

**FESTIVAL
LIVE PERFORMANCE AGREEMENT**

THIS AGREEMENT is made and entered into as of the [date], by and [Festival] ("Presenter"), in connection with located at [Address] ("Venue"), and

ARTIST:

Hereinafter referred to as "Artist," represented by [Agent]

Contact Phone:

Email:

PERFORMANCE DATE: [Fee]

ARTIST PAYMENT: [Fee]

Section 1. ENGAGEMENT. The Presenter hereby engages the Artist to perform musical entertainment services as detailed below at the Venue on the Performance Date, beginning at [Start Time] ("Performance.") Artist shall be available at Venue no less than one (1) hour in advance of the scheduled starting time of Performance.

Section 2. SERVICES. The Artist agrees to provide a professional, high quality and entertaining musical Performance to encompass a [Number of minutes] duration, excluding breaks. The contracted number of musicians for the Performance is 3+.

Section 3. FEE. The Presenter shall pay Artist the above-noted Artist Payment by company check immediately following the completion of the Performance. No other compensation shall be paid for the Performance or for the rights granted to the Presenter herein.

Section 4. INDEPENDENT CONTRACTOR. It is mutually agreed and understood that Artist is furnishing the services hereunder as an independent contractor and not as an employee of Presenter. Presenter shall not in any way control Artist's performance of services as to matters of creative detail, but Presenter shall have the right to approve the general nature of the Performance as outlined in this agreement and any additional Terms and Conditions which are attached hereto and incorporated by reference. Artist shall be responsible for any and all taxes under the provisions of the Internal Revenue Code, the Federal Social Security Act, and/or any other applicable statutes regarding the tax liability for an Independent Contractor.

Section 5. RECORDING/PHOTOGRAPHY. At Presenter's discretion and expense, Presenter may video, film, photograph and/or make audio recordings (collectively, the "Material") of the Performance. The Material may be incorporated in or used solely in connection with media productions created by or agreed to by the Purchaser for grant writing, promotional or archival purposes only. The Presenter shall not use any of the Material for any "for sale" or commercial purpose whatsoever without written consent and approval by Artist under a separate agreement.

Section 6. PRESS AND PROMOTIONS. Presenter is hereby granted the right to include Artist's name, likeness, voice and biographical information in promotional literature and advertisements for the Performance or for the festival, including television commercials and other media, and in any brochure for the festival series. Presenter is further granted the right to use up to thirty (:30) seconds of any one recording or excerpts from Artist's pre-recorded work (CD, DVD, or other media) in promotions and

advertisements for the Performance or for the Series, which may appear in television commercials, not-for-sale promotional CDs and/or on the Presenter website.

Section 7. PUBLIC RELATIONS. Artist shall provide biographical and promotional material no later than [Date]. Any promotional material sent to Presenter shall become the property of Presenter for use in marketing and promoting Artist's Performance. Artist is encouraged to provide Presenter with any such promotional materials as Artist believes will help represent them best in this effort.

Section 8. MERCHANDISE AGREEMENT. Artist shall be allowed to sell merchandise at the Venue before, during and/or after the Performance subject to the following terms and conditions:

- a. Artist may sell CDs, DVDs, apparel, books, and posters on site at the Venue as long as the merchandise is the property of Artist to sell and has a relevance to the Performance;
- b. Presenter shall have the right, at its discretion, to approve any merchandise to be sold and to refuse or limit the right of the Artist to sell merchandise;
- c. Merchandising sales may begin one (1) hour before the contracted Performance time and must conclude thirty (30) minutes after the Performance ends;
- d. Presenter will provide one six-foot table, a single power drop and two chairs to Artist for merchandise sales. Artist must provide the staff, signage, and any and all sales tools needed to conduct the merchandise sales;
- e. It is the responsibility of Artist to operate and manage all merchandise sales and inventory; and to pay applicable taxes, if any.

Section 9. CANCELLATION.

- **By Artist.** If for any reason other than an act of God or force majeure, it shall become necessary for Artist to cancel Artist's performance, the cancellation shall be subject to the following conditions:

- a. If notice of cancellation is made thirty (30) days or more in advance of the Performance date, there will be no penalty or damage charges. Notice must be made in writing stating the reasons for the cancellation. Notice must be made directly to Presenter's Executive Director;
- b. If notice is made less than thirty (30) days in advance of the Performance, the Artist will be responsible for the reimbursement of any costs already incurred by Purchaser in the promotion and/or production of the Performance. This includes, but is not limited to the cost of any advertising, marketing, labor and or equipment rentals that shall have been undertaken and/or incurred specifically for Artist's Performance;
- c. Artist shall also be responsible for all costs associated with re-booking the Performance that exceed the fee Artist is to be paid pursuant to this agreement.

- **By Purchaser:**

- a. In the event an act of God, riots, civil disorder, period of national mourning, rebellion, bomb threat, public health threat, or any natural disaster, other than non-catastrophic inclement weather, renders it impossible or impracticable for Presenter to hold the Performance, Presenter shall have the right to cancel Artist's performance without payment to Artist. Such cancellation shall not be deemed a breach of contract and shall not give rise to any cause of action against Presenter;
- b. In the event of inclement weather or other circumstances beyond the control of the Presenter, other than those enumerated in subsection (a) above, which renders it impossible or impracticable for Presenter to hold the Performance, the following conditions shall apply:
 - i. If Artist and/or Artist members shall have arrived or are in transit to the Venue for the scheduled load-in, Presenter will pay Artist the full Artist Payment, as set forth above;
 - ii. If the cancellation is communicated to Artist prior to noon on the day before the scheduled Performance, Presenter will pay the Artist fifty (50%) percent of the full Artist Payment, as set forth above, provided, however, that any advance which may have been paid to Artist shall be counted in arriving at the fifty (50%) percent total.

