



## PERFORMANCE AGREEMENT

This Performance Agreement (the "Agreement") is entered into as of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") by and between Contagion Media and \_\_\_\_\_, a[n] \_\_\_\_\_ [individual/corporation/partnership/etc.] with a principal place of [residence][business] at \_\_\_\_\_ [insert address] (the "Performer," and together with Contagion Media, the "Parties").

### RECITALS

**WHEREAS**, the Performer is a \_\_\_\_\_ [specify nature of performances (e.g., singer, dancer, motivational speaker)];

**WHEREAS**, Contagion Media wishes to engage the Performer as an independent contractor for the purpose of performing at Contagion Media's \_\_\_\_\_ [describe purpose (e.g., party, festival, nightclub)] (the "Venue") on the terms and conditions set forth below;

**WHEREAS**, the Performer wishes to perform at the Venue and agrees to do so under the terms and conditions of this Agreement; and

**WHEREAS**, each Party is duly authorized and capable of entering into this Agreement.

**NOW THEREFORE**, in consideration of the above recitals and the mutual promises and benefits contained herein, the Parties hereby agree as follows:

#### 1. PURPOSE.

Contagion Media hereby engages the Performer, and the Performer hereby accepts such engagement, to provide the performance and services described in Exhibit A attached hereto and made a part hereof at the Venue (the "Performance").

#### 2. COMPENSATION.

The total compensation for the Performance shall be as set forth in Exhibit A hereto.

#### 3. DATE[S], TIME[S], AND PLACE OF PERFORMANCE.

The date[s], time[s], and place of the Performance shall be as set forth in Exhibit A hereto.

#### 4. RESPONSIBILITIES.

(a) Of the Performer. The Performer agrees to do each of the following:

- (i) Provide the Performance, as detailed in Exhibit A to this Agreement.
- (ii) Devote as much productive time, energy, and ability to the Performance and rehearsal of the Performance as may be necessary.
- (iii) Complete the Performance safely, with professional effort and skill, and using adequate equipment in good working order.
- (iv) Comply with any royalty fees, performance fees, or other obligations of any organizations, including unions, to which the Performer is subject, contractually or otherwise.
- (v) **(Optional)** [OTHER AGREED-ON RESPONSIBILITIES]

(b) Of Contagion Media. Contagion Media agrees to do each of the following:

- (i) Engage the Performer as an independent contractor to provide the Performance as set forth in Exhibit A to this Agreement.
  - (ii) Provide reasonable assistance and cooperation to the Performer to enable the Performer to complete the Performance.
  - (iii) Take reasonable steps to secure the safety of the Performer and the Performer's property and personnel.
  - (iv) Provide appropriate working conditions for the Performance, including suitable space, power, electricity, sound, and other services, as set forth on Exhibit A attached hereto.
  - (v) **(Optional)** [OTHER AGREED-ON RESPONSIBILITIES]
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## 5. PARTIES' REPRESENTATIONS AND WARRANTIES.

- (a) The Parties each represent and warrant as follows:
  - (i) Each Party has the full power, authority, and right to perform its obligations under the Agreement.
  - (ii) This Agreement is a legal, valid, and binding obligation of each Party, enforceable against it in accordance with its terms (except as may be limited by bankruptcy, insolvency, moratorium, or similar laws affecting creditors' rights generally and equitable remedies).
- (b) The Performer hereby represents and warrants as follows:
  - (i) The Performer has the experience and ability to provide the Performance required by this Agreement.
  - (ii) There is no outstanding contract, commitment, agreement, or legal impediment of any kind that conflicts with this Agreement or that might limit, restrict, or impair the Performer's obligations hereunder.
  - (iii) The Performance shall be performed in accordance with and shall not violate any applicable laws, rules, or regulations, including building and fire regulations, and the Performer shall obtain all permits, licenses, or permissions required to comply with such laws, rules, or regulations.
  - (iv) Conducting the Performance under the terms of the Agreement shall not infringe on the property right, copyright, patent right or any other right of any person.
- (c) Contagion Media hereby represents and warrants as follows:
  - (i) Contagion Media will make timely payments to the Performer under this Agreement and as detailed in Exhibit A hereto.
  - (ii) Contagion Media shall provide such other assistance to the Performer as it deems reasonable and appropriate.

## 6. TERM.

This Agreement shall become effective as of the Effective Date and, unless otherwise terminated in accordance with Section 7 of this Agreement, will continue until the Performance has been completed and the Performer has been paid in full for the Performance (the "Term").

