

Band Partnership Agreement Fact Sheet

What is a Band Agreement

A band agreement states the rules under which band members should act and operate throughout the life of the band. These rules outline the rights each band member has in every song that the band creates and how much each member will be paid from income the band generates, as well as how to troubleshoot any conflict that may arise in the life of the band.

When do you need a Band Agreement

Band members should enter into a band agreement when the band begins receiving income. It is important to note that if you wish to be a professional artist in a professional band, agreements such as these are vital in order to protect your rights and your livelihood.

Why do you need a Band Agreement

Each band member should have a strong understanding of their rights in the band's songs and band income at the earliest time possible – ideally before income is actually generated. This will prevent future conflict around issues pertaining to individual members receiving greater songwriting credits and royalties. These issues can become very significant in times when a band member quits or is asked to leave, or additional members join the group.

How to use this Fact Sheet and included Checklist

Included with this fact sheet is a checklist of many of the issues you and your band members should agree on. The checklist will give you a quick idea of the key terms of a contract whilst this fact sheet provides added details on key clauses. For ease of reference, all clause numbers used in the checklist will be mirrored in this fact sheet.

By referring to both these resources, we believe that you will be in a position to better decide whether or not to sign on that dotted line, and how better to negotiate getting there!

Key Terms of a Band Agreement

Clause 3 Legal Structure

There are many ways in which a band can structure how their income, expenses and rights will flow through to the individual band members. Members can sign as individuals, or the band can set up or employ a company, which would sign on their behalf for all recording, management, touring and other contracts. The decision as to whether a band should form a company should be made with reference to each member's current financial situation and should only be made after consulting with a tax accountant familiar with the workings of the music business. For further information see AMIN's musician's *Tax & Musicians* guide, available digitally at www.amin.org.au or through your local state or territory association.

Clause 4 Commencement Date And Term

Band members can agree to put a definite end date to the rules under which a band is bound. For example, the band could operate under a band partnership agreement with a term of three years. Once that elected time concludes, the members can revisit the contract and agree on new terms and conditions.

Another method is what is known as a 'rolling' term – where after an initial time period, the band members will sit down and agree whether to continue with that same contract, or to make or subtract clauses each year following that initial period. This can give the band a good balance and the chance to make amendments to their contract in providing flexibility as required.

Clause 5 Band Names

The bands' name is essentially the trademark and brand that carries the reputation and public recognition the band has worked to develop. It is essential for band members to determine who controls the rights to the name. If the band is the brain child of one member, they might insist on greater rights to the name over other members. There is no hard and fast rule here, but generally in a band where each member contributes equally, rights in the band name are shared equally.

Think about bands like Wolfmother, The Beach Boys and other bands who have broken up, yet a member has continued to operate under that original name.

It is also a good idea to set out how each member can use the band name. For example, can the drummer use the band name to promote their solo drum clinics?

Clause 5 Finances And Assets

Capital Cash Contributions

When setting up a band partnership – each member of the band may agree to give a certain amount of money to the partnership – generally into the band bank account. This initial outlay of cash is known as a "capital contribution". As all bands and members are different, capital contributions may be needed at different times.

For example, at the start of a band members may only need to outlay enough capital so that they can hire out a rehearsal space. But if the band wants to tour in several months time, or to record a demo, the partnership agreement might state that each member contributes more capital to the band account to assist with those payments. This clause should stipulate the nature of any reimbursements to be paid back to band members for these contributions.

Equipment and Instruments

Each band should define which equipment and instrument costs are to be borne by the band partnership and which costs should be taken care of by the individual member.

For example, a guitarist with one guitar may bring that guitar to the partnership as a loan – ie the guitarist loans the partnership the guitar during the term and the partnership pays for all repairs needed to it. But if the guitarist requires a second guitar and the partnership buys it, all repairs to the 2nd guitar will be covered by the band, however the guitarist has no right to keep the guitar when the term ends, unless expressly agreed to by the band.

Again, there are no rules around this and the details will be dependent on how you choose to operate as a band.

Group Bank Account

Dealing with money will be a very hard task! Many band disputes begin with errors in accounting, unintentional or otherwise. To transparently deal with the band's income, it is possible to set up a bank account solely for the band to use. This account will keep all capital contributions as well as any other income the band earns in one place. If the band decides to set up an account, you will then need to decide upon who can be signatories and withdraw funds from the account. For example, does every member need to sign off prior to a withdrawal or is one or two members sufficient?

Expenses

Bands often detail what sort of expenses the partnership's income will cover, this is to prevent members from using band money for personal expenses. The agreement usually states that any unforeseen expenses or any costs over a certain amount must be agreed to by all members before that money can be spent.

Copyright Ownership

An essential element of a band partnership is how to determine who writes what share of each song. Generally, bands split their songwriting rights (known as publishing rights) equally. If there is one dominant songwriter or songwriting partnership, those member/s may seek to have a higher share of the publishing rights than other members. Publishing rights are an important element to be agreed upon, as significant amounts of income can be earned by a band from publishing royalties – that is, the royalties songwriters are paid each time their song is played or performed publicly.

Another consideration to keep in mind is how to decide whether all publishing rights are owned by each member as above, or 100% by the band partnership. This would mean that any income from publishing rights would first flow to the band, so that the band could use the money to pay off any expenses.

Clause 7 Members

Leaving Members

Band partnerships should deal with the less-fun aspects of being in a band, such as when a band member either quits or is asked to leave. It may be hard to fathom now that such a thing could occur, but it is very important to agree upon a method of dealing with what happens to the song rights and finances after a member leaves.

It is important to remember that the leaving member is legally allowed to:

1. Keep their rights in the songs they wrote and keep earning money from the sales of those songs
2. Perform the songs they have rights in outside of the band – and so earn money to the exclusion of the rest of the band.

The leaving member may also be required to contribute their income to the expenses of the band. The division of songwriting rights is particularly important in this respect, if all band members agree on splitting the song an equal number of ways, the leaving member will continue to earn that share after they have left the band – making sure that you accurately and honestly allocate the copyright ownership will help to prevent any ill feeling should this situation arise.

Solo Album Arrangements

It is common for band members to branch out with side projects or solo careers. The band should always agree on how such things will impact the partnership and whether any income or rights that the solo career achieves should flow through to the band and to clearly have a means of mediation should a conflict arise between the two.

Winding Up Procedure

There may come a time when all members agree that it is time to finish up the band. However there may still be royalties, album sales and other income flowing through to the band account. In cases such as this, it is important to document a "wind up procedure" in which the band disbands, but leaves in place a method in which band income is collected and then distributed to each member. This could be done by setting up a company to look after the band's interests.

For further guidance on this matter we recommend you speak with an accountant for advice on the best way to structure such a company.

Clause 7 Income Splits

Bands usually agree to split the income the band earns equally. However, if one member writes more of the songs than the others, or promotes the band to a greater extent, they may look to get a larger share. Some bands choose to work out songwriting rights on a case by case basis, as some songs may be mostly written by member A, whilst others were by member B. As publishing royalties are paid to songwriters every time their song is played or used, it is important that the dominant songwriter's contribution is acknowledged in any band agreement, and prior to seeking an increased rate for such income.

Clause 8 Disputes

As with anything in life, disputes are inevitable— some are easy to fix, others are not. Disputes can often be resolved by asking all members to take a vote, however, this may change if one member invests more time/money/songwriting than others. If you are worried about conflict resolution within the band, it may be advisable to include a procedure stating that band members will go to an independent arbitrator or engage other procedures to decide how to resolve any issues that cannot be dealt with internally.