Section 10. RULES AND REGULATIONS.

- a. Regulations: Artist acknowledges that Presenter is producing the Performance pursuant to the terms and restrictions of license agreements, permits, consents and other approvals issued by the City of Bethlehem and other government entities. The Artist agrees to comply with all regulations, prohibitions and other provisions as may be mandated by such entities.
- b. Rules: Artist hereby acknowledges and agrees as follows:
 - i. Prohibited Substances: At all times during the Performance, Artist shall not have in Artist's possession or use, or be under the influence of any illegal drugs or alcohol;
 - ii. Dress and Behavior: The Performance is open to the public and is presented in a family environment. Artist agrees to use language appropriate to such an environment. Artist further agrees not to wear clothing or display any signage containing images or language that could be considered offensive to such an environment;
 - iii. Sound and Lighting Levels: Artist shall comply with all applicable sound and lighting level ordinances as detailed by Presenter's production. Unless agreed to otherwise in a writing signed by both parties, Artist agrees to use only the sound and lighting services and personnel provided by Presenter for the audio and lighting reinforcement of the Performance. Artist agrees that all decisions regarding sound and lighting shall be made solely by Presenter's sound and lighting personnel and will abide by them accordingly;
 - iv. Pyrotechnics: Artist shall not be permitted to have or use any type of electronic or pyrotechnic display or in any way create a hazardous condition for audience;
 - v. Fire and smoking: The Venue is a non-smoking facility. Artist agrees not to smoke or have any open flames of any kind within fifty (50) feet of the Venue.

Section 11. COMPLIANCE WITH LAWS. Artist agrees to comply with all existing federal, state, and local laws and ordinances applicable to Artist's Performance and to ensure like compliance by all persons and entities under the management and/or control of Artist.

Section 12. INDEMNIFICATION. Artist will defend, indemnify and hold harmless Presenter and Purchaser's affiliates from and against all actions, costs, claims, losses and expenses and/or damages, including attorneys fees, arising out of or resulting from any breach by the Artist of Artist's representations, warranties or agreements hereunder, including by not limited to negligence or alleged negligence of the Artist's or the Artist's employees, representatives or subcontractors for any injury to any guests or patrons or damage to property of the Venue caused solely or in part by the Artist's actions, equipment, instruments or personnel within the control of Artist.

Section 13. BREACH OF CONTRACT. Failure of Artist to comply with any of the terms of this agreement, unless such terms have been waived, modified or deleted in a writing signed by duly authorized representatives of both Artist and Presenter, may in the sole discretion of Presenter, be declared a "Breach of Contract." Any anticipatory breach of this Agreement may, in the sole discretion of Presenter, entitle Presenter to cancel the Performance and pursue all available remedies. All other instances of breach of contract will render Artist liable to Presenter for damages and other relief, including but not limited to injunctive relief.

Section 14. REMEDIES. Any remedies Artist may have against Presenter in connection with this agreement or the use of the Material shall be limited to the right to recover damages, if any, in an action at law. The Artist hereby waives any right or remedy in equity, including the right to terminate this agreement or to rescind Presenter's right, title and interest in and to the Material or the results and/or proceeds of the Performance or to enjoin, restrain, or otherwise impair in any manner the production, distribution, advertising or any other exploitation of any media production incorporating the Material, or any parts or elements thereof.

Section 15. ASSIGNMENT. Neither party shall have the right to assign its rights and/or obligations under this agreement to another person or entity without the prior written consent of the other party.

Section 16. SUPERSEDING AGREEMENT. The parties agree that in the event any term of this agreement shall conflict with a term contained in any other contractual document to which either Presenter or Artist are a party, the term in this agreement shall control and take precedence.

Section 17. ENTIRE AGREEMENT. This agreement contains the full understanding of the parties with respect to the matters hereto and supersedes all prior agreements and understandings, whether written or oral, pertaining thereto, and may not be amended or modified except by a writing signed by both parties.

Section 18. NOTICES. All notices, requests, demands and other communications hereunder that affect the performances of any obligation set forth in this document, shall be made in writing and hand-delivered or mailed with postage prepaid to the party intended at the address set forth at the end of the agreement.

Section 19. GOVERNING LAW. This agreement shall be construed and enforced in accordance with the laws of the State of [State] governing contracts to be wholly performed in [State].

Section 20. ARBITRATION. The parties will attempt in good faith to settle any claim or controversy arising out of or relating to this agreement through consultation, negotiation, and a spirit of mutual cooperation. If those attempts fail, then the dispute will be mediated by a mutually acceptable mediator to be chosen by the parties or will be submitted to arbitration in accordance with the rules of the American Arbitration Association. Each party will bear its own expenses, and the decision of the mediator or arbitrator will be final and binding and may be enforced in any court of competent jurisdiction.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth above.

ARTIST:

FESTIVAL

By:

By:

Authorized Representative

Authorized Representative

Date: _____

Date: _____

Print Name: _____

Address:

