

Performing Artist Agreement # ­­­­­­­­­­­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_­­­­­­­­­­­­­­­­­­­­­­

**[Buyer: This template shall only be used for single events. Recurring events with an Artist that will have an anniversary date will need to include the FW/FW Audit clause. This template also covers Artists with Agents if applicable.]**

This Performing Artist Agreement (“Agreement”) to furnish certain services described herein and in the documents referenced herein (“Performance”) is made by and between The Regents of the University of California, a California public corporation (“UC”) on behalf of the University of California, **[Buyer: if applicable, add name of campus],** and **ARTIST NAME, an individual, [BUYER: or if applicable, a STATE corporation, a STATE LLC**  (“Artist”), together with and as represented by **NAME OF AGENCY** a **STATE** corporation or LLC (hereinafter “Agency”). This Agreement is binding only if it is negotiated and executed by an authorized representative with the proper delegation of authority.

In consideration of the mutual promises and agreements of the parties hereto, as hereinafter set forth, it is agreed as follows:

1. DESCRIPTION OF SERVICES: Artist agrees to present \_\_\_\_\_\_\_\_

The content of all residency activities and performance repertoire shall be mutually determined by UC and Artist.

1. VENUE: \_\_\_\_\_, located at \_\_\_\_\_\_\_\_.
2. TIME:
3. COMPENSATION. UC shall pay to Artist the sum of \_\_\_\_\_\_, less applicable state and federal income taxes, by UC check as full compensation for the performance and activities specified above.

All payments for the above performance and activities shall be made payable to \_\_\_\_\_\_ and addressed to \_\_\_\_\_\_\_\_. Payment shall be mailed on the first business day following the Performance.

1. INCOME TAX REPORTING AND WITHHOLDING.
2. **It is understood that UC shall withhold from the compensation hereinabove described the full amount of any and all income taxes required to be withheld by the laws of the State of California and of the United States of America.** The UC shall remit such amount directly to the State of California Franchise Tax Board to be credited to the Artist’s California State Income Tax Account(s). Point of contact: California State Franchise **[Buyer: if applicable; remove if there is no Agency]** Tax Board, Withholding Services and Compliance Section, P.O. Box 942867, Sacramento, CA 94267-0651; (888) 792-4900.
3. Reporting and withholding will be based on the Artist’s residency for U.S. and California income tax purposes. For this purpose, Artist is: **[Buyer: check the appropriate box if you know the answer, or, let the Artist check],**

[ ] 1. A resident of California

[ ] 2. Not a resident of California

1. SERVICES TO BE PROVIDED BY UC. UC agrees to furnish:
2. Venue will be staffed for the performance described hereinabove and for the necessary set-ups (including lights and stage arrangements completed, to the extent possible to have done so, prior to Artist's arrival at the aforementioned Venue), technical run-throughs and rehearsals. Total time in the Venue shall be limited to \_\_\_ hours: should additional time be required, hours shall be mutually determined by UC and Artist no later than sixty (60) days prior to the performance and Artist shall pay UC for space, staff and equipment used during the additional time. If Artist arrives more than 30 minutes late for mutually agreed upon time of crew call as specified in Exhibit B, Artist shall be liable for cost of idle crew.
3. A non-union crew will be provided adequate to handle customary and traditional back-of-house needs of Artist. Should Artist demand back-of-house services in excess of customary needs, as UC shall determine in its sole discretion, UC may either refuse compliance or, after due notice, charge Artist for additional costs arising from compliance with Artist's demands.
4. Stage equipment will be provided, including lighting and sound system, as may be in the possession of Venue, and readily available for use. Cost of additional stage equipment requirements of Artist shall be charged to Artist no later than six (6) weeks following the performance.
5. Tickets, the sale of tickets and ticket takers.
6. Front-of-house staff, including ushers.
7. House programs.
8. Such advertising and other publicity as deemed necessary by the UC.
9. UC reserves the right to relocate venue and will provide advance notice to the Artist in the case of relocation.

