically, Kobalt “grant[ed] Spotify a non-exclusive, non-transferable . . . irrevocable license throughout the [United States] to [] reproduce and distribute the Publisher Compositions,” defined to include “copyrighted, non-dramatic musical composition[s]” or “portions thereof that [Kobalt], whether now or during the Term, owns, controls, or administers.”

56. [REDACTED]

57. Consistent with its representations before entering the agreement, Kobalt never sought to exclude compositions, including the Compositions at issue, from the license it granted Spotify pursuant to the Mechanical License Agreement.

58. As a result, Kobalt not only led Spotify to believe that Kobalt had granted Spotify a direct license for every composition it owned, controlled, or administered [REDACTED]

[REDACTED]

59. To the extent any third party brought a claim against Spotify on the basis of an “allegation that, if true, would constitute a breach of [Kobalt’s] representations, warranties, or covenants,” Kobalt agreed to “indemnify and hold [Spotify] . . . harmless.” Thus, in the event Spotify were sued for copyright infringement because it allegedly lacked a mechanical license to a composition administered by Kobalt, Kobalt would be responsible for any resulting loss.

60. Through the consistent course of conduct described above, Kobalt clearly administered—and at the very least led Spotify to believe that it administered—Eight Mile’s catalog. Spotify therefore reasonably believed that compositions within that catalog, including the Compositions at issue here, were covered by the Mechanical License Agreement.

61. After executing the Mechanical License Agreement, Kobalt continued to represent, and perpetuate the appearance, that it administered Eight Mile compositions, including the Compositions at issue, by accepting royalties from Spotify for streams and limited downloads of sound recordings embodying those compositions.

62. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

63. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

64. [REDACTED]

V. [REDACTED] **EIGHT MILE CLAIMS THAT KOBALT DID NOT HAVE AUTHORITY TO GRANT LICENSES AND THAT SPOTIFY INFRINGED ITS COPYRIGHTS.**

65. Despite Kobalt’s grant of licenses to Spotify for the Compositions at issue, Eight Mile filed this lawsuit.

66. Eight Mile alleges that Spotify infringed its copyrights by making the Compositions available on Spotify’s streaming service without (according to Eight Mile) a valid mechanical license.

67. In its Complaint, Eight Mile alleges that it granted Kobalt “the right to receive income arising from licenses issued by Eight Mile” but not “the right or ability to license Eight Mile compositions for digital mechanical licenses, unless consented to by Eight Mile.” Compl. (Doc. 1) at ¶ 20. Eight Mile asserts that it did not consent to Kobalt licensing any of the Compositions at issue. *Id.*

68. Eight Mile’s position defies logic because it knew that sound recordings embodying the Compositions were available on Spotify’s service and continuously accepted the royalties that Kobalt received from Spotify for streams and limited downloads of those recordings—royalties for licensed activity.

69. [REDACTED]



[REDACTED]

[REDACTED]

70. The allegations therefore trigger Kobalt’s indemnification obligation under the Mechanical License Agreement, which provides that Kobalt must “indemnify and hold [Spotify] . . . harmless” from any claims “relating to any allegation that, if true, would constitute a breach” of Kobalt’s representations and warranties.

71. Kobalt’s obligation to indemnify Spotify is “contingent upon” Spotify providing Kobalt “with prompt notice of [the claim] in writing.”

72. In satisfaction of that condition, on October 12, 2019, Spotify promptly served a formal written demand on Kobalt, seeking indemnification for the claims asserted against Spotify in this Action.

73. In its October 29, 2019 response, Kobalt flatly refused to engage “in an analysis of the issues” surrounding the indemnification demand and expressly “reject[ed] Spotify’s contention that such an indemnity obligation exists.”

**FIRST CAUSE OF ACTION**  
**Breach of Contract (Mechanical License Agreement)**

74. Spotify repeats, re-alleges, and incorporates by reference each and every allegation contained in the foregoing paragraphs, as though fully set forth herein.

75. The Mechanical License Agreement is a valid and existing contract between Spotify and Kobalt.

76. Spotify fully performed its obligations in accordance with the terms and conditions of the Mechanical License Agreement.

77. [REDACTED]

78. Kobalt owned, controlled, or administered the Compositions at issue in this litigation.

79. [REDACTED]

80. In that event, Kobalt's breaches of representations and warranties will have caused Spotify significant damages in an amount to be determined at trial.

**SECOND CAUSE OF ACTION**  
**Contractual Indemnity (Mechanical License Agreement)**

81. Spotify repeats, re-alleges, and incorporates by reference each and every allegation contained in the foregoing paragraphs, as though fully set forth herein.

82. In the Mechanical License Agreement, Kobalt agreed to indemnify and hold harmless Spotify from "any and all third party claims, damages, liability, costs and expenses (including reasonable legal expenses and counsel fees) relating to any allegation that, if true, would constitute a breach of" Kobalt's representations and warranties.

83. [REDACTED]

84. Kobalt must accordingly indemnify Spotify for all losses incurred in relation to this Action, no matter the result, including all fees and costs incurred in the defense of Eight Mile's claims and any damages awarded to Eight Mile in the event of an adverse judgment.

**THIRD CAUSE OF ACTION**  
**Anticipatory Repudiation (Mechanical License Agreement)**

85. Spotify repeats, re-alleges, and incorporates by reference each and every allegation contained in the foregoing paragraphs, as though fully set forth herein.

86. Upon being served with the Complaint, Spotify promptly sought indemnification from Kobalt pursuant to the Mechanical License Agreement.

