

## INSTRUCTIONAL SERVICES AGREEMENT

THIS AGREEMENT, between "Teacher", and Midwest School of Music, Inc, dba schoolofmusic.com, a Corporation chartered under the laws of the State of Indiana and having its principal office at 10561 Wilson Rd, Brownsburg Indiana 46112 (hereinafter referred to as "SOM").

WITNESSETH:

WHEREAS, SOM is in the business of offering music instruction services (hereinafter referred to as "Services") to clients or students.

WHEREAS, Teacher is qualified as a music instructor and seeks referrals of SOM's students or clients.

WHEREAS, SOM, pursuant to the terms of this agreement, seeks to subcontract with Teacher to provide music instruction services to SOM's students or clients.

NOW, THEREFORE, in consideration of the preambles and mutual recitals set forth herein and each and every term, condition and/or covenant contained herein, the parties hereto agree as follows:

### 1. RELATIONSHIP OF THE PARTIES

- A. Subcontractor relationship. Teacher has entered into a relationship with SOM, whereby SOM has contracted with Teacher to provide Services to SOM's clients or, as each situation may require, to assist SOM in providing said Services. It is specifically agreed and understood that all payment received from said clients for aforesaid Services shall be the sole property of SOM. All invoices, reports, documents, customer lists, trade secrets, proprietary information, contracts, or other documents which in any manner relate to Teacher's contracts with SOM's clients or SOM's communication of information to Teacher remain and are the sole property of SOM. Furthermore, Teacher acquires no possessory or other lien rights, title or interest whatsoever to any of the aforementioned documents or information.
- B. SOM shall actively recruit students for its teachers. SOM shall offer the teacher new students which SOM feels, at its sole discretion, are appropriate to the teacher's circumstances.

## 2. FEES

- A. All fees for the Teacher's lessons shall be collected by SOM at the beginning of each calendar month.
- B. SOM shall have the sole authority to negotiate fees.
- C. SOM shall retain a fee of thirty percent (30%) from the monthly tuition for private lessons. The retainage for a Teacher who is in the process of completing an undergraduate degree shall be thirty-five percent (35%), until which time the teacher has obtained such degree. Upon completion of the undergraduate degree, the retention of tuition by SOM will adjust to thirty percent (30%) Retainage for group lessons will be determined on a case by case basis, and with the mutual agreement of both parties.
- D. The payment made to a teacher for lessons in his or her home studio, or for lessons in another facility shall be established by mutual agreement between the parties.
- E. SOM shall not be responsible to the Teacher for any funds it cannot collect. SOM shall make every effort to collect amounts that are due, but SOM shall be liable to the Teacher only for the amount of monies actually collected on behalf of the Teacher.
- F. The Teacher shall be paid twice monthly on the following schedule: paychecks will be mailed on the fifteenth (15th) and last day of each month, provided Teacher has reported properly for payroll on the 12<sup>th</sup> and 26<sup>th</sup> of each month.
- G. Teacher understands that SOM will expend resources to develop, maintain, and expand its student base. As such, the Teacher agrees that SOM has the right to recover its costs and profit from such activities by deducting the previously mentioned fees.
- H. Teacher agrees to report according to the procedure established by SOM. Failure to do so will result in delay or nonpayment for lessons.

## 3. RESPONSIBILITIES OF THE TEACHER

- A. Teacher is subcontractor engaged in the business of providing music instruction services to clients, and shall act as such hereunder.
- B. Teacher shall bear all expenses incurred by it in acting hereunder, including taxes. Teacher shall select and purchase their own supplies. Teacher should collect for books and other supplies directly from the students.
- C. When teaching in the student's home, Teacher shall arrive and depart on time.
- D. Teacher shall maintain the highest professional standards and ethics with regard to the students and their families. Teacher shall not physically discipline students.

- E. In the case where SOM has a program in a school or community facility, Teacher understands that all students taking lessons from the Teacher at that school or community facility are considered to be students of SOM.
- F. For billing purposes, Teacher shall advise SOM twice a month about any missed lessons. Teacher will contact the students prior to any cancellations. Cancellation of lessons will be limited to a reasonable number. SOM has the option of assessing a monetary penalty upon the Teacher if lessons are cancelled without notification.
- G. Teacher will contact potential new students within 24 hours following the referral.
- H. Teacher shall keep and maintain any and all records that SOM may deem to be in the interest of both parties, especially with regard to the number of lessons given during any period of time. Said records must be kept for one (1) year.
- I. Teacher shall indemnify and hold harmless SOM, its successors and assigns, officers, directors, employees, and agents against and from any direct claim, loss, cost or expense which it, they, or any of them shall suffer or incur arising from any actions of the Teacher. SOM shall indemnify and hold harmless Teacher, successors and assigns against and from any direct claim, loss, cost or expense which it, they, or any of them shall suffer or incur arising from any breach of SOM's warranties, representations or obligations hereunder.

#### 4. TERM AND TERMINATION

- A. The initial term of this Agreement is for twelve (12) months from the date entered below, but shall continue automatically thereafter unless cancelled by either party with a thirty (30) day written notice. Cancellation is also effective by either party during the initial term of this Agreement with a sixty (60) day written notice. If notice of sixty (60) days is not possible, then notice that is provided with reasonable expediency is acceptable for both the initial term and thereafter.

#### 5. GENERAL

- A. For purposes of this Agreement, the term "Client" or "Student" shall mean students or prospective students referred by clients or students with whom SOM has transacted business or had any contact during the two (2) year period preceding the termination of this Agreement. Teacher understands that new students whose siblings are currently studying with Midwest School of Music shall also be considered students of SOM. In situations where Teacher is

referred to another institution by SOM, any student in that the Teacher accepts from that institution, or its system, will be considered a student of SOM.

- B. Waiver of any breach of this Agreement shall not extend to or prejudice any rights in respect to a future breach.
  - C. Any notice required under this Agreement to be in writing shall be deemed given when mailed to the other party by prepaid certified mail at the address specified for such party herein, or at such other address as shall hereafter be designated by written notice of either party.
  - D. The individual signing this Agreement on behalf of SOM warrants his or her authority to so.
  - E. This Agreement shall be construed and enforced in accordance with the laws of the State of Indiana, in which Teacher consents to venue and submits to the jurisdiction of the court that is chosen by SOM.
  - G. No waiver by SOM of any default by Teacher shall be effective unless in writing, nor shall it operate as a waiver of any other default or of the same default on a future occasion.
  - H. "Written notice" shall be construed as a document that is communicated between known e-mail addresses of the parties or printed and sent by certified mail.
6. CONFIDENTIAL INFORMATION. Teacher expressly acknowledges that the following assets (hereinafter referred to as "Confidential Information") are the unique and valuable property of SOM, have been acquired, developed or compiled by SOM at significant expense and effort, and represent trade secrets and part of SOM's goodwill.
- A. The methods employed by SOM in the conduct of its business, markets, acquiring students, or the manner in which SOM supplies goods or services to its students;
  - B. All other documents and records furnished to or acquired by Teacher as a result of Teacher's contract with SOM and relating to SOM's business, including:
    - (i) The names, addresses, and any data pertinent to any Client, including any Client lists;
    - (ii) Files and records of any type whatsoever pertaining to SOM, including, but not limited to, financial records, whether prepared by SOM or Teacher

7. NON-DISCLOSURE OF INFORMATION

- A. Teacher acknowledges that during the course of his contractual relationship with SOM, he has access to and/or will be acquiring, making use of, or adding to Confidential Information. As a material inducement to enter into this contract by SOM, Teacher agrees that he will not, during the period of his employment with SOM or anytime thereafter, directly or indirectly, furnish or divulge any Confidential Information for any purpose whatsoever to any individual, firm, partnership, limited liability SOM or corporation other than the Midwest School of Music, Inc.
- B. Upon termination of his employment with SOM, Teacher shall return all Confidential Information, including all copies thereof, which are then in Teacher's possession, whether prepared by Teacher or others, except that which Teacher is required to retain for tax filing.

