

# UNIVERSITY OF SAN DIEGO

## Performance Agreement

This Performance Agreement (“Agreement”) is entered into by and between the University of San Diego (“USD”) and \_\_\_\_\_ (“Performer”).

WHEREAS, USD is a non-profit institution of higher education; and

WHEREAS, USD wishes to engage Performer on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, USD and Performer agree as follows:

1. Performance. Performer’s performance shall be as follows:

a. Date of Engagement: \_\_\_\_\_

b. Engagement Site: \_\_\_\_\_

c. Time of Engagement: \_\_\_\_\_

d. Time of Performer’s Arrival/Rehearsal: \_\_\_\_\_

e. Purchaser (Name of Club or Committee): \_\_\_\_\_

f. USD Contact (Name and Phone): \_\_\_\_\_

g. Agreed Fee for Engagement:\$ \_\_\_\_\_

h. Additional Agreement Provisions: \_\_\_\_\_

2. **Fee.** USD agrees to pay Performer the performance fee set forth above within 30 days following the conclusion of the performance.

3. **Termination.** Either party shall have the right to terminate this Agreement at any time and for any reason with 30 days’ advance written notice to the other. USD shall have the right to immediately terminate this Agreement without advance notice and suspend Performer’s use of USD facilities if Performer breaches any of the terms of this Agreement as determined in USD’s sole and complete discretion or for safety or security reasons. If Performer terminates this Agreement on or within 30 days prior to the scheduled date of performance, Performer shall reimburse USD for all production, advertising, promotion and labor costs associated with the performance incurred up to the date of cancellation.

4. **Compliance with Laws, Regulations and USD Policies.** Performer acknowledges and agrees that it will comply with all applicable federal and state laws, regulations and USD policies that relate to the use and occupancy of USD facilities. Performer shall not use USD facilities for any unlawful purpose, or for any purpose not specified in this Agreement. If Performer is on USD premises and is noticeably under the influence of alcohol or illegal drugs, or uses alcohol or illegal drugs while on USD premises, USD may immediately terminate this Agreement without penalty, and Performer shall promptly reimburse USD for all payments made to Performer, and for production, advertising, promotion and labor costs associated with the performance incurred up to the date of cancellation.

Performer agrees to refrain from presenting/performing material that contravenes the teachings of the Catholic faith or is contrary to the University of San Diego’s mission and philosophy. If Performer presents/performs such material, as determined solely by an authorized USD’s representative, USD reserves the right to immediately end the presentation/performance and shall not be obligated to pay Performer for any services rendered pursuant to this agreement.

5. **Smoking and Tobacco-Free Campus.** The University is a smoking and tobacco-free campus. For more information, please see [www.sandiego.edu/smokefree](http://www.sandiego.edu/smokefree).

6. **Care and Maintenance of USD Facilities.** Performer shall be responsible for the proper and adequate care and maintenance of USD facilities and equipment. Performer agrees that in the event it damages any USD facilities or equipment, Performer will bear the sole financial responsibility for such damage. Additional costs may be charged by USD to Performer for any damage to USD facilities or equipment. Such additional costs shall be due and payable by Performer to USD within ten (10) working days of Performer's receipt of an invoice for the additional costs. In the alternative, USD may deduct the costs due from any outstanding payments due to Performer.

7. **Independent Contractor Relationship.** Performer and Performer's agents and employees shall be independent contractors of USD. This Agreement does not constitute and shall not be construed as constituting a partnership, joint venture association, or other affiliation or like relationship between parties. Neither party shall have the right to obligate or bind the other in any manner whatsoever with respect to any third party, and nothing herein contained shall give or is intended to give any right to a third party. In no event will either party be liable for the debts or obligations of the other party, except as specifically provided herein. In no event shall Performer's employees or agents be considered employees or agents of USD. Performer assumes full responsibility for the actions of its employees and agents, and is solely responsible for their supervision, daily direction and control, payment of wages or any employment-related benefits and obligations, including but not limited to workers' compensation insurance. Performer shall not be subject to USD's control as to the means and methods of accomplishing the work to be performed under this Agreement, but USD may specify and control the result to be accomplished, including any specifications, standards or requirements.

8. **Taxes and Withholding.** Performer understands that USD will issue to it a Form 1099 in connection with the payment provided under this Agreement. Performer shall be solely responsible for the payment of any and all taxes due as a result of the payments received under this Agreement. Performer agrees and understands that USD will comply with all applicable California laws (including but not necessarily limited to California Revenue and Taxation Code Section 18662) that govern required withholdings from payments to nonresident independent contractors performing services in California. If Performer believes it is exempt from this requirement, it should submit to USD a Withholding Exemption Certificate (California Form 590), which is available in USD's Office of Procurement Services.

9. **Performer's Property.** Performer, and not USD, is solely responsible for the loss of, theft of, or damage to any property of Performer or its representative that occurs on USD property or in USD facilities.

