



THE UNIVERSITY OF
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PERFORMANCE AGREEMENT

THIS AGREEMENT (hereinafter, "Agreement") is made by and between **THE UNIVERSITY OF MEMPHIS**, a public university in the Tennessee Board of Regents System (hereinafter, "University") and _____ (hereinafter, "Contractor").

Name of Artist: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ FAX: _____

E-mail address: _____

Artist's Social Security Number or Employer Identification Number: _____

WITNESSETH:

NOW THEREFORE, in consideration of the mutual promises herein contained, the parties have agreed and do hereby enter into this Agreement according to the provisions set out herein:

A. Contractor agrees to perform the following services:

1. Date(s) of performance: _____

2. Location of performance: _____

3. Time performance to begin: _____

4. Length of performance: _____

5. Number and length of breaks: _____

6. Set-up/Teardown: _____

7. Sound check: _____

8. Equipment/services to be furnished upon need by The University of Memphis:

a. _____.

9. Equipment to be furnished by Contractor: _____.

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10. Contractor concession/merchandise rights (T-shirts, novelties, books, tapes, etc. - 20% commission required): _____.

11. Other particulars: _____.

B. University agrees to compensate Contractor as follows:

1. Pay Contractor _____ for fulfilling its obligations hereunder.
2. Technical Rider requirements will be provided as mutually agreed upon in writing.
3. Payments to Contractor shall be made as set forth herein and only after receipt of invoices for services performed. The final payment shall be made only after Contractor has completely performed Contractor's duties under this Agreement. No advanced deposits or payments will be made.
4. In no event shall the liability of University under this Agreement exceed \$ _____.

C. The parties further agree that the following shall be essential terms and conditions of this Agreement.

1. Only agreed to and signed Riders and/or Addendums, including but not limited to, for example, music addendums, performance riders, professional service agreements, and/or performance contracts, shall become an integral part of this Agreement and incorporated herein, if attached hereto, and signed by both University and Contractor.
2. Contractor warrants that no part of the total amount provided herein shall be paid directly or indirectly to any officer or employee of University or the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to Contractor in connection with any work contemplated or performed relative to this Agreement. If Contractor is an individual, Contractor warrants that within the past six (6) months, he/she has not been and during the term of this Agreement will not become an employee (full or part-time faculty, staff or student employee, including graduate assistant employee) of University or the State of Tennessee.
3. The parties agree to comply with Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 11,246, the Americans with Disabilities Act of 1990 and the related regulations to each. Each party assures that it will not discriminate against any individual including, but not limited to, employees or applicants for employment and/or students because of race, religion, creed, color, sex, age, disability, veteran status or national origin. The parties also agree to take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, religion, creed, color, sex, age, disability, veteran status, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection available to employees and applicants for employment.
4. Contractor, being an independent contractor and not an employee of University, agrees to carry adequate public liability and other appropriate forms of insurance, to pay all taxes incident hereto, and otherwise protect and hold harmless University from any and all liability not specifically provided for in this Agreement.