8. NON-PIRACY AGREEMENT.

- A. In recognition of Teacher's access to Confidential Information, and in order to protect the goodwill and trade secrets of SOM, Teacher agrees that for a period of one (1) year for referrals and two (2) years for students taught directly by the Teacher following Teacher's termination of this agreement with SOM for any reason, Teacher shall not, directly or indirectly through other individuals or entities with which Teacher may become in any way associated:
  - (i). Advise, refer or in any way solicit or encourage any of SOM's Clients to discontinue, divert or curtail their business with SOM;
  - (ii) Canvass or solicit any business from Clients of SOM with respect to services which are substantially the same as, or substitutes for, the services sold or being contemplated by SOM;
  - (iii) Assist or encourage any individual or entity to solicit SOM's Clients, where such individual or entity is engaged in whole or in part in the business of SOM; or
  - (iv). Solicit for employment, or employ any person employed by SOM.

9. ENFORCEMENT OF NON-PIRACY AND NON-DISCLOSURE PROVISIONS.

- A. Teacher expressly acknowledges the reasonableness of the restrictions set forth in this Agreement, including, but not limited to, the time periods and geographic limitations. Teacher further acknowledges that such restrictions are reasonable and necessary for the protection of SOM's trade secrets, client base and goodwill.
- B. In the event that any of the provisions of this Agreement relating to the geographic area of restriction, the period of restriction, or the scope of such restriction shall be determined by any court of competent jurisdiction to exceed the maximum enforceable area, period or scope, the geographic area of restriction, as applicable, shall be deemed to be the maximum enforceable area, period or scope, and such court is expressly authorized and requested by the parties to reform this Agreement to so provide.
- C. In the event that any provision of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, and not subject to reformation under subsection (B) of this Section, such provision shall be deemed severed from this Agreement and the remaining provisions shall continue in full force and effect to the same extent as if such invalid or unenforceable provision had not been included in this Agreement.
- D. In the event of any breach by Teacher of any of the provisions of this Agreement, the damages sustained by SOM would be impossible to ascertain, and SOM would have no adequate remedy at law. SOM shall, therefore, be entitled to enjoin any such breach or threatened breach by Teacher; provided, however, that nothing contained in this Agreement shall operate to preclude SOM from pursuing any other lawful remedies available in the event of any actual or threatened breach of any provision of this Agreement. The costs, expenses and attorneys' fees incurred by SOM in enforcing the provisions of this Agreement, including any action for injunctive relief, shall be assessed against and borne by Teacher.
- E. The provisions of this Agreement shall be deemed independent of any other provision of this Agreement and the existence of any claim or cause of action by Teacher against SOM shall not constitute a defense to the enforcement or application of this Agreement by SOM.
- F. The provisions of this Agreement shall survive the termination of this agreement, regardless of the reason for such termination.

10. ATTORNEY'S FEES AND LEGAL EXPENSES. In the event of any legal action between the parties arising under or relating to this Agreement, the

costs, expenses and attorneys' fees incurred by the prevailing party including, but not limited to, the costs, expenses and attorneys' fees incurred in pursuing any appeal and collecting any judgment, shall be assessed against the other party in such action. If any such action involves both claims and counterclaims, and if each party shall have judgment rendered in its favor on one or more such claims or counterclaims, the party whose total judgments in such action is greatest shall be deemed the prevailing party for purposes of this Section.

11. ABSENTEEISM. Teacher agrees to provide a minimum of twenty-four hours prior notice to SOM of Teacher's unavailability to provide services to a Client. Teacher's failure to provide aforesaid notice to SOM on more than three occasions during a calendar year or the failure by Teacher to appear for any scheduled lessons without notice to Client and SOM shall be a breach of this agreement. Teacher shall be liable to SOM for SOM's commissions for said missed lessons. SOM shall be entitled to deduct said commissions from Teacher's next compensation payment. Teacher understands that inconsistent attendance not only damages the relationship between SOM and its students, but causes an undue hardship on the student, and is therefore, considered by SOM to be negligent behavior.

12. ENTIRE AGREEMENT. THE PARTIES HERETO ACKNOWLEDGE THAT THEY HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS. The parties further acknowledge this Agreement to be the complete and final understanding between the parties, superseding any and all other contracts or proposals, oral or written, and any and all other communications between the parties relating to the subject matter of this Agreement. Each party has exercised due diligence in reviewing this Agreement, and each has had adequate opportunity to consult with legal counsel or other advisors to the extent that each party deemed it necessary.