

## PERFORMANCE AGREEMENT

THIS CONTRACT (the "Agreement") made and entered into on \_\_\_\_\_ (the "Execution Date"),

**BETWEEN:**

\_\_\_\_\_ of \_\_\_\_\_  
(the "Purchaser")

**OF THE FIRST PART**

- AND -

\_\_\_\_\_  
(the "Performer")

**OF THE SECOND PART**

**BACKGROUND:**

- A. The Performer is a professional entertainer known as "\_\_\_\_\_".
- B. The Purchaser wishes to engage the Performer and is willing to undertake to do so, subject to the terms and conditions as follows:

**IN CONSIDERATION OF** and as a condition of the Purchaser hiring the Performer and other valuable consideration, the receipt and sufficiency of which consideration is acknowledged here, the parties to this Agreement agree as follows:

**Business Address of the Performer**

1. Any payments by check or money order should be made out to

\_\_\_\_\_

The Performer's business address is as follows:

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

**Business Address of the Purchaser**

2. The Purchaser's business address is as follows:

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

**Venue**

3. The place of performance (the "Venue") is located at:

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

**Performance**

4. The entertainment to be provided by the Performer is generally described as \_\_\_\_\_ (the "Performance").

**Date and Time of Performance**

5. The date of the Performance is on \_\_\_\_\_. The Venue will be available for set-up and sound check on \_\_\_\_\_ at \_\_\_\_\_. The Performer will play one set on this date as follows:

Set	Start Time	End Time
Set 1.00	_____	_____

**Payment**

6. In full consideration for all services rendered by the Performer at the Performance, the Purchaser agrees to pay the Performer a fixed fee of \$\_\_\_\_\_ USD (the "Fee").

**Deposit**

7. The Purchaser will pay to the Performer \$\_\_\_\_\_ USD as a deposit (the "Deposit") by \_\_\_\_\_. If the Purchaser fails to provide the Deposit promptly by \_\_\_\_\_, the Performer may cancel this Agreement without further obligation.

### **Performer Expenses**

8. The Performer agrees that the Fee is inclusive of all expenses, accommodations, holiday entitlements, traveling expenses to and from the Venue and covers any payments whatsoever due to other members of the group or unit, except as expressly provided in this Agreement.

### **Payment of Balance**

9. Promptly after the last set on the final date of the Performance, the Purchaser will pay to the Performer any outstanding balance of the Fee in cash, money order, or certified check.

### **Cancellation**

10. The Performer reserves the right to cancel this Agreement without obligation upon written notice to the Purchaser prior to \_\_\_\_\_. In the event the Performer cancels the Performance under the terms of this section, the Deposit will be returned to the Purchaser promptly.
11. The Purchaser reserves the right to cancel this Agreement without obligation upon written notice to the Performer prior to \_\_\_\_\_. In the event of said cancellation, the Deposit will be returned promptly. Cancellation by the Purchaser for any reason later than \_\_\_\_\_ will result in forfeit of the Deposit. Cancellation by the Purchaser later than \_\_\_\_\_ will also require payment of any outstanding balance of the full Fee.

### **Non-performance by the Purchaser**

12. Those obligations of the Purchaser that are to be performed prior to the Performance of the Performer are conditions precedent which must be performed in full by the Purchaser before the Performer is required to perform unless otherwise agreed to by all parties in writing. If the Purchaser cancels or postpones any performance without proper notice or fails to make any payment or fails to perform any other condition precedent as required by this Agreement then the Purchaser will be in breach of this Agreement and the Performer will have no further obligations under this Agreement. The Purchaser will forfeit any Deposit already paid to the Performer.

### **Security Deposit**

13. The Performer will not be required to post a bond or security deposit against any or all possible damage related to or arising from the Performance.

### **Force Majeure**

14. Neither the Performer nor the Purchaser will be held liable for any failure to perform its obligations under this Agreement where such breach is due to any of the following: acts or regulations of

public authorities, labor difficulties or strike, inclement weather, epidemic, interruption or delay of transportation service, acts of God, or any other legitimate cause beyond the reasonable control of the Performer and the Purchaser.

### **Sickness and Accidents**

15. The Performer agrees to meet its obligations under this Agreement subject to legitimate incapacity by sickness or accident. Failure to meet its obligations under this section will result in the Performer returning any and all outstanding deposits to the Purchaser.

### **No Recording of the Performance**

16. Recording or transmitting of the Performance by anyone through any means whatsoever will not be allowed under this Agreement. It is the responsibility of the Purchaser to enforce this provision.

