

EXCLUSIVE LICENCE AGREEMENT

Heads of Agreement

Date: 9 November 2019

Licensor: [redacted] [address tbc]

Licensee: [redacted]

Artist: [redacted]
(under all name(s) and artist and/or project name(s))

Agreement: Exclusive License Agreement including full exclusivity of Artist's recording services during the Term.

Term: Initial Term plus two separate and independent Option Periods. Options exercisable individually by [redacted] by written notice (e-mail sufficient) at any time at [redacted] discretion. Duration per Initial Term and per each Option Period: One year, but minimum 8 months after last release date of a contractual Master of the mdc of the respective Initial or Option Period.

Minimum Delivery Commitment: (mdc): Initial Term: The singles: [redacted]
[redacted]
plus option for [redacted] for further recordings sufficient to comprise one (1) Album (min. 13 tracks, min. 45 minutes playing time).

Options: 2 Album (min. 13 tracks, min. 45 minutes playing time).

All Singles/Albums: Newly recorded studio recordings of previously unrecorded compositions. Recording costs to be borne by Licensor. Singles incl. all mixes/remixes and B-sides reasonably required (minimum 1 A-side and 1 Edit); Albums min. 13 tracks of a total of min. 45 minutes playing time.

Territory: The World.

Re-Recording Restriction: Until 10 years after the Term.

Commented [AR1]: You cannot record for anyone else whilst you are signed to this label.

Note: This is the industry norm, but many artists don't take note of this, and it often lands them in legal trouble when they start recording elsewhere.

Commented [AR2]: Only the Label has the right (i.e. 'option') to extend your contract by another year. You have no say in this.

Note: This is normal, but it would be preferable if you could have a say in this decision too, i.e. you must agree to extend the period by another year if you have fully complied with your obligations.

Commented [AR3]: Here the label identifies the minimum amount of songs you must provide them. If you don't record all of these to their satisfaction, you will be in breach (although, this contract doesn't provide details on what happens during breach).

These clauses are the industry norm.

Commented [AR4]: I have not seen something like this. This is similar to the clause before where they have the choice to extend the contract, however here it seems they have the choice if they want you to record another album. I don't like this, because if you have a bad relationship with them, and you don't get along with them, they can still force you to record more albums.

Tip: I'd negotiate to have this removed. If they want you to record more music, they can either stipulate it in the agreement (without making it an option), or you can enter a new agreement when it's time to record a new album.

Commented [AR5]: If they are not paying for an advance, what exactly are they doing for you then? The contract needs to stipulate what their duties are towards you.

Commented [AR6]: What competency do they have to push your material worldwide? This could do you more harm if they have exclusive worldwide rights when in fact, they only know one or two markets.

Tip: Get clarity on them what competency they have worldwide. If they don't know other markets, then I'd negotiate to have this removed, and limit it exclusively to the markets they do know.

Commented [AR7]: This means you cannot re-record your music that you originally recorded when you were with them for 10 years after the end of the contract.

Note: Ask yourself whether you would at some point like to re-record your music, if yes, then I'd negotiate to have this reduced to maybe 3 or 5 years.

Rights: Exclusive rights in perpetuity and throughout the Territory: Exploitation, use, marketing and distribution/dissemination in all physical and non-physical media, formats and/or configurations, in whole and/or in part, including mixes, remixes, edits, extended/cut versions, and including videos. Including but not limited to broadcasting rights, online rights, public performance, third party licensing, synch, sample, third party advertising, games, mobile content etc. Rights to use names/artist names and images/photos/bio for promotion and exploitation of Masters.

Promotional Support: Full promotional support by Artist in all media at standard terms.

Basic Royalty Rates United Kingdom: 20% PPD
Rest of World: 66.66% of United Kingdom (ROW royalty).

PPD: 100% net sales paid and not returned, less taxes, packaging deduction, discounts, retroactive discounts, free goods etc.

Non-physical PPD: Net receipts (gross receipts actually received less taxes and less mechanical licenses (if incurred to [REDACTED]))

Reductions: In-House compilations, media-advertised records or products, Club-, Mail Order-, DRTV-/Online-Mailorder, Premiums, Mid-Price or Low-Price/Budget records:
50% of GSA or ROW Royalty Rate.
Synch/Advertising/3rd Party Licensing etc.: 50% net receipts
No royalty for no-charge basis, promotional purposes, salvage, overstock, scrap, "cut-outs" etc. and/or broadcasting income.

Technical/Package Deduction: 20% on physical formats.

Accounting: Semi-annually (90 days after June 30th and December 31st); with reasonable reserves. Usual audit rights to apply.

Remix and Video costs: 50% recoupable, cross-collateralizable.

