

GUIDES: MANAGEMENT AGREEMENTS

A lot of managers don't have written agreements with their artists. They feel that their close personal relationship with the artist and the trust that has been built up between them will be compromised if the relationship is reduced to written form. This may be a mistake only in that, as with most agreements, it sets out what happens when the relationship ends. It can deal with a myriad of other points of course but essentially it should set out what is expected in the relationship, what restrictions there are and what happens when it ends.

The following is a guide only. It is a combination of suggested issues that should be addressed and some sample clauses. The MMF recommends that once you have worked out some of the issues dealt with in this guide that you then seek legal advice in setting up an agreement that deals with your specific circumstances and management philosophy. There are also a number of very informative texts that deal with management contracts or you can contact the Arts Law Centre and ask for some of their contract templates.

Issues and Samples:

1. Who are the parties to be managed? Is the manager to look after the affairs of just the band or all of the members individually when they are working in the music industry but not as the band..

2. How long is your agreement for; you may want to have a trial period but this is perhaps best done before you enter into a contract. It's probably not worth getting bogged down over negotiating how long the management agreement goes for in that if the relationship is working you don't need the contract to tell you when it ends as you will all want it to continue anyway. And if the relationship is not working no contract is going to force the artist to work with you or vice versa; you just need it to state how the termination should occur and what rights and obligations continue after termination.

3. What services are you going to provide to the artist. A sample is " The Manager agrees to provide to the Artist the service of seeking employment and engagements for the Artist in the entertainment industry. The Manager agrees that he/she will use all reasonable efforts to further develop, promote and advance the Artist's musical career, and to confer with, counsel and advise Artist and represent them in all matters and things relating to Artist's career and business."

4. There are a number of things that the manager will have to do on behalf of the artist on a day to day basis and will need the authority to do so without having to continually gain the artist's consent. This must be balanced with keeping the artist fully informed and making sure that the artist maintains the ultimate approval on all decisive issues. The degree of control given to the manager will vary from artist to artist and may well be varied as the relationship progresses (but in this case you should make sure that the new responsibilities are noted in a side letter to the contract or you may be in breach of the agreement). A sample is:

The Manager is hereby exclusively authorised and empowered with power of

attorney on Artist's behalf, and in Manager's discretion, to do the following:

a) Approve and permit any and all publicity and advertising within a reasonable budget as agreed between the parties from time to time.

b) Approve and permit use of the name "XXXXXX" or any other professional name used by the Artist, photographs, likenesses, artistic and musical materials for commercial and or promotional purposes.

c) Subject to the exceptions set out below and to Artist being fully consulted, the Manager shall have the power to enter into, to sign on behalf of and to bind the Artist to verbal or written contracts, engagements and arrangements relating to the activities of the Artist and the product thereof.

d) Collect and receive sums as well as endorse Artist's name upon any and all cheques payable to Artist for Artist's services and to retain therefrom all sums owing to Manager.

e) Engage, as well as discharge and or direct for Artist and in Artist's name, theatrical agents, agencies as well as other persons, firms or companies who may be retained to obtain contracts, engagements or services for Artist provided always that the fees or percentages paid to such persons, firms or companies shall not exceed the standard industry rate for that service and further provided that Artist shall first consent to such engagement, such consent not to be unreasonably withheld.

f) To contract for and to purchase such items, goods and transport and other such expenses as shall be necessary and incidental to enhancing Artist's commercial value and financial return provided that the total of any one such item shall not exceed \$ xxxx.xx without the consent of the Artist.

(This amount will vary as the artist's career develops but may start off in the vicinity of five hundred dollars, giving the manager the freedom to manage on a day to day basis while protecting the artist who's money it is that is being spent.)

Exceptions:

The Manager shall not do any of the following on behalf of the Artist without the approval of the Artist:

a) Enter into any arrangement or contract-obliging Artist to undertake a tour exceeding four weeks in duration.

b) Enter into any recording, publishing, merchandising, sponsorship or endorsement contract or agreement in respect of the Artist (or any of them).

c) Enter into other contracts as notified in advance by the Artist as being subject to Artist's prior approval.

d) Incur debts on behalf of the Artist other than usual expenses in the ordinary course of Artist's business.

e) Incur debts on behalf of the Artist that exceed funds available for payment of same.

