PERFORMANCE AGREEMENT

BETWEEN

**TENNESSEE STATE UNIVERSITY**

**AND**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

This Performance Agreement (the “Agreement”) is made this \_\_\_ day of \_\_\_\_, 2023, by and between Tennessee State University, acting for the benefit of the Tennessee State University Board of Trustees, located at 3500 John A. Merritt Boulevard, Nashville, Tennessee 37209-1561, hereinafter referred to as the “Institution,” and \_\_\_\_\_\_\_\_\_\_\_\_\_\_, having its principle office located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,hereinafter referred to as the “Contractor.”

# WITNESSETH

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:

1. Venue and Shows. The Institution will perform at \_\_\_[insert address]\_\_\_\_\_\_ (the “Venue”). Institution shall provide a show that includes but is not limited to: \_\_\_\_\_[type of show]\_\_\_\_\_\_\_\_. The shows are as follows:

* Day(s):
* Number of shows:
* Duration (in minutes):
* Time(s) of shows:
* TSU group performing:

1. Duties of Contractor. The Contractor agrees to provide Institution with the following:

*[Examples: stage for shows, amp electricity, sound system, etc.]*

* 1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
  2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
  3. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
  4. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Duties of Institution. Institution agrees to provide and be responsible for the following:

*[Examples: providing performers and musical instruments, etc.]*

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
4. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
5. The parties further agree that the following shall be essential terms and conditions of this Agreement:
6. Performance Period. The effective date and term of the Agreement shall be on the show date(s), from \_\_\_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_\_\_\_.
7. Termination. This Agreement may be terminated by either party by giving written notice to the other, at least 30 days before the effective date of termination. This Agreement may be terminated without the above-described notice if performance is prevented by an occurrence beyond the parties’ control that could not be avoided by the exercise of due care, including, but not limited to, acts of God, riots, wars, epidemics or pandemics, declaration of a federal, state or local state of emergency, or any other similar occurrence or cause. In such an event (known as a “Force Majeure event”), any and all refunds shall be returned for services not already rendered. Institution may also terminate this Agreement if it becomes aware of any threat to personal or public safety arising at the intended time of performance.

If the Contractor fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor shall violate any of the terms of this Agreement, Institution shall have the right to immediately terminate this Agreement.

Notwithstanding the above, the Contractor shall not be relieved of liability to Institution for damages sustained by virtue of any breach of this Agreement by the Contractor.

1. Governing Law and Venue. This Agreement shall be governed by and construed pursuant to the laws of the State of Tennessee. Any action between the parties arising from this Agreement shall be maintained in the courts of Davidson County, Tennessee.
2. Payment. The Contractor agrees to pay Institution $\_\_\_\_\_\_\_\_\_\_\_\_ for providing the show(s). The Contractor shall pay the amount due in one lump sum. Checks can be sent to Institution and made payable to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

*[Include here if the Contractor will be paying for transportation, meals, etc.]*

1. Transportation. The Contractor agrees to provide Institution with transportation to and from the event. *[Include here transportation details.]*
2. Modification. This Agreement may be modified only by written amendment executed by all parties hereto.
3. Non-Assignment. The Contractor shall not assign this Agreement or enter into sub-contracts for any of the work described herein without obtaining the prior written approval of Institution or Tennessee Board of Regents, as appropriate. Approval shall not be given if the proposed subcontractor was or is currently ineligible to bid on the contract.
4. Indemnification. Each party shall be solely liable for payment of its portion of all claims, liability, costs, expenses, demands, settlements, or judgments resulting from negligence, actions or omissions of itself or those for whom it is legally responsible relating to or arising under this Agreement. Any and all monetary claims against the State of Tennessee, its officers, agents, governing board, 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 and shall be limited to those provided for in T.C.A.§9-8-307.
5. Non-Employment by State. The Contractor warrants that no part of the total contracted amount provided herein shall be paid, directly or indirectly, to any officer or employee of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, sub-contractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Agreement.

If the Contractor is an individual, the 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 of the State of Tennessee.

1. Non-Discrimination. The parties agree to comply with Title 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 of 1990 and the related regulations of 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.

