

# Music Publishing

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*A program of the Arts & Business Council of Greater Philadelphia*



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## ***“A Song in my Heart, and Money in my Pocket” A Songwriter’s Primer on a Sample Publishing Contract***

***By Shannon Petty and Robert Graff***

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After composing a song, put it to work for you. A song composer needs to understand how copyrights work in the music industry to do this. Obtaining ownership of various rights related to copyright (reproduction, distribution, and so on) is central to the operations of the music industry—it helps everyone make money. As a composer looking to make money from the copyright in your work, you will likely need to work with a music publisher. Publishers provide a variety of services to songwriters—handling song royalties, promoting your work, and developing essential relationships with artists, producers, and important players in the industry.

The benefits of music publishing do come at a cost. Publishers will generally seek ownership of all or part of your work in exchange for the services they provide. Ownership can be transferred by assignment or license. Assignment is the transfer of copyright from the songwriter to the publisher. It is essentially a sale. A license grants someone other than the copyright holder permission to use a copyright for a specific period. Where an assignment is like a sale of copyright, a license is like a copyright lease. The terms of the license are made at the discretion of the copyright holder. Publishers also collect a portion of the royalties earned from song promotion.

As a songwriter, one of two sources will be responsible for most of your royalties: mechanical royalties, paid by record companies for the right to record and sell your song or performance royalties, from radio and TV stations that broadcast your song. Royalties may also come from publication of your song as sheet music (print licenses) or use of your song in TV shows or a movie (synchronization or “synch” licenses). These royalties are typically distributed to songwriters directly through BMI, ASCAP, or SESAC (see PVLA’s pamphlet on PROs and music licensing).

Before obtaining any of these royalties, a songwriter must first sign an agreement with a publisher.

Songwriters often sign single song agreement deals with multiple publishers before being offered an exclusive deal. This is done through a written contract that gives the publisher the right to publish your work and collect royalties from it. These agreements are very beneficial because they give songwriters the chance to experience to see how several publishers operate entering a long term relationship with one. No two agreements are written the same. Single song contracts will differ from exclusive publishing agreements depending on each publishing company. Although most companies do not use a standard agreement, all single song contract agreements do share certain characteristics. Major provisions in a composer/publisher agreement include:

### ***The Grant-of-Rights Clause***

This clause contains the language that formally transfers ownership of the copyright in your song to the publisher. It is often one of the first issues addressed in a publishing agreement. The language used is often broad and general to give the publisher the most expansive rights possible. Songwriters often negotiate for a reversion clause to place limits on the broad transfer of right publishers seek. A reversion clause usually states that if the publisher does not produce a commercially released version of the song within a certain number of years, ownership reverts back to the songwriter. This benefits the songwriter because it ensures that the publisher makes a good effort to commercially market the song. Provision one in the sample contract that follows is a grants-of-rights clause. Provision eighteen in the sample contract details a reversion clause.

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### *Warranty Clause*

This clause provides catch-all protection for the music publisher. In it, the composer promises four different things: first, that this song is an original work which in no way infringes on any other work; second, that you have not entered into a contract with anyone else regarding this work; third, that no other person or company has a claim to this work other than you; and fourth, that you can sell or transfer ownership of the work without getting permission from anybody else. Provision two of the sample contract details the warranty clause.

### *The Royalties Provision*

This clause contains a promise from the publisher to pay the songwriter a certain specified percentage of any revenues created from the song. In most cases, publishers split all categories of royalties in half. This section is usually long as it contains subparagraphs that detail a specific type of royalty. Provision three of the sample contract discusses royalties.

### *Royalties Statement and Payment*

This clause details when the publisher will account and pay to the songwriter for a given period. Usually, publishers pay songwriters every six months, within forty five days of the end of the accounting period. It is important to negotiate for specific terms a songwriter can deal with. Songwriters frequently complain that publishers hold royalties until the very end of the provision. Royalties earned in December, but not collected until January can be held until the end of August by the publisher. Advances are an option, but most publishers are under no obligation to pay by any other means than those specified in the contract. Provision four of the sample contract details the royalties statement and payment schedule.

### *Indemnity Clause*

This clause, in conjunction with the warranty clause, holds the songwriter legally and financially responsible for claims of copyright infringement made against the song. It holds the publisher free from liability. The clause is usually short but contains very dense language. Note that this section may claim that the publisher can withhold royalties until any claims of copyright infringement are resolved. This can be a huge liability for the songwriter, so be sure you can prove your work is original. Provision eight of the sample contract details the indemnity clause.

