Publishing agreement reference notes

These notes are for reference purposes only. Access to the Publishing Agreement and these notes does not constitute the provision of legal advice by either the ISM or its partners. Those using the contract and these notes do so strictly on the basis that no liability, in relation to the use of the contract or the notes, is accepted by the ISM or its partners.

You are strongly advised to seek independent legal advice before entering into any contract. ISM full and student members are entitled to free legal advice in relation to the use of these template contracts from the ISM legal team.

This agreement is intended to be used by composers who do not have a current exclusive publishing agreement who wish to exclusively licence the copyright and related rights in a single musical composition or compositions (Composition(s)) to a publisher for a set period of time.

Publishers will often in the first instance, seek an assignment of copyright (and sometimes also ask for this to be for the full period of copyright). However, unless a substantial advance is being offered there is no justification for an assignment of copyright and composers should use this format (and limit the Retention Period to a specific number of years).

The agreement is drafted broadly in accordance with current industry practice from the Composer’s perspective with rights of approval over certain uses which are customarily agreed by publishers. If a publisher asks to amend any of the terms of this agreement you should seek expert advice from a solicitor specialising in music business agreements.

The numbers below correspond to footnote numbers in the agreement itself.

**Clause 1.1 Collection Period** – This is the period after the Retention Period during which the Publisher is entitled to collect income arising during the Retention Period.

**Clause 1.1 Retention Period** – This is the rights period during which the Publisher will exclusively control the copyright in the Composition. Depending on the size of the advance offered this may typically be anything from 1 to 15 years.

**Clause 2 Rights and Approvals** – The rights granted and approvals given reflect the standard industry position where an agreement has been negotiated on behalf of a Composer. You should read these carefully to make sure you understand what rights are being granted and which steps a publisher may only take with your prior written approval. If no advance or only a low advance is being offered, consider reserving completely certain rights (such as “grand rights”).

**Clause 2.1 Rights of the PRS** – The drafting of this clause assumes that the Composer is a member of the PRS and that the rights being granted by the Composer are subject to the rights controlled by the PRS. If you are not a member of PRS (or a similar organisation anywhere in the world) you should join.

**Clause 2.3.2** In the final sentence, “performance income” refers to the licence income (generally collected and paid out by PRS) due when a copyright work is performed in public. Public performance refers not only to a live gig, but also refers to a broadcast or digital transmission such as streaming and inclusion in a cable programme service. PRS allocates the income it collects 50/50 between publisher and composer, and pays it to each directly. The expression “100% of the Publisher’s share” therefore refers to the publisher’s 50% split. A publisher will often agree to give some, or as much as half, of their share to the composer, so that the true split of performance income can be as much as 75/25 in the composer’s favour.

**Clauses 2.3.12** “Grand rights” is a particular type of performance right in relation to any fully-staged use of a musical composition. “Fully-staged” means a theatrical or staged production with costumes, scenery, lighting, choreography, stage direction. “Grand rights” are not administered by PRS, and so a licence must always be obtained direct from the publisher or composer. By contrast, a semi-staged performance on a concert platform, with minimal costume and no sets or special lighting, would often not require a grand rights licence and could instead be licensed through PRS.

**Clause 2.4** In this clause, composer’s rights of approval are listed; these are rights granted to the publisher which can only be exercised with the composer’s approval.
Clause 3.1 Advance – If no advance is being paid you should put £1.00 and the Retention Period should be limited to 1-3 years.

Clause 3.2 Royalties – The royalty rates specified here reflect the customary percentages offered in commercial publishing agreements. In classical music publishing agreements the rates offered may be somewhat lower. Royalties are calculated “At Source” (i.e. as a percentage of income received at the source of exploitation), as opposed to a “Receipts” basis (where the Publisher pays through a percentage of income received calculated after deduction of sub-publishers’ fees). If a Publisher offers a lower rate or wishes to account on a Receipts basis you should seek expert advice before agreeing terms. If royalties are calculated on a Receipts basis any sub-publishers’ fees to be taken into account in the calculation of royalties should be capped (a typical cap would be at 10-20%).

Clause 3.2.5 Royalties for performance income – The royalty rate for performance income is based on the “Publisher’s Share” of performance income distributed by performing right societies (the Composer should receive the “Writer’s Share” directly from PRS) and is calculated so that the Composer’s overall share of ALL performance income equates to the main mechanical rate (or applicable rate for Procured Synchronisations).

Clause 4.5 Accounting – “Cross-collateralise” refers to the practice of using royalties under one contract to recoup the advance under another contract. This is a practice that should always be strongly resisted by any composer or artist.

Clause 5 Publisher’s Obligations – This clause sets out the Publisher’s obligations and allows you to compel the Publisher to exploit the Composition(s) if, after a period of time, certain commercial uses have not taken place and (in limited circumstances) to get your rights back.

Clause 8 Termination – This clause allows you to terminate the Retention Period and Collection Period if the Publisher breaches the agreement or fails to account for a minimum amount of royalties over 2 half yearly periods. Publishers may seek to restrict your rights of termination if a substantial advance is being paid.

Clause 9.1 Notices – If you have appointed an independent solicitor to advise you then copies of any notices to the Composer should be sent to them.