### GEORGIA STATE UNIVERSITY FOUNDATION

**RIALTO CENTER FOR THE ARTS**

### PERFORMANCE AGREEMENT

**THIS PERFORMANCE AGREEMENT** (“Agreement”) made this **[\_\_]** day of **[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]**, 20**[\_\_]** (“Effective Date”), by and among the Board of Regents of the University System of Georgia by and on behalf of Georgia State University, located in Atlanta, Georgia (“Georgia State University”), on behalf of its Rialto Center for the Arts (“Rialto), the Georgia State University Foundation, Inc. (“Foundation”), and

|  |  |
| --- | --- |
| **Performer:** |  |
| **Performer’s Representative:** |  |
| **Title, Organization:** |  |
| **Address:** |  |
| **Telephone/Fax:** |  |
| **SSN or FEI** |  |

(“Performer”), who in consideration of the mutual promises set forth herein, do hereby agree as follows:

**1. DETAILS OF EVENT:** Georgia State University and the Foundation hereby engage Performer, and Performer agrees to render services as set forth below (the “Event”):

|  |  |
| --- | --- |
| **Event Title:** |  |
| **Detailed Description of Services:** |  |
| **Length of Performance:** |  |
| **Performance Date(s)/Time(s):** |  |
| **Load-In Starts:** |  |
| **Load-Out/Clean-Up Ends:** |  |
| **Rehearsal Date(s)/Time(s):** |  |
| **Residency Activity(s)/Time(s):** |  |
| **Performance Venue:** | Rialto Center for the Arts  80 Forsyth Street (Corner of Luckie and Forsyth Streets)  Atlanta, Georgia 30303  Backstage Entrance: 75 Poplar Street, Second Floor |

**2. COMPENSATION:** In full consideration of the services to be rendered by Performer, Georgia State University shall pay Performer a performance fee of $**[\_\_\_\_\_\_\_\_\_\_\_\_\_]**.00 (the “Fee”). One hundred Percent (100%) of the Fee will be paid immediately following the final Event Performance by Foundation check made payable to Performer or Performer’s Representative (whichever is the signatory to this Agreement); provided, all negotiations must be concluded and two (2) duplicate originals fully executed by Performer must be received by the Rialto no later than six weeks prior to the performance date in order for Performer to receive payment on the date of performance.

**3.** **TRANSPORTATION & LODGING:** Lodging and travel (both air and local transportation between airport - hotel – venue only) are arranged and paid for by Foundation as more fully described below. Any changes to flights after Performer approval are at Performer’s sole expense. Any transportation and lodging arrangements made by Performer are at the Performer’s sole expense.

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| --- | --- |
| **Air:** | Performer [ ] Foundation Reimbursement [ ] Foundation Direct Pay [ ] N/A [ ] |
| **Local Transportation:** | Performer [ ] Foundation Reimbursement [ ] Foundation Direct Pay [ ] N/A [ ] |
| **Hotel:** | Performer [ ] Foundation Reimbursement [ ] Foundation Direct Pay [ ] N/A [ ] |
| **Meals:** | Performer [ ] Foundation Reimbursement [ ] Foundation Direct Pay [ ] N/A [ ] |
| **Notes:** |  |

**4. GEORGIA STATE UNIVERSITY OBLIGATIONS:** Georgia State University shall furnish the venue, stage, lighting and sound equipment from existing inventory, standard security, box office services, ushers, stagehands and technical support personnel. Georgia State University shall determine, in its sole discretion, the type and amount of services necessary for the proper operation of the venue for the Event. Additional technical and Performer support requirements must be mutually agreed upon in writing by both parties and shall be set forth in the Performer’s Rider (the “Rider) which shall be attached hereto and incorporated herein by reference. Provided, in the event of any conflict between the terms of this Agreement and the Rider, then the Agreement shall control.

**5. PERFORMER’S OBLIGATIONS:** Performer shall pay for the following expenses unless otherwise mutually agreed upon in writing: all musicians, performers, accompanists, musical instruments and costumes; security additional to standard security provided by Georgia State University; costumes; Performer’s and Performer’s entourage’s transportation and accommodations; cartage; insurance; rehearsal costs; and any other costs incurred by Performer in connection with the Event other than those expenses to by paid by Georgia State University as set forth herein. Any expenses incurred by Georgia State University at Performer’s direction shall be promptly settled by Performer upon presentation to Performer of an invoice bill therefore.

**6. TECHNICAL SUPPORT SERVICES:** Georgia State University will provide lighting, sound, and stage equipment from its existing inventory. Georgia State University may provide, at its sole discretion, such additional technical support as may be described in the Rider and agreed to in writing.