### **Merchandising**

17. The Performer may offer CDs, tapes and other such items for sale at the Performance. The Purchaser will provide a suitable area with reasonable visibility and accessibility to facilitate merchandising.

### **Indemnification**

18. The Performer is responsible only for its own conduct. The Performer will be compensated by the Purchaser for any and all damage done to the Performer's equipment by the Purchaser, its agents or guests. The Purchaser indemnifies and holds the Performer harmless for any and all property damage or personal injury that results from or is related to the Performance that is not directly caused by the Performer.

### **Permits**

19. The Purchaser warrants and represents that it has obtained any and all permits, approvals, licenses and variances necessary for the Performance.

### **Security**

20. The Purchaser will take reasonable precautions for the safety of the Performer and the Performer's equipment during all aspects of the Performance and at all times while the Performer and the Performer's equipment is on the Venue premises. The Purchaser is also responsible to ensure that only the Performer and its designated technicians and representatives are allowed on stage or in the backstage area.

### **Picket Lines**

21. The Performer will not be required to cross a picket line established by a labor organization at the Venue nor will the Performer be disciplined, or this Agreement be considered or deemed breached by the Performer, by reason of the Performer's refusal to cross such picket line.

### **Governing Law**

22. The Purchaser and the Performer submit to the jurisdiction of the courts of the State of California for the enforcement of this Agreement or any arbitration award or decision arising from this Agreement. This Agreement will be enforced or construed according to the laws of the State of California.

### **Covenant of Good Faith and Fair Dealing**

23. The Purchaser and the Performer agree to perform their obligations under this Agreement, in all respects, in good faith.

### **Miscellaneous Terms**

24. Time is of the essence in this Agreement.
25. This Agreement may be executed in counterparts. Facsimile signatures are binding and are considered to be original signatures.
26. No part of the Performance may consist of acts in violation of any local laws, codes, statutes, ordinances, regulations, rules or any other requirements including building and fire regulations. The Performance will not contain any lewd or indecent acts, images or language. If the Performer violates this section, the Purchaser may immediately cancel the Performance and this Agreement.
27. The Performer's representative warrants that by signing this Agreement it has the authority to bind the Performer to the terms and conditions of this Agreement.
28. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine gender include the feminine gender and vice versa. Words in the neuter gender include the masculine gender and the feminine gender and vice versa.
29. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, it is the parties' intent that such provision be

reduced in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable and the remainder of the provisions of this Agreement will in no way be affected, impaired or invalidated as a result.

30. This Agreement contains the entire agreement between the parties and cannot be changed except by written instrument subsequently executed by the parties to this Agreement. All negotiations and understandings have been included in this Agreement. Statements or representations which may have been made to the Purchaser by the Performer or to the Performer by the Purchaser, in the negotiation stages of this Agreement may in some way be inconsistent with this final written contract. All such statements are declared to be of no value in this Agreement. Only the written terms of this Agreement will bind the parties.
31. This Agreement and the terms and conditions contained in this Agreement apply to and are binding upon the Performer's successors, assigns, executors, administrators, beneficiaries, and representatives, and the Purchaser's successors and assigns.
32. The Performer specifically warrants and represents that all copyrighted material to be performed has been licensed or authorized by the copyright owners or their representatives. The Performer indemnifies the Purchaser for any copyright infringement and any expenses that may result from such copyright infringement during or as the result of the Performance.
33. The Purchaser will be responsible for providing suitable power and electricity for the Performance.
34. It is the intent of the parties to this Agreement that the Performer is an independent contractor and will control the manner and means of the Performance. The Purchaser will control the scheduling of the Performance. The Performer is not an employee of the Purchaser. The exclusive nature of this Agreement is limited to the duration of the Performance and it is expected that the Performer will enter other similar agreements with other purchasers.
35. Any notices or delivery required here will be deemed completed when hand-delivered, delivered by agent, or seven (7) days after being placed in the post, postage prepaid, to the parties at the respective addresses contained in this Agreement or as the parties may later designate in writing.

**IN WITNESS WHEREOF** the Performer and the Purchaser have duly affixed their signatures under hand and seal on \_\_\_\_\_

\_\_\_\_\_  
Witness (optional)

\_\_\_\_\_  
per: \_\_\_\_\_ (seal)

\_\_\_\_\_  
Witness (optional)

\_\_\_\_\_  
\_\_\_\_\_