87. Kobalt expressly rejected the existence of any obligation to indemnify Spotify.

88. By its categorical rejection of any indemnification obligation, Kobalt has clearly expressed its intention not to fulfill its indemnification obligation.

89. Spotify does not have any reasonable expectation that Kobalt will honor its indemnification obligation. Spotify is therefore entitled to treat Kobalt's repudiation of its indemnification obligation as an anticipatory breach of the indemnity provision of the Mechanical License Agreement.

**FOURTH CAUSE OF ACTION**  
**Breach of Contract** [REDACTED]

90. Spotify repeats, re-alleges, and incorporates by reference each and every allegation contained in the foregoing paragraphs, as though fully set forth herein.

91. [REDACTED]

[REDACTED]

92. [REDACTED]

[REDACTED]

93. [REDACTED]

[REDACTED]

[REDACTED]

94. [REDACTED]

[REDACTED]

95. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

96. [REDACTED]

[REDACTED]

**FIFTH CAUSE OF ACTION**  
**Negligent and/or Intentional Misrepresentation**

97. Spotify repeats, re-alleges, and incorporates by reference each and every allegation contained in the foregoing paragraphs, as though fully set forth herein.

98. By virtue of their contractual relationship, Kobalt was obligated to provide accurate information to, and to not mislead, Spotify.

99. [REDACTED]

[REDACTED]

[REDACTED]

100. To the extent the allegations in the Complaint are true, Kobalt's representations were false and misleading.

101. Spotify reasonably relied on such representations in making sound recordings

embodying the Compositions available on its digital streaming service and paying royalties for resulting streams and limited downloads.

102. To the extent Spotify is held liable for copyright infringement, it will be a direct result of Kobalt's negligence in making those representations.

**PRAYER FOR RELIEF**

WHEREFORE, Spotify respectfully requests that the Court order:

- a. Kobalt to pay to Spotify all fees, costs, and other expenses that Spotify has incurred in defense of this Action;
- b. Kobalt to pay any damages, fees, and costs awarded to Eight Mile in this Action; and
- c. any other such relief the Court deems appropriate.

Dated: May 29, 2020

Respectfully submitted,

By: /s/ Aubrey B. Harwell III

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*Counsel for Spotify USA Inc.*

*\*admitted pro hac vice*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was filed electronically on May 29, 2020 with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to all parties and counsel of record by operation of the Court's CM/ECF system. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

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*/s/ Aubrey B. Harwell III*

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Eight Mile Style, LLC; Martin Affiliated, LLC

Plaintiff

v.

Spotify USA Inc.

Defendant, Third-party plaintiff

v.

Kobalt Music Publishing America, Inc.

Third-party defendant

Civil Action No. 19-cv-00736

SUMMONS ON A THIRD-PARTY COMPLAINT

To: (Third-party defendant's name and address) Kobalt Music Publishing America, Inc.
2 Gansevoort Street, 6th Floor
New York, NY 10014
(212) 247-6204

A lawsuit has been filed against defendant Spotify USA Inc., who as third-party plaintiff is making this claim against you to pay part or all of what the defendant may owe to the plaintiff Eight Mile Style, LLC et al.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff and on the defendant an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the defendant or defendant's attorney, whose name and address are:

- Aubrey B. Harwell III, Neal & Harwell, PLC, 1201 Demonbreun Street, Suite 1000, Nashville, Tennessee 37203, tharwell@nealharwell.com
Matthew D. Ingber, Mayer Brown LLP, 1221 Avenue of the Americas, New York, NY 10020, mingber@mayerbrown.com
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It must also be served on the plaintiff or plaintiff's attorney, whose name and address are:

Richard S. Busch, King & Ballow, 315 Union Street, Suite 1100, Nashville, TN 37201, rbusch@kingballow.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the third-party complaint. You also must file the answer or motion with the court and serve it on any other parties.

A copy of the plaintiff's complaint is also attached. You may – but are not required to – respond to it.

Date: 05/29/2020

CLERK OF COURT

Signature of Clerk or Deputy Clerk



Civil Action No. 19-cv-00736

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify):* \_\_\_\_\_  
\_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

# EXHIBIT A

1 Richard S. Busch  
(Tennessee Bar # 14594)  
2 E-Mail: rbusch@kingballow.com  
KING & BALLOW  
3 315 Union Street, Suite 1100  
Nashville, TN 37201  
4 (615) 259-3456 Facsimile: (615) 726-5417

5 Paul H. Duvall (SBN 73699)  
E-Mail: pduvall@kingballow.com  
6 KING & BALLOW  
1999 Avenue of the Stars, Suite 1100  
7 Century City, CA 90067  
(424) 253-1255 Facsimile: (888) 688-0482

8 Mark L. Block (SBN 115457)  
9 E-Mail: mblock@wargofrench.com  
WARGO & FRENCH LLP  
10 1888 Century Park East, Suite 1520  
Los Angeles, CA 90067  
11 (310) 853-6355 Facsimile: (310) 853-6333

12 Attorneys for Plaintiffs  
HALOSONGS, INC., MARTIN HARRINGTON,  
13 AND THOMAS LEONARD

14 **UNITED STATES DISTRICT COURT**

15 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

16 HaloSongs, Inc., Martin Harrington, and  
17 Thomas Leonard,

18 Plaintiffs,

19 vs.

20 Edward Christopher Sheeran p/k/a Ed  
21 Sheeran, Ed Sheeran Limited, Nathan  
Cable Touring LLP, John “Johnny”  
22 McDaid, Sony/ATV Songs LLC,  
23 Sony/ATV Music Publishing (UK)  
Limited, Polar Patrol Music Limited d/b/a  
24 Polar Patrol Music Publishing, Warner  
25 Music UK Ltd., Warner Music Group  
26 Corporation d/b/a Asylum Records,  
Atlantic Recording Corporation d/b/a  
27 Atlantic, and Kobalt Music Publishing  
America, Inc. Defendants.