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5. Either party may terminate this Agreement by giving written notice to the other at least _____ days before the effective date of termination. In that event, Contractor shall be entitled to receive just and equitable compensation for any satisfactory authorized work completed as of the termination date.
6. If Contractor fails to fulfill in timely and proper manner Contractor's obligations under this Agreement, or if Contractor shall violate any of the terms of this Agreement, University shall have the right to immediately terminate this Agreement and withhold payments in excess of fair compensation for work completed. Notwithstanding the above, Contractor shall not be relieved of liability to University for damages sustained by virtue of any breach of this Agreement by Contractor.
7. This Agreement may be modified only by written approval of the Chancellor of the Tennessee Board of Regents or designee, if applicable.
8. Contractor shall maintain documentation for all charges against University under this Agreement. The books, records and documents of Contractor, insofar as they relate to work performed or money received under this Agreement, shall be maintained for a period of three (3) full years from the date of the final payment, and shall be subject to audit, at any reasonable time and upon reasonable notice, by University or the Comptroller of the Treasury or their duly appointed representatives.
9. If Contractor is an individual and is not a United States citizen, Contractor acknowledges that he/she must still have a social security number to receive the compensation provided herein. Further, the alien Contractor understands that his/her alien status (resident alien/nonresident alien) can directly affect whether or not taxes are withheld. Therefore, Contractor additionally certifies that the appropriate Internal Revenue Service form concerning tax withholding status has been filed with University Accounting Office.
10. Contractor (_____ is/ _____ is not) a small business. A small business in the service industry is a business which is independently owned and operated, is not dominant in its field of operation, has gross annual sales of \$500,000 or less, and has nine (9) or less employees.
11. Contractor (_____ is/ _____ is not) a minority owned business. A minority owned business is a business which is solely owned, or at least fifty-one percent (51%) of the assets or outstanding stock of which is owned, by an individual who personally manages and controls the daily operations of such business and who is impeded from normal entry into the economic mainstream because of past practices of discrimination based on race, religion, ethnic background, or sex.
12. Contractor shall not assign this Agreement or enter into subcontracts for any of the work described herein without obtaining the prior written approval of University or the Tennessee Board of Regents, as appropriate. Approval shall not be given if the proposed subcontractor was or is currently ineligible to bid on this Agreement.
13. This Agreement shall not be binding upon the parties until the President or official designee thereof, and the Tennessee Board of Regents, as appropriate, approves it.
14. Compensation to Contractor for travel, meals, lodging shall be in the amount of actual cost to Contractor, subject to maximum amounts and limitations specified in University Travel Procedures, as they may be from time to time amended.
15. Contractor agrees to assume full responsibility for payment of any and all copyright royalties due for the entertainment performance provided hereunder. Contractor further agrees to assume full responsibility for any copyright infringement which occurs during performance and shall hold University harmless from any and all liabilities and damages arising out of any action for copyright infringement.

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16. Contractor shall be responsible for any applicable amusement or sales taxes. Speaker/performer shall be responsible only for his/her own applicable income taxes.
17. University reserves the right to interrupt or terminate the entertainment, or any portion thereof, if during the entertainment performance, the university determines, in its sole discretion, that such action is warranted to maintain security of compliance with Federal, State or local laws or regulations or Tennessee Board of Regents policy. Such action, in and of itself, shall not affect University's obligation for payment under the terms of this Agreement; provided, however that payment may be withheld if such interruption or termination is necessary due to a failure by Contractor or speaker/performer to observe Federal, State or local laws and/or University policies.
18. Contractor accepts responsibility for its action within its control and University accepts responsibility for its own action.
19. In the event of force majeure, sickness of or accident to Performers, or if a performance is delayed, prevented, rendered impossible or unfeasible by any act or regulation of any public authority or bureau, civil disorder, strike or other labor difficulty, epidemic, interruption in or delay of transportation services, war conditions or emergencies, or any cause beyond the control of Performers, there shall be no claim made for damages by either party to this agreement and speaker's/performer's obligation to speak or perform shall be deemed waived if the performance does not in fact occur. In the event of such non-performance for any reasons stated herein, the monies, if any, advanced to each Performer hereunder, shall be returned. Inclement weather rendering performance impossible or unfeasible shall not be deemed an emergency and expenses shall be reimbursed by University; provided, however, that Performers are present, ready, willing and able to perform pursuant to the terms hereof. Should Performers be unable to appear as scheduled for any reason stated in this provision C.19, neither Contractor nor Performers shall have any liability for any expenses incurred by University. In the event the Performers are unavoidably delayed, but arrives late by no more than two (2) hours and present the performance in full as directed by University or arrives late by no more than two (2) hours and is directed or ordered by University not to perform, the engagement will be considered to have been completed as agreed, and all fees, honorariums, other charges and expenses shall be due in full.
20. Contractor warrants that it has the authority to execute this Agreement on behalf of the speaker/performer and further warrants that the performing artist has agreed to be bound by the terms and conditions stated herein.
21. Provided that speaker/performer has agreed to be bound by the terms and conditions stated herein, University agrees to the following:
 - a. Speaker/performer is Contractor's disclosed principal or an independent contractor and University deals with Contractor as a disclosed agent and not as a principal.
 - b. Contractor shall be responsible for its acts or omissions and shall not be responsible for any acts or omissions of speaker/performer.
 - c. University understands and agrees that Contractor is not responsible for the content or quality of the speaker's/performer's performance or speaker's/performer's actions and University will make no deduction from the fee due to Contractor on such grounds.
22. The appearance by speaker/performer is for the program set forth herein and for no other program or activity. Speaker/performer agrees that s/he shall make no other personal appearances within a one hundred mile radius of the University within one week of his/her performance for the University, unless speaker/performer agrees to a reduced fee and unless the travel expenses are shared on a pro rata basis.