Working with music publishers and contracts can be a daunting task. But several resources exist for artists to inform and protect themselves. The Songwriters Guild of America ([www.songwriters.org](http://www.songwriters.org)) is an excellent resource for songwriters. They provide information on single song agreements as well as a network of songwriters who have experience with various music publishers. You can use the Guild's standard contract as a basis for comparison for any agreements offered to you. You can also have trained members of the Guild review any agreements you receive.

PVLA also offers a variety of services to artists and arts and cultural organizations. PVLA can partner songwriters with volunteer attorneys to answer specific questions about your contract. PVLA can also assist in the review of a publishing agreement. Just remember, we are not an emergency service, so call in advance to avoid being in a time crunch!

This pamphlet is merely a guide; it is not intended to replace professional legal advice. If you have any questions about this sample contract, or about any other arts-related legal issue, contact:

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# *Music Publishing - A Sample Contract Between Composer and Publisher*

## *Sample Contract*

**1. AGREEMENT:** entered into this (insert date) by and between (insert name) and (insert name) (hereinafter individually and collectively referred to as "Publisher") and (insert name) (hereinafter individually and collectively referred to as "Composer").

**2. RIGHTS IN COMPOSITION:** Composer hereby irrevocably sells, assigns, transfers, and delivers to Publisher, its successors and assigns, the original musical composition written and composed by Composer, presently entitled (insert title of composition) (the "Composition"), including the title, words, and music thereof; all world-wide rights therein; all copyrights therein and thereto; all registrations with respect thereto; and the exclusive right to secure copyrights and any extensions and renewals of copyrights in the same and in any arrangements and adaptations thereof, all throughout the world; and any and all other rights, claims, and demands that Composer now has or to that he might be entitled or that he hereafter could or might secure throughout the world with respect thereto if these presents had not been made, and to have and to hold the same absolutely and forever unto Publisher, its successors and assigns, subject only to any existing agreements between Composer and Publisher and (insert name of performing rights society, e.g. ASCAP, BMI, or SESAC).

**3. WARRANTIES:** Composer hereby warrants and represents that the Composition is an original work, that neither the Composition nor any part thereof infringes upon the title, literary or musical property, or copyright of any other work nor the statutory, common law or other rights (including rights of privacy) of any person, firm, or corporation; that he is the sole writer and composer and the sole owner of the Composition and of all the rights therein; that he has not sold, assigned, transferred, hypothecated, or mortgaged any right, title, or interest in or to the Composition or any part thereof or any of the rights herein conveyed; that he has not made or entered into any contract with any other person, firm, or corporation affecting the Composition or any right, title, or interest therein or in the copyright thereof; that no person, firm, or corporation other than Composer has or has had claims or has claimed any right, title, or interest in or to the Composition or any part thereof, any use thereof, or any copyright therein; that the Composition has never been published; and that Composer has full right, power, and authority to make this present instrument of sale and transfer.

**4. COMPENSATION:** In consideration of this contract and of the rights and interests hereby conveyed and granted, Publisher agrees to pay to Composer the following royalties in respect of the Composition, provided Composer has not breached the terms of this agreement:

- (a) \_\_\_\_\_ cents (\$.XX) per copy for each piano copy of the Composition, and for each dance orchestration of the Composition printed, published, and sold in the United States and Canada by Publisher or its licensees, for which payment has been received by Publisher, after deduction of reasonable returns.
- (b) \_\_\_\_\_ percent (XX%) of the wholesale selling price upon each printed copy of each other arrangement and edition of the Composition, printed, published, and sold in the United States and Canada by Publisher, for which payment has been received, or been credited to Publisher's account, after deduction of returns, except that in the event the Composition shall be used or caused to be used, in whole or in part, in conjunction with one or more other Compositions in a folio, album, or other publication, Composer shall be entitled to receive that proportion of said royalty that the Composition shall bear to the total number of compositions contained in such folio, album, or other publication.
- (c) Fifty percent (50%) of any and all net sums actually received (less any cost for collection) by Publisher in the United States from the exploitation in the United States and Canada by licensees of Publisher of mechanical rights, electrical transcription, and reproducing rights; motion picture and television synchronization rights; and all other rights in the Composition (except print rights that are recovered in (a) and (b) above and public performance rights, which are covered in (d) below), whether or not such licensees are affiliated with, owned in whole or in part by, or controlled by Publisher.
- (d) Composer shall receive his public performance royalties throughout the world directly from his own affiliated performing rights society and shall have no claim whatsoever against Publisher for any royalties received by Publisher from any performing rights society that makes payment directly (or indirectly other than through Publisher) to writers, authors, and composers. If, however, Publisher shall collect both the Composer's and Publisher's share of performance income directly and such income shall not be collected by Composer's public performance society, then Publisher shall pay to Composer fifty percent (50%) of all such net sums that are received by Publisher in the United States from the exploitation of such rights in the Compositions throughout the world.

