

FLORIDA ATLANTIC UNIVERSITY

Performance Agreement

This performance agreement (this "Agreement") is made by and between the Florida Atlantic University Board of Trustees, ("SPONSOR") and _____ ("ARTIST") who mutually agree to the following terms and conditions for the performance(s) herein described:

Section 1: Nature of program (lecture, concert, etc.):

Section 2: Performance days and dates:

Section 3: Performance location:

Section 4: Performance time(s):

Length of performance(s):

ARTIST to arrive at performance location by:

Section 5: Total compensation:

Section 6: Check to be made payable to: (insert name and address)

Section 7: Social Security # _____ or Federal Tax ID # : _____

Section 8: This Agreement shall constitute the complete and final agreement of the parties hereto thereby superseding all other contracts, memoranda, or agreements, whether written or oral, which pertain to the subject matter of the Agreement. Any modification to this Agreement must be in writing and signed by the parties hereto. Any conflicts in the terms of this Agreement and any riders, exhibits or attachments to this Agreement shall be resolved such that the terms of this Agreement govern in all cases.

Section 9: This Agreement shall be interpreted and the rights of the parties determined according to the laws of the State of Florida.

Section 10: No stipulation, clause, or condition in this Agreement shall create an agency or employer and employee relationship between the University/SPONSOR and the ARTIST, ARTIST representative, or any other person or corporation. Therefore, the ARTIST is at all times an independent contractor having complete supervision, direction, and control over the performance as well as legal responsibility for it.

Section 11: If the facility scheduled for the performance shall become unusable or should be made inaccessible to the audience by reason of fire, flood, hurricane, hurricane warning, martial law, or power failure, and if no other facility can be utilized, then ARTIST shall be restricted to payments of reasonable costs of transportation to Boca Raton, providing ARTIST has actually made the trip to the performance location.

Section 12: The engagement herein contracted must be conducted in compliance with SPONSOR rules, policies and procedures and must comply with all laws and statutes of the of the State of Florida.

Section 13: ARTIST agrees to provide the complete production-concert-band-lecture or other attraction as specified in this Agreement, fully rehearsed and staged, including all performing personnel, musicians, musical instruments, equipment, and such additional properties and personnel as are required for the proper presentation and performance of this attraction.

Section 14: The Contract shall be subject to cancellation by SPONSOR upon 30 days written notice to ARTIST. A termination penalty may not be charged to SPONSOR. The SPONSOR shall be liable only for payment for service rendered prior to the effective date of termination.

Section 15: The agreement of ARTIST to perform is subject to detention by sickness, accident, civil turmoil, strikes, epidemics, acts of God, or other such conditions beyond ARTIST's control.

Section 16: Union fees and welfare and insurance obligations are a part of the cost of production included in the compensation specified in this Agreement and therefore the University/SPONSOR assumes no responsibility for the payment of these obligations.

Section 17: In the event that ARTIST is not ready to perform at curtain time, or if any performing member (s) is/are not present, or if ARTIST arrives at the performance site in such a condition as to appear to SPONSOR's representative incapable of performing in a reasonably acceptable manner, then ARTIST shall be deemed to have committed a material breach of this Agreement and SPONSOR shall have the absolute right in its sole discretion to cancel the performance or terminate the performance in progress, and to refuse payment accordingly.

Section 18: If signed only by the Agent manager, the Agent/Manager warrants that he/she is duly authorized to act for and on behalf of ARTIST and that he/she is authorized to enter into this Agreement and that the Agent/Manager and ARTIST are jointly and severally liable for any breach of this Agreement. In signing this Agreement, authorized representatives of Florida Atlantic University do not assume any personal liability or responsibility for this engagement.

Section 19: The intentions of the parties herein named and their respective obligations shall be ascertained from this Agreement and the SPONSOR shall have no obligation to adhere to or have knowledge of the constitution, bylaws, rules or regulations of any union.

Section 20: It is expressly understood by and between the parties herein named that membership in the American Federation of Musicians or any other union or organization is not to be required of any person performing the services contemplated in this agreement.

Section 21: Unless ARTIST or ARTIST representative files a signed copy of this Agreement with the Florida Atlantic University Director of Student Development & Activities on or before 2/20/15 this Agreement may be deemed null and void at the option of the SPONSOR.

Section 22: Sound levels related to services performed shall not exceed the following limits:

Maximum Sound Level	110dB (peaks)
Leq:	95dB (average)

Measurements will be made by university personnel using the A-weighting scale and the Fast response according to the ANSI SL4-1971 Standard for Sound Level Meters. Failure to reduce sound levels to the above limits after being so ordered by the SPONSOR will constitute default under this agreement.

Section 23: The ARTIST will be provided with a copy of this completed Agreement on or before the date of the engagement.

Section 24: All performing personnel considered to be a part of this act must be listed below:

NAME

SOCIAL SECURITY NUMBER

Any change in performing personnel may result in a reduction of their performance fee as stated in Section #5 of this Agreement, or in the cancellation of this Agreement at the option of the SPONSOR.

