

CONTRACT OF  
UNILATERAL REPRESENTATION  
BETWEEN  
SOCINPRO AND KODA

Between the undersigned:

Sociedade Brasileira de Administração e Proteção de Direitos Intelectuais in the following called SOCINPRO whose registered office is at Av. Beira Mar, 406/1205, Rio de Janeiro, CEP 20021-060, Brasil, represented by its president Carlos José, specifically authorised for the purposes of the present contract by power of attorney

*on the one part*

and

KODA whose registered office is at Landemærket 23-25, 1119 Copenhagen, Denmark; represented by its Managing Director Niels Bak, specifically authorised for the purposes of the present contract by power of attorney

*on the other part*

it is agreed as follows:

**Art. 1 (I)** By virtue of the present contract, SOCINPRO confers on KODA the exclusive right, in the territories in which this latter Society operates (as they are defined and delimited in Art. 6 (I) hereafter), to grant the necessary authorizations for all public performances (as defined in paragraph III of this Article) of musical works, with or without lyrics, which are protected under the terms of national laws, bilateral treaties and multilateral international conventions relating to the author's right (copyright, intellectual property, etc. ...) now in existence or which may come into existence and enter into effect while

the present contract is in force.

The exclusive right referred to in the preceding paragraph is conferred in so far as the public performance right in the works concerned has been, or shall be, during the period when the present contract is in force, assigned, transferred or granted by whatever means, for the purpose of its administration, to SOCINPRO by its members, in accordance with its Articles of Association and Rules; the said works collectively constituting "the repertoire of SOCINPRO".

(II) Under the terms of the present contract, the expression "*public performances*" includes all sounds and performances rendered audible to the public in any place whatever within the territories in which each of the contracting Societies operates, by any means and in any way whatever, whether the said means be already known and put to use or whether hereafter discovered and put to use during the period when this contract is in force. "Public performance" includes in particular performances provided by live means, instrumental or vocal; by mechanical means such as phonographic records, wires, tapes and sound tracks (magnetic and otherwise); by processes of projection (sound film), of diffusion and transmission (such as radio and television broadcasts, whether made directly or relayed, retransmitted etc...) as well as by any process of wireless reception (radio and television receiving apparatus, telephonic reception, etc.... and similar means and devices, etc...).

(III) With regard to direct broadcasting by satellite, the contracting Societies agree that the rights conferred by virtue of Art. 1 of this Contract are not limited to the territories of operation but are valid for all countries within the footprint of the satellite of which the transmissions are effected, subject to having acquired the other contracting Society's agreement beforehand as to the conditions under which the authorizations required for such transmissions may be delivered, insofar as the territories in which it operates are situated within the satellite's footprint.

**Art. 2. (I)** The exclusive right to authorise performances, as referred to in Art. 1, entitles KODA, within the limits of the powers pertaining to it by virtue of the present contract, and of its own Articles of Association and Rules, and of the national legislation of the country or countries in which it operates;

a) to permit or prohibit, whether in its own name or that of the author

concerned, public performances of works in the repertoire of the other Society and to grant the necessary authorizations for such performances;

b) to collect all royalties required in return for the authorizations granted by it (as provided in a) above)

to receive all sums due as indemnification or damages for unauthorized performances of the works in question;

c) to commence and pursue, either in its own name or that of the author concerned, any legal action against any person or corporate body and any administrative or other authority responsible for illegal performances of the works in question;

to transact, compromise, submit to arbitration, refer to any Court of Law, special or administrative tribunal;

d) to take any other action for the purpose of ensuring the protection of the public performance right in the works covered by the present contract.

**(II)** The present contract being personal to the contracting Societies, and concluded on that basis, it is formally agreed that, without the express written authorization of SOCINPRO, KODA may not in any circumstances assign or transfer to a third party all or part of the exercise of the prerogatives, faculties or otherwise to which it is entitled under the said contract and in particular under Art. 2. Any transfer effected in despite of this clause shall be null and void without the fulfilment of any formality except as regards a transfer limited to the administration of rights for purposes of diffusion by means of a fixed service satellite and operated in favour of a Society having concluded a reciprocal representation contract with each of the contracting Societies.

**Art. 3 (I)** In virtue of the powers conferred by Art. 1 and 2, KODA undertakes to enforce within the territory in which it operates the rights of the members of SOCINPRO in the same way and to the same extent as it does for its own members, and to do this within the limits of the legal protection afforded to a foreign work in the country where protection is claimed, unless, in virtue of the present contract, such protection not being specifically provided in law, it is possible to ensure an equivalent protection. Moreover, the contracting parties undertake to uphold to the greatest possible extent, by way of the appropriate measures and rules, applied in the field of royalty distribution, the principle of solidarity as between the members of both Societies, even where by the effect of local law foreign works are subject to discrimination.

