

MORE THAN MUSIC DESIGN AND PRODUCTION AGREEMENT

This More Than Music Design and Production Agreement (this “*Agreement*”) is entered into as of this ___ day of _____, 2020 (the “*Effective Date*”) by and between More Than Music Creations, LLC, a Texas limited liability company (“*Company*”) and _____ (“*Client*”), each a “*Party*” and collectively, the “*Parties*.”

RECITALS

WHEREAS, the Company is engaged in the business of designing and producing custom jewelry and other fine art inspired by, and in association with, artists, entertainers, and related entities utilizing such artist’s, entertainer’s, and related entity’s recycled or reusable guitar strings for said design and production (the “*Business*”);

WHEREAS, the Client is an artist, entertainer, or related entity that has access to certain recycled or reusable guitar strings (“*Client Materials*”) that are sought by the Company for its Business; and

WHEREAS, the Parties desire to enter into this Agreement, upon the terms contained herein.

NOW, THEREFORE, upon the terms and mutual promises contained in this Agreement, the Parties, intending to be legally bound, agree as follows:

AGREEMENT

1. TERM. This Agreement commences as of the Effective Date and will continue perpetually unless otherwise terminated as provided in this Agreement.

2. SCOPE AND DUTIES OF COMPANY. Upon receiving the Client Materials from the Client, the Company will design and produce custom jewelry and/or other fine art products inspired by Client and Client’s creations for sale (“*Products*”).

a. Design and Methods at Discretion of Company

- i. Each design and the Products created and offered for sale by Company, including all methods and materials used, shall be at the sole and absolute discretion of the Company, excluding any Custom Design. Provided, however, Company agrees to provide Client with proofs of Products prior to offering such Products for sale.
- ii. The Company shall produce the Products in a commercially reasonable timeframe but shall be under no obligation to produce any Products by a specified date or within any timeframe unless otherwise expressly agreed in writing by the Parties.

b. Shipping Cost of Client Materials

- i. The Company shall bear the costs of shipping associated with receiving Client Materials from Client. Such shipping costs shall be allocated to COGS of the Products.

c. Promotion and Marketing of Products

- i. Subject to the Client License contained in this Agreement, the Company may use the Client Licensed Property for its promotional, branding, and marketing efforts, through any and all means and outlets available, and using any methods of Company's choosing, to promote, brand, and market the Products for sale.
- ii. Company does not represent, warrant, or guarantee sales of the Products at any price or in any volume or amount

d. Retail Pricing of Products and Geographical Region

- i. The Company shall have sole and absolute discretion in setting the retail price of the Products.
- ii. The Company shall have the right to sell the Products anywhere throughout the world.

3. DUTIES OF CLIENT. Client agrees to provide the Client Materials to Company when such Client Materials are available to Client. Client shall be under no obligation to provide any specific amount of Client Materials to Company and there shall be no frequency requirement of the provision of such Client Materials to Company. Client may, at Client's sole discretion, promote and market the Products on its own social media accounts and through its own communication, marketing, and promotion channels, provided that any such communication, marketing, and promotion is directed to the official marketplace of the Products whether that be the Company's website (www.morethanmusiccreations.com) or otherwise directed by the Company. Client shall be under no obligation to market, promote, or sell the Products or to assist the Company in its marketing, promotion, and sale of the Products.

- a. Client will not, and will not permit any third party to, reverse engineer, or attempt to modify, translate, or create derivative works based on the Products.
- b. Client will designate an individual who will be responsible for all matters relating to this Agreement ("**Primary Contact**"). Client may change the individual designated as Primary Contact at any time by providing written notice to the Company.

4. LIMITED LICENSE. Client grants to Company a royalty-bearing (as described in Section 5), limited, non-transferable, non-sublicensable, worldwide license for the use of Client's name, likeness, photographs, logos, and any trademarked or copyrighted intellectual property owned by Client, such as song titles and lyrics, directly related to the Products designed and created pursuant to this Agreement (the "**Client Licensed Property**") and used in conjunction with the

Company's Business for the sole purpose of marketing, branding, promoting, designing, producing, creating, and selling the Products by the Company as described in Section 2, above (the "**Client License**"). The Company grants to Client a limited, non-transferable, royalty-free, worldwide license for the use of Company's name, likeness, logo, and any marketing materials ("**Company Licensed Property**") provided by Company for the sole purpose of being used in conjunction with the offering of the Products described in Section 2, above (the "**Company License**"). Both the Company License and the Client License shall automatically terminate and be revoked, subject to the other terms of this Agreement, upon any one of the following events:

- a. the termination of this Agreement for any reason; or
- b. use, by either Party, of the Company License or the Client License for any other purpose other than what is expressly provided in this Agreement.

