

Music publishing agreement

by *Practical Law Media & Telecoms*, reviewed by Julia Montero

Standard documents | Law stated as at 30-Jan-2020 | United Kingdom

An agreement under which a songwriter assigns the copyright in their songs to a publisher for a limited period, in return for which the publisher arranges for the exploitation of the songs, collects the income from such licensing and accounts to the writer for an agreed share of that income. The agreement provides for a minimum commitment from the writer and runs for an initial term followed by optional extension periods.

This deed is dated [DATE]

PARTIES

(1) [FULL COMPANY NAME] incorporated and registered in [COUNTRY OF INCORPORATION] with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Publisher**)

(2) [Name] of [address] (**Writer**)

BACKGROUND

(A) The Writer is a singer-songwriter performing as part of the group [NAME OF GROUP].

Identity of writer

This agreement assumes that the writer is a performing artist in their own right, which is the most common context for a publishing agreement.

Where a writer is a member of a group, the most common structure is nonetheless to offer each writer an individual publishing agreement for their share of the song.

(B) The Writer has agreed to provide their exclusive songwriting services to the Publisher on the terms set out in this agreement and to assign to the Publisher all compositions created during the term of this agreement, and certain compositions created before the term.

Assignment of back catalogue

In an exclusive assignment (as opposed to administration or licensing deal), the writer will usually assign all previously unassigned works to the publisher. There are occasions where the publisher will take only one or some compositions

and not the whole catalogue, for example where a production company is investing in an album project on the basis that all copyright assets (including songs) will belong to the company.

(C) The Publisher intends (but does not undertake) to exploit the copyright assigned to it under this agreement and to account to the Writer for royalties on the income generated from such exploitation.

Forms of exploitation

There are traditionally three main types of licence that the publisher is likely to authorise in respect of the copyright in the writer's compositions. These are as follows.

Mechanical licences: In order to manufacture records the record company requires a licence (called a mechanical licence) from the owner of the song. Under the terms of the licence mechanical royalties are payable at the established rate (for records manufactured in the UK) of 8.5% of the dealer price or 8% of gross revenue in respect of downloads. Generally, the mechanical royalties are collected by the Mechanical Copyright Protection Society Limited (MCPS) on behalf of its publisher members.

Performance licences: the Performing Right Society Ltd (PRS) is the UK collecting society for income generated by the public performance and communication to the public of musical works (whether live, or in recorded form on radio, television and in public places such as shops) and certain online uses such as streaming which are either licensed jointly with MCPS or separately depending on the type of exploitation. PRS collects substantial licence fees and after payment of its administration costs divides up whatever is left over between the relevant rights-holders. Unless the writer is a member of PRS they cannot participate in this income and in order to be accepted as a member the writer has to assign to PRS the performance right in all of their musical works. PRS will then pay six twelfths of any performance income attributable to the writer's songs directly to the writer (the PRS still thinks in terms of twelfths rather than decimals) and will pay the remaining six twelfths to the publisher.

Synchronisation licences: The consent of the copyright owner is required for the use of a piece of music in a film, computer game, advertisement or TV programme. The consent is given in the form of what is called a synchronisation licence and the fees payable under the terms of that licence are referred to as synchronisation fees. Hence, a synchronisation fee is payable by an advertising agency for the use of a piece of music in a television advertisement and is payable by a television company for the use of music to be broadcast on television and is payable by a film company for the use of any music incorporated in a film. Unlike performance income or mechanical royalty income (in relation to which neither the writer nor their publisher has any control over the method of calculation) synchronisation fees are freely negotiable, so the writer will rely on his or her publisher to secure the best possible fee for each use. The traditional activities of publishers are changing and they are now increasingly proactive in generating income synchronisation licensing, online and even in the area of collecting related rights such as the right to publicly perform or broadcast commercially released sound recordings.

OPERATIVE TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

Advances: all payments to the Writer pursuant to [Clause 6](#) and any ex gratia payments made by the Publisher to the Writer during the Term.

Album: a studio-recorded long-playing record in an industry-recognised album format, comprising at least ten previously unreleased musical works performed by the Writer and/or a group including the Writer and having a playing time of not less than 35 minutes.

Definition of Album

Live albums are generally not accepted as fulfilling the minimum commitment, so the definition of Album specifies that it must be studio-recorded.

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from [9.00 am to 5.00 pm] on any Business Day.