In particular, KODA shall apply to work in the repertoire of

SOCINPRO the same tariffs, methods and means of collection and distribution of royalties (subject to what is agreed hereafter in Art. 7) as those which it applies to works in its own repertoire.

(II) KODA undertakes to send to SOCINPRO any information for which it may be asked concerning the tariffs it applies to different kinds of public performance in its own territories.

**Art. 4.** SOCINPRO shall place at the disposal of KODA all documents enabling the latter to justify the royalties it is responsible for collecting under the present contract and to take any legal or other action, as mentioned in Art. 2 (1) above.

**Art. 5. (I)** SOCINPRO shall place at the disposal of KODA all documents, records and information enabling it to exercise effective and thorough control over its interests, in particular as regards notification of works, collection and distribution of royalties, and obtaining and checking performance programmes.

In particular, KODA shall inform SOCINPRO of any discrepancy which it notes between the documentation received from SOCINPRO and its own documentation or that furnished by another Society.

(II) In addition, SOCINPRO shall have the right to consult all KODA's records and to obtain all information from it relating to the collection and distribution of royalties to enable it to check the administration of its repertoire by KODA.

(III) SOCINPRO may accredit a representative to KODA to carry out on its behalf the check provided for in paragraphs (I) and (II) above. The choice of this representative shall be subject to the approval of the Society to which he is to be accredited. Refusal of such approval must be motivated.

**Art. 6. (I)** The territories in which KODA operates are as follows:

Denmark, The Faroe Islands and Greenland

(II) For the duration of the present contract, SOCINPRO shall refrain from any intervention within the territory of KODA in the latter's exercise of the mandate conferred by the present contract.

#### DISTRIBUTION OF ROYALTIES

**Art. 7. (I)** KODA undertakes to do its utmost to obtain programmes of public performances which take place in its territories and to use these programmes as the effective basis for the distribution of the total net royalties collected.

(II) The allocation of sums collected in respect of works performed in KODA's territories shall be made in accordance with Art. 3 and KODA's distribution rules, having regard, nevertheless, to the International Documentation and Distribution Procedures established by the Technical Committee of BIEM and CISAC and approved by the Administrative Council of CISAC, and any subsequent amendments to or new versions of those procedures.

**Art. 8. (I)** KODA shall be entitled to deduct from the sums it collects on behalf of SOCINPRO the percentage necessary to cover its effective administration expenses. This necessary percentage shall not exceed that which is deducted for this purpose from sums collected for members of KODA, and the latter Society shall always endeavour in this respect to keep within reasonable limits, having regard to local conditions in the territories in which it operates.

(II) When it does not make any supplementary collection for the purpose of supporting its members' pensions, benevolent or provident funds, or for the encouragement of the national arts, or in favour of any funds serving similar purposes, KODA shall be entitled to deduct from the sums collected by it on behalf of the co-contracting Society 10% at the maximum, which shall be allocated to the said purposes.

(III) Any other deductions, apart from taxes, that KODA may make or be obliged to make from the net royalties accruing to the SOCINPRO would give rise to special arrangements between the contracting parties so as to enable the Society not making such deductions to recoup itself as far as possible from

the royalties collected by it for the account of the other Society.

(IV) No part of the royalties collected by KODA for the account of SOCINPRO in consideration of the authorizations which it grants solely for the copyright works which it is authorised to administer may be regarded as not distributable to SOCINPRO. With the exception, therefore, only of the deduction mentioned in paragraph (I) of this Article, and subject to the provisions of paragraphs (II) and (III) of the said Article, the net total of the royalties collected by KODA for the account of SOCINPRO shall be entirely and effectively distributed to the latter.

**Art. 9. (I)** KODA shall distribute to SOCINPRO the sums due under the terms of the present contract as and when distributions are made to its own members and at least once a year. Payment of these sums shall be made within 90 days following each distribution, barring duly ascertained cases outside the Societies' control.

(II) Each payment shall be accompanied by a distribution statement in such form as to enable SOCINPRO to allocate to each interested party, whatever his membership or category as member, the royalties accruing to him. These statements shall be uniform in style and content and conform as far as possible to the standards recommended from time to time by the Technical Committee of BIEM and CISAC and approved by the Administrative Council of CISAC.

(III) Settlements shall be made by KODA in the currency of its country. If such a currency is not transferrable settlements shall be made in a transferrable currency at international rates current on the day of payment.

(IV) KODA shall remain responsible to SOCINPRO for any error or omission which it may make in the distribution of the royalties accruing to works in the repertoire of SOCINPRO.

(V) The mere fact that the date for settlement of accounts agreed upon between the contracting Societies has fallen due shall constitute without any formality, a formal demand on KODA which has failed to make the payment due to SOCINPRO on the date in question. This provision shall be subject to force majeure.