7. SERVICES TO BE PROVIDED BY ARTIST. Artist agrees to provide at Artist's cost and expense such services, equipment, information and materials as are listed below:

1. Transportation to and from UC for Artist and all of Artist's baggage and equipment. **[Buyer: if applicable, you may also need to change this if UC is providing transportation],**
2. All lodging, meals, salaries, and expenses for the Artist during Artist's engagement at the UC**.**  Any of Supplier’s travel expenses that UC agrees to reimburse will be reimbursed under UC’s Travel Policy, which may be found at <http://policy.ucop.edu/doc/3420365> **[Buyer: if applicable, you may also need to change this if UC is providing travel expenses],**
3. **[Buyer: if applicable]** Promotional and program material, as specified in Exhibit A, attached. UC reserves the right to edit all promotional and program copy submitted by Artist.
4. **[Buyer: if applicable]** Technical requirements, light plot, patch sheet and crew calls as specified and mutually agreed to in Exhibit B and due no later than six (6) weeks prior to the first performance. Artist’s light plot and patch sheet shall conform, within reasonable limits, to the Venue specifications which the UC has provided to Artist. UC shall bill Artist for the actual costs of the in-house preparation of light plots or patch sheet, if such preparation is necessary because Artist has submitted light plots and patch sheet which substantially do not conform to the provided specifications.
5. Should Artist fail to deliver the services, equipment, information, or materials hereinabove specified by the specified dates(s), UC shall notify Artist or Agent of such failure, either in writing or via fax. Unless delivery of the specified service, equipment, information, or materials is made within seven (7) calendar days following receipt of said notice (in the case of fax transmissions, the date of transmission shall be deemed to be the date of receipt, as confirmed by a journal printed by the UC’s fax machine), UC shall deduct from the compensation specified herein an amount equal to one percent (1%) of that compensation for each seven (7) days of delinquency commencing after the above-cited seven-day period.
6. It is agreed that Artist will be available prior to the performance for two to three (2- 3) interviews with newspapers, magazines, television, and radio stations.
7. No form of the UC's name shall be used by Artist in promotional materials, announcements, signs, or other forms of communication or advertising, nor shall UC's premises be used for dissemination or posting of such advertising materials, unless UC's express written permission has been obtained in advance.  If UC grants written permission to Artist to use UC’s name then, Artist agrees that all local advertising done by Artist's sponsor shall credit UC as the Artist's local presenter.
8. REPRODUCTION OF PERFORMANCE. UC agrees to prevent, to the best of its ability, the photographing, filming, broadcasting, recording, or reproduction by radio, television, or any other device, of the performance defined hereinabove or of any portion or portions thereof, without written permission of Artist, except for limited reproduction by the UC and by representatives of recognized media as arranged through the UC. Artist/Agent shall not photograph, film, broadcast, nor record, this performance without written permission from the UC, which must be received by UC in writing at least thirty (30) days prior to performance date.   Location of photographer or recording equipment to be mutually determined by Artist and UC.
9. AMPLIFIED SOUND LEVELS.
10. Artist(s) agrees that Artist's staff will consult with UC sound engineer on all sound levels, balances, equalizations, and stage instrument amplifier settings.
11. Average sound levels in excess of 90 dB may not be permitted, as measured by a member of the UC's staff using a professional sound meter on setting "C" at the house mix position, at UC's sole discretion.  Sound level measurement will include main PA Artists, all monitors and side fills, and stage instrument amplifiers.
12. Average sound levels in excess of 95 dB on stage may not be permitted, as measured by a member of the UC's staff using a professional sound meter on setting "C" at the onstage monitor mix position, at UC's sole discretion.  Sound level measurement will include all monitors, side fills, and stage instrument amplifiers.
13. If Artist(s) engineer operates the soundboard, UC sound engineer shall retain ultimate control of the sound pressure level, balances, equalization, and stage instrument amplifier settings.
14. At all times, Artist(s) or Artist(s) representative must be present at sound checks.
15. INDEMNIFICATION. To the fullest extent permitted by law, Artist and, Agency shall defend, indemnify and hold UC, its officers, employees or agents harmless from and against any and all liability, allegations, demands, claims, costs, losses, claims for injury, damages, recoveries, settlements and expenses (including reasonable attorneys' fees, accounting fees, expert witness fees and penalties), or, incurred by the UC (“Losses”), known or unknown, contingent or otherwise, directly or indirectly arising from or related to suits, actions or claims in connection with the performance of this Agreement, except such suits actions, or claims resulting from or caused by UC’s sole and active negligence or willful misconduct. Artist and, Agency’s duty to indemnify shall include all Losses caused or alleged to be caused in whole or in part by any intentional negligent act or omission, whether active or passive of (i) Artist, (ii) Agency, (iii) or Artist or Agency’s officers, agents, contractors, associates, partners, co-performers, or employees.
