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**MPA GUIDELINE FOR ILLUSTRATION PURPOSES ONLY**

 **EXCLUSIVE SONGWRITING AGREEMENT – DRAFTING NOTES**

**Introduction**

This guideline document is a form of Exclusive Songwriting Agreement which has been drafted to illustrate a range of provisions which may be included in this type of agreement. It is in no way a comprehensive guide to every provision which can have a place in this type of agreement, nor indeed an indication of “best practice”. The provisions appropriate can vary considerably dependent upon the particular circumstances of each case. The draft assumes (a) UK writer /writers being signed to a UK Publisher to a deal for an initial period with the potential for one or more options at the discretion of the Publisher thereafter. At appropriate points it does seek to provide alternative wording to cover some of the alternative situations which may arise. These are:

1. Individual or Group signings
2. Minimum Commitment fulfilment by way of Album or individual track release
3. Fixed or performance based Option advances

**Notes**

1. DATED - Leave date blank until full execution of document
2. BETWEEN - Insert Writers and Publishers names, addresses and CAE/IPI numbers
3. Clause 1.2 - The **Album Advance Controlled Percentage** definition only needs to be included where the Writer’s advances are to be based on the percentage of control of an album which the Writer has. (Usually , this will be where the Writers fulfilment is based on Album release) If it is included , the percentage which the Publisher wishes to be controlled by the Writer for payment of full advances should be completed
4. Clause 1.2 - The number of months **collection period** required should be inserted
5. Clause 1.2 - The definition of “**Commercial Release**” or “**Commercially** **Released**” contains optional wording where the Publisher wishes to provide for release by way of digital distribution only. If this bracketed wording is not required it should be deleted If included the number of months required in the last line should be completed
6. Clause 1.2 - The **Commitment Album** definition only needs to be included where fulfillment of the Writers minimum commitment is to be by way of an Album release as opposed to individual track(s) release if included, the number of minutes duration should be completed.
7. Clause 1.2 - The **Commitment Track** definition only needs to be included where fulfillment of the Writers minimum commitment is to be by way of individual track(s) release as opposed to an Album release if included, the number of minutes duration should be completed. If the Writer is not a performer the words in square brackets” (which does not include or comprise the Writer)” should be included. Otherwise they should be deleted
8. Clause 1.2 - The definition of **Group** should be included if the Writers are in a group .If it is included the group’s name should be completed
9. Clause 1.2 - The definition of **Key Carrier** can be omitted if the expression is not used in the remainder of the Agreement
10. Clause 1.2 - The **Minimum Commitment Percentage** definition only needs to be included where the Writer’s fulfilment is based on the Writers percentage control of an Album release if it is included, the percentage should be completed.
11. Clause 1.2 - The definition of **Pipeline Income** can be omitted if the expression is not used in the remainder of the Agreement
12. Clause 3 - Insert value of consideration (at least £1 or more)
13. Clause 3.1(b) - If the Retention Period granted is less than life of copyright, the words “despite the limited duration of the Retention Period” should be retained.
14. Clause 3.1(b) - If the Territory for which rights are granted is less than the World, the bracketed words “despite the limited extent of the Territory” and the bracketed words “which includes the Territory or part thereof” should be retained. {Moreover, if the Territory granted is less than the world it may be necessary to modify the wording here so that it is consistent with the methodology used for the granting of synchronization and grand rights by the Writer to publishers outside the Territory) .
15. Clause 3.6 Territory for which rights are granted is less than the World, the bracketed words “and limited extent of the Territory” should be retained.
16. Clause 3.8 - The draft includes at clause 3.8 (a) and (b) commonly granted optional Writer approvals, which should be deleted if the Publisher does not want to include. If (any are) included, Publisher should consider restricting approval for Term only by retaining the words in square brackets “during the Term”
17. Clause 5.2 - If the royalty calculation is to be made on an “at source” basis the first bracketed wording in clause 5.2 (ie that which includes the words “at source”) should be retained and the bracketed wording for clause 5.2.4 deleted. If the royalty calculation is to be made on a “receipts” basis then the first bracketed wording for clause 5.2 should be deleted and the bracketed wording for clause 5.2.4 should be adopted but where any affiliated (ie not completely independent third parties) sub publishers may be engaged the wording confirming the appropriate percentage figure for the maximum sub publisher deduction **must** also be adopted and completed.
18. Clause 5.3 - The drafting here assumes that the PRO’s rules are such that the publisher will collect 50% of performance income (the so called “publishers share”) distributed by the PRO and that the writer will collect the remaining 50% (the so called “writers share”) distributed by the PRO directly from the PRO himself/herself. It also assumes that the Publisher will collect 100% of all other income.