Case No. 8:16-cv-01062 VS-JCG

**DECLARATION OF JOEL MARTIN  
IN SUPPORT OF PLAINTIFFS’  
MOTION FOR LIMITED  
JURISDICTIONAL DISCOVERY AND  
TO STAY DEFENDANTS’ PENDING  
MOTION TO DISMISS**

Hon. James V. Selna, Courtroom 10C

**DEMAND FOR JURY TRIAL**  
COMPLAINT FILED: June 8, 2016  
TRIAL DATE: December 12, 2017

Hearing Date  
December 5, 2016, 1:30 p.m.

1 I, Joel Martin, declare as follows:

2 1. I submit this Declaration in support of Plaintiffs' Motion for Limited  
3 Jurisdictional Discovery and to Stay Defendants' Pending Motion to Dismiss.

4 2. I make this Declaration based upon my personal knowledge of the facts  
5 stated herein and I am competent to testify to the same.

6 3. I am a music industry professional and have acted as manager and  
7 consultant to several well-known artists and writers. Among other things, my company  
8 is the music publisher and administrator of musical compositions written in whole or in  
9 part by Marshall Mathers p/k/a Eminem.

10 4. On behalf of my company, I have negotiated and executed administration  
11 agreements with Defendant, Kobalt Music Publishing America, Inc. ("Kobalt").  
12 Therefore, I am personally familiar with Kobalt's standard terms in its administration  
13 agreements.

14 5. In each instance, the written administration agreement (the "Agreement")  
15 between Kobalt and my company referred to Kobalt US as our "agent." In certain  
16 instances, as our agent, the Agreement granted to Kobalt US certain rights to administer  
17 the compositions and to grant certain licenses to use the copyrighted compositions  
18 without requiring my company's approval. In one agreement in particular, relevant  
19 excerpts of which are attached hereto, the licenses that Kobalt US could grant without  
20 approval included: the right to print, publish and sell the Compositions to the public as  
21 sheet music; to record and reproduce the Compositions; to grant non-exclusive licenses  
22 for others to record and reproduce the Compositions; and to license public performance  
23 broadcast and re-transmissions (subject to the rights of performance rights societies).  
24 (Relevant portions of this administration agreement are attached hereto as **Exhibit A**).

25 6. However, in each instance, the Agreement between Kobalt and my  
26 company required Kobalt, as our agent, to obtain our written consent prior to Kobalt's  
27 grant of certain licenses. In the Agreement (**Ex. A**), for example, these licenses that  
28 Kobalt could not enter into without our approval and consent included the grant of a

1 license to administer use and exploit one hundred per cent of the Owner's interest in the  
2 Compositions; the right to add to or substitute the lyrics of the Compositions; the right  
3 to use the titles of the Compositions for any purpose; synchronization licenses; licenses  
4 to use on third party public websites, karaoke licenses; licenses for digital distribution;  
5 and the right to create derivative works of the Compositions.

6 7. It is my understanding that Kobalt and its affiliate in the United Kingdom,  
7 Kobalt Music Group, Ltd. operate as one enterprise to fulfill Kobalt's obligations set  
8 forth in the Agreement.

9 8. For example, when Kobalt Music Publishing America, Inc. was required to  
10 seek written approval for certain exploitations in accordance with the Agreement, it  
11 would come mainly in the form of an email from Kobalt Music Publishing America,  
12 Inc. or from Kobalt Music Group, Ltd.

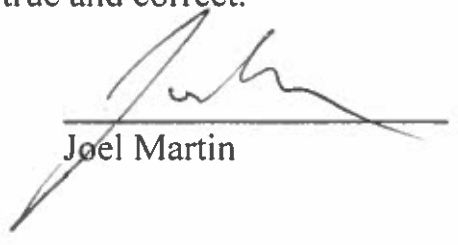
13 9. Even though the Agreement was between my company and Kobalt Music  
14 Publishing America, Inc., requests to exploit a composition in the UK or Europe came  
15 from Kobalt Music Group, Ltd., rather than Kobalt Music Publishing America, Inc.  
16 Examples of such requests are attached hereto as Exhibit B.

17 10. Further, even when the requests to exploit compositions came from Kobalt  
18 Music Publishing America, Inc., those emails all contained a signature block containing  
19 Kobalt Music Group, Ltd.'s address and the following language: "This email and any  
20 files transmitted with it, including replies and forwarded copies subsequently  
21 transmitted from Kobalt Music Group and all its subsidiary and associated companies,  
22 are confidential and solely for the use of the intended recipient."  
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I declare, under penalty of perjury, and pursuant to 28 U.S.C. 1746, and the laws of the United States of America, that the foregoing is true and correct.

