

**This document (on the following 4 pages) is provided for Members of the Entertainment Agents' Association Ltd as a suggested basic Terms of Business declaration. Members are free to use the document 'as is' or in an extended form\*\* as may be appropriate to their own business. It should be noted however that the form and phraseology of this document is the copyright of the Association and is ONLY available for use by fully paid up Members of the Association.**

**It is NOT available for use by any agent / agency whose Membership has lapsed or who is not anyway a Member of the Association.**

\*\*If you ADD clauses to this document, you should make it clear that such clauses are of your own devising and that they are **additional** to those in the Standard Association Terms of Business

If you AMEND any of the standard clauses, then you should make it clear that the amended part(s) is/are NOT standard Association clauses, but are of your own devising

If you make any amendments or additions to this document which change the intended basis of the document as a whole or radically alter the sense or intention of any standard clause(s), then you **may not** then refer to this document as being the standard Association Terms of Business for use between an Employment Business and an Artist.

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**These Terms of Business now supersede Version 4.**

### April 2018

Please note the amendment to **Clause 6** which refers to the prohibition of Artists making derogatory comments on any form of social media

PLEASE NOTE THE FOLLOWING POINTS ARE VERY IMPORTANT AND EXPLAIN THE UPDATES TO CLAUSES 20 AND 23 MADE IN OCTOBER 2009.

Clause 20 has been amended to include reference to artists carrying the relevant music licence should a licence be required. An advisory note has been added to Clause 23 covering the 30 day termination period.

Clause 26 has proved to be the most difficult to retain in a useful form for those Members who wish to have recourse to such a 'device'. There will be many members who do NOT wish/need to include this clause – if that is the case, please delete the preamble to Clause 26 AND Clause 26 itself in its entirety. Then renumber clauses 27 to 26 and 28 to 27 respectively. You will also need to delete the bracketed, red, italicised words (*save for clause 26 which will not apply*) that appear in the paragraph following the final clause. i.e. the paragraph commencing "We would appreciate your signing and returning ... etc"

If you DO wish to keep the clause, then please be aware of the following:

- 1) You must be scrupulously correct and fair over its application.
- 2) You should be aware that you **MUST** have the Artist's signature and return of a copy of the Terms to be able to apply this clause otherwise BIS will consider that the Regulations have been breached if you apply it..
- 3) Having made the two points above, think through the implications of why any Artist might wish to delete this clause at the beginning of your Agent/Artist

relationship.

As always, to understand fully your rights and obligations as set out in Terms of Business, it is vital that you are fully conversant with their content and implications. The wide differences in agency practice across the numerous sectors of the industry suggest that, whilst this 'template', as provided by your Association, may be completely acceptable 'as is' for YOUR type of operation, it is intended to be a safe guide to your constructing suitable Terms of Business for your agency. It is not an inviolate standard that MUST be used by everyone!

We recommend that Members commence using these new Terms of Business with all new Artists with whom they begin booking. Where Terms of Business are already in place with Artists, you may perhaps choose to leave them 'as is' or not to take any action under the old Clause 26.

If it has not been your practice to apply this measure you MAY be OK in leaving your old Terms in place – although you would be wise, if entering into more formal representation deals in the future, to ensure that any documentation covering such deals states very specifically that such new agreements supersede ANY and ALL previous agreements, oral or written, particularly with regard to the term of the agreement and/or notice period (if any) therein.

Equally, you may choose to write to all Artists with whom you have Terms of Business in place, and intend to do further business in the future, either:

- a) Providing a full copy of the new Terms to cover all new business done thenceforward with that Artist OR
- b) Stating that Clauses 6, 20 and (if appropriate) Clause 26 will now be replaced by the text ... then include or attach a written copy of the new wording for the Clause(s) – including, if you do use Clause 26, its preamble.

# Terms of Business

We, ..... (name of Agency), are Members of the Entertainment Agents' Association Ltd and trade as an Employment Business in compliance with the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as detailed in Statutory Instrument 2003 No. 3319).

To.....

Date .....

.....

Trading and/or known as

.....

.....

**We write to confirm our terms of business in respect of the Artist known as ..... (you) in relation to contractual arrangements and engagements for your services within the entertainment industry (Engagements). You will supply your services to us and we will supply your services to third party hirers.**