5. By signing a management agreement the artist is giving up a lot of control over their career, albeit to someone they trust. There are a number of general undertakings that the manager can make which help set the manager's obligations.

Sample: The Manager shall at all times act in the best interest of the Artist and will do nothing that will bring Artist into disrepute or public ridicule .

You should state that yours services are not exclusive to the Artist. The Manager shall at all times be free to perform the same or similar services for others as well as to engage in any and all other business activities, provided always that an amount of time sufficient to meet the needs of properly managing the Artist is devoted to the Artist by the Manager.

6. It is important that the artist's financial transactions be clear and ordered. The best way to accomplish this is to have all monies earned by the artist be paid into the artist's bank account and all withdrawals taken from that account, not from cash on hand. Money due to the artist should not be put into the management bank account. (This is in fact a legal obligation in New South Wales, Australia unless the manager posts a bond). The manager's commission should be paid from the artist's account upon presentation of an invoice, setting out what the commission relates to and the GST element.

Sample:

a) The Manager will keep true and accurate books and accounts and records of all documents and contracts relating to the Artist. Such books and records shall be open and accessible to the Artist or their representatives for viewing or audit at all times.

b) The Manager shall maintain a separate bank account (the "Bank Account") to be operated solely for transactions relating to the affairs of the Artist. All money from time to time received by the Manager on behalf of the Artist shall, unless otherwise agreed to by the Artist, promptly upon receipt be paid into the Bank Account.

7. In most cases the manager will be responsible for the running costs of their management business while the manager's expenses in dealing with the artist's business are covered by the artist. This should be stated in the agreement.

Sample:

Manager will be responsible for all of Manager's expenses incurred in the performance of his obligations including:

1. Conducting and maintaining Manager's general office and administration;
2. Office personnel;
3. Telephone and telex accounts within Australia,
4. Wages and expenses of any personal manager.

(a) The Artist will pay the following Management expenses relating Artist's activities provided the Manager provides complete records verifying all expenses relating to the management of the Artist:

i. Accommodation expenses and per diems outside of the city in which Manager is usually resident provided that budgets for these expenses have been first approved by the Artist.

ii. Economy class travelling expenses outside of the State in which Manager is usually resident provided that budgets for these expenses have been first approved by the Artist.

iii. International telephone, Skype, fax, email and mailing.

8. Management commissions vary greatly depending on such factors as the relative standing of both the artist and manager at the time that they enter into their agreement. There are also a number of ways of structuring the remuneration paid to the manager. The most common is of course a set percentage of the artist's income.

Sample:

In compensation for Manager's services herein Artist agrees to pay the Manager:

(a) as and when received by Artist a sum equal to (%) percent of any and all gross monies or other considerations which Artist may be due or receive as a result of Artist's activities during the term of this agreement in the recording field, including but not limited to motion picture, television or video performances and usages, recording fees and royalties and any other royalties or advances earned by Artist's artistic endeavors throughout the universe including satellites.

(b) as and when received by Artist a sum equal to (%) percent of any and all gross monies or other considerations which Artist may be due or receive from any publisher or merchandising company or any other person, firm or company where such monies are earned by reason of the exploitation of Artist's compositions or merchandising in any and all forms.

(c) as and when received by Artist a sum equal to (%) percent of any and all gross monies or other considerations which Artist may be due or receive as a result of Artist's activities during the term of this agreement in live performances.

The artist and manager may agree that there are certain things which should not be commissioned by the manager. These may include items in this sample:

Notwithstanding the provisions of (a) and (b), for the purposes of calculating the Manager's entitlement to remuneration the following payments to or made on behalf of the Artist (whether made in money or otherwise) shall be excluded:

1. Payments to agents used in the obtaining of performances or employment
2. Payments to any support artists used in connection with any performance
3. Payments or contributions toward specific items of expenditure made by record companies or publishers including contributions towards tour support and recordings or promotional video costs;
4. Royalties applied towards unrecouped accounts where the advances were made for and spent on tour support, recording costs or promotional videos;
5. The provision of studio facilities for the purpose of making recordings or promotional videos.