Dated: November 3, 2016



Joel Martin

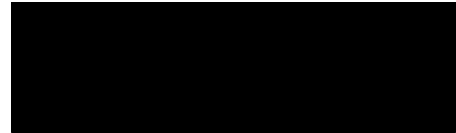
# EXHIBIT B

# EXHIBIT A



**ADMINISTRATION AGREEMENT**

THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_



**BETWEEN:**

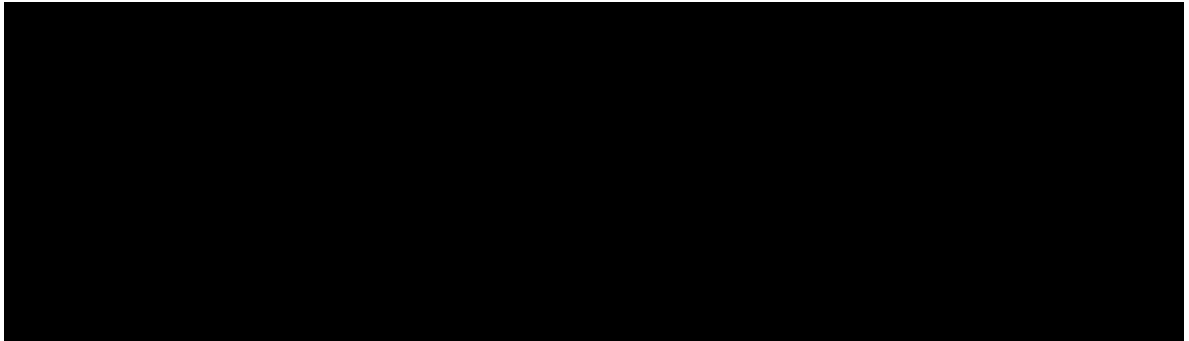
**Kobalt Music Services America Inc**  
1501 Broadway, 27<sup>th</sup> Floor NY 10019, USA  
  
(the Administrator)

**AND:**

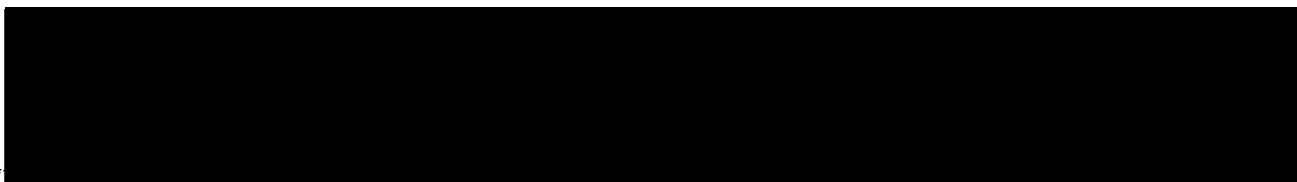
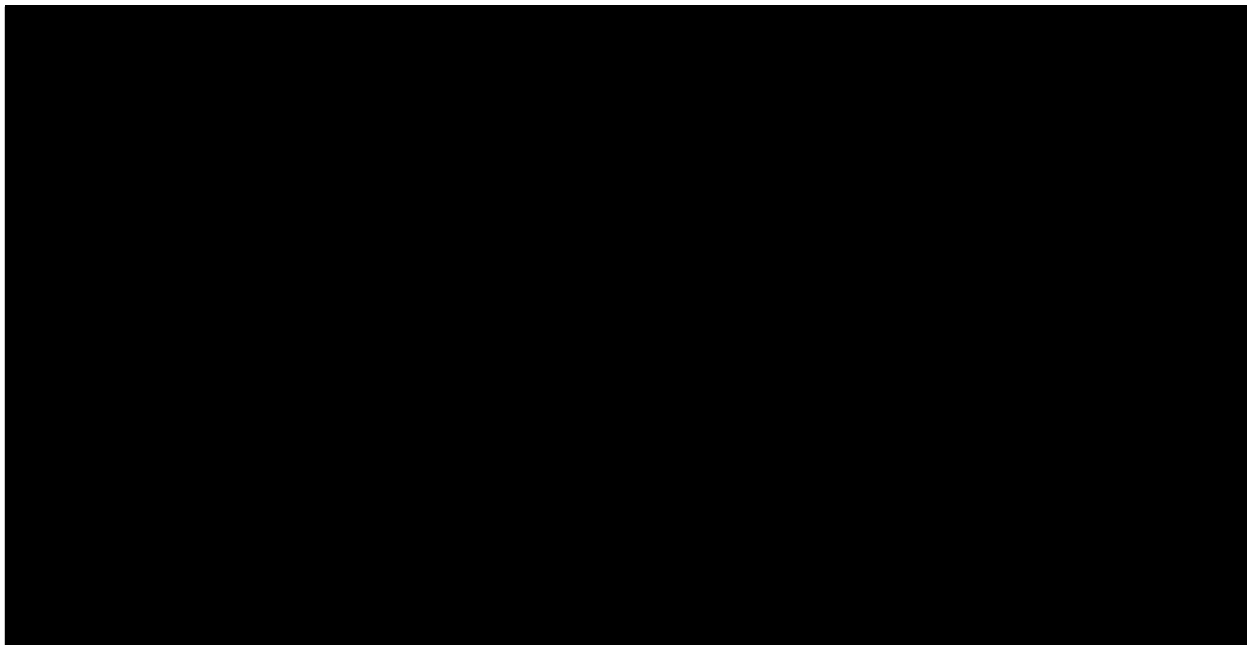