1. You have made yourself known to us as a ..... and have provided/undertake to provide the personal details requested by us to enable us, with your agreement, to introduce, negotiate and secure Engagements for you as appropriate to your talent, capabilities and qualifications.
2. You will provide your services to us and we will contract directly with any hirer for the provision of your services.
3. These terms of business together with any specific terms we agree in relation to each such Engagement will be the terms upon which you supply your services to us. The specific terms we agree for each Engagement will, in these terms of business, be called **Terms**.
4. When the Terms have been negotiated and accepted by you and us, you will be under an obligation to perform at that Engagement in accordance with the Terms and to provide your services, through us, to the hirer. We will provide you with written confirmation of the Terms for each Engagement you have agreed to undertake. When agreed by you and us the Terms will be incorporated into these terms of business for the purpose of that Engagement.
5. You will undertake and perform at each Engagement to the best of your ability. In undertaking any Engagement you will comply with the reasonable instructions of both us and the hirer.
6. You agree that you will refrain from making any adverse, negative or derogatory comments relating to any engagement negotiated by us (however minor), in any form, including postings on social networking sites prior to, during or following any engagement negotiated by us. Failure to comply may lead to cancellation of future engagements and/or legal proceedings by slandered or libelled parties.
7. We will agree the fee we pay you for that Engagement as part of the Terms (**Fee**). Unless we agree otherwise in writing, we will pay you the Fee within .....days of the date of the Engagement, and any applicable VAT following receipt of an invoice from you, less any monies properly due to us. You acknowledge that we will be paid by the hirer directly for the provision of your services and you agree to pay to us any money paid by or on behalf of the hirer directly to you or to any person or entity on your behalf in relation to the Engagement. We will from time to time agree a minimum level of Fee you will be prepared to accept for any Engagement and we will not, except in exceptional circumstances, refer to you any Engagement where the Fee is less than the minimum agreed.
8. The Fee is exclusive of VAT. We will pay any VAT properly payable on the Fee upon receipt from you of a valid VAT invoice on or before the date on which we would pay the Fee. You acknowledge that we will withhold from the Fee any sums we are required by law to withhold or deduct and pay such withholding or deduction to the relevant authority. In such a case, we will provide you with relevant documents evidencing the withholding or deduction.

9. This is a contract for services and not a contract of service (ie this is not an employment contract) and it is not intended to form the basis of an employer/employee relationship between you and us. Accordingly, you are not entitled to any holiday or holiday pay in relation to the provision of your services or your undertaking of any Engagement. If we are required by law or in any agreement with any union or other body to pay you holiday pay, the Fee will be deemed to include such holiday pay. You are responsible for the payment of any tax (whether PAYE or otherwise), national insurance or other payments on the Fee.
10. We will pay you the Fee whether or not we receive payment from the hirer. However, if you do not attend any Engagement for whatever reason (except only where your failure to attend and perform at an Engagement is our fault) you will not be paid the Fee for that Engagement.
11. If you do not honour any Engagement and your failure to honour such Engagement causes us to lose revenue, you will be required to make good such loss, except where your failure to perform is caused by reason of illness or by "Force Majeure" (eg national mourning, war, fire, strike or lock-out directly affecting the venue or by order of any licensing or public authority having jurisdiction). In the case of illness you will be expected to provide us with a medical certificate within seven days.
12. Except as otherwise agreed (or as set out in these terms of business), in the event that any Engagement is cancelled by the hirer, we will use our reasonable endeavours to find an alternative Engagement for you on the night(s) of the original Engagement on similar terms to the Engagement that has been cancelled. If we find any alternative Engagement, you agree to attend that Engagement on the new Terms. In addition, you will use your reasonable endeavours to find an alternative Engagement on those nights. If neither of us are able to find any alternative/replacement Engagement and the cancellation has taken place less than 6 months from the date the Engagement(s) were due to take place, we shall pay you as follows:
  - a. where the hirer cancels the Engagement less than 6 months but more than 3 months prior to the date of the Engagement, 25% of the Fee; or
  - b. where the hirer cancels the Engagement less than 3 months but more than 1 month prior to the date of the Engagement, 50% of the Fee; or
  - c. where the hirer cancels the Engagement less than 1 month prior to the date of the Engagement, the Fee less any savings (including but not limited to travel costs) you have made by not attending the Engagement.
13. Any payment made to you by us prior to the Engagement shall be at our discretion and be deemed to be in the form of a loan, repayable immediately on demand, at our sole discretion. You hereby give us permission to reimburse ourselves for any such loan(s) from any Fee we are to pay to you at any time. In the event that you do not perform at any Engagement, you will repay to us such loan(s) within 7 days of the date that the Engagement was due to take place.
14. We will keep details of contracts, confirmations and/or letters of agreement for work for which we supply you for 1 year after the completion of the relevant Engagement. Such records may be in written or electronic form.
15. (a) You consent to us processing both the personal information you provide us with and the information we obtain during our appointment. We will be required (and you agree that we may) provide some or all of the personal information that you provide to us to each potential hirer. Aside from this, we will keep the personal information you provide us on file and will use it only as necessary to secure work for you. We will not otherwise divulge such information to third parties without your express consent except where we are required to make any such disclosure to your professional body, required to make any such disclosure by law or as otherwise set out in these terms of business.
15. (b) We are registered with the Information Commissioners Office (ICO) to collect, retain, store and pass on personal information on Artists, Hirers, Suppliers and other Agents in accordance with the General Data Protection Regulations 2018. Our registration Number is:.....and our Data Processor is:.....
16. You must be aware that if we receive any information about you that indicates that you are unsuitable for any Engagement, we are under a legal obligation to notify the hirer on the same day

as discovery, or at the latest the next business day **and** either terminate the supply of your services to the hirer or to investigate the information we receive. You will on request provide us with such information and documents we require to enable us to properly investigate such information. Following the investigation we may still be required to terminate the supply of your services to the hirer. You will not be paid any Fee for such Engagement.