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23. No audio, visual or written reproduction of the performance may be made without the prior written approval of speaker/performer, unless such reproduction is used solely for educational or archival purposes. In addition, no use of speaker's/performer's name or likeness may be used as an endorsement of any product, service, or in connection with any commercial tie-in to the engagement without the written consent of the speaker/performer.
24. Souvenirs, programs, T-shirts, jackets or other apparel, photos or other appropriate merchandise may only be sold as mutually agreed in writing between speaker/performer and University _____ representatives.
25. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Tennessee as the site for performance of this Agreement without regard to its conflict of laws. Contractor shall comply with all applicable federal, state and local laws, and regulations in performing with his duties under this Agreement. Any and all claims against the State of Tennessee, its officers, agents, and employees in performing any responsibility specifically required under the terms of this Agreement shall be submitted to the Board of Claims or the Claims Commission of the State of Tennessee. Damages recoverable against the State of Tennessee shall be limited to claims paid by the Board of Claims or the Claims Commission pursuant to Tennessee law.
26. This Agreement constitutes the entire understanding between the parties and all other prior negotiations, representations, and understandings are superseded hereby. Neither party was induced to enter into this Agreement by any statements or representations not contained in this Agreement. Neither party shall have any authority, and neither party shall represent that it has authority, to assume or create any obligation, express or implied, on behalf of the other party, except as provided in this Agreement. Each party is an independent contractor, and this Agreement shall not be construed as creating a partnership, joint venture or employment relationship between the parties or as creating any other form of legal association that would impose liability on one party for the act or failure to act of the other party.
27. Any notice required or permitted by this Agreement from one party shall be sent to the other party by U.S. first-class mail, postage prepaid, return receipt requested, at the following, respective address:

If to University:

Attn: _____

If to Contractor:

and/or to such other addresses as either party may designate in writing to the other party hereafter.

28. If any provision of this Agreement shall be determined to be contrary to law, void, invalid, unenforceable or illegal for any reason by a body having jurisdiction over the parties, it shall be ineffective only to the extent of such determination and the validity and enforceability of all the remaining provisions shall not be affected thereby.

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29. This Agreement is subject to the below listed Rider(s) and/or Addendum(s) which are attached hereto and incorporated by reference into this Agreement, the terms of which have been agreed to by and between the parties:

- a. _____
- b. _____
- c. _____
- d. _____.

Unless listed above, and agreed to by the parties in advance in writing, no additional Rider(s) and/or Addendum(s) will be accepted.

30. Prohibition on Hiring Illegal Immigrants. Tennessee Public Chapter No. 878 of 2006, TCA 12-4-124, requires that Contractor attest in writing that Contractor will not knowingly utilize the services of illegal immigrants in the performance of this Contract and will not knowingly utilize the services of any subcontractor, if permitted under this Contract, who will utilize the services of illegal immigrants in the performance of this Contract. The attestation shall be made on the form, Attestation re Personnel Used in Contract Performance (“the Attestation”), which is attached (Attachment 1) and hereby incorporated by this reference.

If Contractor is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that the Contractor shall be prohibited from contracting or submitting a bid to any Tennessee Board of Regents institution or any other state entity for a period of one (1) year from the date of discovery of the breach. Contractor may appeal the one (1) year by utilizing an appeals process in the Rules of Finance and Administration, 0620.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate counterpart original by their duly authorized representatives this ___ day of _____, subject to the above noted attached Rider(s) and/or Addendum(s).

CONTRACTOR

THE UNIVERSITY OF MEMPHIS

By: _____

By: _____

Print Name

Canty Robbins

Date

Print Title

Procurement Services, Director

Print Title

Date

Date

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

CONTRACT NUMBER:	Provided by University of Memphis --
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

SIGNATURE & DATE:

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PERFORMANCE RIDER

THIS RIDER (hereinafter, "Rider") is an essential part of the attached Agreement dated the ____
day of _____ between **The University of Memphis** (herein called Purchaser") and
_____ (herein called "Artist," even though there may
be more than one person and/or the person signing the Agreement is a representative for the artist)
for the personal services of Artist.

1. Any requirements that the Purchaser comply with terms, provision, or directions of agreements, indentures, declarations of trust, etc., shall only be binding if the specific terms of the same are known to and agreed to by the Purchaser, in writing, in advance of Agreement execution or are made a part of this Agreement prior to the signing of this Agreement by the purchaser.
2. The performing Artist or company shall notify Purchaser at least _____ days prior to the event of the expected time of arrival of company materials and/or company crews. In the event of late arrival of company materials and/or crews the company shall reimburse Purchaser for any out-of-pocket expenses for stagehands and other expenses incurred on account of such delay.

CANCELLATIONS

3. Artist agrees to furnish payment to the Purchaser for actual appearance preparation costs in the event of a late cancellation, late appearance, or non-appearance with 20 days after billing.

BREACH OF CONTRACT

4. This Rider and the Agreement and the terms and conditions contained herein, may be enforced by the Purchaser and/or Artist.

INSURANCE

5. Damages to the premises, equipment or properties of the Purchaser caused by Artist or Artist's staff, either intentionally or through negligence, will be paid for by Artist or may be deducted from the fee.
6. The Purchaser assumes no responsibility for equipment, costumes, etc., utilized by Artist, except in such instances where the Purchaser agrees, in writing, to accept custody of same and then only to the extent that loss of injury is occasioned by the Purchaser's negligence or intentional acts.

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OTHER

7. Artist certifies that all equipment requested in this Agreement for usage at said performance will be utilized at said performance. Any equipment not used by Artist shall be paid for by Artist and any such costs will be deducted from the agreed upon fee prior to payment by Purchaser.
8. Purchaser reserves the right to all stage announcements made at the engagement. Purchaser may additionally take whatever steps it deems necessary to protect the health, safety, and welfare of the persons attending the performance covered by this Agreement.
9. Purchaser will not use any funds to purchase alcoholic beverages. Sponsoring members and/or Purchaser staff are not obligated to obtain alcoholic beverages for Artist regardless of source of funds.
10. Sale of souvenir items or programs by Artist shall only be permitted upon specific written agreement with Purchaser 21 days prior to the date of engagement, and then subject to the terms thereof.
11. Artist is solely responsible for payment of royalty fees or dramatic rights and dramatic musical works and/or performance fees, fees required by unions and similar organizations, and similar costs. Artist shall indemnify the Purchaser against any liability or damages, including attorney fees, which may arise as a result of violation by Artist of copyright laws.

IN WITNESS WHEREOF, the parties have caused this Rider to be signed on the _____ **day** of _____, **200** . Artist representative hereby represents and warrants that he/she has the authority to execute this Agreement on behalf of the performing group and each member thereof and further warrants that all persons that perform or provide services under this Agreement have agreed to be bound by said terms and conditions; and each person to be chosen, upon acceptance, shall be bound by said terms and conditions.