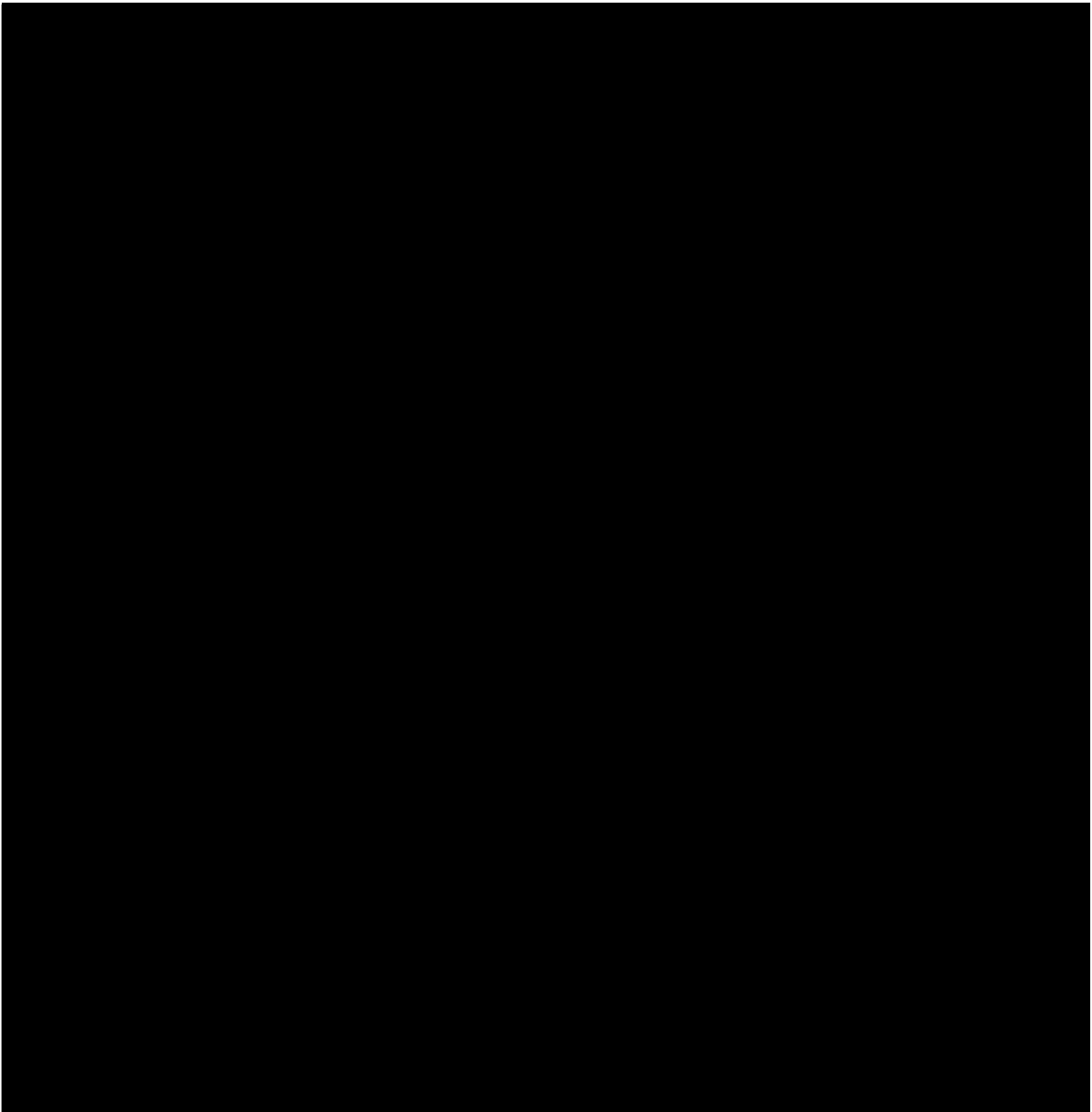
(the Owner)

**WHEREAS:**



**IT IS AGREED** as follows:

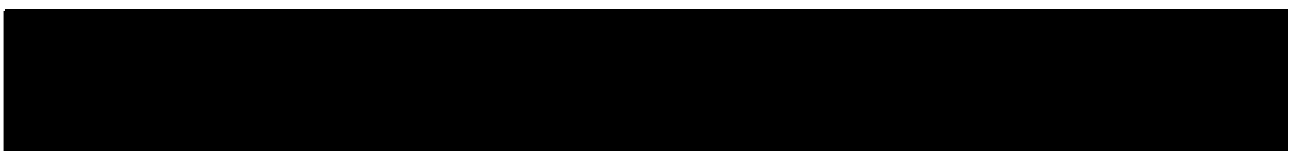




**3 GRANT OF RIGHTS**

3.1 In consideration of the services to be provided herein by Administrator to Owner and for other good and valuable consideration provided herein, the Owner:

- (a) solely and exclusively licences to the Administrator subject to the terms set out herein the copyright interest as set out in Schedule One hereto (and where relevant by way of present grant of a licence in respect of future copyright) and a licence of all other rights of whatever kind and nature (whether now known or hereafter devised) throughout the Territory (including without limitation any and all rental and lending rights and cable re-transmission rights and making available rights and rights of communication to the public) in the Compositions to hold the same to the Administrator absolutely throughout the Territory for the Term (and where and as applicable the Rights Period) and during the Term (and where and as applicable the Rights Period) and a licence of any and all possible renewals revivals reversions and



extensions of copyright wherever and howsoever the law of any country in the Territory so provides.