Nothing contained in this Agreement or the provisions related to the Client License or Company License shall be construed to transfer or convey ownership of any personal or intellectual property from one Party to the other Party. Company and Client shall retain ownership of its own personal and intellectual property rights.

Any use of the Company License or the Client License for any purpose other than as expressly stated herein shall constitute a material breach of this Agreement. The Parties understand that the remedies available by law may be inadequate to compensate an affected Party and therefore, each Party agrees that any use of the Company License and/or the Client License for any other purposes other than what is provided herein, unless expressly agreed otherwise by the Parties, will entitle the non-breaching Party to injunctive relief as well as any other remedies available by law.

5. ROYALTY. The Company shall pay to Client a royalty equal to ____% of its Gross Profit of the Products (the "**Royalty**"). "**Gross Profit**" means Net Sales less COGS. "**Net Sales**" means the total gross receipts for sales of the Products by the Company less returns and allowances, discounts, packing costs, insurance costs, freight out and other transportation charges, taxes or excise duties imposed on the transaction, and wholesaler and cash discounts in amounts customary in the trade to the extent actually granted. "**COGS**" means actual costs and expenses incurred or accounted for by the Company allocable to the sourcing and production of the Products (and the components thereof).

- a. Payment of Royalty. No later than seven (7) business days following the last day or each fiscal quarter of the Company, the Company shall pay to Client the Royalty for such quarter.

6. EXPENSES. Neither Company nor Client are authorized to incur expenses on behalf of the other without the prior consent of the other.

7. INDEPENDENT STATUS. Company and Client are considered independent contractors of each other. Nothing contained in this Agreement shall be interpreted to create an employment,

agency, joint venture, or partnership relationship between the Parties. As a result, neither Party shall have the authority to bind the other to any agreements with any other parties.

Each Party shall report and pay to the proper state and federal agencies taxes on all income earned and derived in the performance of this Agreement. The Parties to this Agreement are in agreement that each Party holds the status, for state and federal tax purposes, of an independent contractor.

8. CONFIDENTIAL INFORMATION.

- a. The term “*Confidential Information*” means any and all oral or written (including electronically recorded) confidential technical and/or business information including, but not limited to, information related to, or contained in, patents, patent applications, presentations, emails, research, product plans, products, developments, inventions, trade secrets, know-how, processes, designs, drawings, engineering, formulae, markets, software (including source and object code), computer programs, algorithms, business plans, agreements with third parties, licenses, services, customers, customer lists, suppliers, prices and costs, finances, budgets, marketing or other business and technical information disclosed to Client by the Company. Confidential Information does not include any information that was in the public domain at the time it was disclosed by the Company or entered the public domain through no wrongful act of Client or of others who were under confidentiality obligations as to the item or items involved.
- b. Each Party receiving Confidential Information (the “*Recipient*”) agrees to keep confidential, and not to use for any purpose other than the performance of this Agreement, all Confidential Information belonging to the Party disclosing such Confidential Information (the “*Disclosing Party*”) with which it may come in contact during the course of the Services.
- c. Each Party agrees to advise its employees, directors, officers, and agents, who might have access to Confidential Information of the confidential nature thereof and agrees that its employees, directors, officers, and agents shall be bound by the terms of this Agreement.
- d. The terms under Section 8(a) shall not apply to any information that:
 - i. Exists in the public domain or is accessible to the public at the time it is transmitted to the Recipient, or
 - ii. Becomes public or accessible to the public for reasons other than any act, error or omission attributable to the Recipient, or
 - iii. Is obtained in good faith by the Recipient and without any commitment relating to confidentiality from a third party entitled to disclose them.

9. CUSTOM DESIGN. Notwithstanding terms contained in this Agreement to the contrary, the Client may request a custom design to be developed by the Company (“*Custom Design*”). All such Custom Designs shall require a design fee as mutually agreed in writing between the Parties (the “*Design Fee*”). Upon payment of the Design Fee, the Company will endeavor to create the Custom Design to the specifications of Client (including materials) and develop a retail price for the product resulting from the Custom Design (the “*Custom Product*”). The Company shall retain the intellectual property rights of any such Custom Design and shall have the right to produce, market, promote, and sell the Custom Product at its discretion.

10. WHOLESALE OPTION. Throughout the Term of this Agreement, Client shall have the option of negotiating and entering into a separate wholesale agreement with Company in order to enable Client to purchase the Products from the Company at mutually agreed wholesale prices and offer said Products directly through Client’s own marketing efforts and channels, including Client’s social media accounts, websites, and at live performances (“*Wholesale Option*”).