19. Clause 5.9 - Complete in line with Writers election
20. Clause 7.1(h) - Amend if necessary but note Drafting Note 18 and ensure this assumption is correct for the PRO in question
21. Clause 12.3 - Complete percentages as required
22. Clause 15.1 - Delete bracketed wording in 15.1 if right to serve notice on Writer by email is not required
23. Clause 15.2 - Delete bracketed wording in 15.2 if right to serve notice on Writer by email is not required
24. Clause 15.3(b) - Insert number of days required by Publisher for deemed approval
25. Clause 22 - Delete wording in clause 22 and replace with wording “Intentionally deleted” if no Group Provisions are required
26. Clause 23 - Insert name of Writer
27. Clause 23 - Witness to sign alongside the word “witness”
28. Clause 23 - Insert name & address of witness
29. Clause 23 - The Publishers attestation wording assumes that the Publisher is a corporate entity. Insert name of authorized officer of Publisher who is signing
30. Clause 23 - Insert name of Publisher
31. Clause 23 - Witness to sign alongside the word “witness”
32. Clause 23 - Insert name & address of witness
33. Schedule 1, Clause 1 - Insert details of Territory to be controlled
34. Schedule 1, Clause 2 - Insert details of Title of Work(s), the writers of the Work(s) and percentage which each writer has written and controls
35. Schedule 1, Clause 3.2 - Insert number of options required by Publisher and amend wording detailing names of Option Periods accordingly
36. Schedule 1, Clause 3.3(a) - Insert minimum duration of each Period
37. Schedule 1, Clause 3.3(b) - Insert minimum period which Period is to run after fulfilment
38. Schedule 1, Clause 3.3(b) - Insert cap on duration of each Period (
39. Schedule 1, Clause 3.4 - Insert option warning period required by Publisher ( typically around 10 Business days)
40. Schedule 1, Clause 4 - If the Writers minimum commitment is to be based on an Album release, retain from the first bracketed wording in this clause “Commercial Release of a Commitment Album” and delete the remainder. If it is to be based on the release of a number of individual tracks retain from the bracketed wording “Commercial Release of at least [ xx ] Commitment Tracks”, complete the number of tracks ,and delete the remainder of the bracketed wording
41. Schedule 1, Clause 4 - Choose from the 2 remaining bracketed sections in this clause the wording to conform with that chosen at Point 39 above
42. Schedule 1, Clause 5 - Insert bracketed wording either a) granting life of copyright rights or (b) rights for a limited number of years (actual number to be inserted) with additional collection rights
43. Schedule 1, Clause 6.1.1 - Insert Retail Selling Price royalty for sheet music and print copies sold by the Publisher
44. Schedule 1, Clause 6.1.2 - Insert receipts royalty for sheet music and print copies sold by third parties
45. Schedule 1, Clause 6.2 - Insert mechanical royalty percentage and reduced percentage for Covers
46. Schedule 1, Clause 6.3 - Insert synchronization royalty percentage and reduced percentage for Covers
47. Schedule 1, Clause 6.4 - Insert royalty percentage re publishers share of performance fees
48. Schedule 1, Clause 6.5 - Insert royalty percentage for other income and reduced percentage for Covers
49. Schedule 1, Clause 7(a)(i) - Insert details of advance payable for First Period deleting any bracketed wording not required
50. Schedule 1, Clause 7(b)(i) - Alternative wording for Option Period advances (1) sets out fixed payments
51. Schedule 1, Clause 7(b) - Alternative wording for Option Period advances (2) sets out payments based on a performance formula – a percentage of mechanical & performance royalties during the previous period (either based on an Album or Individual tracks ) with a minimum and maximum figure for each Period. Choose from the alternative wording set out in square brackets dependant on whether the Writers commitment is to be based on an Album or individual tracks. Complete the minimum and maximum advance figures for each Period and percentages for the scheduling of payment per Period, as required.
52. Schedule 1, Clause 7(c)(i) - Insert required number of Business Days
53. Schedule 1, Clause 7(c)(ii) - Delete bracketed wording if there are no to be no Group provisions in the Agreement
54. Schedule 1, Clause 7(c)(iii) - Delete unless the minimum commitment is to be based on an Album
55. Schedule 1, Clause 7(c)(iii) - Delete unless the minimum commitment is to be based on an individual tracks
56. Schedule 4, Clause 2.2 - Insert required number of days for Publisher to decide whether to terminate in relation to writer Members
57. Schedule 4, Clause 2.3 - Repeat number inserted as per Drafting Note 55
58. Schedule 4, Clause 2.4(a) - This sub clause 2.4(a) assumes that all Writer Members will be making an equal contribution to writing/composition. Other formulas are possible
59. Schedule 4, Clause 2.4(b) - This sub clause 2.4(b)(ii) assumes that all Writer Members will be making an equal contribution to writing/composition. Other formulas are possible
60. Schedule 4, Clause 2.6(b) - If Publisher wishes to provide for further recoupment of the Old Balance from an individual Writer Member beyond the share attributed to them by a split based on historic royalty earning , the wording in square brackets should be included and the required percentage filled in.
61. Schedule 4, Clause 5.1 - Insert name of payee