The above sub-clauses shall not pertain however where such payments, contributions or provision of facilities are made in lieu of income otherwise due to the Artist.

A second commission scenario is based on the manager sharing all costs with the artist and in a similar fashion sharing all profits from live performances. In this case the costs of running the management business are looked at as being an artist cost. To avoid having to go through every local telephone bill and stationary receipt to see what is attributable to any particular management client it may be advisable to just agree on a monthly contribution by the artist to the management running cost, revisable from time to time. Note that as record and publishing royalties may go directly to the artist they are still commissioned at the original percentage rate in this scenario; you would delete (c) which refers to "live performance". Such a relationship may be set out by adding to the commission clause a new (c):

(c)(i) Notwithstanding the above and separate from any commissions or other monies payable by You to Manager, You shall pay Manager a fee (hereinafter "Manager's Fee") of dollars (\$) per calendar month towards its operating costs. It is agreed that at such time as you do not perform or record for a period of six consecutive months then the monthly payments shall cease to be payable. At such time as you become active, either through touring or recording then the payment towards operating costs shall likewise resume.

The following may then be used to set out how the managers participates in profits from live income:

(c)(ii) You shall pay to Manager a share of net income from all sources other than those set out in (a) and (b) above, generally derived from but not limited to live performances and touring, as an equal member of the group "Net Income" shall be deemed to be all monies earned less all reasonable costs specifically incurred in gaining said income and the proper and reasonable running of your business. The division of such net income shall be determined prior to the deduction of any payments to individual band members, superannuation paid on their behalf, the payment of the Fee in (c) (i), allowance for depreciation, capital expenditure on assets, acquisitions, or the deduction of taxes, individual accountancy fees, legal fees incurred in proceedings between band members or band v. management and any other amounts not charged to the band as a whole.

(N.B. The manager may share as an 'equal member' as stated above where the "artist" is comprised of at least three members. Where the artist is solo or a duo then perhaps an "equal" split may be unwarranted and the appropriate split should be inserted in this clause.)

As suggested at the beginning of this outline, setting out in your written agreement with the artist what happens when the relationship ends will probably save you and the artist untold stress and perhaps money (money that otherwise would probably end up being paid to solicitors to settle the same question.). If the relationship ends in a friendly manner then with an agreement in place that friendship will have a good chance of continuing. Without an agreement there is every chance that someone will feel they have been done wrong by!

The contract may well state that when the manager's services are no longer required all payments to them will similarly cease. On the other hand some managers feel that they should be paid full commission for any work they did during the agreement for as long as income derived from the resulting product continues to flow. Either of these philosophies or indeed a middle ground may be achieved by including clauses such as:

. (a) Upon termination of this agreement the Artist agrees to pay to the Manager all sums as provided for herein with respect to any and all engagements, contracts and agreements entered into during the term immediately upon receipt of payment in respect of such engagements, contracts and agreements even though such sums may not have been received at the time of termination of this agreement.

(b) Notwithstanding the above in the case of sound recordings and any publishing inherent therein, where such recordings are first released for sale to the public within nine (9) months after the date of termination of this agreement, the Manager shall be entitled to receive a percentage from all income earned from all sales of any and all such recordings and publishing throughout the world after the date of termination of this agreement. Such percentage payable to the Manager shall be:

1. For the twelve months immediately following the date of termination of this agreement, 100% of the royalty as otherwise set out herein;
2. For the next immediate 12 month period, 75% of the percentage as otherwise set out herein;
3. For the next immediate twelve month period, 50% of the percentage as otherwise herein.
4. Thereafter in perpetuity, 25% of the percentage set out in clause 13 hereof.

This Provision Shell not apply where the agreement is terminated by reason of breach by the Manager.

Your contract will also include a number of other clauses dealing with the ability to assign the agreement, the legal relationship between the parties (i.e. not a partnership), the legal jurisdiction, breach and rectification provisions, when notices are deemed to have been delivered and that where consents are required from the Artist or decisions are to be made by the Artist then they shall be given or made by a majority of them and shall be binding on the Artist

jointly and severally.

Finally, you must ensure that the artist is advised to seek legal advice on the agreement prior to signing. The fact that this has been done should always be set out in the agreement itself.