

MUSIC MANAGERS FORUM • AOTEAROA •

MANAGEMENT AGREEMENTS CHECKLIST

INTRODUCTION

A good relationship and clear communication is probably the most important factor for a manager in creating a successful partnership with any artist they manage. However, a Management Agreement that defines more specifically the nature of the relationship and the rights and obligations each party owes to the other is the best way of clarifying the details in a management relationship that may not otherwise be discussed and agreed. As these details often relate to the intricacies of how a manager is to be remunerated for their services, the exact extent of the manager's powers in respect of the affairs of the artist and basis on which the relationship can be terminated by either party, the importance of having a good Management Agreement in place is obvious. Think of a good Management Agreement as an insurance policy that if required can be relied on to keep both parties true to the original deal that was agreed on at the outset of the relationship.

It is also important that any Management Agreement does accurately reflect the specific practical nature of the relationship between a manager and their artist. A Management Agreement that fails to provide for exactly how the parties intend things to operate can in fact cause more problems than it solves. Following on from this it is always important that Management Agreements are appropriately updated in writing if the parties wish to change the specifics of the deal between them.

The following is a checklist for the key issues that Management Agreements based out of New Zealand should ideally provide for. However, as noted above Management Agreements need to reflect the precise deal between the parties and therefore the following should be seen as a starting point for the drafting of an appropriate Management Agreement, rather than the definitive final word on what should exactly be included in each specific case.

THE AGREEMENT

- *Defining the Parties:* It needs to be clearly established who the actual parties to the agreement are. If you run your management business through a company then make sure the contract is in the name of the company rather than you personally. Similarly, rather than just describing the artist by their stage name or band name include their full legal names. In the case of a band every member of the band should personally be a party to the agreement so as it is clear who exactly you are providing management services to.
- *Management Services:* The actual management services you will supply should be specified but can be defined broadly as providing advice and assistance in developing the business of the artist in respect of the 'Artist's Activities' as discussed below. Whatever approach is adopted it needs to be sufficiently flexible to account for the wide range of services you will provide as a manager.

- *Artist's Activities*: The aspects of the artist's career that you will be providing the management services in respect of should be specifically set out. Due to the ever more interlinked aspects of the entertainment industries you will want this to be as wide as possible and include for instance 'all the artist's activities in the entertainment industries'. It may however be decided to limit this much more specifically to just the music industry. If this is the case then it should still be made clear in the agreement that if the artist requests your assistance with anything outside of just the 'music industry' then you will be entitled to normal management commission in relation to these activities.
- *Territory*: Clearly define the territory for which you will be providing your management services to the band. Ideally these days this will be the 'world'.
- *Term*: It is very important to clearly specify how long the agreement will last for. Although this is very much a matter for agreement between you and the artist in any particular case three years is quite a common period. The further issues that need to be considered in respect of the Term of the agreement in each particular case is whether there will perhaps first be a trial period and whether you will have any rights to extend the Term once the initial period (e.g. three years as suggested above) has expired.
- *Exclusivity*: You should be stated as being the exclusive provider of management services to the artist in respect of the Artist's Activities in the Territory during the Term. There should also be a requirement for the artist not to undertake any negotiations themselves regarding the Artist's Activities and for all such matters to be referred to you in the first instance.
- *Other Business*: Although the artist can only have you as their manager it should be clarified for the avoidance of doubt that you can manage other artists and be involved in other business activities as long as they don't affect your ability to deliver on your obligations under the agreement.
- *Commission*: A manager will usually be paid 20% of the gross income (e.g. before any costs are deducted) which is generated from the Artist's Activities. These days there are however a number of qualifications to this general rule. For instance:
 - Due to the significant overheads involved in respect of live performances and touring, it is not uncommon for a manager to only receive 20% of the net profit from such activities (e.g. the actual money earned after the deduction of all costs associated with the specific performances or touring).
 - No commission will be payable on money due to the artist, but which the artist must use for a specific purpose only. Examples of this type of income include advances from record labels for recording and video costs. NZ On Air and Outward Sound grants are another example of the type of income that is usually not able to be commissioned.
- *Payment of Commission*: Ideally commission should be paid on at least a monthly basis.
- *Alternative Approaches*: Although the above represents a very standard approach to how a manager's commission is paid, each specific situation may have its own peculiarities. For example in some cases a manager may not take commission on APRA income. Similarly in some cases a manager may take no commission, or a reduced commission, on income from a specific aspect of the Artist's Activities where the manager's actual involvement in this aspect of the Artist's Activities is minimal. However you finally decided to approach the issue of your remuneration it is important that the arrangement is fair to both you and the artist as otherwise over time this will most certainly become a cause of tension in the relationship.

