



Cleveland State University
Division of Business Affairs & Finance
Department of Arena and Conference Services
Performance Agreement

This Performance Agreement (“Agreement”), effective as of the last date of signature by CSU (“Effective Date”), is by and between Cleveland State University, on behalf of _____, [User Department/Office to insert the applicable CSU Department/Office and delete this green instruction and delete this green instruction.] a public institution of higher education and instrumentality of the State of Ohio, with a principal address at 2121 Euclid Avenue, Cleveland, Ohio 44115 (“CSU”) and _____ [insert Performer/Artist/Speaker Name and delete this green instruction] with a principal address at _____ (“Performer”). CSU and Performer agree to the following:

I. OBLIGATION OF THE PARTIES

Performer agrees to perform as specified below in Section II, Specifications of the Engagement (the “Engagement”) in consideration of CSU’s obligation to pay Performer the total amount of \$ _____, and to provide a location for the Engagement. Performer acknowledges, understands, and agrees that CSU is exempt from federal, state, and municipal sales and excise taxes and that the payment set forth herein shall be net and shall not include the amount of any such tax. Payment, by CSU check, will be made by CSU within thirty (30) days following the Engagement. Payment is subject to withholding taxes as described herein.

II. SPECIFICATIONS OF THE ENGAGEMENT

1. Date:
2. Location:
3. Description of services being provided by Performer:
4. Ticket Price (if applicable, list ticket price; if not applicable mark N/A):
5. Performer’s arrival time:
6. Set-up time:
7. Engagement start time:
8. Engagement completion time:
9. Sound system provided by:
10. Lighting:
11. Electrical needs:
12. Electrical needs:

13. Performer's needs:

14. Performer's promotional material to be sent to CSU:

Cleveland State University
2121 Euclid Avenue, SC 140
Cleveland, Ohio 44115

Attention: _____

15. CSU contact information:

Name: Rodolfo Pagsanjan
Title: Director, Event & Conference Management, Department of Conference Services
Address: 2121 Euclid Avenue, SC 140
Cleveland, OH 44115
Email: r.pagsanjan@csuohio.edu
Phone: (216) 687-2227

16. Performer's contact information:

Name:
Address:

Email:
Phone:
Fax:

17. Performer's Social Security # or Federal Tax Id#:

18. CSU check to be made payable to:

19. Other arrangements agreed to:

III. TRAVEL. Performer will not be reimbursed for travel, lodging, or any other expenses incurred in the performance of this Agreement.

IV. AMPLIFICATION

Sound pressure levels must not exceed occupational noise standards set forth by the Occupational Safety and Health Administration ("OSHA") and must remain compliant with those standards throughout the duration of the Engagement. CSU reserves the right to interrupt, and if necessary, terminate the Engagement in order to comply with these standards. Termination of the Engagement pursuant to this provision will result in cancellation of this Agreement and forfeiture of payment.

V. PUBLICITY

Performer agrees not to use CSU's name, seal, logo, or other CSU identification in advertising or promotional literature, except to note the location of the Engagement. Performer further agrees not to imply, in any way, the sponsorship by CSU of any event without the express written permission of CSU. CSU's Department of Marketing and Public Relations reserves the sole discretion to approve, in advance, and in writing, all forms of advertising or publicity, which include CSU's name, seal, logo, or other CSU identification.

VI. INTELLECTUAL PROPERTY

Performer represents and warrants that in conducting the Engagement, its works are either original with Performer as the artist or that Performer has obtained any and all necessary permissions or is otherwise authorized to perform the work. Performer represents that it has not violated any laws or privacy rights in carrying out its responsibilities under this Agreement.

VII. USE BY CSU

Performer agrees to waive all rights, claims, and causes of action arising from pictures, newspaper accounts, recordings and other reproductions that CSU may make of Performer's Engagement, provided that CSU's use of same shall be restricted to such activities as are permitted by law for educational institutions.

VIII. PYROTECHNICS

The use of any flammable, combustible, ignitable, or explosive materials by Performer during the Engagement is strictly prohibited. CSU reserves the right to terminate the Engagement if the Performer violates this provision. Termination of the Engagement pursuant to this provision will result in cancellation of this Agreement and forfeiture of payment.