- a. In the event that Client elects to exercise the Wholesale Option, in addition to the mutually agreed terms in said separate wholesale agreement, Client agrees that:
 - i. Company shall retain the right to market, promote, and sell the Products in addition to Client’s own efforts;
 - ii. Client shall associate the design and production of the Products with the Company in Client’s marketing and promotional efforts;
 - iii. Client will not offer or sell such Products for an amount that is less than the Company’s retail price, unless expressly agreed otherwise by the Company.

11. INDEMNIFICATION. All indemnification obligations under this section arising from an act or omission occurring during the Term of this Agreement shall survive the termination of this Agreement.

- a. Indemnification of Company. Client shall indemnify, defend, and hold harmless Company from and against any and all claims, demands, liens, causes of action, suits, liabilities, damages, penalties, losses costs, expenses and attorneys’ fees (as applicable, “*Claims*”), resulting from or related to Client’s obligations and covenants contained in this Agreement and the performance thereof. Notwithstanding the preceding sentence, Client shall not be required to indemnify, defend, or hold harmless the Company to the extent any Claims result from or relate to Company’s gross negligence or Company’s willful misconduct.
- b. Indemnification of Client. Company shall indemnify, defend, and hold harmless Client from and against any and all Claims resulting from or related to Company’s obligations and covenants contained in this Agreement and the performance thereof. Notwithstanding the preceding sentence, Company shall

not be required to indemnify, defend, or hold harmless Client to the extent any Claims result from or relate to Client's gross negligence or Client's willful misconduct.

- 12. INTELLECTUAL PROPERTY.** Except as expressly set forth herein, Company alone shall own and retain all intellectual property rights relating to the design and production of the Products, and any developments, improvements, suggestions, ideas, enhancement requests, feedback, and/or recommendations made or provided by the Company, Client, or any third party related to the Products, all of which are hereby assigned to the Company. Client will not copy, distribute, reproduce, or use any of the foregoing except as expressly permitted under this Agreement. Except as expressly set forth herein, this Agreement is not a sale and does not convey to Client or any third party any rights of ownership in or related to the Products, or any intellectual property rights.
- 13. TERMINATION.** This Agreement shall terminate in accordance with the following:
- a. Termination on sixty (60) days' notice. Either Party may terminate this Agreement by providing sixty (60) days' written notice to the other of such termination at which time neither Party shall have any ongoing duties or obligations to the other.
 - b. Immediate Termination. Either Party may terminate this Agreement immediately in the event that:
 - i. The other Party commits any act involving material dishonesty with regard to the subject matter contemplated in this Agreement;
 - ii. The other Party becomes insolvent or files for bankruptcy;
 - iii. The Parties agree to such termination; or
 - iv. Any applicable license or permit required to be held by a Party is revoked or suspended rendering the Party to be unable to continue performance of its obligations under this Agreement.

Upon the termination of this Agreement, the Company shall be entitled an opportunity to liquidate all of the Products designed and produced pursuant to this Agreement and to continue to utilize the Client License and Client Licensed Property until the later of (i) the complete liquidation of the Products produced pursuant to this Agreement; or (ii) three (3) months following the termination of this Agreement (the "***Liquidation Period***"). Any and all Client Materials and Products in inventory or possession of the Company after the expiration of the Liquidation Period shall remain the property of the Company, however the Company shall not be entitled to sell such Client Materials or Products to any third party.

14. REPRESENTATIONS.

- a. By Company.

- i. Company represents to Client that the individual executing this Agreement on behalf of Company has the full power and authority to enter into this Agreement for the purposes and consideration herein set forth;
- ii. Company is a limited liability company, duly organized, existing and in good standing under the laws of the State of Texas and the Texas Comptroller and is duly authorized and qualified to do business in the State of Texas;
- iii. To the best of Company's knowledge, Company is presently in compliance and will hereafter comply with any known written requirements it has received concerning applicable state, federal or local statute, or regulation in relation to the Company and its Business; and
- iv. The execution of this Agreement by Company, or by a representative of Company, will not result in the breach or violation of any other agreement between Company and any third party.

b. By Client.

- i. Client represents to Company that the individual executing this Agreement on behalf of Company has the full power and authority to enter into this Agreement for the purposes and consideration herein set forth;
- ii. If Client is a legal entity, Client is a validly existing entity, duly organized, existing and in good standing under the laws of the state of incorporation;
- iii. The execution of this Agreement by Client, or by a representative of Client, will not result in the breach or violation of any other agreement between Client and any third party.