**7. COMPLIMENTARY TICKETS:** Georgia State University will provide Performer with ten (10) complimentary tickets per Event Performance Time listed above. Performer agrees to return all unused complimentary tickets to Georgia State University for release and sale to the public no less than 24 hours prior to each Event Performance Time.

**8. ORCHESTRA PIT SEATING:** Georgia State University reserves the right to add seating for the Event in the orchestra pit area if Performer is not using this area for the Event.

**9. SOUND QUALITY, CLARITY, AND VOLUME:** Georgia State University retains the exclusive right to supervise and control volume level, sound quality and clarity of Event to ensure safety of patrons and equipment, overall quality and clarity of sound for patron satisfaction, and the proper enforcement of applicable local ordinances. Georgia State University agrees to consult with Performer in an attempt to reach a mutually-agreeable decision with respect to volume level, sound quality and sound clarity; provided, in the event the parties are unable to reach a mutually-agreeable resolution of these issues, Georgia State University’s determination shall control. In that event, if Performer refuses to comply with Georgia State University’s directives regarding sound quality, clarity or volume, Performer shall be deemed to be in default of this Agreement and agrees to forfeit the Fee and to reimburse Georgia State University for all costs and expenses incurred in association with the Event.

**10. PUBLICITY:** Upon execution of this Agreement, Performer will furnish photographs and biographical information to Georgia State University for use in connection with advertising and promoting the Event. Performer agrees to announce Event Details (Venue, date and time) on each social media network on which Performer has a professional presence where upcoming performances are listed. Unless otherwise agreed to in writing, Georgia State University shall make all decisions regarding Event advertising and promotion and will be solely responsible for the costs thereof.

**11. PROGRAMS:** No less than sixty (60) calendar days prior to the Event, Performer agrees to furnish to Georgia State University or its designee with a correct copy of the Event program to be performed and such other matters that Performer would like to have inserted in the program. Georgia State University has the sole discretion to accept, alter or reject any materials submitted by Performer for inclusion in the Event program without liability to Performer.

**12. MERCHANDISE & CONCESSIONS:** If agreed to in writing, Performer may sell promotional merchandise at the Event upon payment of twenty percent (20%) of net sales (the “Merchandise Fee”) to Georgia State University. Georgia State University reserves the right to refuse the sale of specific promotional items in its sole discretion. Upon request, Georgia State University may agree to sell merchandise on Performer’s behalf in exchange for a $40.00 fee for labor (“Labor Fee”) in addition to the Merchandise Fee. Payment of the Merchandise Fee and Labor Fee is due in cash immediately following completion of the Event.

Performer is solely responsible for paying applicable sales tax to appropriate taxing authorities. For purposes of this Agreement, Net Sales shall be defined as gross sales less eight percent (8%) sales tax. Performer is solely responsible for all shipping charges associated with shipping the merchandise to and from the venue. Performer shall receive no compensation from the sale of promotional items developed for sale by or on behalf of Georgia State University.

Georgia State University has the sole right and authority to sell concessions at the performance and to retain all profits resulting there from.

**13. FORCE MAJEURE:** In the event that the purpose of the Agreement is substantially frustrated, or performance by either party to this Agreement is made illegal, impossible, or commercially impractical, by acts of God, fire, flood or terrorism, strike, acts of war, civil disorder, utility or communications failures, governmental or university transportation or travel restrictions (but not delay of arrival for Event except where documented travel arrangements show that travel was booked to arrive in Atlanta at least 4 hours in advance of Event and the delay was caused by the common carrier rather than Performer), acts or regulations of the United States or state government or their respective agencies, outbreak, epidemic, pandemic, health and safety concerns as determined by the University that are not caused in whole or in part by the negligence of either party, serious illness of Performer requiring documented inpatient hospitalization the parties shall respectively be relieved of their obligations hereunder and there shall be no claim for damages by either party against the other; provided, upon termination of the Agreement, Performer shall refund any sums already paid by University less actual non-refundable expenses substantiated with receipts and fees due for work performed through the date of termination.

**14. RECORDING:** For in-person events, Performer grants Georgia State University the right to live stream the performance to all Georgia State satellite campuses and university community members, and to photograph and/or video Performer with no-flash during the first five (5) minutes of performance for archival purposes or educational purposes and for inclusion in publications of Georgia State University and its student media groups. Virtual events may be live-streamed or pre-recorded for asynchronous online presentation. Subject to rights granted to Georgia State herein, Performer retains all other rights to his or her work. Performer may request from Georgia State a copy of the any recording or, if made, a transcript of the recording.

15. WARRANTIES OF PERFORMER: Performer covenants, warrants and represents that: (1) Performer has the full right and power to enter into this Agreement and to perform on the date(s) and at the venue set forth herein; (2) Performer’s performance of the Event will not violate or infringe on any copyright, right of privacy or publicity, or other statutory or common law right of any person, firm, or corporation; (3) Performers performance will not defame any person, firm or corporation; (4) Performer will not violate the Code of Good Practices of the National Association of Broadcasters if the Event is authorized under this Agreement to be broadcast by radio or television; and (5) Performer shall not perform within a one hundred miles radius of Georgia State University within six months days of the scheduled Event unless consented to in advance and in writing by Georgia State University.

**16. INDEMNITY:** Performer does hereby indemnify and shall hold harmless Georgia State University, the Foundation, its directors, members, agents, servants and employees, the Board of Regents of the University System of Georgia and its directors, members, agents, servants and employees (each of the foregoing being hereinafter referred to individually as “Indemnified Party”) against all claims, demands, causes of action, actions, judgments or other liability including attorneys’ fees (other than liability solely the fault of the Indemnified Party) arising out of, resulting from or in connection with this Agreement, including but not limited to: (1) any breach or alleged breach of Performer’s warranties set forth above; (2) the violation of any third party's trade secrets, proprietary information, trademarks, copyright, patent rights or other intellectual property rights; (3) all injuries or death to persons or damage to property, including theft; (4) Performer's failure to perform all obligations owed to Performer's employees including any claim Performer's employees might have or make for privilege, compensation or benefits under any employee benefit plan; and (5) any and all sums that are due and owing to the Internal Revenue Service for withholding, FICA and unemployment or other state and federal taxes.

Performer's obligation to indemnify any Indemnified Party will survive the expiration or termination of this Agreement by either party for any reason.

Performer agrees to assume, at Performer’s sole expense, the defense of any claims, demands, suits, or actions based on or arising from the breach or alleged breach by Performer of any of Performer’s warranties or obligations under this Agreement, but acknowledges that Georgia State University and/or the Foundation reserves the right to select counsel of its own choice, at its own expense, to defend any of the foregoing claims, demands, suits, or actions.

**17. ADDITIONAL SPONSORS/UNDERWRITERS**: Performermust notify Georgia State University and the Foundation of all sponsors, underwriters or other third parties receiving promotional consideration from Representative or Performer for the Event. Georgia State University and the Foundation reserve the right to limit any promotional/sponsorship activities that do not meet the artistic and academic requirements of Georgia State University and the Foundation or contribute to its mission, as determined in Georgia State University and/or the Foundation’s sole discretion. Georgia State University and the Foundation will not accept alcohol, tobacco-related, or adult-themed sponsorships. In cases where a sponsor is approved, Georgia State University and the Foundation must be acknowledged in all publicity related to the Event. In all printed matter, Georgia State University and the Foundation's name and/or logos shall be larger and more prominent than the names and/or logos of additional sponsors or underwriters. In all other forms of publicity, Georgia State University and the Foundation shall be the primary sponsors.

**18. WARRANTIES OF PERFORMER’S REPRESENTATIVE:** Performer’s representative, if signing this Agreement for Performer, warrants and represents that it is an authorized representative of Performer with full and current legal authority to Agreement on Performer’s behalf.

**19. COMPLIANCE:** Performer and Performer’s Representative agree to abide by all Georgia State University and Foundation policies and federal, state and local laws applicable to the performance of the Agreement.

**20.**  **ASSIGNMENT:** Performer may not assign, modify, or subcontract any of his/her obligations under this Agreement except with the prior written consent of Georgia State University and the Foundation. Performer agrees that the Foundation may assign the performance of services under this Agreement to Georgia State University.

**21. TERMINATION:** Georgia State University and/or the Foundation may terminate this Agreement immediately by written notice to Performer if Performer is in default of any provision of this Agreement. Georgia State University and/or the Foundation may regard Performer to be in default of this Agreement if Performer abandons performance of the services to be rendered under this Agreement at any time prior to completion of performance, becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise.

Should Georgia State University and/or the Foundation terminate the Agreement for cause, then any and all deposits paid to Performer or Performer’s Representative shall be immediately refunded and must be received by Georgia State University and/or the Foundation no later than ten (10) days following the date of Georgia State University and/or the Foundation’s notice of termination or become subject to 1.5% interest per month. In addition, Performer will be held responsible for reimbursement of all costs incurred in preparing for and promoting Event, including, but not limited to, marketing, advertising, production, box office, front-of-house and travel expenses. Georgia State University and/or the Foundation must receive Performer’s reimbursement for such costs no later than thirty (30) days of Georgia State University and/or the Foundation’s invoice for same.