IX. SECURITY

CSU, in its sole discretion, shall determine and control security arrangements for the Engagement, including, but not limited to, numbers, type, placement, and use of security personnel.

X. CANCELLATION

If the Engagement is canceled due to construction, partial or total destruction, acts of God, severe inclement weather, war, terrorism, outbreaks of disease, epidemics, government regulation, disaster, fire, strikes, civil disorder, unavailability of water, electricity or other necessary utilities, or any other similar cause beyond the control of the parties, which would make it inadvisable, illegal, or impossible to perform under the terms and conditions of this contract, then this Agreement will terminate and neither party shall have any further rights nor liabilities hereunder.

XI. CITY WITHOLDING FOR ENTERTAINMENT SERVICES

Performer agrees to pay to the appropriate authority(ies) all relevant state and/or local sales taxes/or license fees arising out of this Agreement.

- A. As required by the City of Cleveland ordinance 191.1302, all payments made through CSU's Accounts Payable for the services of any entertainer, entertainment act, speaker, sports event, promotional booth, special event, band, orchestra, theatrical performance, or promoter or booking agent for any of the above, shall be subject to a deduction of 2.5% for Cleveland tax withholding.
- B. CSU will provide the applicable City of Cleveland municipal tax form number, which will contain information about the amount received and the amount of city income tax withheld for tax filing purposes.

XII. NON-RESIDENT ALIENS PROVIDING INDEPENDENT PERSONAL SERVICES

As required by Internal Revenue Service regulations, any non-resident alien receiving compensation for independent personal services through CSU's Accounts Payable will be subject to withholding at the statutory rate of 30% unless the following requirements are met and the following forms are completed:

- A. The non-resident alien must be qualified to apply for and must apply for a social security number;
- B. The non-resident alien must be a resident of a country that has a tax treaty with the United States that exempts independent personal services from United States income tax; and
- C. The Performer must submit a properly completed IRS Form 8233 – Exemption From Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual and enter her/his social security number or the words "applied for" in the appropriate section of this form.

XIII. INDEMNIFICATION AND INSURANCE

- A. Performer, Performer's agent(s), and employee(s), jointly and severally, agree to indemnify and hold CSU, its trustees, officers, and employees harmless from any and all losses and expenses, which may be obtained against, imposed upon, or suffered by CSU because Performer's actions infringe or violate or are claimed to infringe or violate any copyright or trademark, common or statutory law, or any literary, dramatic, or other right, or such actions cause personal injury or property damage.

- B. Performer will provide evidence of Commercial General Liability insurance, including Coverage B Personal and Advertising Injury Liability, without a deductible, in limits of not less than One Million Dollars per occurrence Two Million Dollars per aggregate. Such insurance will name as insured the Performer and Cleveland State University and cover both Performer and CSU from all liability occurring as a result of the Engagement.
- C. If Performer is driving on CSU property, Performer shall provide proof of Commercial Auto Coverage. Further, if Performer employees are doing work on CSU property, Performer shall provide proof of Workers' Compensation coverage in statutory amounts.
- D. CSU and its Board of Trustees shall be listed as additional insureds under Performer's Commercial General Liability policy.
- E. A certificate reflecting the continuing coverage of all policies procured by Performer as required herein shall be delivered to CSU at least thirty days before the time such insurance is required to be carried by Performer, and thereafter at least thirty days before the expiration of any policy.
- F. CSU reserves the right to require limits above the minimum insurance limits set forth above when, in the sole discretion of CSU's Office of Environmental Health and Safety ("OEHS"), such higher limits are justified.
 - a. Additional insurance limit Requested? Yes No CSU OEHS Initials _____
- G. CSU is not responsible for, and has no liability to the Performer, Performer's agents, employees, contractors, guests, participants, attendees or spectators for any loss, theft, damage, personal injury, delay, annoyance, inability to perform as set forth herein or other casualty, and Performer hereby waives any claim against CSU for any such liability, except to the extent that such liability, loss or damage is determined to be due to the negligent acts or negligent omissions of CSU, its trustees, officer, or employees while acting within the scope of their employment, as set forth in Ohio Revised Code 2743.02. Nothing in this Agreement shall be constructed or interpreted as a waiver of the sovereign immunity of CSU and/or the State of Ohio beyond the waiver provided in Ohio Revised Code 2743.02.