Commercial Release: the release in commercial quantities of a record embodying one or more Compositions in physical format through established channels of distribution.

Definition of Commercial Release

Release in a non-tangible format such as electronic download from the internet can be achieved so easily that it does not necessarily entail any material commercial investment in the song; for this reason the definition of Commercial Release requires release in physical format.

Compositions: all musical and literary works (including arrangements of works and lyrics) written, in whole or in part, by the Writer during the Term (including works commenced during the Term but completed after the expiry of the Term) to the extent of the Writer's contribution, and all literary and musical works written by the Writer before the Term not previously assigned to any third party, or which have previously been assigned to a third party but reverting to the Writer or an entity owned or controlled by the Writer before or during the Term, including the works listed in [Schedule 1](#).

Contract Period: a period of 12 months or (if expiring later) a period running until six months after the fulfilment of the Minimum Commitment.

Definition of Contract Period

The Contract Period automatically continues until the minimum commitment is satisfied, plus six months. This gives the publisher time to assess whether it is commercially worthwhile to continue the agreement for a further contract period;

it often takes several months for sales figures to be determined (especially in relation to overseas territories). There may be a maximum backstop period of three years per Contract Period.

Exceptionally the term will be a continuous one-year rolling period with no minimum commitment; this is more common for producer-writers.

Cover Recording: the recording of a Composition by any person other than the Writer or a person whose records are produced by the Writer, save that if the recording is made after the Composition's first Commercial Release, and the first Commercial Release was a recording by the Writer or a person whose records are produced by the Writer, then such recording shall not be a Cover Recording.

Definition of Cover Recording

There is sometimes an additional requirement that the publisher has to have introduced the work to the covering artist.

Major Record Company: any of Sony BMG, Warner Music or Universal Music, any record company that is a wholly owned subsidiary of one of the foregoing, and any other record companies as shall be approved from time to time by the Publisher in writing.

Merchandise Licence: any agreement entered into in respect of the right to reproduce and incorporate any of the lyrics of the Compositions on clothing and/or other merchandise products.

Minimum Commitment: in respect of each Contract Period the Commercial Release by a Major Record Company of one Album of which [80]% of the compositions embodied thereon (counted by number rather than by recording time) are previously unreleased Compositions, or else the aggregate equivalent in respect of two or more studio Albums by the Writer.

Definition of Minimum Commitment

Where the writer is not an artist, then there will be no requirement that the compositions be released on an album, or indeed be performed by the writer.

The percentage is expressed as number of tracks rather than as proportion of the album's total running time (although percentage of running time is often used where the deal is very high-value).

This provision will vary considerably according to the circumstances of the writer. A minimum commitment as low as 20% is not uncommon, but the advances will vary accordingly. This is the anticipated contribution for each album less a small margin of error.

If the writer fails to fulfil the minimum commitment on the first album, they will often require a second album to do so. This can extend a publishing deal perceived to be for, say, four albums into five or more.

Publisher's Receipts: all fees and royalties (other than the Publisher's six-twelfths share of so-called performance income) actually received by the Publisher in the UK arising directly and identifiably from the exploitation of the Compositions within the Territory and solely to the extent attributable to them.

Definition of Publisher's Receipts

Most publishers collect income outside the UK as well as within the UK. This clause allows the publisher to withhold payment of royalties in respect of income that has not yet been transferred to the UK. (Where the publisher's central accounting function is elsewhere, the relevant territory should be substituted for the UK in this definition.) If the writer is in a strong bargaining position, they may try to widen this definition to include money received in other key territories and calculated "at source".

Retention Period: a period commencing on the first day of the Term and continuing until 20 years after the expiry of the Term, save that if the date on which this period ends is not 31 December or 30 June then the period shall be extended up to and including the next such date.

Length of copyright retention period

Ten to 20 years is the normal length of the copyright retention period.

Term: the period specified in [Clause 2.1](#) of this agreement, including all Contract Periods for which the Publisher exercises its option to extend.

Territory: the world.

VAT: value added tax [or any equivalent tax chargeable in the UK [or elsewhere]].

1.2 A reference to a statute or statutory provision is a reference to it as [amended, extended or re-enacted from time to time **OR** it is in force as at the date of this agreement].

1.3 A reference to a statute or statutory provision shall include all subordinate legislation made [from time to time **OR** as at the date of this agreement] under that statute or statutory provision.

