PERFORMANCE AGREEMENT

BETWEEN

**TENNESSEE STATE UNIVERSITY**

**AND**

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

This Performance Agreement (the “Agreement”) is made by and between **TENNESSEE STATE UNIVERSITY,** hereinafter referred to as the “Institution,” and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_,** hereinafter referred to as the “Contractor.”

# WITNESSETH

In consideration of the mutual promises contained herein, the parties hereby agree and enter into this Agreement according to the provisions set forth below:

1. Scope of Services. Contractor agrees to provide a musical and/or theatrical performance (the “Performance”), as follows:

* Event Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Location: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Date(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Time(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Duration: \_\_\_\_\_\_\_\_ minutes

Performance details and logistics shall be separately agreed upon by the parties. Performance details may include, without limitation, load-in/set-up, sound check, staging, load-out/equipment removal, schedule of events, lighting requirements, security, and parking.

1. Performance Terms and Conditions.
   1. Performance Control. For events held on Institution’s campus, Institution will reserve the exclusive right to control the event and Performance, including, but not limited to, stage announcements and the schedule of events. Institution reserves the right to immediately terminate the Performance, in whole or in part, if it determines, in its sole discretion, that such action is necessary to maintain security or ensure compliance with federal, state, and/or local laws and regulations, or Institution policies. Payment may be withheld upon such termination.
   2. Equipment. Institution assumes no responsibility for Contractor’s equipment, instruments, or other property. Contractor is solely responsible for the security, maintenance, and insurance of its property at all times. Institution shall not be liable for any loss, theft, damage, or destruction of such items, regardless of cause. Any equipment provided by Institution for the Performance shall remain under Institution’s complete supervision, direction, and control.
   3. Rider Compliance**.** Where applicable, Institution will make its best efforts, in accordance with reasonable and industry standards, to adhere to a rider provided by Contractor, so long as it does not conflict with the terms of this Agreement or Institution policies. Contractor is responsible for providing all rider details, including technical requirements and equipment needs, prior to the Performance. Failure to do so will result in Contractor bearing any additional costs necessary to procure or adjust equipment or fulfill other rider provisions. Institution shall only be bound by the terms of a rider if it has been expressly reviewed, agreed to in writing, and incorporated into this Agreement.
   4. Professional Conduct. Contractor agrees to maintain the highest standards of professionalism and ensure that the Performance content is free from obscenity, discrimination, and disparagement. Specifically, Contractor will avoid obscene or explicitly offensive expressions and refrain from making disparaging statements that could reasonably be construed as damaging to the reputation of Institution. Contractor shall neither invite nor bring any audience members, including students, onto the stage, nor throw or distribute any objects into the audience during the Performance. Any violation of this provision by Contractor shall constitute a material breach of this Agreement.
   5. Recording and Use. Institution shall be allowed to take photos and short videos of the Performance for non-commercial use only, without the need for a separate written agreement. By executing this Agreement, Contractor grants Institution permission to upload such photos and videos to Institution’s social media platforms during and after the Performance. Institution may also use this content for educational or promotional purposes in connection with its programs and activities. All such content must include appropriate credits to Contractor. Institution shall not be held legally responsible for any unauthorized recordings or distribution of the Performance by any third party for whom Institution is not legally responsible for under Tennessee law.
2. Standard Terms and Conditions.
3. Term. The term of this Agreement shall be from \_\_\_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_\_\_\_. This Agreement may be renewed through a written amendment signed by the parties hereto. Under no circumstances shall the total term of this Agreement exceed five (5) years, including all extensions and renewals.
4. Termination. This Agreement may be terminated by either party upon at least thirty (30) days’ written notice to the other party. Contractor shall be entitled to receive compensation for authorized work completed as of the termination date, but in no event shall Institution be liable to Contractor for any service that has not been rendered. Institution may terminate this Agreement at the end of any fiscal year without notice in the event that funds to support this Agreement become unavailable. T.C.A. § 12-3-305(c)(2).