CONTRACTOR

THE UNIVERSITY OF MEMPHIS

By: _____

By: _____

Print Name

Canty Robbins

Print Name

Print Title

Procurement Services, Director

Print Title

Date

Date

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The University of Memphis

MUSIC ADDENDUM
TO AGREEMENT BETWEEN
THE UNIVERSITY OF MEMPHIS
AND

THIS MUSIC ADDENDUM is an essential part of the attached Agreement dated the ____ day of _____, 200__ between The University of Memphis (herein called "Purchaser") and _____ (herein called "Artist," even though there may be more than one person and/or the person signing the contract is a representative of Artist) for the personal services of Artist. The following terms and conditions shall apply to the performance of music services:

1. The manner means and details of the performance must be coordinated with and approved by Purchaser official responsible for administering this Agreement prior to any performance.
2. Purchaser reserves the right to interrupt or terminate the entertainment, or any portion thereof, if during the entertainment performance, Purchaser determines, in its sole discretion, that such action is warranted to maintain security or compliance with Federal, State or local laws or regulations or Tennessee Board of Regents policy. Such action, in and of itself, shall not affect Purchaser's obligation for payment under the terms of this Agreement; provided, however, that payment may be withheld if such interruption or termination is necessary due to a failure by Artist to observe Purchaser policies of which it has been informed.
3. Whatever equipment Purchaser may provide for any performance shall remain under complete supervision, direction and control of Purchaser.
4. The State of Tennessee prohibits Purchaser from providing, carrying or maintaining commercial general liability insurance or medical, professional or hospital liability insurance. Any and all claims against the State of Tennessee, including Purchaser or its employees, for injury, damage, expenses or attorneys' fees shall be heard and determined by the Tennessee Claims Commission in the manner prescribed by law. Damages recoverable against Purchaser shall be limited expressly to claims paid by the Claims Commission pursuant to T.C.A. Section 9-8-301 et seq.
5. Non-performance of this Addendum will be excused only on the grounds that such non-performance was due to an act of God, strike, lockout, fire, flood or other such calamity beyond the control and not the fault of the non-performing party.
6. The parties agree to the following copyright provisions:
 - a. Purchaser does not presently have a SESAC, Inc., music license; therefore, Artist agrees that it or any person it may provide will not perform copyrighted music or work for which SESAC, Inc., is the performance rights licensing agency without providing Purchaser with prior written consent of SESAC, Inc.
 - b. Artist assures that all necessary copyright royalty licenses have been obtained from ASCAP, BMI, SESAC and any other performing rights organization or the copyright owner for the performance to be presented under the terms of this Agreement. In that regard, Artist assumes full responsibility for payment of any and all copyright royalties due for the entertainment performance hereunder.
 - c. Artist further agrees to assume full responsibility and to indemnify, hold harmless and defend Purchaser and the State of Tennessee from and against any and all claims, demands,

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or suits which may be brought for copyright infringement allegedly arising in course of the performance presented under the terms of this Agreement. Such indemnification shall extend to both criminal and civil actions and shall include any and all losses, liabilities, damages, penalties, court costs or attorney's fees incurred by the university as a result of such infringement.

- d. Purchaser shall promptly notify Artist of any such claim brought against Purchaser or the State of Tennessee. The settlement or compromise of any claim brought against Purchaser or the State of Tennessee shall be subject to the approval of the appropriate State officials, as required by T.C.A. Section 20-13-103.

- 7. Artist shall be responsible for any applicable amusement or sales taxes as agreed upon through this Addendum.
- 8. Performance hereunder and all other related activities shall be detailed in the Performance Rider which is attached hereto and made an integral part hereof.
- 9. Artist agrees to pay to Purchaser a _____ commission on any concession sales permitted by Purchaser. Artist shall provide a detailed accounting of sales and pay the appropriate commission within ten (10) days of the performance. Artist shall be responsible for paying sales taxes associated with any concession sales.
- 10. The undersigned hereby represents and warrants that he/she has the authority to execute this Agreement on behalf of the performing group and each member thereof and further warrants that all persons it may have perform or provide services under this Agreement have agreed to be bound by said terms and conditions; and each person yet to be chosen, upon acceptance, shall be bound by said terms and conditions. Each individual so provided may enforce this Agreement, and severally agree to render services under the undersigned Artist.

I agree to and accept the above terms concerning musical performances.

ARTIST

By: _____

Print Name

Print Title

Date

THE UNIVERSITY OF MEMPHIS

By: _____

Canty Robbins

Print Name

Procurement Services, Director

Print Title

Date