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- (e) Fifty percent (50%) of any and all net sums, after deduction of foreign taxes, actually received (less any reasonable costs for collection) by Publisher in the United States from sales, licenses, and other uses of the Composition in countries outside of the United States and Canada (other than public performance royalties as hereinabove mentioned in Sub-clause 3(d)) from collection agents, licensees, subpublishers, or others, whether or not same are affiliated with, owned in whole or in part by, or controlled by Publisher.
- (f) Publisher shall not be required to pay any royalties on professional or complimentary printed copies of the Composition or copies of mechanical derivatives of the Composition that are distributed gratuitously to performing artists, orchestra leaders, and disc jockeys or for advertising, promotional, or exploitation purposes. Furthermore, no royalties shall be payable to Composer on consigned copies of the Composition unless paid for, and not until such time as an accounting therefore can properly be made.
- (g) If the Composition does not now have lyrics, and lyrics shall hereafter be added by Publisher, then the above royalties shall be divided equally between Composer on the one hand and the writer or writers of the lyrics on the other hand.
- (h) Except as herein expressly provided, no other royalties or monies shall be paid to Composer. In no event shall Composer be entitled to share in any advance payments, guarantee payments, or minimum royalty payments that Publisher may receive in connection with any subpublishing agreement, collection agreement, licensing agreement, or other agreements covering the Composition.

**5. STATEMENTS:** Within ninety (90) days after the last days of June and December in each year, Publisher will prepare and furnish semi-annual statements to Composer hereunder, and each such statement shall be accompanied by payment of any and all sums shown to be due thereby, after deduction of any and all recoupable costs or advances to Composer under this or any other agreement between Composer and Publisher.

In respect to print royalties only, Publisher shall have the right to retain as a reserve against returns, such portion of payable royalties as shall be necessary in its best business judgment.

Each statement rendered by Publisher to Composer shall be binding upon Composer and not subject to any objection by Composer for any reason unless specific written objection, stating the basis thereof, is sent by Composer to Publisher within two (2) years after the date that statement is rendered.

An independent certified public accountant on Composer's behalf may, at Composer's expense, at reasonable intervals (but not more frequently than once each year), examine Publisher's royalty books and records insofar as same concern the Composition, during Publisher's usual business hours and upon reasonable notice, solely for the purpose of verifying the accuracy of any statement rendered to Composer hereunder. Composer may not examine Publisher's books or royalty records relating to a specific accounting period or periods more than once.

In respect of any royalty statement or other accounting rendered or which was to be rendered by Composer hereunder (or in respect of the accounting period to which it relates or was to relate), suit against Publisher shall be barred unless Composer commences an action, suit or proceeding against Publisher in a court of competent jurisdiction within two and one-half (2-1/2) years after the date the applicable statement is rendered.

If Publisher shall not receive payment in United States dollars in the United States in respect of any exploitation of the Composition, then royalties in respect thereof shall not be credited to Composer's royalty account hereunder. Publisher shall, however, if Publisher is able to do so, accept such payments in foreign currency and deposit in a foreign bank or other depository, at Composer's expense, in such foreign currency such portion thereof, if any, as shall equal the royalties that would have actually been payable to Composer hereunder in respect of such exploitation had such payments been made to Publisher in United States dollars in the United States, and Publisher shall notify Composer thereof promptly. This deposit shall fulfill Publisher's royalty obligations hereunder as to such exploitation.

**6. NAME AND LIKENESS:** Composer grants to Publisher the perpetual right to use and publish and to permit others to use and publish Composer's name (including any professional name heretofore or hereafter adopted by Composer), likeness, and biographical material, or any reproduction or simulation thereof, and the title of the Composition in connection with the printing, sale, advertising, distribution, and exploitation of music, folios, recordings, performances, player rolls, and otherwise concerning the Composition, and for any other purpose related to the business of Publisher, its associates, affiliates, and subsidiaries, or to refrain therefrom.

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**7. PUBLISHER'S RIGHTS:** Composer acknowledges that Publisher has the right hereunder, in its sole discretion, to substitute a new title or titles for the Composition; to make changes, arrangements, adaptations, translations, dramatizations, and transpositions of the Composition, in whole or in part, and in connection with any other musical, literary, or dramatic material; and to add new lyrics to the music of the Composition or new music to the lyrics of the Composition. Composer waives any and all claims that he has or may have against Publisher and its associates, affiliates, and subsidiaries because the title of the Composition may be the same as or similar to that of any other musical compositions heretofore or hereafter acquired by Publisher.