- (b) Without limiting the generality of the grant and licence of copyright to the Administrator hereunder the rights vested in Administrator shall include by way of example but not limitation the sole and exclusive right throughout the Territory for the Term (and where and as applicable the Rights Period) subject to the terms hereof:
- (i) to register the copyright in the Compositions in the name of the Administrator as the administrator and the Owner as the copyright owner and any parties deriving ownership rights in any Compositions from other songwriters as well as to register each Composition with the Society or other public performance society as selected by the Owner and notified to the Administrator;
  - (ii) subject to the consents of the Owner required hereunder in each instance to administer use and exploit one hundred per cent (100%) of the Owner's interest in the Compositions in any and all media now known or hereafter invented;
  - (iii) subject to obtaining the Owner's consent in each instance to add to or substitute the lyrics of the Compositions (if any) and generally to make and publish adaptations, translations and variations of the Compositions;
  - (iv) subject to obtaining the Owner's consent in each instance to use the titles of the Compositions for any purpose and/or subject to the Owner's consent in each instance to re-title the Compositions (and/or any part of them);
  - (v) to print, publish and sell the Compositions to the public, as individual Compositions as ordinary sheet music, and subject to Owner's consent in each instance in mixed multi artist folios and/or selections or otherwise. In respect of mixed folios containing Compositions together with other musical works Administrator shall have the non-exclusive right to continue to distribute, sell and authorise the further distribution and sale of such mixed folios then printed by Administrator or under Administrators authority for a period of one (1) year following the expiry of the Term;
  - (vi) to record and/or reproduce the Compositions or to grant non-exclusive licences authorising others to record and/or reproduce the Compositions by means of mechanical or digital reproduction or otherwise on all forms of sound carrier now known or hereafter invented (such right to be exercised by Administrator without reference to Owner where there already exists a licence and /or is subject to a so-called industry "blanket" or standard licence but to be otherwise exercised subject to obtaining the Owner's consent) and on all forms of audio visual device now known or hereafter invented and to use manufacture advertise licence or sell such reproductions for any and all purposes (such right to be exercised by Administrator without reference to Owner where there already exists a licence and /or is subject to a so-called industry "blanket" or standard licence but to be otherwise exercised subject to obtaining the Owner's consent);
  - (vii) subject to obtaining the Owner's consent in each instance (save where such right is exercised subject to a so-called industry "blanket" or standard licence) to synchronise the Compositions or to grant licences authorising others to synchronise the Compositions with any and all audio-visual media now known or hereafter invented (including advertisements) For the avoidance of doubt, subject to obtaining Owner's consent, Administrator shall have the exclusive right to grant worldwide licences for the synchronisation of the Compositions in and with any and all audio visual media originating and/or produced in the Territory. For the further avoidance of doubt, subject to the terms of this

Agreement, Owner shall have the exclusive right to grant worldwide licences for synchronisation of the Compositions with any and all audio visual media originating and/or produced in the Excluded Territories;

- (viii) subject to any and all rights of the Society and the applicable performing rights societies throughout the Territory to license the public performance broadcast transmission and re-transmission of the Compositions in live venues and in any and all audio and audio-visual media whether now known or hereafter invented and to licence the Compositions for inclusion in a cable programme service;
- (ix) subject to obtaining Owner's consent (save where such right is exercised subject to a so-called industry "blanket" society licence) to grant any and all licences as may be required by third party licensees for websites which are based in the Territory (irrespective of whether the users of the services of such Territory based website are located outside of the Territory);
- (x) subject to the terms of this Agreement to collect and receive during the Term (and the Rights Period as may be applicable) and thereafter during the Collection Period one hundred percent (100%) of moneys arising from the exploitation of the Compositions (whether the exploitation of the Compositions takes place before or) during the Term;
- (xi) subject to the approval of the Owner in each instance (save where such right is exercised subject to a so-called industry "blanket" society licence) the exclusive right throughout the Territory to license karaoke uses of the Compositions including, but not limited to, the recording or other reproduction of the Compositions or any part thereof for use in karaoke machines, the manufacture and distribution of karaoke devices embodying the Compositions, and the performance of the Compositions;
- (xii) subject to the approval of the Owner in each instance (save where such right is exercised subject to a so-called industry "blanket" society licence) the exclusive right throughout the Territory to license so-called "digital uses" of the Compositions (to include all Internet uses based in the Territory irrespective of where the users are based) including but not limited to the right to embody the Compositions in or on any digital file format in CD-ROM, CD-I, or CD-R devices or similar systems, in computer or video game software, in interactive optical disk systems, in interactive television, in multi-user networks or in on-line (including Internet Protocol or similar networks or platforms such as Wireless Application Protocol (WAP) and Short Messaging Service (SMS) or other similar mobile entertainment applications such as mobile phone ring tones), and in holographic or virtual reality implementations, whether now known or hereafter devised;
- (xiii) subject to the approval of the Owner in each instance the right to authorize the creation of derivative works originating in the Territory for the world or part thereof, whether in conjunction with so-called "samples," or otherwise, and to automatically licence hereunder those portions of the new works, which are vested in the Owner by virtue of such sample clearance.

For the avoidance of doubt and subject to the terms of this Agreement: -

- (aa) irrespective of whether a synchronisation licence is granted to a third party licensee in the Territory or the Excluded Territory to synchronise a Composition with an audio visual media, Administrator shall have the exclusive right to collect and receive all mechanical and Performing Right royalties and fees with respect thereto for the distribution and exhibition of such Composition in the Territory. For

the avoidance of doubt if Owner has issued or, following the date hereof, issues a license for the use of a Composition in the manner contemplated by this subparagraph (aa) and such license includes a so-called "home video buy-out," then Administrator shall not have the right to collect royalties or fees payable by reason of the manufacture, distribution or sale in the Territory of Audio-Visual Devices containing the production which is the subject of such "home video buy-out" unless, notwithstanding such "home video buy-out" provisions, royalties are nevertheless paid for the manufacture and/or distribution in the Territory of Audio-Visual Devices containing such production;

and

- (bb) Administrator shall have the exclusive right to collect and receive all royalties and fees which arise from licences granted for websites which are based in the Territory and to collect and receive all royalties and fees arising from users of such services;
- (xi) to exercise (and authorise or licence others to exercise) all of the rights specified in this clause 3 and any and all other rights of a "music publishing" nature now or hereafter existing in any and all Compositions subject to the terms of this Agreement, the Owner's reserved rights and the Owner's consent.