1.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

2. TERM

2.1 The term of this agreement shall consist initially of a Contract Period commencing on the date of this agreement. The Publisher shall have three separate options to extend the term by a further consecutive Contract Period, each option being exercisable by written notice to the Writer at any time during the then-current Contract Period.

Number of contract periods

If the publisher is prepared to pay an advance (and without this there would usually be little incentive to sign a long-term publishing deal) then, quite reasonably, the publisher will expect a minimum commitment of some kind from the writer. Each contract period will therefore be extended if necessary until a given period after the commitment has been met. The contract will usually enable the publisher to extend the relevant contract period until, say, three months after the commitment has been met (in order give the publisher enough time to decide whether to exercise its option to continue into the next contract period).

The usual number of contract periods for a major publisher is two or three and for an independent publishing agreement it is four, where the writer is expected to write on an album by album basis; if there is a corresponding recording agreement the number of albums would not normally exceed the number of albums under the recording agreement.

2.2 Notwithstanding the provisions of [Clause 2.1](#), if any Contract Period would expire and the Publisher has failed either to exercise its option in respect of the subsequent Contract Period or to notify the Writer in writing that the Publisher intends not to exercise its option, then the current Contract Period shall instead continue for a period (**Option Warning Period**) commencing on the date that the current Contract Period would have expired and expiring ten working days after notification from the Writer to the Publisher that the option remains unexercised. If the Publisher exercises its option during the Option Warning Period then the next Contract Period shall be deemed to commence on the first day of the Option Warning Period.

2.3 Notwithstanding anything else in this agreement, no Contract Period shall exceed three years from the date of commencement.

Maximum length of contract period

To avoid restraint of trade problems, most publishers are advised to put a limit on the period of extension of perhaps two or three years. In the case of a four-year deal, therefore, if there is a maximum period of extension of two years then each contract period will run for a maximum of three years so that theoretically the contract might run for a maximum of 12 years. For more information about the law applicable to restraint of trade, see *Standard document, Management agreement: Solo artist: drafting note: Restraint of trade*.

3. SERVICES OF THE WRITER

3.1 The Writer shall provide their services as a songwriter exclusively for the Publisher during the Term and shall notify the Publisher promptly on completion of each Composition. The Writer shall provide with such notification full copyright registration information for each Composition including the full names of any co-writers and the share of each Composition attributable to each writer. If the shares of copyright in any Composition are not specified then they shall be deemed equal between all writers.

3.2 For each Composition notified by the Writer to the Publisher under [Clause 3.1](#), the Writer shall deliver to the Publisher a lead sheet and/or digital recording (at the Publisher's election) and a copy of any lyrics.

3.3 At the Publisher's request the Writer shall promptly execute a separate single-song confirmatory assignment in the form set out at [Schedule 2](#) with respect to any or all of the Compositions. If the Writer fails to execute such assignment within ten working days of such request, the Publisher shall have a power of attorney to execute same in the name of the Writer.

Power of attorney

For this power of attorney to be effective, the agreement must be executed as a deed.

3.4 The Writer warrants that they are a member of the Performing Rights Society Limited (**PRS**) and accordingly the performing right in the Compositions (including the right to perform or play the Compositions in public, broadcast the Compositions, include the Compositions in a cable programme and authorise third parties to do any of these acts in relation to the Compositions) in all parts of the world shall be subject to the rights of the PRS and its affiliated societies outside the UK.

Writer's membership of collecting societies

Collection via PRS and MCPS makes life easier for the publisher as it means that this income comes to it directly with little administration cost or investment of time. However, they will not collect income from the performance and reproduction of a composition unless the writer is a signed-up member in respect of the composition. The PRS membership agreement also includes an assignment of the so-called performing right in the composition, which means that this particular category of right does not form part of the rights assigned under the publishing agreement. In contrast, MCPS merely acts as an agent for the copyright holder (usually the publisher) in granting licences to make copies of recordings of the song.

Note that EEA collecting societies are no longer required to represent UK right-holders or to represent the catalogues of UK CMOs for online licensing of musical rights since the expiry of the [UK-EU transition period](#). However, the government has maintained existing obligations on UK collecting societies, including those specific to multi-territorial licensing of musical works for online services (see [Practice note, Brexit: implications for intellectual property rights: Copyright](#)).

4. ASSIGNMENT OF RIGHTS

4.1 In consideration of the payment of £1, receipt of which is acknowledged by the Writer's signature below, the Writer assigns to the Publisher with full title guarantee all copyright, related rights and other rights and interest (including any future interest however arising) in the Compositions throughout the Territory for the duration of the Retention Period including any rights of renewal or extension that arise during that period.