Institution may immediately terminate this Agreement if Contractor engages in conduct that could reasonably be construed as negatively affecting Institution's reputation or public image. If Contractor fails to perform its obligations under this Agreement in a timely or proper manner, or if Contractor violates any term of this Agreement, Institution shall have the right to immediately terminate this Agreement upon written notice to Contractor. Upon such termination, Contractor shall receive compensation only for authorized services provided up to the termination date, if any, and will not be entitled to additional damages or compensation.

1. Force Majeure. The parties’ obligations under this Agreement shall be voided in the event of 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.
2. Payment. Institution will pay Contractor $\_\_\_\_\_\_\_\_\_\_\_\_ for all services rendered under this Agreement. Payments to Contractor will be made upon submission of invoice(s) by Contractor, as submitted to: accountspayable@tnstate.edu. Institution agrees to remit payment to Contractor no later than forty-five (45) calendar days after receipt of invoices and to pay any applicable interest at the maximum rates permitted under the Tennessee Prompt Pay Act, T.C.A. § 12-4-701, et seq. If Contractor is a non-resident alien, payment of any portion of the amounts owed under this Agreement will not be made until verification of Contractor’s tax status and determination of appropriate withholdings, if any.
3. Travel Compensation. Reimbursement to Contractor for travel, meals, and/or lodging shall be in the amount of actual cost/per diem and shall be subject to the limitations and provisions specified in the State Comprehensive Travel Regulations, Tennessee state statutes, and Institution policies, as they may be from time to time amended.
4. Maximum Financial Obligation. In no event shall the maximum financial obligation of Institution for services under this Agreement exceed $\_\_\_\_\_\_\_\_\_. This maximum financial obligation includes, but is not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by Contractor. The maximum financial obligation represents available funds for payment to Contractor and does not guarantee payment of any such funds to Contractor under this Agreement unless Institution requests work and Contractor performs the work.
5. Hold Harmless. Contractor agrees to indemnify and hold harmless Institution, as well as its officers, agents, and employees, from and against any and all claims, liabilities, losses, and causes of action, including those related to damage to Institution’s premises, equipment, or property, which may arise, accrue, or result to any person (including Institution), firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of Contractor, its employees, or any person acting for or on its or their behalf relating to this Agreement. Contractor shall be liable for the reasonable cost of attorneys’ fees for Institution in the event such service is necessitated to enforce the terms of this Agreement or otherwise enforce the obligations of Contractor to Institution.
6. Remedies. The State of Tennessee may be found liable for actual damages only. Institution, as a State of Tennessee entity, shall not, under any circumstances, indemnify, defend, or hold harmless any party, including Contractor, or be liable for attorneys’ fees, punitive damages, or the costs of litigation. Furthermore, Institution is not permitted to pay liquidated damages or cancellation charges resulting in a penalty to Institution. Any and all monetary claims against the State of Tennessee, including Institution, its officers, agents, and employees, in performing any responsibility specifically required under the terms of this Agreement shall 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.
7. Insurance. Institution, as an agency of the State of Tennessee, is self-insured under the Tennessee Claims Commission Act, T.C.A. § 9-8-301 et seq. The insurance coverage afforded to Institution is controlled and limited by state law. Contractor shall carry and maintain adequate general liability insurance, as well as any other appropriate forms of insurance required by the law. Certificates of insurance shall be provided upon request.
8. Conflict of Interest. Contractor warrants that no part of the total contracted amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to Contractor in connection with any work contemplated or performed in relation to this Agreement. Contractor acknowledges and agrees that this Agreement shall be null and void if Contractor is, becomes, or within the past six (6) months has been, an employee of the State of Tennessee.
9. Non-Discrimination. The parties agree to comply with all applicable state and federal laws pertaining to discrimination. Contractor agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination in the performance of this Agreement or in the employment practices of Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by law.
10. Illegal Immigrants. T.C.A. § 12-3-309 prohibits State of Tennessee entities from contracting to acquire goods or services from any person who knowingly utilizes the services of illegal immigrants in the performance of a contract. Contactor attests, certifies, warrants, and assures that Contractor will not knowingly utilize, nor hire subcontractors who will utilize, the services of illegal immigrants in the performance of this Agreement.
11. Iran Divestment Act. The requirements of T.C.A. § 12-12-101 et. seq., which address contracting with persons with investment activities in Iran, shall be a material provision of this Agreement. Contractor certifies, under penalty of perjury and to the best of its knowledge and belief, that it is not on the list created pursuant to T.C.A. § 12-12-106. Misrepresentation may result in civil and criminal sanctions, including contract termination, debarment, or suspension from being a contractor under Institution’s contracts.
12. Audit and Documentation. Contractor shall maintain documentation for all charges against Institution under this Agreement. In accordance with T.C.A. § 12-3-602, the books and records of Contractor insofar as they relate to work performed or money received under this Agreement, shall be maintained for a period of five (5) full years from the date of final payment and shall be subject to audit at any reasonable time and upon reasonable notice by Institution, the Comptroller of the Treasury, or their duly appointed representatives.
13. Debarment and Suspension. Contractor certifies, to the best of its knowledge and belief, that it and its principals: a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency; b) have not within a three (3) year period preceding this Agreement been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with, obtaining attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property; c) are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses listed in section b) of this certification; and d) have not within a three (3) year period preceding this Agreement had one or more public transactions (federal, state, or local) terminated for cause or default.
14. Notices. Any notice, request, approval, or consent required or permitted to be given under this Agreement shall be in writing and deemed to have been sufficiently given if delivered in person, sent by nationally recognized overnight carrier service with confirmation of receipt, or sent by certified or electronic mail, return receipt requested, to the party to whom it is directed at its address shown below:

If to **Institution:** Tennessee State University

3500 John A Merritt Boulevard

Nashville, TN 37209

Attn: (Department Name)

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

With Copy to: Tennessee State University

3500 John A. Merritt Boulevard

Nashville, TN 37209

Attn: Office of the General Counsel

Email: legalnotice@tnstate.edu

If to **Contractor:** (Insert Contractor Name)

(Address Line 1)

(Address Line 2)

Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Sales and Use Tax. Institution is tax exempt under Tennessee law and is not liable for the payment of Tennessee sales or use taxes. T.C.A. § 67-6-322. If Contractor makes sales to customers in Tennessee of taxable goods or services, 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. Contractor shall comply, and shall require any approved subcontractors to comply, with all laws and regulations governing the remittance of sales and use taxes on the sale of goods and services made by Contractor or any approved subcontractors.
2. Forms. Contractor agrees to complete and submit both a Minority Ethnicity and W-9 form to Institution with this Agreement.
3. Relationship of the Parties. The parties hereto shall not act as employees, agents, partners, joint venturers, or associates of one another in the performance of this Agreement. The parties acknowledge that they are independent contracting entities and that nothing in this Agreement shall be construed to create an employer-employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services.
4. Non-Assignment. Neither party shall assign this Agreement or enter into subcontracts for any of the work described herein without obtaining the prior written approval of the other party.
5. Modification. This Agreement may be modified only by a written amendment signed by the parties hereto.
6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict of law provisions.
7. Copyright Compliance. Contractor warrants that all necessary copyright and royalty licenses have been obtained from ASCAP, BMI, SESAC, and/or any other applicable performing rights organizations or copyright owners. Institution shall promptly notify Contractor of any copyright-related claims brought against Institution or the State of Tennessee. Any settlement or resolution of such claims involving Institution or the State of Tennessee shall be subject to approval by the appropriate State of Tennessee officials as required by law.
8. Compliance with Laws. The parties shall comply with all applicable federal, state, and local laws and regulations in the performance of this Agreement. Contractor agrees to comply with all applicable Institution policies, rules, and regulations, including, but not limited to, policies related to safety, security, and facility use.
9. Entire Agreement. This Agreement shall constitute the entire agreement between the parties relating to the subject matter contained herein. This Agreement supersedes any and all prior understandings, representations, negotiations, and agreements between the parties, whether written or oral.
10. Assent. This Agreement shall not be binding upon the parties until it is signed by each party’s authorized official(s). For Institution, this shall be Institution’s President or the President’s authorized designee.

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

**TENNESSEE STATE UNIVERSITY [INSERT CONTRACTOR NAME]**

Signature:  Signature: \_\_\_\_\_

Name: Dwayne Tucker Name:

Title: President Title:

Date: Date: