

# Signing a Management Agreement

## **Management Agreement**

As an artist, producer, or DJ, let's talk about a management agreement with you and a manager. The first thing you realize is that there is no rights assignment or license to the manager. It is a simple services agreement. So, you as an artist are the boss, so to say. You give the commission to the manager to bring his services to you. The basis of a management agreement is always exclusivity. This is standard. So the manager is your exclusive manager. You are not allowed to make any deals anymore yourself. Not with friends, family, or any booker or venue. Of course, the exclusivity makes perfect sense. Otherwise, your schedule would be one big mess because you make deals yourself and your manager makes other deals on the same date. It is as simple as that.

The basis of the management agreement is that the manager handles all of your business, all of your deals and negotiations, and gets a commission paid out of your total income for any activity you do as an artist or as a writer or producer. A commission will be delivered to the manager. Keep in mind that we are talking about traditional management agencies. Here at the 360 Artist Group, we only take the subscription fee, and you keep everything else!

## **Difference between a management and a booking agency**

Both companies are busy with live performances, with gigs for you as an artist or DJ. But the manager has a broader scale of activities, not only the live performances but also everything related to your music, releases, sponsor deals, endorsement deals, merchandising, etc. So they overlap live performances, and you have to pay them both a commission for your live performance income. But the manager does a lot more than a booking agency. You could say that the booking agency primarily focuses on creating tour schedules and making sure everything is going smoothly on tour, and a manager is almost like a parent who makes sure that you and your business are doing well and is healthy.

## **The responsibility of a manager**

The manager is responsible for the total promotion of your career as an artist. A manager is busy on all platforms simultaneously and is working on your profile as an artist. In that sense, the manager is slightly above the booking agency and controls what gigs are part of your schedule. The manager has to approve every booking on behalf of you.

Of course, the manager is of vital importance for your career. You have to work with them daily, and they decide and control the most important deals for your career. Therefore, it is of the essence that you have an excellent click with your manager on a personal level. They will advise you on your reputation, on your show, on your music, on everything. You will be spending a lot of time together.

## **Documentaries**

I want to share two documentaries to create a better understanding of what it is a manager exactly does.

<https://www.dailymotion.com/video/x46x4i7>



<https://www.dailymotion.com/video/x46xirs>

### **Exclusivity**

A manager can bring you great success, but it can also become a nightmare if you are stuck in a management deal because you cannot terminate the agreement. As you can understand, the manager is interested in a long-term agreement with you. So you cannot get out of the deal as soon as you reach a level of success because they built that success for you. Therefore, management agreements have a term of at least three to five years. In that period, many things can happen.

You sign a management deal for a certain period as called the term. It is an exclusive agreement. You have to pay a commission to the manager on all types of income, whether as a writer or composer, lyricist, movie star, or whatever role you play in the entertainment industry. Why is that? Why is it not focused on your producing qualities only? The idea behind this is that the manager is building your profile. While you become more popular as a DJ, you might be invited to participate in a TV show, for instance, or write a novel or do whatever other creative work. So, therefore, the manager will negotiate with your terms that they get a commission on all your creative or artistic income in the entertainment industry.

### **Commission**

You should be aware that the manager earns a commission, a percentage of your income, on every activity you partake in. Even if your manager did not make the deal for you, you made the deal yourself. Perhaps it is a deal that was going on before you signed the management agreement. Maybe the money is coming in to exploit your old songs that are coming in during the management agreement. You still have to pay the manager a commission on that. Be very aware of this. For instance, if you write novels and produce music and a manager can only help you, exclude the commission on writing books. Even if you bring yourself a deal to the table, let's say you are invited to become a resident DJ of a big club. Even then, the manager will earn a commission on your income out of those club performances. Of course, you can

exclude some activities for which you have to pay the manager a commission, but you have to have excellent reasons to argue about this. Your success is also because of your manager, and that's why they ask for a commission for everything you do.

The clause underneath is self-explanatory. This one manager will represent you for five years—no more deals with friends or family.

### ENGAGEMENT & TERM:

Artist hereby engages Manager as Artist's sole and **exclusive personal representative and manager** for a period of **five (5) years**, commencing from the date hereof (hereinafter referred to as the "Initial Term").

This other clause is almost the same as the one before. The difference is that it connects to all your activities — even things like writing a book or acting in a movie. That's a comprehensive definition, and you might want to try and negotiate it out of your contract. But that is hard: the manager will argue that since your hit track was properly promoted, invitations for a TV show lead to that acting role, etc.

During the period of this appointment ("Term") we will be your **exclusive manager throughout the world** ("Territory") representing **you in connection with all of your activities** in the entertainment industry ("Activities"). We may also manage other artists, but will continue to devote sufficient time to you.

### Negotiating the best deal

Of course, you can negotiate a different commission on different activities with your manager—10% on live performances, maybe 5% on writing songs, and so forth. But you have to have good arguments for doing this. One of those arguments could be that you already have a publishing agreement in place. So when you are writing songs, the manager doesn't have to get a commission. That's a way to lower their commission on tracks. You can also argue that since you have signed with a booking agency for live performances, the manager has to put less effort into getting you new gigs. So then you can negotiate the price of the commission for live performances. You could also argue with a manager that since you have a booking agent in place, his commission should be lower because the booking agency does all the work. The manager will tell you that he is busy with the total profile. It doesn't matter how much effort he puts into one activity or the other. They need to have a living too. They want a standard commission between 20 and 25 percent on your total income. As with everything in life, it depends on your popularity when signing the management agreement. If you're a famous artist, you will get better rates from the manager.

### Calculating your manager's commission

## **ROBIN NAP**

You pay a commission to the manager on your total income as an artist for the manager's services. Typically, a manager's commission is, on average, something between 20 and 25 percent of your total income. It would be tough to negotiate a lower commission as a beginning artist. The key here is with the commission is the question on what basis is the commission calculated? Here is something you have to take into account. There is a difference between your gross income and your net income as an artist. Standard in a management agreement is that you pay the manager off a gross income. Now you have to negotiate on this. You will try to pay off your net income after deducting costs. Many times you will not succeed as a beginning artist. This will be very hard to argue, and the manager will hold firm on the gross income commission. Another solution is to change the definition of gross income. Then you will say to the manager: Yes. I'll pay you off a gross income. But first, I'm allowed to deduct the following costs: transportation and hotels and the costs I have to pay to my booking agency for arranging my bookings. It does not matter how much you do it. As long as you don't pay commission off a cost, you have to spend yourself.

At least it would help if you negotiated that you can deduct the commission for the booking agency before you pay the management. Be aware that one of the arguments that the manager wants to get their commission of a gross income is that they don't want to argue about what costs should they spent and what costs should not be spent. They will probably say, well, if you're going to have a first-class flight ticket, I'm not the one paying along with you for that. Of course, you can counter this and agree with the manager that only flight tickets on the economy class would be considered and not first-class tickets. The bigger the artist or reputation, the more deductible costs they agree on with the manager. They have the power in a negotiation to say: Whatever I spend on my crew, on my support, or my laser show, what I have to pay is first deducted from my gross income before I pay you, my manager, a commission.

Here is an example of the manager's commission clause

Now, this is something I can get behind. As you can see, travel costs and accommodation are

Manager will be entitled to receive **commission** on monies and benefits earned by Artist derived from Artist Activities during the Term or which are organized during the Term **at the rate of twenty percent (20%) of all gross monies**.

In respect of **live performances**, we will be entitled to commission at a rate of fifteen (15%) of **net monies**, that is to say gross monies **less the commission payable to your booking agent and any expenses approved in writing by us**.

We shall **not be entitled** to commission:

- any monies advanced by way of and which are actually **expended on recording or video production costs;**
- any monies advanced by way of and which are actually used as 'per diems', **expenses reimbursed for promotional activities, travel, accommodation and bona fide tour support**

taken into account: these are deducted first from the gross income, then the commission is calculated over that net income. Often, that's a point of discussion in many agreements. You, as an artist, want the deductions as widely phrased as possible. Otherwise, you pay commissions over money spent on costs! Try first to deduct the booking agency commission, then other fees.

Here is another one

Now, this is something else. You won't receive a contract like this very often. It makes sense

As a **consideration** for all of the management services to be provided under this agreement Management shall receive a fee ('**commission**') of:

LIVE

- 15%** accounted over the Net revenue per contractual year up to € XXX;
- 12,5%** accounted over the Net revenue per contractual year between XXX and XXXX;
- 10%** accounted over the Net revenue per contractual year higher than of XXXX million.

that the commission is going down if the performance income gets higher and higher.

## Proper term & notice of termination

Two things are of vital importance within a management agreement. Of course, again, that is the term of the agreement, the duration, and the percentage of the commission you have to pay the manager; now, the time of the contract is of vital importance, of course, in your relationship with your manager. Mainly, I would say, because the manager controls everything you do in your career as an artist. So if you have a feeling that they are not giving you their best efforts, you're stuck with someone who does nothing for you anymore. Therefore, make sure the initial term of the agreement is not too long. Make it as short as possible. You can do this maybe for one or two years or maybe three. But if the manager demands that you sign with them for ten years, that would be ridiculous. It is hazardous because you can not step out of this agreement without paying damages to the manager. So be very, very careful.

As a term, three years is pretty standard. But if it is longer-term, you could be at risk if you want to step out of this agreement. Then you have to prove that the manager was in default, which is very hard to prove. If you would like to terminate the contract during the term without a legal cause, you would be at risk without legal grounds to do that. Because then you have to pay damages to the manager. So if you have a term of the agreement of four years, but you quit after two years, you could be in danger of paying them commission over another two years on average. Therefore, our advice is always to have a 'letter of notice' clause in your agreement. This means that you can send them a letter by mail records to terminate the contract without any grounds. Perhaps you can persuade the management to accept a term of six months to terminate the agreement on a letter of notice. The manager is aware, of course, that if you're not happy with an artist, there's not much business to do together. What we see in our legal practice is that many artists become, during a time, very unhappy with a manager but cannot terminate the agreement. We estimate that almost 50% of the cases about artists versus managers are about the termination of the contract. That is one of the reasons why we started the 360 Artist Group, to give artists the freedom of choice.

Let's take a look at some clauses.

**The term** of this agreement shall commence on XXXX and shall continue for a period of **one (1) year** until XXXX (the "Initial Period")

The Initial Period is referred to collectively herein as the "Term."

You hereby irrevocably grant to Manager **one (1) option, to extend the Term** for a period ("Option Period) commencing upon the expiration of the Initial Period and **continuing for a period of two (2) years**.

At first, this looks like a reasonable clause, but beware when you see the 'option'! The Manager has the option to continue this agreement for another two years, whether you like it or not. You might want to grant the manager an opportunity but only on certain conditions to be met: a record or publishing deal was signed, a certain amount of gross income was received in the previous period. In other words, when the manager has been successful, you grant the manager more time to profit from it.

This clause is highly artist-friendly and almost too good to be true.

This Agreement will take effect on XXXX for a **duration of 2 (two) years** and will therefore run until XXXX.

The agreement shall be deemed **terminated by law** after this date and both parties **are free** to open discussions on any **possible extension** of this agreement.

### Targets & list of activities

Imagine that you are negotiating with your manager. They want to sign you for five years, but you only want to sign for two years. How can you solve this? One possible solution is a target. You put in a contract that if you have a total income of XXXX euros in the first two years, the manager has to extend the agreement for another two years. In this way, you have some security. So if the cooperation doesn't turn out how you thought it would be, you can terminate the agreement. You also guarantee that you can still leave their company without paying damages if the manager does not put in their best efforts.

Obviously, in the management agreement, you try to list activities the manager should do for you. However, be very aware, if you put in a list of activities, it is tough to prove that a manager is in default with those activities. The manager should put in his best efforts to get you deals, live performances, sponsor deals, or whatever. But it is tough to prove that that was his fault, that those deals were not signed. Be aware that the manager can always say it is your lack of talent or a lack of good tracks or productions that are not bringing the success you had expected. Therefore, it is tough to pinpoint who is to blame for not getting the sensation within the management agreement. Therefore, our advice is to have a letter of notice so you can terminate without legal grounds.

### Ending a management agreement

The standard term in a management agreement is that you have to pay them a commission for everything they do during the contract period, even when your performances happen after the deal. That makes sense. The manager made that deal when you were still in contract, but you still have to perform. So because the manager has done his job, you will pay them a full commission about terminating the agreement and paying the commission. This is called a sunset clause because there is a transition phase when the manager stops working for you and the payments; it is like a sun going down where it slowly fades into darkness.

There are different possibilities when agreeing on the post-term commission after the termination of your agreement. We have listed some of the examples we have come across in

years. — from extremely unreasonable to very reasonable.

As you will understand, this example looks pretty unreasonable. It's an extreme example. The

The **compensation** agreed to **be paid to Manager** shall be based upon **Artist's Gross Earnings** (as herein defined) earned by during the Term of this Agreement.

Notwithstanding the foregoing, Artist likewise agrees to pay Manager **in perpetuity**, compensation following the expiration or termination of this Agreement with respect **to any and all engagements**, contracts and agreements, or extensions or amendments thereto, entered into **during the Term** or offers initiated or negotiated during the Term and consummated or executed within three (3) months following the expiration of the Term hereof.

artist will be paying eternity for everything the manager has arranged for them during the agreement.

If the manager gets you a record deal, they benefit from it as long as the contract lasts. This means that the manager will benefit from getting you longer record deals. That might not be in your best interest, so be very careful with this. As you can see in this example, the post-term commission percentage remains at the same level as during the agreement. That is exceptionally unreasonable, and it is widespread that such a rate is declining every year after the term (see example below).

Parties agree on the following ("**sunset**") **fees** to be paid by the Artist to Management for revenue accruing to the Artist ensuing from agreements entered into with third parties by Manager **during the term of this agreement** for Artist's rights granted or services **delivered by Artist after termination of this Agreement**:

1 <sup>st</sup> year:	<b>60%</b>
2 <sup>nd</sup> year:	<b>50%</b>
3 <sup>rd</sup> year:	<b>40%</b>

You will see this very often: a declining percentage for the manager in the years after the Term. It means that gradually, the artist will have to pay a lesser rate of what he owes his manager according to the contract (for income on deals the manager made during the term). Please consider: the 60/50/40% is a percentage of the percentage owed to the manager according to the standard commission in the agreement (say 20-25%).

This isn't all too unreasonable and something you will often see in a Management Agreement.



We will **not be entitled** to any commission in respect of any **Commissionable Income** received by you or on your behalf after six (6) years following expiry of the Term.

This is an extreme artist-friendly clause, as nothing will be commissioned after six months, whether that money was generated during the agreement or six months after that. That is almost too good to be true.