

Legalese of Music
Kevin Hackler and Jill Terhaar Lewis

Presentation Materials

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Glossary

ASCAP: The American Society of Composers, Authors, and Publishers (ASCAP) is an American non-profit performance-rights organization (PRO) that protects its members' musical copyrights by monitoring public performances of their music, whether via a broadcast or live performance, and compensating them accordingly.

https://en.wikipedia.org/wiki/American_Society_of_Composers,_Authors_and_Publishers

BMI: Broadcast Music, Inc. (BMI) is one of the four major United States performing rights organizations, along with ASCAP, SESAC, and GMR. It collects license fees from businesses that use music on behalf of songwriters, composers, and music publishers and distributes them as royalties to those members whose works have been performed. In FY 2019, BMI collected \$1.28 billion in revenues and distributed \$1.196 billion in royalties. BMI's repertoire includes over one million songwriters and 15 million compositions.

https://en.wikipedia.org/wiki/Broadcast_Music,_Inc.

Forbearance: A refraining from the enforcement of something (as a debt, right, or obligation) that is due.

<https://www.merriam-webster.com/dictionary/forbearance#legalDictionary>

Force Majeure an event (as war, labor strike, or extreme weather) or effect that cannot be reasonably anticipated or controlled.

<https://www.merriam-webster.com/dictionary/force%20majeure#legalDictionary>

Harry Fox Agency: is a provider of rights management and collector and distributor of mechanical license fees on behalf of music publishers in the United States.

https://en.wikipedia.org/wiki/Harry_Fox_Agency

Hold Harmless Clause: of, relating to, or being an agreement between parties in which one assumes the potential liability for injury that may arise from a situation and thus relieves the other of liability.

<https://www.merriam-webster.com/legal/hold%20harmless>

Indemnification/Indemnity: Security against hurt, loss, or damage.

<https://www.merriam-webster.com/dictionary/indemnity#legalDictionary>

Limitation of Liability: A rule that controls or reduces someone's legal and financial responsibility for a problem, such as damage, a debt, or a mistake.

<https://dictionary.cambridge.org/us/dictionary/english/limitation-of-liability>

Liquidated Damages: A liquidated damages clause specifies a predetermined amount of money that must be paid as damages for failure to perform under a contract.

<https://www.nolo.com/legal-encyclopedia/when-are-liquidated-damage-provisions-enforceable.html>

Mechanical License: In copyright law, a **mechanical license** is a license from the holder of a copyright of a composition or musical work, to another party to "cover song", reproduce, or sample a portion of the original composition. It applies to copyrighted work that is neither a free/open source item nor in the public domain.

https://en.wikipedia.org/wiki/Mechanical_license

Parol Evidence Rule: a rule of document interpretation: parol evidence offered to contradict or modify a writing (as a contract or will) is not admissible when the writing is unambiguous or was intended to be a final expression of the author's wishes.

<https://www.merriam-webster.com/legal/parol%20evidence%20rule>

Severability: a clause (as in a contract) which states that provisions are severable.

<https://www.merriam-webster.com/legal/severability%20clause>

ARTIST PERFORMANCE AGREEMENT

This Agreement, entered into on this ____ day of [Month], [Year], in Charleston, South Carolina, by and between _____ ("Artist") and _____ ("Purchaser"), upon the following terms and conditions:

WHEREAS, Purchaser desires to hire Artist, as an independent contractor, to provide the Performance generally described below; and

WHEREAS, Artist desires to provide such Performance;

The parties agree as follows:

1. **PERFORMANCE OF ARTIST.** Purchaser hereby engages Artist to perform at [event] on [Month] [day], [year] at [location], in [City, State] (the "Performance"). Artist shall perform for [three] hours, beginning at _____ [p.m.] and ending at _____ [p.m.] Artist shall take [two (2)] breaks during the performance, not to exceed [fifteen (15)] minutes each. Artist shall perform in its typical musical style, which is generally described as [jazz, blues, and swing]. Artist shall provide all musical and sound equipment for Artist's performance. Artist shall provide a [three] piece band consisting of [guitar, bass, and drums].
2. **ARTIST'S COMPENSATION.** In consideration of Artist's services hereunder, Purchaser agrees to pay Artist a fee in the amount of [One Thousand Two Hundred Dollars (\$1,200.00)]. Purchaser agrees to pay a deposit of [Five Hundred Dollars (\$500.00)] due upon execution of this Agreement. Purchaser agrees to pay the remaining balance of [Seven Hundred Dollars (\$700.00)] at least [two (2)] weeks prior to Artist's Performance. Upon payment of these sums of money to Artist, Purchaser shall not be entitled to a refund except as set forth in Paragraph 4 herein.
3. **PURCHASER OBLIGATIONS.** Purchaser shall be responsible for the acquisition of all required permits and licenses required for the contracted Performance. Purchaser accepts all responsibility for any fines incurred, should the required permits, licenses, and taxes not be obtained and paid. Purchaser shall be responsible for providing a safe and appropriate performance space for Artist. In the event of inclement weather, Purchaser shall provide a performance space that shields Artist from the inclement weather. Artist, in its sole discretion, may refuse to perform if there is a danger of damage to persons or property due to the unavailability of a suitable performance space that protects Artist and its property from inclement weather. If Artist determines that the performance space is not safe as contemplated in this paragraph, Artist may stop the performance and require Purchaser to relocate the band to an alternate performance space that is safe prior to resuming the performance. Any such determination by Artist shall not be deemed a breach of this Agreement and shall not affect any of the other rights and obligations set forth in this Agreement.
4. **TERMINATION.** Purchaser may terminate this agreement in writing at any time. Purchaser understands and agrees that by accepting this Agreement Artist has become unavailable for other bookings, and that any termination of this Agreement would cause Artist to incur damages. In the

event that Purchaser terminates this Agreement prior to *[Date]*, Artist shall return the *[Five Hundred Dollar (\$500.00)]* deposit. In the event that Purchaser terminates this Agreement on or following *[Date]*, Artist shall retain the *[Five Hundred Dollar (\$500.00)]* deposit as liquidated damages and not as a penalty. In the event that Purchaser terminates this agreement on or after *[Date]*, Purchaser shall be obligated to compensate Artist the full amount due under this Agreement as liquidated damages and not as a penalty. In the event that Artist terminates this Agreement for any reason except as specifically allowed herein, Artist shall return the *[Five Hundred Dollar (\$500.00)]* to Purchaser and shall not be entitled to any further compensation.

5. **FORCE MAJEURE.** Neither party shall be liable for damages due to delay or failure to perform any obligation under this agreement if such delay or failure results from circumstances beyond the control of either party due to acts of God, war, riots, lockouts, acts of government in a sovereign or contractual capacity, fire, flood, pandemic, mandated quarantine, earthquake or other natural catastrophes. Inclement weather shall not excuse performance of either party except as set forth in Section 3 above.
6. **ILLNESS OR EMERGENCY.** In the event that Artist suffers an illness, emergency, or other unanticipated event that prevents Artist from performing its obligations under this Agreement, Artist may hire a substitute to fulfill the obligations in Section 1 above, which shall not be deemed a breach of this Agreement. Artist will immediately notify Purchaser when such emergency or illness becomes known to Artist and shall use its best efforts to secure Purchaser's consent to the substitute artist. Nothing in this Section shall be construed to excuse Artist's performance of this Agreement for the purpose of performing a different musical event.
7. **INDEMNIFICATIONS AND HOLD HARMLESS.** Artist and Purchaser hereby agree to indemnify and hold each other harmless of and from all liabilities or costs resulting from this Agreement, including, but not limited to, penalties, claims, proceedings, fines, taxes, losses, damages, injuries, (including reasonable attorney's fees) sustained by either party as well as from and against any and all third party claims brought by any person (including an employee of either party) for damage, loss, personal injury or death, arising out of this Agreement or by reason of a breach of warranty or representation by either party or by reason of use of the materials associated with either party, except to the extent that any claim may be proven to be due solely to the willful or negligent act of Purchaser, Artist, or either of their employees or agents. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, NEITHER PARTY SHALL BE LIABLE UNDER ANY THEORY OF LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, ANY SUCH DAMAGES ARISING FROM BREACH OF CONTRACT, NEGLIGENCE OR STRICT LIABILITY, OR OTHER THEORY, AT LAW OR IN EQUITY), INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, REVENUE, OR USE.
8. **LIMIT OF LIABILITY.** It is understood and agreed that should either party and/or its agents or employees be found liable for any loss or damages resulting from a failure to perform any of its obligations, including but not limited to negligence, breach of contract or otherwise, the the liability of the liable party its agents or employees shall be limited to a sum equal to the amount of the fee paid by the paid by the Purchaser under the terms of this Agreement, and nothing more.