Publishing: Publishing rights in and to the compositions and lyrics (or parts thereof) contained on the Masters and written by Licensor and/or by Artist to be assigned to a publisher selected by [REDACTED] at the standard rates and conditions of the [REDACTED] Association of Music Publishers.

Commented [AR8]: This is very dangerous. Here it means that **only they** can use your songs **forever** throughout the world. They can do anything with your songs, and not even you can do anything (as it is exclusive).

Tip: These exclusive rights should be limited for the duration of the contract + 3 years after termination. Therefore after 3 years since you ended the contract, they can no longer do these things.

Commented [AR9]: What exactly are these standard terms? They need to clarify this otherwise it just begs more questions.

Commented [AR10]: They must expand more on these, as they can screw you out of money if they say the value of the CD was only x amount because of these deductions. They could make an excuse on how expensive packaging was and how many discounts there were etc. and hence you only get a very small percentage.

Tip: They must remove discounts, retroactive discounts and free goods. They must provide more detail on the type of deductions; get them to commit to the type of deductions they will reduce. They can't just have these broad terms or else it will come back to haunt you. Also, these deductions should be taken off the gross receipts earned and not the net (they do this in the Non-physical PPD so why not in this one?)

Commented [AR11]: This is too high. Packaging doesn't cost that much. This is a standard trick that labels use to try get as much money out of you without having actually incurred these costs.

Tip: Get them to reduce this from 20% to max 8%

Commented [AR12]: This clause is very important for you as you can hold them accountable and check their records to make sure they are not screwing you. It needs to be more comprehensive. What are "reasonable reserves", and what are "usual audit rights"? They need to specify this. I have seen pages devoted to Accounting related clauses. One sentence simply doesn't cut it.

Commented [AR13]: This means if they make a video for you, they can claim the money you earn from all other income streams to pay this off. E.g., if you have recorded 3 albums with them, then they can use the income you earn from all 3 albums to pay this 50%.

Tip: I'd prefer they take this out, as they will still get royalties from the video, it will just take a longer. But I don't see why you should be burdened by not earning any royalties from your songs.

Commented [AR14]: Nope. You should always have a say in the publisher, otherwise they could assign the rights to one of their publishers (maybe they have a sister company), and then they really have full control over your music.

Tip: They **must** get your consent before signing with other publishers. They must not have exclusive rights to choose your publisher. If you don't have this, then it gives them free reign to do anything with your music. You need to have some control.

Live/Booking Income:

For shows from 1000 Euro 20% of Artist's live/professional appearance income to be accounted and paid to [REDACTED] monthly.

Commented [AR15]: This should only be for shows they organise. If you have another booking agent, or you book your own shows, this would be unfair if they still get 20%.
Tip: Negotiate that it's only for shows they organize that they can get this cut.

Merchandising:

Exclusive Merchandising rights (i.e. exploitation rights of name(s), artist/project name(s), trademark(s), logos, images, biographical information, spoken word etc. (hereinafter: "Merch contribution") of Artist and the individuals constituting Artist) for the World and during the Term, plus 6 month non-exclusive sell-off, in and on all media/products, incl. testimonial rights, sponsorship, third party advertising etc.).

Commented [AR16]: 6 months from when? They must stipulate this.

Merchandising royalties: 15% of net PPD of sold and paid products manufactured by [REDACTED] and containing Merch contribution(s). 50% of [REDACTED]'s net receipts (less provisions and legal expenses) of third party Merchandising license income and of income generated by sponsorship agreements, testimonial deals, third party product advertising.

Commented [AR17]: Does this mean they get 50% of merchandise for work done by a 3rd party? So they can do nothing and still get 50%.
Tip: This should be less. Maybe 25%

Merchandising royalties to be accounted and paid at the same intervals and conditions as Master royalties hereunder.

Miscellaneous:

Governed by [REDACTED] law; Court of Jurisdiction: [REDACTED].

Commented [AR18]: This means if there is a dispute and you go to court, it has to go to the court in their country. This will be incredibly expensive for you as you'll have to hire lawyers from their jurisdiction who can go to court on your behalf.
Tip: Although this type of clause is the norm, it would be preferable if they have an arbitration clause which allows the parties to try settle the matter without going to court.

Should any part of this Agreement be determined to be invalid or unenforceable by a court of competent jurisdiction or by any other legally constituted body having jurisdiction to make such determination, then the remainder of this Agreement shall remain in full force and effect. An invalid clause shall be replaced by a valid clause that comes closest to the intended operation of this Agreement. The Parties hereto shall co-operate in good faith to agree on the wording of such replacement clause.

IN WITNESS WHEREOF, the parties have caused the foregoing to be executed as of the date first above written.

.....
[REDACTED]

.....
[REDACTED] [REDACTED]