16. JOINT AND SEVERAL LIABILITY. **[Buyer: if applicable; remove if there is no Agency]** The liability of Artist and Agency shall be joint and several, and each of them shall be jointly and severally liable for performance of all obligations of Artist and/or Agency under this Agreement.
17. EXCLUSIVE PERFORMANCES. **[Buyer: if applicable**] Artist agrees not to accept any other engagement for a performance of any sort or kind including satellite broadcasts between the issuing of this Agreement and \_\_\_\_, within a radius of 90 miles from the UC without express written permission of UC. In the event of any such unauthorized performance, the performance described hereinabove, or any portion or portions thereof, may be cancelled by the UC, and such cancellation shall be without prejudice to UC's other rights and remedies hereunder.
18. PERFORMANCE TICKETS.
19. Complimentary tickets. UC shall be the only party authorized to issue complimentary tickets to the performance described hereinabove. A maximum of \_\_\_\_ complimentary tickets for each performance shall be available to the Artist. Artist must notify the UC of the disposition of such tickets no later than noon on the day of performance. If UC does not receive such notice, UC may release the tickets for general sale. All complimentary tickets shall be appropriately distinguished and shall not be counted as income in determining gross receipts.
20. Artist Ticket Purchases. If Artist wishes to purchase additional tickets, the purchase must be completed no less than thirty (30) days prior to date of the first performance. UC will provide Artist with the best available tickets at the time of purchase.
21. HOSPITALITY. The UC shall provide basic hospitality before each performance in sufficient quantities for Artist’s company including: Complimentary coffee, tea, juices, bottled water, and selected snacks. The UC is not equipped to provide hot meals or provide meal service **except for approved requests per Artist Rider**. Should Artist, because of travel arrangements or rehearsal schedule, require a hot meal, the Artist may arrange for service from local vendors at Artist’s expense. UC will assist Artist to identify appropriate local vendors. Artist must notify UC of plans for such meal service at least one week in advance. UC does not provide alcoholic beverages as part of any hospitality agreement. Delivery and pick-up must correspond to Artist’s time in the Venue as specified in Exhibit B and comply with UC parking and safety regulations. Should UC incur any extra expenses for personnel or custodial services as a result of Artist’s hot meal, Artist shall be liable for those costs and will be charged no later than six (6) weeks following the performance date.
22. SMOKE-FREE. UC venues are smoke-free environments. Smoking and the use of smokeless tobacco or unregulated nicotine products (such as electronic cigarettes) is prohibited on and within UC managed property. UC managed property includes all UC facilities, owned or leased, both indoor and outdoor. The sale or distribution of tobacco and unregulated nicotine products on or within UC managed property is also prohibited.
23. ACCESSIBILITY. Artist agrees to comply with measures which will ensure that the Artist's performance and outreach activities are fully accessible in compliance with the Americans with Disabilities Act regulations and UC practices.
24. MERCHANDISING. Written approval must be obtained from the UC no less than (7) days prior to performance for lobby sale of souvenir programs, records, or any other Artist souvenir. UC reserves the right to deny sale of souvenirs and/or to solicit sponsor or other vendor to sell artists’ recordings and publications. If approval is granted, UC will be paid twenty five per cent (25%) of the gross sales (20% if Artist sells) of such souvenirs within one hour following the completion of each performance. UC reserves the right to verify inventory.
25. NOTICES. All notices to be addressed by UC to Artist in connection with this Agreement shall be given in writing to Artist and, if applicable, Agency to \_\_\_\_\_\_\_\_. All notices to be addressed by Artist and, if applicable, Agency to the UC in connection with this agreement shall be given in writing to \_\_\_\_\_\_\_\_\_\_.
26. UC FAIR WORK FAIR WAGE. Artist warrants that it is in compliance with applicable federal, state and local working conditions requirements, and Artist will not pay less than the UC Fair Wage rates to Artist’s employees, subcontractors, and/or independent contractors (defined as $15 per hour as of 10/1/17) when providing the Performance in this Agreement. Artist agrees UC may conduct such UC Fair Wage/Fair Work interim compliance audits as UC reasonably requests, as determined in UC’s sole discretion. Artist agrees to post the UC Fair Wage/Fair Work notice in public areas (such as break rooms and lunch rooms) frequented by Artist employees who perform services at the UC. A copy of that form is located at: <https://www.ucop.edu/procurement-services/_files/fair-wage-supplier-notice.pdf>
27. FORCE MAJEURE. Neither Artist nor UC shall be liable for failure to appear, present, or perform if such failure is caused by, or due to, acts or regulations of public or UC authorities, labor difficulties, civil tumult, strike, threats or acts of terrorism or similar acts, interruption or delay of transportation service, acts of God, fire or any cause beyond the control of Artist or UC. Despite anything to the contrary in this paragraph, if the cause of a party’s failure to perform results from any act by that party, then that cause will not excuse the performance of the provisions of this Agreement by that party.