Section 25: To the extent provided under Section 768.28 of the Florida Statutes, SPONSOR assumes any and all risks of personal injury and property damage, deprivation, or infringement (including, but not limited to, intellectual property) attributable to the negligent acts or omissions of the SPONSOR and its officers, employees, servants, and agents while acting within the scope of their employment. Nothing contained herein or in any term or condition contained within the Contract or any sub-contract referenced shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the University, the State of Florida or their officers, employees, servants, agents, agencies, or public bodies corporate to be sued; (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in section 768.28 of the Florida Statutes; or (4) the consent of the University, the State of Florida or its officers, employees, servants, agents, agencies, or public bodies corporate to the jurisdiction or authority of any laws, forum or court outside the State of Florida; and any such term or condition purporting to do so shall be null and void and of no force or effect. ARTIST assumes any and all risk of personal injury and property damage attributable to the willful or negligent acts or omissions of ARTIST and its own officers, employees and other agents. ARTIST also assumes such risk with respect to the willful or negligent acts or omissions of persons subcontracting with ARTIST or otherwise acting or engaged to act at the instance of ARTIST in furtherance of ARTIST's obligations under this Agreement.

Section 26: At the request of SPONSOR, ARTIST shall provide SPONSOR with public liability and property damage insurance for the contracted performance, in an amount to be determined in SPONSOR'S reasonable discretion. ARTIST agrees to indemnify and hold free and harmless, and defend the State of Florida, the Board of Trustees, Florida Atlantic University and their officers, employees and agents, from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses, including attorneys fees, which in any manner directly or indirectly may arise

or be alleged to have arisen, or resulted or alleged to have resulted from the presence, activities and promotions of every kind and nature of ARTIST or its officers, employees, agents and contractors, in connection with this Agreement, specifically including claims for infringement or misappropriation of a copyright, patent, trade secret or other third party proprietary right.

Section 27: ARTIST may not, without the advance written approval of SPONSOR, assign any right or delegate any duties under this Agreement, nor may it transfer, pledge, surrender or otherwise encumber or dispose of its interest in any portion of this Agreement.

Section 28: Failure to exercise or delay in exercising any right, power or remedy accruing to SPONSOR on any breach or default of ARTIST shall not impair any such right, power or remedy, or be construed as a waiver of any such breach or default or of any similar breach or default occurring; nor shall any waiver of any single breach or default be construed as a waiver of any other breach or default occurring.

Section 29: Florida law requires that all contractual agreements for services contain the following provisions:

- A. The SPONSOR has the right to cancel this Agreement if the ARTIST does not allow public access to all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the ARTIST in conjunction with this Agreement. If the Contract is for services and the Vendor is acting on behalf of the University, the Vendor further agrees to: (i) keep and maintain public records that ordinarily and necessarily would be required by the University in order to perform the service, (ii) provide the public with access to public records on the same terms and conditions that the University would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law, (iii) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law, and (iv) meet all requirements for retaining public records and transfer, at no cost, to the University all public records in possession of the Vendor upon termination of the Contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the University in a format that is compatible with the information technology systems of the University.
- B. An invoice shall be prepared for fees or other compensation for services or expenses and shall be submitted in sufficient detail for proper pre-audit and post-audit purposes.
- C. The SPONSOR has no obligation to pay the travel expenses of the ARTIST. However, if an amendment which would permit such payment is signed by all parties to this Agreement, then bills for travel expenses shall be submitted and paid in accordance with Section 112.061, Florida Statutes.
- D. This Agreement is subject to the laws of the State of Florida. In addition, the SPONSOR's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Florida Legislature.
- E. SPONSOR acknowledges, in accordance with University regulations, the ARTIST is engaged for the purpose of presenting a public performance in accordance with Sponsor's Agency responsibility to do so and that SPONSOR acknowledges that it has determined that this Agency responsibility could be met in no other way than to engage ARTIST for this production and that ARTIST was selected in accordance with Agency's policies and procedures.

- F. In accordance with Section 112.3185, Florida Statutes, ARTIST certifies that to the best of his knowledge and belief no individual employed by him or subcontracted by him has an immediate relation to any employee of the SPONSOR who was directly or indirectly involved in the procurement of said services. Violation of this section by ARTIST shall be grounds for cancellation of this Agreement by SPONSOR.

Section 30: In accordance with SPONSOR's solicitation policy, all merchandise sales must be conducted by representatives of the SPONSOR. Sponsoring department will retain 6% of gross sales owed to the State of Florida for the Florida Sales Tax and 20% of the remaining net revenues. Purchaser must be notified of Artist's intent to have items sold at least 3 days in advance of engagement.

Section 31: ARTIST contact information is as follows:

Name of ARTIST CONTACTS:

Address:

Telephone:

Section 32: Special Provisions:

Accepted and Agreed as of the date first written above:

ARTIST

FLORIDA ATLANTIC UNIVERSITY
BOARD OF TRUSTEES

By _____
Name: _____ Date _____
Title: _____

By _____
Name: _____ Date _____
Title: Director of Purchasing