



PERFORMANCE AGREEMENT

The undersigned Artist(s) and/or Artist's Agency and Purchaser agree to the following terms and conditions for the engagement herein described below

- 1) This Agreement is made and entered into by and between _____
[Name of Sponsoring Organization]

(the "Purchaser,") and _____ *[Name of Performer]*

(the "Artist(s)") and/or _____
[Performer's Agency/Agent the "Booking Agent" – if applicable]
- 2) For and in consideration of \$ _____ to be paid by the Purchaser, the Artist agrees to appear and
[Performance] *[Fee]*
to appear and perform on _____ at _____ a.m./p.m. at _____,
[Date] *[Location of Performance]*
California State University, Fresno.
- 3) Payment will be made by the Purchaser via the California State University, Fresno Association, Inc. by check at the conclusion of the Performance and:

 made payable to the Artist mailed
or made payable to the Artist's Agency or given to the artist
- 4) Artist's performance will be _____ hours/minutes in duration, consisting of _____ set(s) of _____ minutes and interrupted only by _____ break(s) of _____ minutes each.
- 5) Artist(s) shall arrive on campus a minimum of _____ hour(s) before Performance time to inspect the engagement location and set up any equipment needed.
- 6) Neither Purchaser nor Artist shall be deemed to be in default if performance of the obligations required by this Agreement is delayed or becomes impossible because of any act of God, war, earthquake, fire, strike, sickness, accident, civil commotion, epidemic, act of government, its agencies or officers, or any other legitimate cause beyond the control of the parties. Upon the occurrence of any such event, or if the Artist fails to perform any or all of the conditions or covenants of this Agreement because of circumstances beyond the control of Purchaser and not induced or brought about by the unreasonable act of Purchaser, then Purchaser, in addition to any other rights and remedies it may have, may elect, by giving notice to Artist, to extend the term of this Agreement for a period equivalent to all or any part of the period that any such conditions shall prevail or that Artist shall be in default. In the event of any such extension, specific dates, periods, and time requirements referred to in this Agreement shall be postponed or extended accordingly. Except as provided above, any party canceling the Performance shall within thirty (30) days

after presentation of a detailed invoice, pay to the other parties hereto, their actual reasonable expenses supported by accurate documentation and caused directly by the cancellation.

- 7) Artist has complete right and authority to enter into this Agreement and is in no way encumbered from performing all obligations of Artist set forth herein.
- 8) Artist is the sole owner of any and all rights covered by this Agreement with respect to the Performance.
- 9) Nothing has been done in the past, or will be done during the term of this Agreement, that might impair the right of Artist to perform pursuant to this Agreement or otherwise interfere with Purchaser's complete enjoyment of its rights.
- 10) There exists no pending claim or litigation that might affect Artist's right or ability to perform.
- 11) There are no existing or pending rights, licenses, and/or grants of any nature in favor of any person or business organization that might impair, diminish, or infringe upon those rights or affect the Performance. Artist will pay promptly any and all royalties occurring as a result of the Performance and will indemnify and hold Purchaser harmless from any cost or expense related thereto.
- 12) No element in the Performance and no depiction of or reference to any person therein and no characterization or depiction of any real person in any way shall infringe upon or violate any rights of any person or business organization or is libelous, slanderous, or an invasion of any personal rights of any person.
- 13) Artist has secured all written consents, waivers, and permissions from any and all of the persons necessary or appropriate for the Performance or the use, depiction, or mention of those persons in the Performance. Artist shall deliver copies of all relevant waivers, consents, and permissions to Purchaser.
- 14) No acts have been or will be committed by Artist or any person or business under Author's control that would in any way interfere with Purchaser's full enjoyment of the Performance. Artist will not conduct a presentation or an act similar to the Performance within _____ days of the Performance within the Counties of Fresno, Madera, Kings or Tulare except as agreed by Purchaser.
- 15) Purchaser shall have the exclusive right to advertise the Performance. The rights granted under the Paragraph shall include, but shall not be limited to, the right to advertise in any segment of the media excerpts, summaries, synopses, and stories contained in the Performance.
- 16) Purchaser shall have the exclusive right to distribute, sell, lease, exhibit, license for exploitation, and in any other manner exploit and dispose of, all goods offered for sale in connection with the Performance.
- 17) It is understood that the Artist(s) and/or Agency executes this Agreement as an independent contractor and is not an employee of the Purchaser, and the Artist(s) and/or Agency shall have exclusive control over the means, methods and details of fulfilling his/her obligation under this Agreement, except for the time(s), and minimum and maximum length of the Performance.
- 18) Artist(s) and/or Agency agrees as an independent contractor to perform and discharge all their obligations under any and all laws, whether existing or in the future, in any way pertaining to the Performance, including but not limited to laws concerning, worker's compensation insurance, income taxes, state employment insurance taxes or contributions and public liability insurance; and Artist(s), and/or Agency

will indemnify and hold Purchaser harmless against any claims, cost or expense related to such laws, as well as against any and all union claims for welfare payments.