**22. REMEDIES / NO WAIVER:** All the rights and remedies of the parties under this Agreement are distinct, separate and cumulative, and mention or reference to any one or more of them shall not be deemed to be an exclusion of or waiver of any right or remedy, and the parties shall have to the fullest extent permitted by law the right to enforce any rights or remedies separately. No failure to enforce any provision of this Agreement nor any waiver of any right, unless in writing, shall discharge or invalidate such provision or affect the rights of the parties to enforce same or any subsequent default or breach of such provision.

**23. ATTORNEY’S FEES:** In case any suit, action, or proceeding shall be brought or taken by Georgia State University and/or the Foundation to enforce any right or exercise any remedy under this Agreement, Georgia State University and/or the Foundation shall be entitled to receive and there shall be allowed to Georgia State University and/or the Foundation, to be included in any judgment recovered, reimbursement for all reasonable costs, including attorneys’ fees.

**24. WITHHOLDING:** Georgia State University and/or the Foundation may withhold such sums as Georgia State University and/or the Foundation may determine in its sole discretion should be withheld under the Internal Revenue Code and other laws without liability to Performer as a result thereof. Notwithstanding the foregoing, Performer shall withhold all taxes required to be withheld under the Internal Revenue Code and under other applicable laws, including taxes on non-resident aliens and foreign corporations.

**25. INDEPENDENT CONTRACTORS:** Performer is an independent contractor and shall not be deemed to be employed by Georgia State University or the Foundation. Inasmuch as Georgia State University, the Foundation, and Performer are contractors independent of one another, neither has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in writing signed by both parties hereto. Performer shall not represent himself or herself as Georgia State University or the Foundation’s agent for any purpose to any party or allow any employee of Performer to do so, unless specifically authorized, in advance and in writing by Georgia State University and/or the Foundation, and then only for the limited purpose stated in such authorization. Performer shall assume full liability for any contracts or agreements Performer enters into with third parties without the express knowledge and prior written consent of Georgia State University and/or the Foundation.

**26. NON-DISCRIMINATION:** The parties agree that in the performance of the Agreement they will not discriminate against any person or group of persons on the basis of gender, handicap, race, color, religion, sexual orientation or national origin, or in any other manner prohibited by the laws of the United States or the State of Georgia.

**27. NOTICE:** Any notice which the parties may desire or may be required to send to each other under this Agreement shall be deemed sufficiently given if in writing and personally delivered or sent by registered or certified mail, postage prepaid, addressed, if to Performer, at the address set forth above, or, if to Georgia State University or the Foundation, as follows: Managing Director, Rialto Center for the Performing Arts, Georgia State University, University Plaza, Atlanta, GA, 30303, with a copy to Office of Legal Affairs, Georgia State University, P.O. Box 3987 Atlanta, GA, 30303-3987, or other such addresses as the parties may from time to time designate by written notice.

**28. SEVERABILITY:** If any provision of this Agreement or its application to any person or in any circumstances shall be invalid or unenforceable, the other provisions of this Agreement shall nonetheless remain in full force and effect.

**29. GOVERNING LAW:** This Agreement shall be governed in all respects by the laws of the State of Georgia, without regard to conflict of law provisions.

**30. RIDERS:** Riders must be initialed by both parties to be considered part of the Agreement. If technical requirements are presented by or on behalf of Performer subsequent to execution of the Agreement, Georgia State University and Foundation reserve the right to renegotiate the terms of the Agreement and, if mutually agreeable terms are not reached, to cancel the Agreement with no further obligation to Performer. In the event of any conflict between the terms and conditions of this Agreement and those of any riders attached hereto, then the terms and conditions of this Agreement shall control.

**31. COUNTERPARTS:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

**32. ENTIRE AGREEMENT:** This Agreement constitutes the entire understanding between the parties concerning the subject matter hereof, and supersedes any and all prior written or oral understandings or agreements between the parties. This Agreement may not be changed, altered, modified, or amended without the written consent of both parties. Whenever the approval or consent of Georgia State University or the Foundation is required by Performer pursuant to this Agreement, such approval or consent shall not be deemed to be given unless in writing and by an authorized representatives of such parties. The Agreement shall not be considered binding until fully executed.

[Signatures on Following Page]

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as of the Effective Date.

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| **Performer**: **[\_\_\_\_\_\_\_\_\_\_\_\_\_]**  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **Board of Regents of the University System of**  **Georgia by and on behalf of Georgia State**  **University:**  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
| Authorized Representative Date  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Print Name and Title | | Authorized Representative Date  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Print Name and Title | |
|  | | **Georgia State University Foundation, Inc.:**  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
|  | | Authorized Representative Date  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Print Name and Title | |