**8. POWER OF ATTORNEY:** Composer does hereby irrevocably empower and appoint Publisher, or any of its officers, Composer's true and lawful attorney (with full power of substitution and delegation) in Composer's name, and in Composer's place and stead, or in Publisher's name, to take and do such action, and to make, sign, execute, acknowledge, deliver, and record any and all instruments or documents that Publisher, from time to time, may deem desirable or necessary to vest in Publisher, its successors, assigns and licensees, any of the rights granted by Composer hereunder, including, without limitation, such instruments or documents required to secure to Publisher copyright registration and protection for the Composition for the full term of copyright and for any renewals or extensions thereof. Publishers will allow the writer the first opportunity to sign any such documents, provided that the writer signs such documents within a fixed period of time after Publisher asks the writer to sign these documents.

**9. INDEMNITY:** Composer hereby indemnifies, saves and holds Publisher; its successors and assigns; and its parent, subsidiary, and affiliated companies and its and their respective officers, employees, and agents harmless from any and all liability, claims, demands, loss, and damage (including, without limitation, attorneys' fees and court costs) arising from or connected with any claim, demand, or action or by a third party that is inconsistent with any of the warranties, representations, or agreements made or assumed by Composer in this Agreement.

Pending the determination and settlement of any claim, demand, or action that is inconsistent with any of the warranties, representations, covenants, or agreements made or assumed by Composer in this Agreement, Publisher shall have the right, at Publisher's election, to withhold payment to Composer of any monies otherwise payable to Composer hereunder in an amount reasonably related to the amount of that claim, demand, or action and the reasonably estimated amount of Publisher's costs, expenses, or other damages in connection therewith (including, without limitation, legal costs and attorneys' fees). Upon the resolution of any claim, monies withheld by Publisher as aforesaid may be used by Publisher to satisfy Composer's indemnity obligations hereunder and to the extent that the withheld sums exceed such indemnity obligations they shall be credited to Composer's royalty account hereunder.

Publisher shall have the right, at Publisher's election and without limitation for any reason, to withhold and recoup and recover the amount of any and all costs and expenses (including, without limitation, legal costs and attorneys' fees) that are paid or incurred by Publisher or on Publisher's behalf to defend, respond to, negotiate or prosecute any claim, demand, or action that is inconsistent with any of Composer's warranties, representations, covenants, or agreements hereunder from any monies payable to Composer hereunder or under any other agreement to which Publisher or Publisher's affiliates are a party. Composer shall reimburse Publisher, on demand, for any payments made by Publisher at any time with respect to the actual amount of any claim, demand, or action that is inconsistent with any of Composer's warranties, representations, covenants, or agreements hereunder. Composer shall have the right, at Composer's expense, to participate in the defense of any such claim, demand, or action with counsel of Composer's choice. The defense and settlement of that claim, demand, or action, however, shall be controlled and determined in Publisher's sole discretion.

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**10. ACTIONS:** Publisher may take such action as it deems necessary, either in Composer's name or in its own name, against any person to protect the rights and interest acquired by Publisher hereunder. Composer will, at Publisher's request, cooperate fully with Publisher in any controversy that may arise or litigation that may be brought concerning Publisher's rights and interests acquired hereunder. Publisher shall have the right, in its absolute discretion, to employ attorneys and to institute or defend any action or proceeding and to take any other proper steps to protect the right, title, and interest of Publisher in and to the Composition and every portion thereof and, in that connection, to settle, compromise, or in any other manner dispose of any matter, claim, action, or proceeding and to satisfy any judgment that may be rendered, in any manner, as Publisher in its sole discretion may determine. Any legal action brought by Publisher against any alleged infringer of the Composition shall be initiated and prosecuted by Publisher, and if there is any recovery made by Publisher as a result thereof, after deduction of the expense of litigation, including but not limited to attorney's fees and court costs, a sum equal to fifty percent (50%) of such net proceeds shall be credited to the Composer's royalty account.

**11. COMPOSER DEFINED:** The term "Composer" shall be understood to include all the writers and composers of the Composition. If there be more than one, the covenants herein contained shall be deemed to be both joint and several on the part of the writers and composers and the royalties herein above specified to be paid to Composer shall, unless a different division of royalties be specified, be due to all the writers and composers collectively, to be paid by Publisher in equal shares to each.

**12. ASSIGNMENT:** Publisher shall have the right to assign this Agreement and any of its rights hereunder and to delegate any of its obligations hereunder in whole or in part, to any person, firm or corporation. Composer shall not transfer or assign this contract, or any interest therein, or any sums that may be or become due hereunder, without Publisher's prior written consent, which consent shall be neither unreasonably withheld nor delayed.

**13. ENTIRE AGREEMENT:** This contract contains the entire understanding between parties, and all of its terms, conditions, and covenants shall be binding upon and shall inure to the benefit of the respective parties and their heirs, successors, and assigns. No modification or waiver hereunder shall be valid unless the same is in writing and is signed by the party sought to be bound.

**14. GOVERNING LAW:** This Agreement has been entered into and delivered in the State of [insert Publisher's state] and the validity, interpretation and legal effect of this Agreement shall be governed by and construed in accordance with the internal laws of the State of [insert Publisher's state] applicable to contracts entered into and performed entirely within the State of [insert Publisher's state]. Only the [insert Publisher's state] courts (state and federal) will have jurisdiction over any controversies regarding this Agreement, and the transactions contemplated by this Agreement; any action or other proceeding that involves such a controversy will be brought in those courts, in [insert Publisher's city or county], and not elsewhere. The parties hereto hereby irrevocably submit to the jurisdiction of the [insert Publisher's state] courts (state and federal) in any such action or proceeding and irrevocably waive any right to contest the jurisdiction (in rem or in personam) or power or decision of that court within or without the United States other than appropriate appellate courts having jurisdiction over appeals from such court(s). The parties hereto also irrevocably waive any defense of inconvenient forum to the maintenance of any such action or proceeding. Any process in any action or proceeding may, among other methods, be served upon either party by delivering it or mailing it in accordance with the notice provisions below. Any such delivery or mail service shall be deemed to have the same force and effect as personal service within the State of [insert Publisher's state].

**15. WRITTEN NOTICES:** All notices, statements and payments required or desired to be given hereunder shall be sent to the applicable party at the address set forth herein or to such other address as such party may hereafter designate by notice in writing to the other party. Notices will be sent either by certified mail, return receipt requested (and in the case of notices sent to or from a location outside the United States, by air mail), or by personal delivery or air express (e.g., Federal Express, D.H.L., or any other similar type of first class overnight courier service that gives the sender a proof of delivery) and will be deemed served when the same is mailed, except that (a) all materials personally delivered will be deemed served when received by the party to whom addressed, (b) overnight air express materials will be deemed served the next business day after delivery to the air express company, (c) notices of change of address will be effective only from the date of receipt, and (d) royalty statements will be sent by regular mail and will be deemed rendered when mailed.

**16. SINGULAR INCLUDES PLURAL:** The use of the singular in this Agreement shall apply to and mean the plural where appropriate.

**17. DIVISION OF ROYALTIES:** Composer shall divide Writer's royalties as follows: (a) (name of writer): (percentage); (b) (name): (percentage); (c) (name): (percentage).

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**18. ADVANCE:** Publisher will make a non-returnable advance in the sum of \$\_\_\_\_\_ (\$XXX.XX) to Composer on execution hereof, which advance will be recoupable from the royalties payable to Composer under this or any other agreement between Writer and Publisher. If, and to the extent, Publisher produces demonstration recordings of the Composition (which Publisher shall not be obliged to do), (optional one-half ( 1/2 ) of) the costs of producing such demos shall be recoupable from the royalties payable to Composer under this or any other agreement between Composer and Publisher.

**19. REVERSION OF RIGHTS:** If Publisher fails to secure a cover recording of the Composition within three (3) years from the date of this Agreement, Composer may, during the fifteen (15) days following the expiration of said three (3) year period, demand the return of the Composition in writing and if Publisher receives such notice within said fifteen (15) day time period, Publisher agrees to promptly reassign the Composition and all of Publisher's rights therein to Composer and to execute any documents necessary to effect such conveyance. However, Publisher shall not be obliged to reassign the Composition to a Composer until such time as Composer shall repay to Publisher any advances or unrecouped demonstration recording costs chargeable to Composer.

**20. SUBPUBLISHING RIGHTS:** Publisher shall have the right to enter into subpublishing and collection agreements with its affiliated or related companies for countries of the world outside of the United States, provided, however, that any such agreement shall be on a basis no less favorable to Publisher than an agreement providing for the Publisher to receive in the United States not less than fifty percent (50%) of all income earned by the Composition outside the United States, except in the area of printed music, where Publisher shall receive a royalty on printed editions of not less than ten percent (10%) of the suggested retail selling price on printed editions, pro-rated where appropriate.

IN WITNESS WHEREOF, the parties hereto have executed this contract on the date hereinabove set forth.

"Publisher"

"Composer"

Address

Address

Soc. Sec. #

Soc. Sec. #

Birthdate

Birthdate

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