Assignment of rights

Clause 4 operates as an assignment of rights in existing and future Compositions. The purpose of the confirmatory form of assignment at *Schedule 2* is to provide easy proof to third parties such as collecting societies that the publisher is the owner of title in the Compositions, without having to show a copy (redacted or otherwise) of the full agreement. Although UK collecting societies no longer ask to see such evidence, there are collecting societies in other jurisdictions which do. Publishers increasingly play an active role in the exploitation of merchandise rights relating to compositions and it is common for the writer to grant the publisher the right to exploit such rights subject to the writer receiving a share of the related income.

Under *section 90(2), Copyright, Designs and Patents Act 1988* an assignment of copyright may be limited so as to apply to part, but not the whole, of the period for which the copyright is to subsist. This period may be fixed or may depend on a future event, for example, a breach of a term of the assignment by the assignee, at which point the copyright would revert to the assignor (a mechanism which is frequently described as a "floating reverter" clause) (see *Crosstown Music Co 1 LLC v Rive Droite Music Ltd [2010] EWCA Civ 1222 (02 November 2010)*).

4.2 The Writer consents to all forms of exploitation of the Compositions now existing or created in the future and the Writer agrees not to assert any right (including so-called "droit moral" and moral rights) that would prevent the Publisher, or any person authorised by the Publisher, from exploiting the Compositions.

Waiver of moral rights

Some agreements prefer to list the individual uses "without limitation" rather than just referring to "all forms of exploitation". For more information about moral rights, see *Waiver of moral rights: drafting note*.

4.3 The Publisher agrees not to make any material alterations to the Compositions (other than for direct translation into a foreign language) without the approval of the Writer.

Reservation of rights by Writer

The writer may also seek to reserve other rights, such as the right to approve synch licences, the right to grant a first mechanical licence to any person other than the writer, and a right of first refusal over the first mechanical licence of a song.

4.4 The Publisher agrees not to grant any Merchandise Licence without the prior written approval of the Writer.

4.5 If a Merchandise Licence granted by the Publisher and/or its sub-publishers in accordance with this agreement also requires the licence of other intellectual property controlled by the Writer including but not limited to use of name and likeness, then the Publisher shall be entitled to grant such licence on the Writer's behalf.

4.6 The grant of performing rights with respect to each of the Compositions is subject to the rights in any part of the Territory of any performing rights society to which the Writer may be affiliated provided that the performing rights society accounts directly to the Publisher for the so-called "Publisher's Share" of such fees and royalties, which shall be no less than six-twelfths of the total public performance fees and royalties.

5. REVERSION OF RIGHTS

Reversion of rights

The publisher makes no commitment to exploit any of the compositions. This clause therefore deals with the restraint of trade issues with a composition being "shelved" by the publisher. For more information about the law applicable to restraint of trade, see *Standard document, Management agreement: Solo artist: drafting note: Restraint of trade*.

5.1 If in respect of any Composition neither of the following forms of exploitation have occurred anywhere in the Territory either during the Term or within two years of the expiry of the Term:

- (a) a Commercial Release; or
 - (b) the grant of a synchronisation licence for the use of the Composition in a television or film production;
- then at any time after that period the Writer may serve notice on the Publisher provided that such notice shall be of no effect if served after such exploitation has occurred.

Triggering of reversion

Some publishers may have a longer list of forms of acceptable exploitation including the issue of print folio and the public performance of a song; these are in themselves are of little commercial significance and so are usually negotiated out of the contract. Depending on the genre, computer games may be included in the list. Sometimes a minimum licence fee, say £500, is specified.

Rarely, the reversion will be automatic without notice.

5.2 If on the date three months from a notice served under [Clause 5.1](#) the Publisher has not provided evidence of any of the forms of exploitation under [Clause 5.1](#) taking place then the copyright in those Compositions shall revert to the Writer on that date without further formality.

Length of reversion notice period

The notice period is usually set at between three and six months.

5.3 If the date on which the copyright in a Composition would revert under [Clause 5.2](#) is not 31 December or 30 June then the date on which the reversion shall occur shall be extended until the next such date.

Automatic extension of notice period

[Clause 6](#) is an optional clause for convenience. The longer the period under [Clause 6](#), the less likely it is that this extension of convenience will be acceptable to the Writer.