**(VI)** If legislative or statutory measures impede the free exchange of international payments, or exchange control agreements have been or will be concluded in the future by KODA, the latter shall:

a) without delay, immediately after drawing up the distribution accounting for SOCINPRO, take all necessary steps and comply with all formalities as required by its national authorities in order to ensure that the said payments can be effected at the earliest possible moment;

b) inform SOCINPRO that the said steps have been taken and formalities complied with when sending to it the statements mentioned in paragraph **(II)** of the present Article.

**Art. 10. (I)** SOCINPRO undertakes to supply on a regular basis to the CAE Centre of CISAC (SUISA) complete and detailed information on the real names and pseudonyms of its members, including dates of decease, deletions and alterations. Furthermore KODA undertakes to use the CAE List output as the basis for its identification of and distribution in respect of the membership of SOCINPRO.

**(II)** KODA shall also provide SOCINPRO with a copy of its current Articles of Association and Rules, including its Distribution Plan, and shall inform it of any subsequent modifications made thereto while the present contract is in force.

**Art. 11. (I)** The members of SOCINPRO shall be protected and represented by KODA under the present contract without the said members being required by KODA to comply with any formalities and without their being required to join KODA.

**(II)** While this contract is in force, neither of the contracting Societies may, without the consent of the other, accept as member any member of the other Society or any natural person, firm or company having the nationality of one of the countries in which the other Society operates. Any refusal to consent to such acceptance by the other Society must be duly motivated. In the absence of a reply within three months, following a request sent by recorded delivery letter, it shall be presumed that agreement has been given.

(III) Nevertheless, the preceding clause shall not be interpreted as prohibiting either of the contracting Societies from accepting as members natural persons who enjoy refugee status in its own territories of operation, or who have been authorized to settle there and have actually been resident there for at least one year, and to do so as long as they continue to reside there. Such membership shall not apply to the territory of the Society operating in the country of which the author is a national.

(IV) Each contracting Society undertakes not to communicate directly with members of the other Society, but, if occasion arises, to communicate with them through the intermediary of the other Society.

(V) Any disputes or difficulties which may arise between the two contracting Societies relating to the membership of an interested party or assignee shall be settled amicably between them in the widest spirit of conciliation.

#### CONFEDERATION

**Art. 12.** The present contract is subject to the provisions of the Statutes and decisions of the International Confederation of Societies of Authors and Composers (CISAC).

#### DURATION

**Art. 13.** The present contract shall come into force as from 1 January 1999 and, subject to the terms of Art. 14, shall continue in force from year to year by automatic extension if it has not been determined by registered letter at least 6 months before the expiration of each period.

**Art. 14.** Notwithstanding the terms of Art. 13, the present contract may be determined immediately by SOCINPRO:

a) if an alteration is made in the Articles of Association, Rules or Distribution Plan of KODA such as may modify in an appreciably unfavourable way the enjoyment or exercise of the patrimonial rights of the present owners of the copyrights administered by SOCINPRO. Any change of this nature shall be



verified by the competent body of the International Confederation of Societies of Authors and Composers. After such verification the Confederation's Administrative Council may allow KODA a period of three months to remedy the situation thus created. When this period has expired without the necessary steps having been taken by KODA the present contract may be terminated by the unilaterally expressed wish of SOCINPRO, if it so decides;

b) if such a legal or factual situation arises in the territories administered by KODA that the members of SOCINPRO are placed in a less favourable position than the members of KODA, or if KODA puts into practice measures resulting in a boycott of the works in the repertoire of SOCINPRO.

#### LEGAL DISPUTES - JURISDICTION

**Art. 15. (I)** Each of the contracting Societies may seek the advice of the Confederation's Administrative Council about any difficulty which may arise between the two Societies regarding the interpretation or performance of this contract.

**(II)** The two Societies may, if need be, and after attempting conciliation before the body mentioned in Article 10 b) 6th paragraph of the Confederal Statutes, agree to resort to arbitration by the Confederation's appropriate authority in order to settle any dispute that may arise between them with regard to the present contract.

**(III)** If the two contracting Societies do not think it appropriate to resort to arbitration by the Confederation or to arrange between them for arbitration, even independently of the Confederation, in order to settle their disagreement, the competent Court to decide the issue between them shall be that in which the defendant Society is domiciled.

Executed in good faith, in the same number of copies as there are parties to this contract.

signed:

For KODA:  
read and approved,  
by power of attorney:

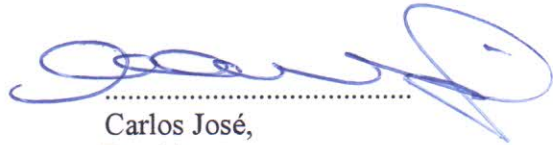
Copenhagen, the 25.1.99



.....  
Niels Bak,  
Managing Director

For SOCINPRO:  
read and approved,  
by power of attorney:

Rio de Janeiro, the



.....  
Carlos José,  
President