- *Set Fee:* Another variation on the way in which a manager is compensated for their services is through the payment of a set fee rather than a percentage of overall income. This kind of approach may be more appropriate in the type of situation where the band is not generating enough income for the manager's standard commission to fairly compensate the manager for their work. Whenever a set fee is being contemplated however it needs to be considered whether this may once again create resentment with the artist if they themselves are personally not earning much for the investment of their own time and effort. Also it needs to be clearly provided for as to how this arrangement may change once the artist does start to receive income that would make the manager's percentage commission a fair amount in practice.
- *Post Term Commission:* Even though you will no longer be managing them, you should still be entitled to a share of the artist's income after the end of the Term which reflects the ongoing benefit to their career from the work you did for them during the Term of the agreement. A common approach adopted these days is to provide for a decreasing percentage of income over a set period of time, but only from the projects you were involved in or helped to set up during your time as manager. So for instance, in the first year after the end of the agreement you may receive a full 20% commission, but this will gradually reduce to where after a certain period of time you're no longer entitled to any commission. The length of time that the post term commission reduces over very much depends on such factors as the length of the actual Term of the agreement itself and also the benefit that it is perceived you will be able to bring to the overall standing of the artist during your time as manager.
- *Authority:* Just what you can do on behalf of the artist needs to be made very clear. Although to ensure that you can actually do your job as manager you need to provide that you have authority to negotiate contracts and enter into commercial discussions on behalf of the artist, it is safer for you and the artist that the agreement states that you cannot bind the artist to any contract or deal without having obtained the artist's express prior approval. This will give the artist comfort that they are being kept informed of all that is going on. From your perspective it also provides protection in that if a deal later founders it is hard for the artist to blame you if they themselves approved the deal.
- *Expenses:* The artist should have to reimburse you for any expenses you incur in relation to working for them. Generally this cannot extend to the fixed costs of your management business such as office rent, phone and internet connections and power. However it should include all other incidental costs you incur on behalf of working for the artist such as toll calls, postage, travel and accommodation. To provide the artist some protection on the amount of expenses you may incur, it is common to provide for a specific nominal amount of expenses you can incur in any given month. Any expenses in excess of this that you want to be reimbursed for then have to be approved in advance by the artist. The timing on which the artist must reimburse you for the expenses you incur is a matter of negotiation in each case although a common approach is for this to occur on a monthly basis subject to the manager having provided appropriate receipts etc for any expenses they are claiming.
- *Bank Accounts:* These days it is by far the safest approach for you to not collect and hold any money due to your artists. All money earned by the artist should be paid direct to the artist's accountant or otherwise straight to the artist themselves. All payments to be made by the artist should also be administered in a similar way. This protects you from any claims that you are not accounting to the artist correctly and also from honest accounting mistakes you may make in handling the artist's money which could once again cause tension with the artist. This does however mean you can't deduct your commission and expenses direct from the artist's income when it is received. Consequently the agreement needs to provide for

both the regularity on which these payments will be made to you (at the very least monthly) and also for your ability to audit the artist's accounts if you so wish to make sure you are being paid everything you should be from the artist's income.

- *Leaving Members:* If any artist you manage is comprised of more than one member it is also a good idea to clarify your rights as a manager if the group breaks up or a member leaves. To take account of the fact that some members of a group may be more worthwhile you managing than others, the agreement needs to give flexibility for you to decide who you wish to continue working with.
- *Dispute Resolution:* A strong artist manager relationship is key to any management arrangement. Consequently, once the relationship between yourself and any artist you manage breaks down to the point that you cannot easily and amicably resolve any disputes which may arise between you, there is unfortunately not a lot a Management Agreement can do to save the situation. However you can include in a Management Agreement as an alternative to court action a more efficient dispute resolution process which may involve mediation or even arbitration. Both of these methods of dispute resolution also give you the added benefit of being able to keep the dispute confidential between yourself and the artist unlike what happens when a matter goes before the courts.
- *Termination:* Termination provisions in a Management Agreement will generally be of primary benefit to the artist. You want to avoid giving the artist any ability to terminate the agreement other than for a very serious breach by you of your obligations under the agreement. It is however a good idea to also give yourself the ability to terminate the agreement, if you so wish, in the event of a very serious breach by the artist of their obligations under the agreement.
- *Boilerplate Clauses:* It is also important that the agreement has certain standard legal provisions that ensure the legal mechanics of the agreement are appropriately provided for. Examples of some of these necessary types of clauses are provisions that clarify that the agreement represents the entire agreement between the parties on the subject matter and also a clause which clarifies that the agreement is governed by New Zealand law.

Disclaimer

This information is intended to provide a general outline of the relevant legal issues and further professional advice should be sought before any action is taken in relation to the information contained in this checklist.