1. EQUAL OPPORTUNITY AFFIRMATIVE ACTION. Artist will abide by the requirements set forth in Executive Orders 11246 and 11375. Where applicable, Artist will abide by 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), incorporated by reference with this statement: **“This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.”** With respect to activities occurring in the State of California, Artist agrees to adhere to the California Fair Employment and Housing Act. Artist will provide UC on request a breakdown of its labor force by groups as specified by UC, and will discuss with UC its policies and practices relating to its affirmative action programs. Artist will not maintain or provide facilities for employees at any establishment under its control that are segregated on a basis prohibited by federal law. Separate or single-user restrooms and necessary dressing or sleeping areas must be provided, however, to ensure privacy.
2. ANTICIPATORY BREACH. In the event that, Artist or Agency indicates or informs UC of Artist’s intention not to perform, or present the performance on the date and at the time stated in Section 1 hereinabove, andsuch failure is not excusable under Section 20 hereinabove, Artist and, if applicable, Agency shall be liable to UC for any and all costs or expenses of any kind and nature, including but not limited to deposits paid to Artist, costs associated with ticket sales, event promotion, or venue deposits, in connection with, caused by or arise from Artist’s non-performance or breach of any term under this Section 22. Within a reasonable time after Artist and, if applicable, Agency’s indication of Artist’s intention not to perform or non-performance, UC will submit to Artist and, if applicable, Agency, a statement of all costs and expenses incurred by UC. Artist and, if applicable, Agency shall, no later than (30) days after UC’s submission of such statement, reimburse UC by check made payable to UC Regents.
3. ARTIST WARRANTIES AGAINST INTELLECTUAL PROPERTY AND PERSONAL RIGHTS. Artist and Agency represent and warrant that the Performance will not interfere with or violate any copyright or proprietary right of any third party. Artist Agency represent and warrant that Artist has the full right and authority to enter into this agreement. Artist Agency shall defend, indemnify and hold UC, its officers, employees or agents harmless from and against any and all claims of infringement of any intellectual property or personal rights, including but not limited to claims arising from the use of patented, trademarked, franchised or copyright-protected material, material that violates the right of privacy or right of publicity, or any other statutory or common law right, or claims of defamation arising from or related to the Performance.
4. INSURANCE. Artist and/or Agency shall, at the insuring party’s or parties’ sole cost and expense, insure its activities in connection with this Agreement. Artist and, if applicable, Agency shall provide UC written evidence of coverage by insurance of the types and in the minimum amounts specified below:
   1. Commercial General Liability: (Minimum Limits)
5. General Aggregate (BI, PD) $2,000,000
6. Products, Completed Operations Aggregate $1,000,000
7. Personal and Advertising Injury $1,000,000
8. Each Occurrence $1,000,000

If such insurance is written on a claims-made form, coverage shall survive for a period no less than three years following termination of this agreement.  Coverage must have a retroactive date of placement prior to or coinciding with the effective date of this agreement.