6. ADVANCES

6.1 In respect of the first Contract Period, the Publisher shall pay the Writer an advance of £[AMOUNT] which shall be fully recoupable from all fees and royalties payable to the Writer under this agreement. Such advance shall be payable 50% on signature of this agreement and 50% on fulfilment of the Minimum Commitment for the first Contract Period.

6.2 In respect of any subsequent Contract Period, the Publisher shall pay the Writer the following advances which shall be fully recoupable from all fees and royalties payable to the Writer under this agreement:

- (a) Second Contract Period: £[AMOUNT]
- (b) Third Contract Period: £[AMOUNT]
- (c) Fourth Contract Period: £[AMOUNT]

Such advances shall be payable 50% on commencement of the relevant Contract Period and 50% on fulfilment of the Minimum Commitment for that Contract Period.

Timing and amount of advance payments

Exceptionally this will be in three tranches, the first payable on option exercise.

The more common structure amongst independent publishers is to have a simple advance structure with a modest increase between contract periods. An alternative structure favoured by the major publishers is to calculate the advances by reference to the performance of the previous minimum commitment, subject to a minimum and maximum.

6.3 If the Album or Albums which undergo a Commercial Release in fulfilment of the Minimum Commitment for any Contract Period comprises recordings of musical works of which less than 90% (counted by number rather than by recording time) are Compositions that have been assigned to the Publisher under this agreement, the advance payable under [Clause 6.2](#) shall be reduced proportionately. If the adjusted advance is therefore less than the advances previously paid, then the Publisher may elect:

- (a) to require the Writer to repay the excess to the Publisher; or

- (b) to deduct such excess from any future advances becoming payable to the Writer under this agreement.

Linking of advances with proportion of Compositions on relevant albums

The 90% figure given here is not the Minimum Commitment, which is usually less than the anticipated writer's contribution to each album. The advances, however, will typically be based on the anticipated contribution but subject to this adjustment provision. A 90% contribution would permit the Writer to keep the whole advance; if, for example, the album, or albums cumulatively, consisted of 45% Compositions and 45% other tracks, the Writer would be required to return half of the advance for the relevant contract period.

7. ROYALTIES

7.1 The Publisher shall pay the Writer a royalty (**Royalty**) from the exploitation of the Compositions as follows:

- (a) 70% of the Publisher's Receipts in connection with the reproduction of the Compositions in any recorded form, save that in respect of a Cover Recording this percentage shall be 60% instead.

Royalty rate for reproduction

70% is typically regarded as standard, 60% as low but not unheard of, and 80% as high. The alternative royalty basis is a so-called "at source" calculation where the sub-publisher's deductions are ignored. This is more common for a major publisher collecting in each territory. Some publishers choose to build in an escalator, which means that the royalty rate automatically increases once the advance has been recouped from royalties.

Clause 7.1(a) refers to reproduction rather than sale, as reproduction is the activity for which MCPS collects royalties. However, the clause is based on Publisher's Receipts (that is, income on sales).

Royalty levels for cover recordings are generally lower because the publisher normally has more involvement in arranging such recordings. If the writer is not also the performing artist this means that the majority of releases may be cover records and paid at the lower rate. There are carve-outs in the definition of "Cover Recording" to exclude cover records produced by the writer and cover recordings of a song that post-date its first commercial release.

MCPS accounts for royalties on the basis of percentage of running time (so, for example, if half the tracks on an album are Compositions but they take up only 40% of the total album length, MCPS would apportion 40% of the royalties to those Compositions). This means that a minimum commitment to, say, 50% may be fulfilled (based on number of tracks) even though less than half of the royalties are allocated to Compositions. This could ultimately leave the publisher with less income than expected, which is why major publishers base the minimum commitment in high-value deals on running time rather than number of tracks. In lower-value deals, it is not usually worth the administrative burden of calculating run-time percentages, especially as most songs are of roughly similar length.

- (b) 60% of the Publisher's Receipts from the grant of any synchronisation licence in connection with any film or television programme.

Royalty rate for synchronisation licensing

The rationale for the reduction below the headline rate is that this is usually attributable to the work and efforts of the publisher, although sometimes there is a contractual condition requiring that the direct involvement of the publisher in procuring the licence must be shown.