10. **Modifications.** Performer shall not make any temporary or permanent modifications to USD facilities or equipment without the express written permission of USD.

11. **Indemnification.** Performer shall be solely responsible for any and all claims, damages and injuries caused by Performer or Performer's employees or agents arising out of or relating to the performance of this Agreement. Performer agrees to defend, indemnify and hold USD and its employees and agents harmless from any and all liability, claims, demands, suits, costs, charges and expenses, including without limitation attorneys' fees, arising out of or in any way related to the alleged acts or omissions of Performer or its agents or employees, including but not limited to claims relating to intellectual property infringement, property damage, personal injury, death, Performer's failure to perform any of its obligations under this Agreement, or any other statutory, contract or tort claims.

12. **Insurance.** As an independent contractor, Performer is responsible for maintaining the following types and levels of insurance to cover Performer and its employees and agents for any and all services related to Performer's performance or Performer's use of USD facilities and equipment under this Agreement: Commercial general liability insurance, workers' compensation insurance, automobile liability (including bodily injury, personal injury, and property damage), each with a limit in an amount not less than \$1,000,000 per occurrence. Performer shall provide USD with proof of the required insurance coverage upon request.

If this box is marked and initialed by USD, Performer is not required to comply with the requirements of Paragraph 12.

13. **Use of USD's Trademarks and Logos.** Performer shall not use USD's trademarks, logos or insignia, or otherwise identify USD in any form of publicity, disclosure or sale without the advance written permission of USD.
14. **Intellectual Property.** Performer represents and warrants that in conducting the performance(s) contemplated under this Agreement, its works are either original with Performer as the artist, or that Performer has obtained any and all necessary permissions or is otherwise authorized to perform the work. Performer represents that it has not violated any laws or privacy rights in carrying out its responsibilities under this Agreement.
15. **Entire Agreement.** The parties declare and represent that no promise, inducement or agreement not herein expressed has been made to them and that this Agreement contains the full and entire agreement between and among the parties relating to the subject matter herein, and that the terms of this Agreement are contractual and not a mere recital.
16. **Amendment/Severability.** This Agreement may not be amended, except through a writing signed by authorized representatives of USD and Performer. If any provision of this Agreement, or part thereof, is held invalid, void or voidable as against public policy or otherwise, the invalidity shall not affect other provisions, or parts thereof, which may be given effect without the invalid provision or part. To this extent, the provisions, and parts thereof, of this Agreement are severable.
17. **Assignment and Subletting.** The rights and responsibilities granted in this Agreement are not assignable.
18. **Dispute Resolution.** This Agreement shall be governed by the laws of the State of California. Any dispute arising out of or relating to this Agreement shall be resolved through binding arbitration under the applicable rules of JAMS. The venue for the arbitration shall be in San Diego, California. Each party shall be responsible for its own costs and attorneys' fees incurred in connection with any such dispute.
19. **No Third Party Beneficiaries.** This Agreement shall be binding upon and inure to the benefit of and be enforceable only by the parties to this Agreement. No third party shall be a beneficiary of or have any right to enforce the terms of this Agreement.
20. **Force Majeure.** Neither party shall be responsible for any delays, failure to provide access to USD facilities and equipment, or termination of the performance due to acts of God, strikes, war, insurrection, embargoes, governmental restrictions, acts of government, or governmental authorities, acts of terrorism, pandemic events, outbreaks of infectious diseases, other disturbances, or other causes of any kind beyond the control of either party. Any funds paid in advance of the performance shall be immediately repaid to USD in full.
21. **Authority.** By signing below, the representative from each party represents that he/she is duly authorized to sign the Agreement on behalf of either USD or Performer.
22. **Performer Agreement.**
- If this box is checked and initialed by USD, USD and Performer also have signed or will sign the terms of a separate written agreement provided by Performer. The terms of that written agreement are fully incorporated by reference into this Agreement. In the event of a conflict or ambiguity between this Agreement and the written agreement provided by Performer that is signed by the parties, the terms of this Agreement shall govern.

*(Remainder of page intentionally blank)*

**PERFORMER:**

**UNIVERSITY OF SAN DIEGO:**

\_\_\_\_\_  
Legal Name of Contracting Entity

\_\_\_\_\_  
Signature of Authorized Officer

\_\_\_\_\_  
Social Security Number or FEIN

\_\_\_\_\_  
Print Name of Authorized Officer

\_\_\_\_\_  
Signature of Authorized Officer

\_\_\_\_\_  
Title of Authorized Officer

\_\_\_\_\_  
Print Name of Authorized Officer

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Title of Authorized Officer

Address: **University of San Diego**  
**5998 Alcalá Park**  
**San Diego, CA 92110**

\_\_\_\_\_  
Date:

Address:  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
City

\_\_\_\_\_  
Zip Code