* 1. Business Auto Liability for Owned, Scheduled, Non-Owned, or Hired Automobiles: combined single limit of no less than $1,000,000 per occurrence.
  2. Workers' Compensation:  as required under California State Law.
  3. Such other insurance in such amounts as from time to time may reasonably be required by the mutual consent of UC and Agency against such other insurable hazards relating to performance.
  4. It is expressly understood, however, that the coverages required, excluding Workers’ Compensation Insurance coverage, will not in any way limit the liability of the Artist.
  5. The Commercial General Liability and Business Automobile Liability coverages referred to above must be endorsed to include “The Regents of the University of California” as an additional insured. The named insured on the face of the certificates must be the legal name and address of the Artist. The certificate holder must be identified as follows:

The Regents of the University of California

\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_

* 1. The certificates of insurance must provide for advance written notice to the UC, in accordance with policy provisions, of any modification, change, or cancellation of any component of the insurance coverage.
  2. The Artist and Agency acknowledge and agree that the UC will not execute this Agreement that no valid Agreement between the parties will exist, and that this Agreement may be canceled until and unless the required certificate of insurance is received and approved.
  3. The insuring party(ies) warrant(s) that the insurance policy(ies) provided to UC in connection with the insuring party(ies) obligations under this Section 24 contain an additional insured provision or endorsement permitting coverage for additional insureds.
  4. The Artist and Agency acknowledge and agree that the UC will not execute this Agreement and that no valid Agreement between the parties will exist, and that this Agreement may be canceled until and unless the required certificate of insurance is received and approved.

1. GOVERNING LAW. This Agreement will be governed and construed in accordance with the internal substantive laws of the State of California as applied to contracts made and performed in California and without regard to its conflicts of laws provisions. All disputes arising out of or with respect to this Agreement shall be heard exclusively, in a state court having jurisdiction of Alameda County, California and each of the parties expressly consents to the jurisdiction and venue of such courts.
2. Attorney Fees. In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party will be awarded reasonable attorney fees, together with any costs and expenses, to resolve the dispute and to enforce the final judgment, including the reasonable value of any services provided by in-house counsel. The reasonable value of services provided by in-house counsel will be calculated by applying an hourly rate commensurate with prevailing market rates charged by attorneys in private practice for such services.
3. Severability of Agreement. If a court or an arbitrator of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid for any reason, the validity and enforceability of the remaining provisions of this Agreement shall not be affected.
4. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument.
5. Effectiveness. This Agreement will be effective only when signed by all parties.
6. RIGHT TO TERMINATE. UC shall have the right to terminate this Agreement if any of the following events occur: A material and permanent change in Artist’s ability to perform; or conduct of the Artist which results in a violation of the law or adverse publicity which the UC believes may reflect badly on the Artist and/or the UC.
7. ORAL REPRESENTATION AND AMENDMENTS. No representation, warranty, condition or agreement of any kind or nature whatsoever shall be binding upon the parties hereto unless incorporated in this Agreement. This Agreement and its incorporated documents contain the entire Agreement between the parties and supersede all prior written or oral agreements with respect to the subject matter herein.
8. 32. Incorporated Documents: **[Buyer: if applicable]**

The instrument titled "Artist Rider" is attached hereto and is incorporated herein as a subordinate instrument. In the event of a conflict between the Agreement and the Artist Rider, the terms of the Agreement shall prevail.

33. SIGNATORY'S WARRANTY. **[Buyer: if applicable; remove if there is no Agency]** Signatory warrants that s/he has full and current legal authority to act and contract on behalf of the Artist and on behalf of the Agency.

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| FOR THE REGENTS OF THE UNIVERSITY OF CALIFORNIA   by: | FOR THE AGENCY AND ARTIST    by: |
| Name: (Date)  Title: | Name: (Date)  Title: |