9. **ENTIRE AGREEMENT; AMENDMENT.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof. No amendment, modification or discharge of this Agreement shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification or discharge is sought.
10. **GOVERNING LAW, VENUE, JURISDICTION, ATTORNEY FEES.** This Agreement shall be governed by and construed in accordance with the laws of *[South Carolina]*, without regard to the choice of law rules utilized in that jurisdiction. In the event that a dispute arises from this agreement, the parties hereby acknowledge and agree that the courts of Charleston County, South Carolina shall be the appropriate venue for such dispute, and by such agreement the parties are deemed to have submitted to the jurisdiction of the courts of *[Charleston] County, [South Carolina]*. The parties hereby waive any and all claims of inappropriate venue or jurisdiction for actions arising out of this dispute filed in *[Charleston] County, [South Carolina]*. The parties acknowledge and agree that if a dispute arises out of this Agreement and is filed in court, the prevailing party shall be entitled to recover reasonable attorney fees from the non-prevailing party.
11. **SEVERABILITY.** If any term or provision of this Agreement is illegal or unenforceable at law or in equity, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

12. ADDRESS FOR NOTICES:

If to Artist:

If to Purchaser:

13. **ELECTRONIC SIGNATURES, COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Any party providing an electronic signature agrees to promptly execute and deliver to the other parties an original signed Agreement upon request.

14. ADDITIONAL PROVISIONS: _____

Executed on the date first set forth above, by:

 _____(print name)
 Artist

 _____(print name)
 Purchaser

STUDIO INSTRUCTION AGREEMENT

This Agreement, entered into on this ____ day of [Month], [Year], in [Charleston, South Carolina], by and between _____ ("Teacher") and _____ ("Student"), upon the following terms and conditions:

WHEREAS, Student desires to hire Teacher, as an independent contractor, to provide the musical instruction generally described below; and

WHEREAS, Teacher desires to provide such instruction;

The parties agree as follows:

1. **TEACHER'S OBLIGATIONS.** Teacher shall teach Student [*voice lessons*] consisting of one (1) hour per lesson on a weekly basis until this Agreement is terminated as provided herein. Such lessons shall follow the Teacher's syllabus and guidelines, as may be amended from time to time at Teacher's sole discretion, and which will be provided to Student upon request.
2. **TEACHER'S COMPENSATION.** In consideration of Teacher's services hereunder, Student agrees to pay Teacher a fee in the amount of [*Seventy-Five Dollars (\$75.00)*] per lesson, payable in advance.
3. **STUDENT OBLIGATIONS.** Student shall coordinate with Teacher to schedule lessons at a mutually convenient time. Student shall provide a twenty-four (24) hour notice to Teacher prior to cancelling any lesson. In the event Student fails to provide a twenty-four (24) hour cancellation notice to Teacher, then Student shall compensate Teacher for the missed lesson as set forth in Section 2. If Student is late to any lesson, the lesson time will be shortened by the amount of time the Student is late, and the lesson will at the time originally scheduled.
4. **TERMINATION.** Either party may terminate this Agreement at any time by providing written notice to the other at least twenty-four (24) hours prior to any scheduled lesson.
5. **FORCE MAJEURE.** Neither party shall be liable for damages due to delay or failure to perform any obligation under this agreement if such delay or failure results from circumstances beyond the control of either party due to acts of God, war, riots, lockouts, acts of government in a sovereign or contractual capacity, fire, flood, pandemic, mandated quarantine, earthquake or other natural catastrophes. Inclement weather shall not excuse performance of either party except as set forth in Section 3 above.
6. **ILLNESS OR EMERGENCY.** In the event that either party suffers an illness, emergency, or other unanticipated event that prevents that party from performing its obligations under this Agreement, that party will immediately notify the other when such emergency or illness becomes known and shall not be liable for such failure to perform. In the case of an illness or emergency covered by this Section 6, the parties will work together to reschedule any missed lessons at a mutually convenient time.

7. **LIMIT OF LIABILITY.** It is understood and agreed that should either party and/or its agents or employees be found liable for any loss or damages resulting from a failure to perform any of its obligations, including but not limited to negligence, breach of contract or otherwise, the liability of the liable party its agents or employees shall be limited to a sum equal to the amount of the fee paid by the paid by the Student under the terms of this Agreement, and nothing more.
8. **ENTIRE AGREEMENT; AMENDMENT.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof. No amendment, modification or discharge of this Agreement shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification or discharge is sought.
9. **GOVERNING LAW, VENUE, JURISDICTION, ATTORNEY FEES.** This Agreement shall be governed by and construed in accordance with the laws of *[South Carolina]*, without regard to the choice of law rules utilized in that jurisdiction. In the event that a dispute arises from this agreement, the parties hereby acknowledge and agree that the courts of Charleston County, South Carolina shall be the appropriate venue for such dispute, and by such agreement the parties are deemed to have submitted to the jurisdiction of the courts of *[Charleston] County, [South Carolina]*. The parties hereby waive any and all claims of inappropriate venue or jurisdiction for actions arising out of this dispute filed in *[Charleston] County, [South Carolina]*. The parties acknowledge and agree that if a dispute arises out of this Agreement and is filed in court, the prevailing party shall be entitled to recover reasonable attorney fees from the non-prevailing party.
10. **SEVERABILITY.** If any term or provision of this Agreement is illegal of unenforceable at law or in equity, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

11. ADDRESS FOR NOTICES:

If to Teacher:

If to Student:

12. **ELECTRONIC SIGNATURES, COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Any party providing an electronic signature agrees to promptly execute and deliver to the other parties an original signed Agreement upon request.

13. WAIVER AND RELEASE. As a material term of this Agreement, Student (or their parent(s) / guardian(s) if under 18) must sign the Waiver and Release attached hereto as Exhibit "A", the terms of which are incorporated into this Agreement as if fully set forth herein. The Waiver and Release must be signed prior to the Student receiving any instruction contemplated by this Agreement.

Executed on the date first set forth above, by:

STUDENT

TEACHER

(Print)

(Print)

IF STUDENT IS UNER EIGHTEEN (18) YEARS OLD THEN PARENT(S) OR GUARDIAN(S) MUST SIGN BELOW AND MUST SIGN THE WAIVER AND RELEASE ON EXHIBIT A

By signing below the undersigned Parent(s) / Guardian(s) agree to be bound by the terms of this Agreement and agree to be financially responsible for any amounts due under this Agreement.