17. Please note that in seeking suitable work for you, we may offer your services to other agencies and, where appropriate, will authorise such agencies to collect any fees payable in relation to any Engagement and pay it to us. You agree that we may “sub-contract” our services to other agencies and we will endeavour to ensure that the second agency is ‘suitable’ (as defined by the Regulations). We may provide such second agency with such of your personal details as are required to secure the work in question.
18. Please note that in seeking suitable work for you we will endeavour to ensure that the hirer is ‘suitable’ (as defined by the Regulations).
19. We will use our reasonable endeavours to obtain, and make you aware of, any relevant information and/or issues relating to health and safety and any legal requirements you must comply with in any Engagements we supply you for. You, in turn, undertake to keep us fully informed of any aspects of, or changes to, your act or presentation which may have health and safety (or other risk) implications of which we should inform potential hirers.
20. It is your responsibility to ensure that your equipment (where applicable) is maintained in a safe condition, particularly electrical equipment which should be PAT (Portable Appliance Testing) certified. It is also your responsibility to arrange and keep current the appropriate music licence(s) if you are either playing records or are using music copied to other media for public performances.
21. It is your responsibility to arrange, and keep current, suitable Public Liability insurance. We recommend that this cover should be in the sum of not less than £5,000,000.
22. If we negotiate an Engagement for you and we subsequently discover your services will be supplied for that Engagement as a result of a previously engaged artiste taking part in an official strike or official industrial action at the same Engagement, we are required by law to cancel the supply of your services for that Engagement. In such a case we will not pay you the Fee.
23. Our appointment under these terms of business is non-exclusive and you will be entitled to appoint other agents on your behalf. We do not give you any guarantees as to the level of work or number of Engagements that we will introduce to you. You can terminate our appointment by giving us no less than 30 days notice in writing of your intention to do so. We can terminate our appointment by giving you no less than 30 days notice of our intention to stop acting for you. You will not be entitled to terminate these terms of business (or the relevant Terms) in relation to any Engagement for which you have agreed to provide your services.

In the event that we have between us, already in existence, and/or later agree, any sort of exclusive, and/or sole representation and/or management agreement which contains different terms of obligation and/or of notice or termination from those detailed in the preceding paragraph then the preceding paragraph shall not and/or shall no longer apply and, specifically, the 30 day notice detailed shall not apply.

24. If any Engagement requires you to work with any persons under the age of 18, you will, on request, provide us with such additional information as we require to ensure that you are suitable for that position.
25. If any Engagement requires that you work away from home, we must ensure that you and/or the hirer have arranged suitable travel arrangements. To that end you will provide us with such information as we require in relation to those arrangements.

**NB You may delete the following clause (26) before signing and returning a copy of these Terms of Business if you do not want to grant us this particular permission.**

**However, if rejecting the clause you MUST delete it AND sign and return the copy of these Terms.**

26. We are a member of The Entertainment Agents' Association Ltd and reserve the right to advise fellow members of that Association (via the Council of The Entertainment Agents' Association) if you fail to comply with these terms of business. Such disclosures, their content and the form they are in, will be at the discretion of The Entertainment Agents' Association.

27. If any provision of this agreement should be held invalid it shall to that extent be severed and the remaining provisions shall continue to have full force and effect.

28. This agreement shall be construed in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the English Courts.

**We would appreciate your signing and returning the attached copy of this letter by way of your acknowledgement of its Terms of Business. PLEASE NOTE however, that if we introduce and/or negotiate and you accept Engagements from us, then these are the Terms of Business (save for clause 26 which will not apply) which will apply to our trading together whether or not you have signed and returned a copy of this letter.**

Yours sincerely ..... Acknowledged .....

Name (block caps) ..... Date .....

**If you are under 18, the following must be completed:**

Date of Birth of applicant ...../...../.....

I am the Mother / Father / Guardian (delete as applicable) of ..... and have custody and control of ..... who lives with me at the above address (or specify other address)

I agree that the terms of business are to the benefit of ..... and are in his/her best interests.

Any restrictions imposed by these terms of business are fair and customary and are outweighed by the advantages immediately and potentially available to .....

Signature ..... Name (block caps) .....

Date .....