Without limitation to the foregoing the following rights may not be granted by the Administrator without the prior written consent of the Owner in each instance:-

- (aa) Any rights to be granted to a third party by way of an exclusive licence; and
- (bb) Any licence to be granted to a third party at less than the applicable statutory or applicable prevailing highest rate as set under industry agreement or by way of blanket licence in each local territory comprising the Territory.
- (c) Intentionally Deleted
- (d) Intentionally Deleted
- (e) At the end of the Term (and the Rights Period as applicable in each instance) the licence granted hereunder by the Owner to the Administrator shall be deemed automatically terminated and all rights other than those set out in clause 3(b) (v) and (x) above shall cease to be exercisable by the Administrator. The Administrator hereby agrees that it will upon demand execute and sign all such documents and do all such acts and things which the Owner may hereafter reasonably require the Administrator to execute, sign and do for the purpose of confirming or further assuring the Owner's title to the rights that shall vest or are intended to vest in the Owner after the Term (and the Rights Period as applicable in each instance) in accordance with the foregoing provision.

Throughout this Agreement the rights, permissions and consents granted under Clause 3.1 shall be collectively called the **Rights**. For the avoidance of doubt the "Rights" granted to the Administrator under Clause 3.1 above shall automatically exclude the Owner's reserved rights set out under Clause 3.3 below.

- 3.2 Notwithstanding anything to the contrary contained in this Agreement, it is acknowledged and agreed that, to the extent possible under the rules of the applicable local collection society in force from time to time, the Owner may wish to exclude the Compositions from the scope of any so called "blanket licences" which cover any of the following forms of exploitation; karaoke, monophonic/polyphonic ringtones/ringbacks, interactive uses, play/view on demand

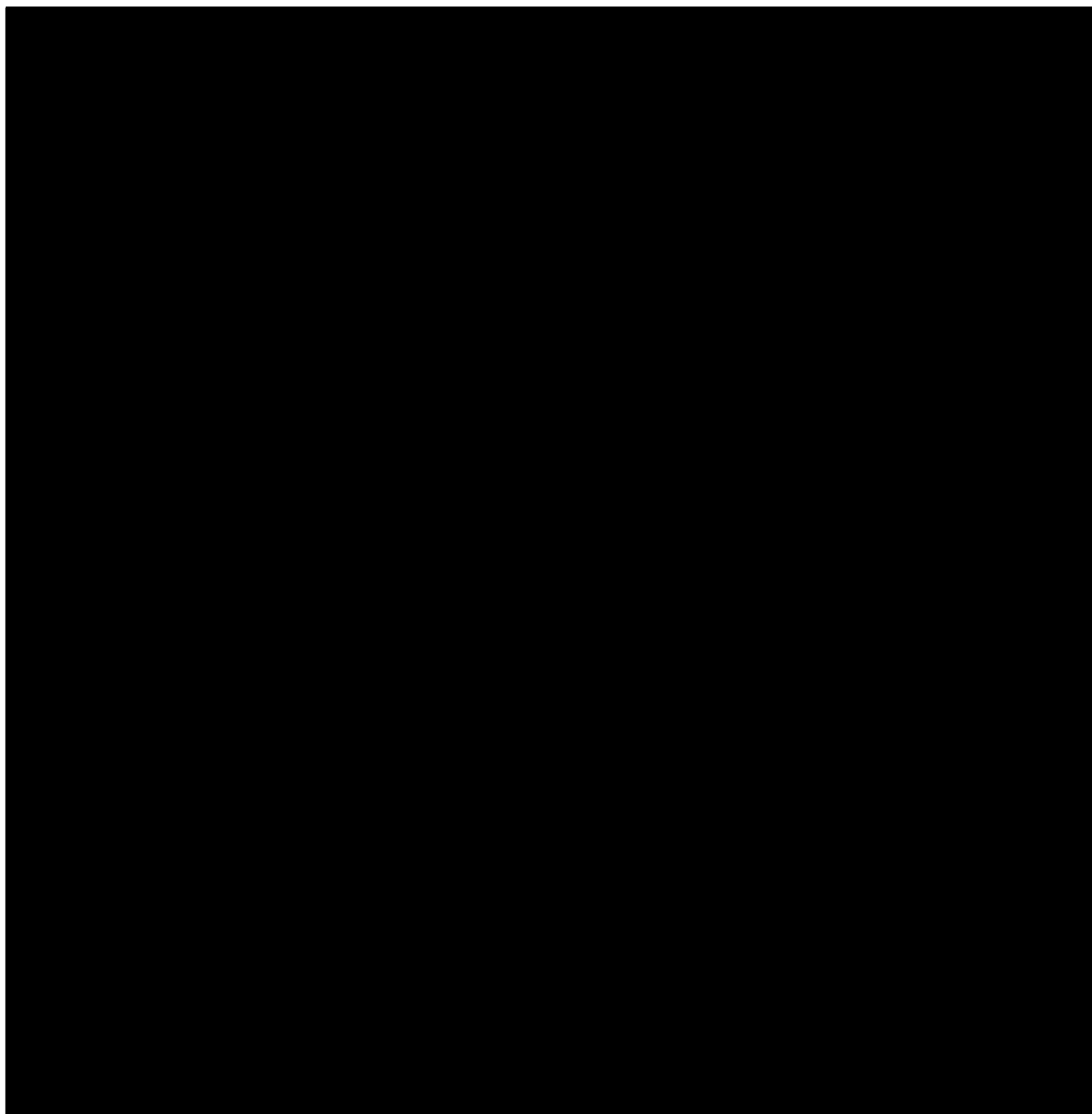
and audio visual downloads via mobile or online (together the "Subject Exploitations") and the Administrator agrees to use reasonable commercial endeavours to assist Owner in achieving this. Owner acknowledges that Administrator shall have fulfilled its obligations pursuant to this clause 3.2 by (i) sending a notice to each collection society it is a direct member of and to each of its sub publishers (instructing them to forward the notice to such collection societies that they are direct members of) requesting that they provide details of the existence and main commercial terms (including any rights to exclude the Compositions) of any blanket licences which the applicable collection society operates which covers any of the Subject Exploitations (the "Subject Blanket Licences") (ii) keeping Owner updated once per calendar quarter in respect of any responses from collection societies/sub publishers in respect of such notice and (iii) at Owner's written request sending notices once per calendar quarter to those societies/sub publishers which have indicated that it is possible to exclude the Compositions from any Subject Blanket Licence exercising any such rights to exclude the Compositions from such Subject Blanket Licences provided always that Administrator shall only be obliged to do if the exclusion can apply solely to the Compositions. If, and to the extent that, the Compositions are excluded from a Subject Blanket Licence the Owner and Administrator shall discuss in good faith (on a case by case basis) how licence requests/licences in respect of the form(s) of Subject Exploitations which was/were covered by such Subject Blanket Licence shall be handled but, for the avoidance of doubt, it is acknowledged and agreed that unless it agrees in writing to the contrary the Administrator shall have no obligation to undertake handling such licence requests/licences.