XIV. RELATIONSHIP BETWEEN PERFORMER AND CSU

Performer, Performer's agents and employees are independent contractors and are not to be considered or deemed employees of CSU for any purpose whatsoever, including but not limited to Social Security withholding, Ohio Public Employees Retirement System benefits, Unemployment Compensation, Workers' Compensation or any employment-based benefits.

XV. ETHICS COMPLIANCE

Performer represents warrants and certifies that it and its employees and agents engaged in the performance of this Agreement are knowledgeable of and understand the Ohio Ethics and Conflict of Interest laws. Performer further represents, warrants, and certifies that neither Performer nor any of its employees will do any act that is inconsistent with such laws.

XVI. DRUG FREE WORKPLACE

Performer agrees to comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places and shall make a good faith effort to ensure that none of its employees or agents engaged in performance purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

XVII. COMPLIANCE WITH LAW

Performer agrees to comply with all applicable federal, state, and local laws, ordinances and regulations and all applicable CSU rules, regulations, policies, procedures and guidelines.

XVIII. CHOICE OF LAW

This Agreement shall be governed by the laws of the State of Ohio and any action or proceeding relating in any way to this Agreement or the subject matter hereof shall be brought and enforced exclusively in the competent courts of Ohio.

XIX. RIDERS [User Department/Office to write any applicable rider on the line and provide all riders to OGC for review as to legal form before having this contract signed by authorized CSU signatory or if no rider, write N/A. Delete this green wording before giving the contract to performer.]

The following rider(s), signed by both parties, are attached hereto and incorporated herein by reference:

The terms of this Agreement shall govern in the event of any conflicting terms between any rider and this Agreement.

XX. OTHER PROVISIONS

- A. This Agreement is not binding upon CSU until signed by both CSU and the Performer.
- B. The person signing this Agreement on behalf of Performer represents that the personnel used by Performer are bound to the obligations and conditions of this Agreement and that he/she signs as a properly authorized representative of the Performer.
- C. No amendment or modification of any provisions of this Agreement will be effective unless it is in writing, prepared as an amendment referencing this Agreement, and signed by duly authorized representatives of both parties.
- D. In the event of any conflict between the terms and provisions of the body of this Agreement and any attachment, the terms and provisions of the body of this Agreement shall control.
- E. The terms of this Agreement are servable such that if one or more provisions are declared illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.
- F. The waiver by CSU of any provision of this Agreement on any occasion and upon any particular circumstances shall not operate as a waiver of such provision on any other occasion or upon any other circumstances.
- G. The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of construction or interpretation of this Agreement.
- H. Neither this Agreement or any rights, duties, or obligations hereunder may be assigned or transferred in whole or in part by Performer, without the prior written approval of CSU.
- I. Performer must sign and return this Agreement to CSU by: _____.
Payment is conditioned on Performer signing and returning this Agreement to CSU.

XXI. COMPLETE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the subject matter hereof, and shall not be altered, modified, amended, or supplemented in any way except by an instrument in writing, signed by the parties and attached hereto. This Agreement supersedes any and all previous agreements, whether written or oral, between the parties.

[The remainder of this page is left blank intentionally. Signature page follows.]

AGREED TO AND ACCEPTED BY:

CLEVELAND STATE UNIVERSITY

PERFORMER

By: _____

By: _____

Name: _____

Name: _____

Title: Dean or Division Vice President

Title: _____

Date: _____

Date: _____

Additional CSU Required Information and Signatures to be obtained before signed by Dean or Division Vice President:

CSU Department of Conference Services approval of facility use:

Name: _____

Signature: _____

Date: _____

CSU Department/Office Name and Account Number: _____

CSU Department/Office Budget Approver Name: _____

CSU Department/Office Budget Approver Signature: _____

Date: _____

For Student Organization run events:

Name of Student Organization: _____

Student Life Advisor Name (print): _____

Student Life Advisor Signature: _____

Date: _____

Student Life Budget Approver Name (print): _____

Student Life Budget Approver Signature: _____

Date: _____