15. GOVERNING LAW/VENUE. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS APPLICABLE TO AGREEMENTS MADE IN AND WHOLLY PERFORMED IN THAT JURISDICTION, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES. THE PARTIES HERETO EXPRESSLY SUBMIT AND IRREVOCABLY CONSENT TO THE JURISDICTION OF THE COURTS PRESENT IN THE STATE OF TEXAS, COUNTY OF HAYS, IN ANY ACTION BROUGHT TO ENFORCE (OR OTHERWISE RELATING TO) THIS AGREEMENT.

16. NOTICES. Any notices or communications required or permitted to be given by this Agreement must be (i) given in writing, and (ii) be personally delivered or mailed by prepaid mail or overnight courier, electronic mail, or by facsimile transmission delivered or transmitted to the party to whom such notice or communication is directed, to the address of such party as follows, or any other address provided to the other parties to this Agreement:

TO COMPANY: More Than Music Creations, LLC

PO Box 1450
San Marcos, Texas 78666
info@morethanmusiccreations.com

TO CLIENT : **NAME**
 ADDRESS
 ADDRESS
 EMAIL

17. CONSTRUCTION. Whenever the context requires, the gender of all words used in this Agreement include the masculine, feminine and gender neutral and the singular includes the plural, and vice versa.

18. ENTIRE AGREEMENT/SEVERABILITY. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereon, and all prior agreements, representations, statements, negotiations, and undertakings are superseded. No provision of this Agreement may be amended, modified or waived unless such amendment, modification, or waiver is agreed to in advance, in writing, and signed by the Parties. In the event that any provision of this Agreement or the application thereof shall be determined to be invalid or unenforceable for any reason by a court of competent jurisdiction, the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by law.

19. NON-ASSIGNABILITY. Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other, such consent to be given, withheld, or conditioned in the sole and absolute discretion of the other. Any purported assignment in violation of this section shall be void, *ab initio*.

20. HEADINGS. The headings used in this Agreement are for the convenience of the Parties only and shall not be considered in interpreting the meaning of any provision of this Agreement.

21. NO CONSTRUCTION AGAINST DRAFTER. The Parties acknowledge that this Agreement and all the terms and conditions contained herein have been fully reviewed and negotiated by the Parties. Having acknowledged the foregoing, the Parties agree that any principle of construction rule of law that provides that, in the event of any inconsistency or ambiguity, an agreement shall be construed against the drafter of the agreement shall have no application to the terms and conditions of this Agreement.

22. SURVIVAL OF SECTIONS 8 AND 11. Should either Party lawfully terminate this Agreement, Sections 8 and 11 hereof shall survive any such termination and remain in full force and effect until the expiration of their legal enforceability.

23. EXECUTION; COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement. Electronic signatures placed upon counterparts of this Agreement by a Party or their authorized signor shall be considered valid representations of that Party's signature.

24. ACKNOWLEDGEMENTS. Each Party acknowledges that such Party has had an opportunity to read and study this Agreement, to consider it, and to consult with an attorney if such Party has so desired.

25. EFFECT OF WAIVER OR BREACH. The waiver by a Party of a breach of any of the provisions of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach.

26. ADDENDA AND RECITALS INCORPORATED. All addenda, exhibits, recitals, and other information are incorporated into this Agreement.

27. REMEDIES AND ARBITRATION. The Parties agree to negotiate in good faith in an effort to resolve any dispute related to this Agreement that may arise between the Parties. If the dispute cannot be resolved by negotiation, the dispute will be submitted to binding arbitration in San Marcos, Texas, in accordance with the rules of the American Arbitration Association by one arbitrator appointed in accordance with said rules, costs of said arbitrator shall be borne equally among the Parties. The arbitrator shall apply Texas law, without reference to rules of conflicts of law or rules of statutory arbitration, to the resolution of any dispute. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The prevailing Party in any arbitration, suit, or action against the other to enforce the terms of this Agreement or any rights or obligations hereunder, shall be entitled to receive, in addition to such other relief as the arbitrator or court may award, its reasonable costs and expenses, including its portion of the arbitrator's fees as well as its attorneys' fees. Notwithstanding the foregoing, the Parties may apply to any court of competent jurisdiction for preliminary or interim equitable relief, or to compel arbitration in accordance with this paragraph, without breach of this arbitration provision.

(Remainder of Page Left Blank Intentionally)

IN WITNESS WHEREOF, this Agreement has been executed by the Parties to be effective as of the Effective Date set forth above.

COMPANY:

By: _____
Its: _____

Date: _____

CLIENT:

By: _____
Its: _____

Date: _____