Institution is committed to providing accessible information, materials and technologies to assure that individuals with disabilities have access to Institution resources comparable to access that is available to others.

1. Prohibition on Hiring Illegal Immigrants. T.C.A. § 12-3-309 prohibits State entities from contracting to acquire goods or services from any person who knowingly utilizes the service of illegal immigrants in the performance of the Agreement and by signing this Agreement, the Contactor attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of illegal immigrants in the performance of the Agreement and will not knowingly utilize the services of any subcontractor, if permitted under the Agreement, who will utilize the services of illegal immigrants in the performance of the Agreement.
2. Iran Divestment Act. In accordance with the Iran Divestment Act, Tennessee Code Annotated § 12-12-101 et seq., Contractor certifies that to the best of its knowledge and belief, neither Contractor nor any of its subcontractors are on the list created pursuant to Tennessee Code Annotated § 12-12-106. Misrepresentation may result in civil and criminal sanctions, including contract termination, debarment, or suspension from being a contractor or subcontractor under Institution’s contracts.
3. Sales and Use Tax. If the Contractor makes sales to customers in Tennessee of taxable good or services, the Contractor shall be registered with or have received an exemption from the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Agreement. The Contractor shall comply, and shall require any subcontractor to comply, with all laws and regulations governing the remittance of sales and use taxes on the sale of goods and services made by the Contractor, or the Contractor’s subcontractor.
4. Insurance. The Contractor, being an independent contractor and not an employee of this Institution, agrees to carry adequate public liability and other appropriate forms of insurance, to pay all taxes incidental hereunto, and otherwise protect and hold Institution harmless from any and all liability not specifically provided for in this agreement.
5. Intellectual Property. All Work Product developed or produced by Contractor during the term of this Agreement shall be the property of Institution.  As used in this Agreement, "Work Product" means all images, photographs, video recordings, graphics, training materials, presentations, inventions, processes, data, documents, drawings, records, and works of authorship, whether or not copyrightable or patentable, that are originated or prepared by Contractor in the course of rendering services under this Agreement.
6. Nondisclosure and Nonuse. The Institution does not have the authority to consent to provisions which require confidentiality, or Nondisclosure in violation of Tennessee Open Records Act. Therefore, each party will treat the other party’s Confidential Information as Confidential to the extent permitted by law. Specifically, each party receiving Confidential Information agrees not to disclose such Confidential Information except to those directors, officers, employees and agents of such party, and shall use the same care to prevent disclosure of such information as such party uses with respect to its own confidential and proprietary information, provided that in any case it shall not use less than the care a reasonable person would use under similar circumstances.
7. Forms. The Contractor agrees that no work shall commence until this Agreement is fully executed by both parties and that a Minority Ethnicity and W-9 forms are completed and returned with this Agreement.
8. \_\_\_\_\_\_\_\_\_\_\_\_ is the Institution’s Contract Monitor for this Agreement and can be reached at tel: \_\_\_\_\_\_\_\_\_\_\_, or email: \_\_\_\_\_\_\_\_\_\_\_
9. \_\_\_\_\_\_\_\_\_\_\_\_\_ is the Contractor’s Coordinator for this Agreement and can be reached at tel: \_\_\_\_\_\_\_\_\_\_\_\_, or email: \_\_\_\_\_\_\_\_\_\_\_\_\_
10. Assent. This Agreement shall not be binding upon the parties until it is approved by Institution’s President.
11. Relationship of Parties. Contractor and Institution shall not be considered joint employers. The parties agree that the relationship between them is that of independent contractor and that neither party shall have any authority to represent or bind the other and that neither party shall hold itself out or have any authority as an agent of the other for any purpose whatsoever. Nothing herein shall be construed as creating a principal and agent, joint venture, or any other type of relationship besides independent contractor between Contractor and Institution.
12. Compliance with Laws. The Contractor shall comply with all applicable federal, state and local laws and regulations in the performance of this Agreement.

**IN WITNESS WHEREOF**, the parties have by their duly authorized representatives set forth their signatures:

**[INSERT CONTRACTOR NAME HERE]**

Signature:

Title Date

**TENNESSEE STATE UNIVERSITY**

Signature: President

Dr. Glenda Glover Title Date