3.3 Notwithstanding anything to the contrary contained in this Agreement, Owner hereby reserves for itself, free of any claim by Administrator, the following rights only in and to the Compositions not specifically granted to Administrator under this Agreement:-

- (a) The exclusive right to collect and retain all royalties and other fees generated solely by the exploitation of the reserved rights expressly set out herein but not further or otherwise;
- (b) All rights in and to the worldwide copyrights (including renewals and extension of copyright), copyright rights, similar rights and neighbouring rights in and to the Compositions and the titles thereof, and all rights in the copyright in any adaptations, arrangements, translations and new lyric versions thereof. For the avoidance of doubt the rights to any and all such versions of the Compositions i.e. adaptations, arrangements, translations, arrangements etc) shall automatically be exclusively licensed to the Administrator under the terms of this Agreement and shall be automatically included in the Rights set out under clause 3.1 above;
- (c) The exclusive right throughout the world to license so-called "grand rights" in the Compositions or any part thereof, as such rights are now known or may hereafter evolve, including, but not limited to, the exclusive right to license dramatic uses or versions of the Compositions or any part thereof (including uses in which the story line, concept, title or lyrics of a Composition form the basis for any aspect of any motion picture, advertisement, commercial, television production, recording, ballet or other dramatic presentation, whether in whole or in part); and to license such grand rights in any and all media whatsoever, whether now known or hereafter developed, including, but not limited to, live stage, motion pictures, television, video devices, or any other form of visual, audio or audiovisual device;
- (d) The exclusive right throughout the world to license uses of the titles of the Compositions (in any language) separately from the music and lyrics;
- (e) The exclusive right throughout the world to make cartoon, literary and other subsidiary versions of the Compositions and to print, publish and otherwise use such versions (as well as the dramatic versions aforementioned);
- (f) The exclusive right throughout the world to use or license the use or publication of the lyrics of the Compositions, apart from the music (excluding any and all forms of sheet music), in books, magazines or otherwise, it being agreed that if a third party

in the Territory so exploits any of the rights set forth in this subparagraph (f) in accordance with an industry-wide "blanket license" or other license issued by the Society in good faith or at the request of the Administrator and approved by the Owner then Administrator shall have the right to collect all royalties and fees payable under such license and the issuance of such license shall not constitute a breach of this Agreement by Administrator;

- (g) The exclusive right throughout the world to publish or license for publication so called "personality folios" anthologies, or collections of the Compositions as performed by the artist professionally known as "Eminem", it being agreed that if a third party in the Territory so exploits any of the rights set forth in this subparagraph (g) in accordance with an industry-wide "blanket license" or other license issued by the Society in good faith, or at the request of the Administrator and approved by the Owner, then Administrator shall have the right to collect all royalties and fees payable under such license and the issuance of such license shall not constitute a breach of this Agreement by Administrator;



17      **FURTHER ASSURANCE AND POWER OF ATTORNEY**

(a) The Owner shall promptly execute and deliver to the Administrator any and all documents and such letter of direction to the Society and/or any applicable collecting societies which Administrator may reasonably request from time to time to evidence establish and protect the rights granted under this Agreement and to carry out and effectuate the intent and purposes of this Agreement and in particular to ensure that Administrator shall be entitled to collect and receive during the Term (and Rights Period as may be applicable) and thereafter during the Collection Period one hundred per cent (100%) of moneys arising from the exploitation of the Compositions (whether the exploitation of the Compositions takes place before or) during the Term (and Rights Period as may be applicable). All documents to be prepared hereunder shall be at the cost and expense of the Administrator.

(b) If the Owner does not comply with the request of the Administrator under sub clause (a) above having been given ten (10) days written notice to comply with such request the Owner constitutes authorises empowers and appoints the Administrator or any of its officers the Owner's true and lawful attorney (with full power of substitution and delegation) in the Owner's name and in the Owner's place or in the Administrator's name to take and do such action and to make sign execute acknowledge and deliver any and all instruments or documents which the Administrator from time to time may deem necessary to vest in the Administrator all of the rights or interests granted by the Owner under this Agreement. The Owner declares that the power of attorney contained in this Clause 17 is coupled with an interest and is irrevocable.