PRS rule 2(f)(ii) places a limit of 2/12 on the proportion of income that it will pay to a publisher in respect of back-catalogue tracks written specifically for film soundtracks. It applies to works for which PRS administered the rights on or after 4 July 1990. If this is relevant to any of the back catalogue, the publisher and writer should contract out of this limit by including a clause in the publishing agreement which requires the publisher "to use all reasonable endeavours to exploit the work for the benefit of the writer by means additional to the inclusion of the work in the soundtrack of the film for which it was commissioned and the public performance or communication to the public of the film in question" in relation to works that fall into this category.

- (c) 10% of the net retail selling price of each copy of single sheet music published by the Publisher, or a pro rata amount in respect of any printed album or folio published by the Publisher, in each case sold in the UK, paid for and not returned, and pro-rated to the contribution to such sheet music attributable to Compositions.
- (d) 40% of the Publisher's share of public performance income attributable to Compositions performed within the Territory.

Royalty rate on performance income

The public performance royalty percentage is set at such a level that in conjunction with the Writer's share (which is paid directly) it will amount to the same as the headline rate.

PRS will not accept agreements that entitle the publisher to more than 50% of the performance income.

- (e) 70% of the Publisher's Receipts from the grant of any Merchandise Licence.

Royalty rate on merchandise income

The royalty rate for merchandise income is negotiable but would normally be of a similar level to the royalty rate for "other income" set out in [Clause 7.1\(f\)](#).

(f) 70% of the Publisher's Receipts from any other use of the Compositions in the Territory.

7.2 The Royalty shall be calculated on the total fees and royalties received by the Publisher arising directly and identifiably from the use and/or exploitation of the Compositions, after deduction of VAT and any other like taxes required to be deducted in any part of the Territory.

7.3 If the Publisher, or its agents or licensees, does not receive in any part of the Territory six-twelfths of the total public performing fees and 100% of all other fees and royalties resulting from the use and/or exploitation of the Compositions in the Territory then the proportion of such fees and royalties payable by the Publisher to the Writer under this agreement shall be correspondingly reduced as if the Publisher had retained the balance after collecting six twelfths of the total public performing fees and 100% of all other fees.

7.4 The Publisher shall keep proper books and records of account in respect of exploitation of the Compositions and shall make up statements of account showing the Royalty due to the Writer in respect of each Composition at half yearly intervals ending on 30 June and 31 December in each year until the Publisher shall cease to derive income from such Composition. The Publisher shall forward such statements and (subject to full recoupment of the Advance) make payment of the amounts shown due to the Writer within 90 days of 30 June and 31 December each year.

7.5 Not more than once in any year subject to reasonable notice, the Writer may appoint a chartered accountant to inspect the relevant parts of the Publisher's books and records in order to verify the accounts. Any audit shall be at the usual place of business of the Publisher during Business Hours and shall be at the sole expense of the Writer. The Writer may not inspect the books or records in respect of royalty accounts rendered more than three years previously.

Limitation on right of audit

Clause 7.5 limits the right of audit to three years from the date of receipt. It is important to avoid trying to limit the writer's right to dispute accounts (as opposed to inspecting them - see last sentence of *Clause 7.5*), as this may be deemed unenforceable under the *Unfair Contract Terms Act 1977*. For more information about this legislation, see *Practice note, Contracts: structure and terms of commercial contracts: Limitations and exclusions of liability*.

8. WARRANTY AND INDEMNITY

8.1 The Writer warrants that it has the right to grant the rights assigned under this agreement free of encumbrances and that its share of the Compositions shall be original and not infringe the rights of any third party nor be obscene or defamatory. The Writer further warrants there is no claim or other legal action pending or threatened in respect of the Compositions.

8.2 The Writer indemnifies the Publisher against any loss (including legal fees) that the Publisher may suffer resulting from any claim against the Publisher inconsistent with any representation made by the Writer in this agreement. Until such claim has been finally adjudicated, settled or withdrawn the Publisher, in its sole discretion, shall have the right to withhold a reasonable proportion of any and all monies becoming payable to the Writer under this agreement until the final adjudication, settlement or withdrawal of such claim.

9. FURTHER ASSURANCE

Further assurance

For more information about further assurance clauses, see *Further assurance: drafting note*.

9.1 The Writer undertakes to acknowledge, execute and deliver at the Publisher's expense all such further instruments or documents and to perform all such further acts as the Publisher may reasonably deem necessary to give effect to the terms and provisions of this agreement.