Child's Name: _____ (Print)

Parent Signature 1: _____ Date: _____

Print Name: _____

Parent Signature 2: _____ Date: _____
(If Applicable)

Print Name: _____

EXHIBIT "A"

WAIVER AND RELEASE OF LIABILITY

I, the undersigned, in consideration of myself and/or my child (if under 18) being permitted access to and participation in [Name of Teacher]'s Studio Instruction, do for myself, my heirs, executors, and assigns, hereby waive, release and forever discharge [Name of Teacher], its owners, representatives, contractors, agents, and employees, of and from any and every claim, demand, action or right of action, of whatever kind or nature, which I now have or may hereafter acquire, arising from participation at [Name of Teacher]'s Studio, whether relating to any illness or exposure to illness that may occur as a result of such participation or any other cause, including but not limited to bodily injury or death which may occur in connection with participation at [Name of Teacher]'s Studio or in connection with any instruction provided by [Name of Teacher], whether by negligence or not, to the fullest extent permitted by law. I understand and acknowledge there may be risks associated with participating [Name of Teacher]'s programs as a result of the COVID-19 pandemic. I further understand and acknowledge that participation in [Name of Teacher]'s programs is solely for my benefit and is done at my own risk, and I assume full responsibility, therefore. I hereby further declare that my child and I are healthy and are not showing any symptoms of the COVID-19 virus, including but not limited to fever or shortness of breath. I further agree that if my child or anyone in our household has symptoms of COVID-19, I will not allow my children to attend lessons with [Name of Teacher] for a period of fourteen (14) days or until a negative test result for COVID-19 is presented to [Name of Teacher]. I further agree that if the above waiver and release is found to be unenforceable by a court of competent jurisdiction for any reason, or if [Name of Teacher] is found liable to me for any claim whatsoever, that [Name of Teacher]'s liability to me will be limited to the amount of the weekly lesson fee paid by me and nothing more to the extent permitted by applicable law. This Waiver and Release of Liability Agreement is governed by the laws of the State of South Carolina, and I agree that the courts in Charleston County, South Carolina shall have exclusive jurisdiction over any dispute arising out of or relating to this Agreement. By signing my name below, I acknowledge and warrant that I have carefully read the foregoing waiver and release of liability agreement, that I understand the contents hereof, that I have authority to sign this waiver and release on behalf of myself or my child listed below (if under 18), and that I have executed this release voluntarily.

Student Signature: _____

Student Name: _____ (Print)

IF STUDENT IS UNDER EIGHTEEN (18) PARENT(S) / GUARDIAN(S) MUST SIGN BELOW

Child's Name: _____ (Print)

Parent Signature 1: _____ Date: _____

Print Name: _____

Parent Signature 2: _____ Date: _____

(If Applicable)

Print Name: _____

AGREEMENT

WORK MADE FOR HIRE (MUSICIAN)

This Work Made for Hire Agreement ("Agreement") by and between _____ ("Producer") and _____ ("Artist"). Producer and Artist agree to the following terms and conditions governing the provision by Artist to Producer of music and musician services as described herein for the project tentatively known as _____ (the "Project"). All music and other contributions provided by Artist to Producer pursuant to this Agreement (the "Music") shall be deemed to be "work[s] made for hire" as that term is defined in Section 101 of the United States Copyright Act, 17 U.S.C. § 101.

1. **Term:** This Agreement shall be effective as of the date of the last signature below and, unless terminated by Producer as provided herein, shall continue until completion of the Project to the satisfaction of Producer.
2. **Performance of Musician Services:** Artist shall perform such Music as is requested from time to time by Producer during the term of this Agreement. Artist shall exercise his/her independent judgment and skill in determining how best to perform the Music under the direction of the Producer. Artist agrees to cooperate in scheduling, and agrees to perform at such time(s) and location(s) chosen by Producer.
3. **Ownership.** All Music provided by Artist to Producer pursuant to this Agreement shall be deemed to be "work[s] made for hire" as that term is defined in Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and Producer shall be the sole owner of the Music and recordings thereof, and of all rights, including but not limited to all copyrights, in such music. Artist shall execute all documents, and perform such other acts, as Producer may deem necessary to secure for Producer all such ownership rights. In its sole discretion, Producer may credit Artist as the creator in connection with Producer's use of the Music created pursuant to this Agreement, but is under no obligation to do so. If for any reason the Music created pursuant to this Agreement would not be considered a "work made for hire" under applicable law, Artist does hereby sell, assign, and transfer to Producer, its successors and assigns, the entire right, title and interest in and to the copyright in the Music and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Music, throughout the world.
4. **Payment and Taxes.** Producer shall pay Artist the sum of \$ _____ as consideration for performance of this Agreement, payable upon completion of the Project and full performance of this Agreement to Producer's sole satisfaction. Producer will not pay or withhold Federal, state or local income or other payroll taxes on behalf of Artist. Artist shall report and pay all applicable taxes, and shall be deemed an independent contractor for all purposes under this Agreement. Nothing herein shall be construed to

