



SESSION MUSICIAN'S RELEASE EXPLANATORY NOTES

USING THE EXPLANATORY NOTES

The Explanatory Notes are intended to give more detailed explanations of certain clauses in this **sample document** or to give more detail about the law involved.

The Explanatory Notes **DO NOT** form part of the document and should not be included in your final redrafted version.

It may be useful to separate the Explanatory Notes from the actual document when you are redrafting it to suit your particular situation.

The Explanatory Notes are not intended as legal advice and should be considered information only. You should contact Arts Law for legal advice.

Introduction

A Session Musician's Release is generally in the interests of the person to whom it is given by the session musician, such as a music producer ("producer"). This version of the release, though, suggests some clauses that at least limit some of the rights given by the session musician to the other party.

The Release generally assumes that the parties have entered into another agreement about the details of the session musician's engagement. If they have, you may not need clauses 4, 5 or 6 as their subject-matter may have already been dealt with.

You can either use this document in conjunction with another document, or include the relevant terms from this document in your other document.

PARTIES

The document should clearly identify the name, address and preferably the telephone and fax numbers, and the ABN (Australian Business Number) or ACN (Australian Company Number) of the persons or entities who enter into it (parties). Throughout the rest of the document, the parties are referred to or "defined" by shorthand terms for ease of reference, for example, "I or Me" or "You". Other terms could be used, or the parties could simply use their own names.

This section also requires you to insert the details or a description of the performance and includes a payment to the session musician. Contracts between people and organisations may take the form of an agreement or a deed. For an agreement to be legally binding particular requirements must be met, including an exchange of promises between the parties. The price paid in exchange for a promise is known as "consideration". The price can be money or another promise. The amount can be very small.

If you are not including "consideration" in the contract then the contract must take the form of a deed. Deeds do not need "consideration" to be binding. To be binding, deeds need to be dated, properly executed (they need to be signed, sealed and delivered) and witnessed by someone who is not a party to the deed.



Arts Law recommends that the producer provides “consideration” to the session musician and that an agreement be used.

If the session musician is not paid (ie because payment has been dealt with under another agreement between the parties), but the producer makes other promises to the session musician, you should replace the words at the beginning of the Release with the following:

“In consideration of the promises made in this Release:”

RECORDINGS AUTHORITY (CLAUSE 1)

Clause 1 provides two alternative clauses. You need to decide which one is most appropriate and delete the other.

Alternative 1 can be used to put limitations on the use of the recording of the performance. In some cases the producer will want an unlimited right to use the performance and in other cases the performance will be for a clearly specified use. The producer should ensure that the release is for all of the purposes which the producer requires, while the session musician should ensure that, if the use to which the performance can be put is limited, that limitation is reflected by clause 1. For example, a performance which is to be included in a documentary film could be limited by the words “for use in connection with documentary film *Botany Bay*, including exploitation of the film in all media throughout the world, and advertising of the film.”

Under clause 1.1a the session musician authorises the producer to record and use the performance. Note that this release also entitles the producer to use the recorded performance as a soundtrack for a film and:

- for any other purpose; or
- for certain purposes which can be listed in the **★[describe purposes]★** section. If this is not appropriate it should be deleted.

Under clause 1.1b the session musician authorises the producer to “communicate the work to the public” which means to make available online or electronically transmit the recording (for example, to place the recording on the internet).

If the producer wants unlimited rights to use the performance then the producer will want to use *Alternative 1.2* as this will cover all uses which the producer requires. This is a matter for negotiation.

ASSIGNMENT (CLAUSE 2)

Clause 2 provides for the assignment of the session musician’s copyright in the recording to the producer. This means that the session musician will be selling/giving their copyright to the producer and that the session musician no longer retains any copyright in the performance.

MORAL RIGHTS (CLAUSE 3)

Moral rights vest in the creator of copyright material, who may not be the copyright owner, for example, because the material was created by them in the course of their employment or because they have sold their copyright.

Clause 3 provides two alternative clauses. You need to decide which clause is the most appropriate and delete the alternative clause that you do not want to use.

Alternative 1 allows the session musician to consent to specific acts which would otherwise be an infringement of the session musician’s moral rights. These acts could include, for example, the right to edit and delete material from the recording.



Alternative 2 is broader and allows the session musician to consent to the producer doing anything to the recording which would otherwise be an infringement of the session musician's moral rights. As at 2 August 2007, the current performers' moral rights provisions allow the performer (in this case the session musician) to give a broad consent to any or all acts or omissions that would otherwise be an infringement.

CREDIT (CLAUSE 4)

Any credit that the session musician is entitled to should be set out in this clause, including the type and positioning of the credit.

NAME, LIKENESS, VOICE, BIOGRAPHY (CLAUSE 5)

This clause provides two alternative clauses.

Alternative 1 can be used when the session musician wishes to limit the use of their name, likeness, voice, biography and copyright works for certain purposes.

Alternative 2 can be used when the producer needs to obtain unlimited use of the session musician's name, likeness, voice, biography for the promotion of the recordings or a work in which the recordings will be included.

DISPUTES (CLAUSE 6)

It is almost never worth going to court to resolve a dispute, but not every problem can be solved easily. Clause 6 provides that a party which wants to access the dispute resolution procedure in the contract must first send a written notice of the dispute to each other party. This starts a timetable for resolving the dispute. The parties must make a good faith effort to sort out their dispute themselves, but if that isn't successful must then attend a mediation arranged through the Arts Law mediation service (at least one party must subscribe to access this service). Compared to litigation and arbitration, mediation is an informal and less expensive dispute resolution process, in which an independent person helps the parties in conflict to formulate their own solution. For more information see Arts Law's information sheet: [Mediation and the Arts Law Mediation Service](#).

The Arts Law mediation service expects that the parties will be able to agree on the person to be appointed as the mediator. If however that is not possible, the contract provides that the Arts Law Centre will appoint a mediator. Instead of the Arts Law Centre, the parties may wish to nominate another independent body within their industry such as APRA/AMCOS. Only after the parties have attempted mediation, can the dispute be the subject of court proceedings.

GENERAL (CLAUSE 7)

Clause 7.1 defines the relationship between the parties as one of independent contractor as distinct from, among other things, one of employment. It indicates the intention of the parties but may not be legally effective if in reality the session musician is an employee or partner.

A legally enforceable agreement can comprise both written and verbal (oral) terms and oral terms can be expressly stated or implied from the circumstances.

Clause 7.2 is included to ensure that the parties entering the agreement will solely be responsible for their obligations. If any responsibilities are to be delegated or subcontracted, the subcontractors and their obligations should be first agreed to.

In the interests of certainty, clause 7.3 seeks to ensure that the written agreement contains *all* relevant terms. Anything that might have been canvassed during negotiations which is not actually set out in the agreement will generally be *excluded* by this clause. However, there are exceptions, for example, where terms cannot be excluded by statute and where one



party has made deliberate or negligent misrepresentations on which the other party relied in entering the agreement.

Clause 7.4 addresses possible future changes to the law in favour of Indigenous rights. It provides that should these laws be enacted that the parties to the agreement will comply with the law.

Clause 7.5 requires any changes to this agreement to be in writing signed by both parties. This avoids confusion over the terms of the agreement and prevents a party arguing that an agreement was varied orally.

Amend clause 7.6 to state the appropriate governing law for the agreement. This is particularly important if the agreement is between people in different states or different countries where laws may vary.

SIGNING THE DOCUMENT

If you are an individual, sign your name and write in the date of signing where indicated at the bottom of the agreement. This is sometimes called “executing” the agreement.

If you are signing on behalf of a company or association, you must consult the organisation’s rules and relevant laws to determine who is authorised to sign. It may also be necessary to stamp or “affix” the document with the company or association’s seal if this is required under its constitution or articles of association.

If someone else is signing on behalf of either party as their agent, you should insert the following sentence into the signature section:

“I am the authorised agent for ...”

If any of the parties is under the age of eighteen, their parent or legal guardian will need to sign the agreement “on behalf” of the child. This does not mean that the parent or legal guardian becomes a party to the agreement in his or her own right.

If there is a change to the agreement at the last minute before signing, you can either retype the agreement, or make the change in handwriting and have each party initial next to the change before signing at the end. You may also wish to initial each page in order to make sure that no new pages are inserted after you have signed, but this is not strictly necessary.

KEEP RECORDS OF YOUR AGREEMENT

Signing the agreement is evidence that you agree to what is written there. You will usually be bound to perform the agreement as it is written. For this reason, it is a good idea to get the same number of identical originals of the agreement as there are parties to it, which are signed by all parties. Each party then keeps a fully signed copy. At the very least, however, make sure you have a *copy* of the original agreement so that you remember what you have signed.

STAMP DUTY

Stamp duty, or duty, is a tax that is enforced and collected by state and territory governments on certain ‘instruments’ (that is, documents) and transactions relating to property such as partnership interests or shares, or in some cases, intellectual property such as copyright. You should check with the office of state revenue in your state or territory as to what duty, if any, may be payable on your document or transaction.