9.2 The Writer authorises the Publisher to enforce and protect all rights in the Compositions within the Territory. The Publisher may, in its sole discretion, join the Writer as party to any proceedings in respect of the enforcement or defence of any claim in respect of the Compositions. Any legal costs and disbursements incurred by the Publisher shall be borne by the Publisher and any sum recovered by either party by way of damages or otherwise shall be shared between the Writer and the Publisher as if it were royalty income under this agreement after reimbursement to the Writer and/or the Publisher of any legal costs and disbursements incurred.

10. TERMINATION

10.1 The Term and Retention Period shall terminate if the Publisher takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets, or its entering a procedure in any jurisdiction with a similar effect to a procedure listed in this clause.

10.2 The Publisher shall have the option to terminate the Term by notice in writing to the Writer if the Writer takes or has taken against them any step or action towards their entering bankruptcy or any arrangement with their creditors or entering a procedure in any jurisdiction with a similar effect to a procedure listed in this clause.

10.3 If the Publisher fails to provide accounting statements or to pay any sums shown owing on any of those statements, and such default continues for a period of 30 days after the receipt by the Publisher of notice in writing from the Writer requiring the non-payment to be remedied, the Writer shall have the right to terminate the Term and the Retention Period by written notice sent to the Publisher served at any time after the expiry of the 30-day period and before such accounts and monies are rendered.

10.4 If the Writer defaults in the performance of any of the material provisions of this agreement and such default (where it is capable of remedy) continues for a period of 30 days after the Writer has received notice in writing from the Publisher alleging such default, the Publisher shall have the right to terminate the Term by notice in writing to the Writer.

11. NOTICES

Notices

For more information on this clause, see:

The drafting notes in *Standard clauses, Notices*.

Practice note, Notice clauses.

Practice note, Boilerplate: do I really need this clause and why?: Notices.

11.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case)[; or]
- (b) sent by email to the following addresses (or an address substituted in writing by the party to be served):

(i) Party 1: [ADDRESS].

(ii) Party 2: [ADDRESS].

11.2 Any notice shall be deemed to have been received:

(a) if delivered by hand, at the time the notice is left at the proper address;

(b) if sent by pre-paid first-class post or other next working day delivery service, at [9.00 am] on the [second] Business Day after posting [;or]

(c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

11.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

12. ENTIRE AGREEMENT

Entire agreement

For more information on this clause, see:

The drafting notes in *Standard clause, Entire agreement*.

Practice note, Boilerplate: do I really need this clause and why?: Entire agreement

12.1 This agreement constitutes the entire agreement between the parties.

12.2 Each party acknowledges that in entering into this agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

13. THIRD PARTY RIGHTS

13.1 [Unless it expressly states otherwise, this **OR** This] agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

13.2 [The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.]

14. VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15. WAIVER

Waiver

For information on this clause, see:

The drafting notes in *Standard clause, Waiver*.

Practice note, Boilerplate: do I really need this clause and why?: Waiver

15.1 A waiver of any right or remedy is only effective if given in writing [and shall not be deemed a waiver of any subsequent right or remedy].

15.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

16. GOVERNING LAW

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

17. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have [exclusive **OR** non-exclusive] jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by [NAME OF
PUBLISHER]

.....

[SIGNATURE OF FIRST
DIRECTOR]

acting by [NAME OF FIRST
DIRECTOR], a director and

Director

[NAME OF SECOND DIRECTOR/

.....

SECRETARY], [a director OR its
secretary]

[SIGNATURE OF SECOND
DIRECTOR OR SECRETARY]

[Director OR Secretary]

OR

Executed as a deed by [NAME OF
PUBLISHER]

.....

[SIGNATURE OF DIRECTOR]

Director

acting by [NAME OF DIRECTOR] a
director, in the presence of:

.....

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]

[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]

**SCHEDULE 1
EXISTING COMPOSITIONS**

Title	Writer's share	Other writers' share
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**SCHEDULE 2
SINGLE-SONG ASSIGNMENT**

Purpose of single-song assignment

Typically this document is merely confirmatory of the rights. It is sometimes required by collection societies outside the UK as evidence of copyright ownership.

To:[Publisher]

Dear [NAME OF ORGANISATION],

Pursuant to the agreement between you and me dated [] and in further consideration of the sum of £1, receipt of which is acknowledged by my signature below, I confirm the assignment to you of the Writer's share of the Composition(s) listed below.

Yours faithfully,

Title	Writer's share
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END OF DOCUMENT