create a partnership, an employer/employee relationship, or otherwise create a legal relationship between the parties outside this Agreement.

5. **Artist's Warranty.** Artist warrants that s/he has authority to enter into, and to be bound by, this Agreement, that the Music provided to Producer pursuant to this Agreement will not infringe any copyrights or other intellectual property rights, will not contain libelous or unlawful matter, and will not violate the privacy rights of any individual. Artist agrees to indemnify and hold harmless Producer against any claims or losses resulting from or caused by Artist's violation of the terms of the preceding sentence.
6. **Use of Name/Trademarks.** Artist shall not use the name or trademarks of Producer in any advertising, marketing or other promotional materials without Producer's express written prior consent to each specific use.
7. **Termination.** This Agreement may be terminated at any time upon two (2) days written notice by Producer.
8. **Miscellaneous.** This Agreement is the entire agreement between the parties and may not be amended except by a writing signed by both parties. This Agreement shall be governed by and construed in accordance with the laws of South Carolina and the laws of the United States of America, without regard to the choice of law rules utilized in that jurisdiction. In the event that a dispute arises from this agreement, the parties hereby acknowledge and agree that the State and Federal courts of Horry County, South Carolina shall be the appropriate venue for such dispute, and are deemed to have submitted to the jurisdiction of the State and Federal courts of Horry County, South Carolina. The parties hereby waive any and all claims of inappropriate venue or jurisdiction for actions arising out of this dispute filed in Horry County, South Carolina. The parties acknowledge and agree that if a dispute arises out of this agreement and is filed in court, the prevailing party shall be entitled to recover reasonable attorney fees from the non-prevailing party. The relationship of Artist to Producer pursuant to this Agreement shall be that of independent contractor. Artist shall not be deemed to be an employee of Producer for any purpose. The provisions of sections 3, 5 and 6 shall survive the termination of this Agreement.
9. **Severability.** If any term or provision of this Agreement is illegal or unenforceable at law or in equity, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

PRODUCER

ARTIST

Print: _____

Dated: _____

Print: _____

Dated: _____

PHOTO/VIDEO RELEASE

I hereby grant *[Teaching Studio]* the right to use the photographs and/or video recordings listed below taken of me by agents or employees of the *[Teaching Studio]* for educational, promotional or advertising purposes related to the *[Teaching Studio]*. This permission includes, without limitation, the right to reproduce these images and/or video in the *[Teaching Studio]*'s various printed publications, displays, electronic/online media, broadcast opportunities and other means, where applicable.

I understand that all photos and/or video recordings taken are without compensation to me, the undersigned, and are the property of *[Teaching Studio]*.

I hereby acknowledge that I have read and understand the terms of this release form.

Description of photographs and/or video recordings covered by this release:

STUDENT

_____ (Print)

IF STUDENT IS UNER EIGHTEEN (18) YEARS OLD THEN PARENT(S) OR GUARDIAN(S) MUST SIGN BELOW

By signing below the undersigned Parent(s) / Guardian(s) understand and agree to the terms of this photo and video release.

Child's Name: _____ (Print)

Parent Signature 1: _____ Date: _____

Print Name: _____

Parent Signature 2: _____ Date: _____

(If Applicable)

Print Name: _____