

MANAGEMENT AGREEMENT FACT SHEET

REMEMBER TO CHECK OUT THE MANAGEMENT AGREEMENT CHECKLIST THAT GOES WITH THIS FACT SHEET. THE CHECKLIST OUTLINES KEY TERMS IN A MANAGEMENT AGREEMENT, AND THIS FACT SHEET PROVIDES MORE DETAILS ON THOSE TERMS.

WHEN DO YOU NEED A MANAGEMENT AGREEMENT?

When the demands of organising your business become too much for you as a creator to handle by yourself, or you believe that a particular manager can benefit your career through experience, contacts, track record, or other attributes.

The artist and manager relationship is very important and requires a high degree of trust and confidence between the parties. So, it's important to agree on the rules governing your commercial relationship. For example, expectations, duties, roles, what happens with the money, and so on. The management agreement should set out what your manager is expected to do (business administration, promotion, organising tours, and so on), exactly what they are allowed to do on your behalf (with and without express permission, as the case may be), and how they will be paid for their services (the commission and how it will be calculated).

Key Terms of a Management Agreement

MANAGER DETAILS

This will be straightforward unless a band chooses to sign with a management company instead of an individual. If you are signing with a management company, you must decide whether the person who looks after you at the management company is the main reason

you want to engage that company to manage you. You might be able to negotiate a "key person" clause under which you can end the Term of the management contract if that person leaves.

If you are signing with a management company, then you need the manager to personally guarantee the company's performance of the production obligation. (Otherwise, you'll have a claim against nothing but a company, which may be broke, with the human behind the corporate structure escaping liability.) Where the contract is with the manager's service company, the company must also promise to provide your chosen manager's personal services.

ARTIST(S) DETAILS

If you are a band, you will need to decide how you make the contract. You might all sign the same agreement as sole traders. If you are operating as a partnership, one or more of you may be able to sign on behalf of the partnership (see our Checklist and Fact Sheet on Band Partnership Agreements).

TERRITORY

Usually, a manager will look after a band's affairs within a specific territory — e.g. Australia. You should, in most cases, only extend the manager's territory (e.g. to the UK and USA) if that manager has the required standing, experience and networks to effectively manage you in those territories. Bands need to get the best possible services they can get for their money and ideally choose their managers based on their territorial expertise and ability.

Where you have signed with a manager for multiple territories, your manager might seek to engage another manager for you outside their "home" territory. Your contract should address who picks your overseas management (i.e. whether your manager needs to consult with you about this or requires your prior permission) and how they will be paid (usually payment should come out of the manager's commission).

Appointing co-managers in different territories can require quite complex negotiations about management commission and the income to which it attaches. You should seek to ensure that you don't pay more than the going rate for management overall. Better to let the co-managers divide up the commission "pie" between themselves.

TERM

A management agreement will often be for a fixed period (e.g. 3-4 years). At the end of the initial Term, the manager (or both parties by agreement) may have the option to extend this "Term". You will have to agree on how long this extension will be, how many times the Term can be extended, and whether there are any performance triggers for the option to become available. For example, a management agreement might say that the manager can extend the Term for an additional 2 years only if the band secures a record deal within the initial Term. (Performance triggers could also be anything from securing a publishing deal to reaching a certain income turnover figure.)

You might want to "test the water" with a manager before committing to the full Term of the management agreement. If so, you can include a "probationary period" at the start of the Term after which either party can walk away on short notice.

Note that in New South Wales, there is a mandatory 3-day cooling off period under the Entertainment Industry Act 2013 (NSW) during which you can end the contract without penalty.

REMUNERATION

Management agreements usually state that a manager will get paid a specific percentage of what the band earns (commonly between 10-20% of its "Gross Income"). It is important to understand how the term "Gross Income" is defined in your management agreement because this will determine the size of your manager's commission.

A management agreement will usually have agreed categories of "deductions", that is costs or sources of income on which commission can't be charged, and which are deducted from Gross Income before the manager's commission is calculated. Every deduction makes the pool of money smaller that the commission percentage is applied to.

Customary deductions include: costs of producing recordings and videos; tour support payments from a label or other third party funder (although once such payments are applied to the financials of the tour, the manager may be able to commission any profit from the tour — that is, the tour support does not get commissioned on the way "in"); venue costs and support band fees, and sometimes, if you can negotiate it, production costs of live shows or "sound and lights".

SERVICES OF MANAGER

Managers generally seek to be your "exclusive" manager (i.e. so that you cannot work with other managers at the same time). This protects their investment of time, resources and expertise. Your manager will put time and energy into growing the band. If other managers could come and profit from that hard work, it wouldn't be worth the investment for your manager.

Usually, a manager will become responsible for all an artist or band's entertainment industry activities (not just music-related activities). You might decide between you that there are some activities that will be excluded from the manager's responsibilities. For example, you might choose to exclude teaching music or production (if that's your day-job), or journalism or literary endeavours because they aren't connected to the music industry and your manager does not have expertise or connections in literary publishing. Obviously in entertainment and media, some activities and successes have a halo effect into other sectors, and generally it's considered fair that the manager looks after the whole range of your activities in that area.

For the activities that your manager is responsible for, it is a good idea to set restrictions on what they can do without personal approval. This encourages consultation between you, and ensures your manager is accountable to you (financially and otherwise). Some common financial restrictions are caps on weekly or monthly spending, and limits on single transactions (e.g. so that your manager must ask you before buying an expensive touring van or a long lease on a rehearsal room). You can also place limits on their general activities (e.g. how they conduct promotional campaigns or use your social media handles).

As discussed further below, managers should be required to report to the band and keep financial records at least as set out in the NSW Industry Code (see below). The NSW Industry Code is compulsory in NSW, and can be used as good practice in other States and Territories. The Queensland Industry Code also contains some financial and reporting requirements (see below).

ARRANGEMENTS FOR BANKING AND ACCOUNTING

If the manager is handling your Gross Income, the accounting should be correct and transparent. The Industry Code sets out some basis rules, but properly drafted management contracts have comprehensive accounting clauses anyway, which cover much the same ground. If you are handling your own Gross Income, the manager will want a transparent system so they can see what's going on and how and when to charge commission,

REMUNERATION UPON TERMINATION

Generally, managers negotiate post-Term or "trailing" commission which applies to certain income streams after the Term ends. Typically this will include income from songs written, recordings released, and shows booked during the Term, that is, on their watch.

The rate generally reduces over time: for example, the commission rate will be 15% (down from 20%) for year one, 10% for year two and 5% for year three.

INDUSTRY CODE

In NSW, "performer representatives" (which includes booking agents and managers) must comply with the Entertainment Industry Regulation 2020 (NSW) and the Entertainment Industry Act 2013 (NSW) which are administered by Fair Trading NSW (Industry Code). In Queensland, "private employment agents" (which includes booking agents and managers) must comply with the Queensland Industry Code (Private Employment Agents (Code of Conduct) Regulations 2015 (Qld)). Even if your manager is based in a different State, if they are going to provide any services in NSW or Qld, they should comply with the Industry Codes in relation to those services.

It is a good idea to familiarise yourself with the Industry Codes before signing a management agreement. Some of the minimum requirements are set out in the Management Agreement Checklist.

For more information, you can speak to your local Industry Association, the Arts Law Centre of Australia or a legal practitioner.



This checklist is an initiative of the Australian Music Industry Network. For more information visit www.amin.org.au.