- 19) Artist(s) and/or Agency represent that in conducting the Performance under the terms of this Agreement they are not infringing on the property right, copyright, patent right, or any other right of any person; and that if any suit is brought or a claim made by any person that anything in conjunction with the ownership or the presentation of said act or appearance is an infringement on the property right, copyright, patent right or any other rights of any person, Artist(s) and Booking Agent will indemnify and hold harmless all other parties against any and all loss, damage, cost, attorney fee or other loss whatsoever by reason of the presentation of the Performance.
- 20) Purchaser shall withhold applicable taxes from the payment unless Artist or Booking Agent proves to the satisfaction of Purchaser that such payment is exempt from any withholding requirement. Artist agrees that California Revenue and Taxation Code Section 18662 and the related California regulations require the withholding of California income or franchise taxes on payments of California source income to nonresident entities. Withholding is not required if:
- a. payments to a particular performing entity total \$1,500 or less during the calendar year,
 - b. the entertainer is a corporation qualified to do business in California or has a permanent place of business in California,
 - c. the entertainer is a partnership that has a permanent place of business in California (Partnerships that are in California to present plays, ballets, operas and other musical productions and do not have a permanent place of business in this state are subject to withholding),
 - d. the entertainer or the withholding agent receives a withholding waiver from the Franchise Tax Board,
 - e. the entertainer is a tax exempt organization under either California or federal law.
- 21) Any controversies arising between the Artist(s) and/or Agency and the Purchaser pertaining to this Agreement shall be resolved in accordance with the laws of State of California. Venue for all such legal actions shall be in Fresno County Superior Court.
- 22) The services to be performed by Artist under the terms of this Agreement are of a character that is unique and/or intellectual, in that *[describe how services are unique, and/or intellectual]*:
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- The character of Artist's services gives those services a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at law. Artist therefore expressly agrees that Purchaser, in addition to any other rights or remedies that Purchaser may have, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by Artist.
- 23) If the Artist(s) or Artist(s)' Agent Contract Form, California State University, Fresno Association, Inc. Performance Contract Addendum Form are not in the possession of the officials of the University prior to the arrival of the Artist(s), the actual arrival of the Artist(s) will constitute the Artist(s)' agreement with the Artist(s) or Artist(s)' Agent Contract Form, California State University, Fresno Association, Inc. Addendum Form, and any changes required on these documents by the University.

- 24) The representative of Purchaser, in signing this Agreement, warrants that he/she signs as a properly authorized representative of the Association and all parties agree that he/she does not assume any personal liability under the terms of the Agreement.
- 25) This Performance Agreement, including the attached Addendum, contains all of the terms and conditions agreed upon by the parties hereto, and there shall be no variation, amendment, or modification except in writing signed by all parties to this Agreement.
- 26) _____ **[Name of Performer]** shall hold harmless, defend, and indemnify Associated Students California State University, Fresno; the Trustees of the California State University; the State of California; California State University, Fresno; and all of said entities' employees, agents, administrators, representatives, directors, officers, boards, committees, affiliates and volunteers, from and against all claims, damages, costs, lawsuits, attorneys' fees and costs, expenses, liabilities, penalties and/or losses in any way arising out of, resulting from, or relating to: (i) the negligence or willful misconduct of _____ **[Name of Performer]** or anyone directly or indirectly hired or paid by _____ **[Name of Sponsoring Organization]** or anyone for whose acts _____ **[Name of Performer]** may be liable, and/or (ii) any breach of this Agreement by _____ **[Name of Performer]**. The provisions of this section shall survive any expiration or earlier termination of this Agreement.

Artist/Agency _____
 Name (print) _____
 Signature _____
 Date _____
 Soc. Sec. No./Tax ID No. _____
 Address _____
 Phone _____ Fax _____

Student Organization Representative:
 Name (print) _____
 Signature _____
 Date _____
 Address _____
 Phone _____ Fax _____

Associated Students, Inc. California State University, Fresno
 University Student Union 317
 5280 North Jackson Avenue, M/S SU32
 Fresno, California 93740-8023
 Phone: (559) 278-2656 ♦ Fax: (559) 278-2720

www.asi.csufresno.edu

This contract will not be accepted without a W-9 form.

<http://www.irs.gov/pub/irs-fill/fw9.pdf>

The W-9 is also available at: <<http://asi.csufresno.edu/clubfunding.html>>.