## 7. TERMINATION.

This Agreement may be terminated and the Performance cancelled:

- (a) By either Party immediately on notice to the other Party in the event of sickness, injury, accidents, fire, earthquake, flood, explosion, strike, riot, war, terrorism, or similar legitimate event beyond that Party's reasonable control (each a "Force Majeure Event"). In the event of a Force Majeure Event, both Parties shall be released and discharged from any obligations and liabilities under this Agreement, including Contagion Media's obligation to make any payments to the Performer, and the Performer shall promptly refund Contagion Media any payments [, including the Deposit,] already made by Contagion Media connection with the Performance.

- (b) By either Party for a material breach of any provision of this Agreement by the other Party, if the other Party's material breach is not cured within \_\_\_\_\_ (\_\_\_\_) days of receipt of written notice thereof.

**8. RECORDING OF PERFORMANCE.**

Contagion Media shall have the rights to record (audio or video) or photograph the Performer for the duration of the performance only. Any content created with the Performer's image or performance shall be delivered to Performer prior to publishing. The content is permitted to be published by the Performer or Contagion Media only.

**9. MERCHANDISE.**

The Performer shall have the right, at the Performer's option, to sell the following goods, products, merchandise, or services at the Venue during the Performance: *[describe permissible merchandise here (e.g., CDs, DVDs, t-shirts)]*  
\_\_\_\_\_. Contagion Media shall provide appropriate space, including table and chairs, to the Performer at the Venue to facilitate the Performer's sales. The Performer shall retain all of the proceeds from such sales.

**INDEMNIFICATION.**

- (a) Of Contagion Media by Performer. The Performer shall indemnify, defend, and hold harmless Contagion Media and Contagion Media's parent, subsidiaries, affiliates, employees, agents, successors, and assigns from and against any and all claims, including, but not limited to, claims of libel and copyright infringement, actions, damages, and losses, liabilities and expenses, including reasonable outside attorneys' fees, arising out of or caused by the Performer's obligations under this Agreement.
- (b) Of Performer by Contagion Media. Contagion Media shall indemnify, defend, and hold harmless the Performer and the Performer's parent, subsidiaries, affiliates, employees, agents, successors, and assigns from and against any and all claims, actions, damages, and losses, liabilities and expenses, including reasonable outside attorneys' fees, arising out of or caused by Contagion Media's obligations under this Agreement but only in proportion to and to the extent such claim, actions, damages, and losses, liabilities and expenses arise out of or are caused by the negligent or intentional acts or omissions of Contagion Media and Contagion Media's parent, subsidiaries, affiliates, employees, agents, successors, and assigns.

**10. NATURE OF RELATIONSHIP.**

The Performer agrees to provide the Performance hereunder solely as an independent contractor. The Parties agree that nothing in this Agreement shall be construed as creating a joint venture, partnership, franchise, agency, employer/employee, or similar relationship between the Parties, or as authorizing either Party to act as the agent of the other. The Performer is and will remain an independent contractor in its relationship to Contagion Media. Contagion Media shall not be responsible for withholding taxes with respect to the Performer's compensation hereunder [except as follows: *[insert any legal Contagion Media has to withhold taxes]*

\_\_\_\_\_  
\_\_\_\_\_.]

The Performer shall have no claim against Contagion Media hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

**11. AUTHORITY TO SIGN AGREEMENT.**

If this Agreement is signed by a person other than the Performer, such person signing for the Performer expressly warrants that he or she is authorized by the Performer to sign this Agreement on the Performer's behalf.

**12. ASSIGNMENT.**

This Agreement may not be assigned by either Party without the prior written consent of the other Party.

**13. SUCCESSORS AND ASSIGNS.**

All references in this Agreement to the Parties shall be deemed to include, as applicable, a reference to their respective successors and assigns. The provisions of this Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the Parties.

**14. MODIFICATION.**

This Agreement may be supplemented, amended, or modified only by the mutual agreement of the Parties, which agreement must be in writing and signed by both Parties.

**15. NOTICE.**

Any notice or other communication provided for herein or given hereunder to a Party hereto shall be in writing and shall be given in person, by overnight courier, or by mail (registered or certified mail, postage prepaid, return-receipt requested) to the respective Parties as follows:

If to Contagion Media:

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

If to the Performer:

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

**16. GOVERNING LAW.**

This Agreement shall be governed by the laws of the state of \_\_\_\_\_. In the event that litigation results from or arises out of this Agreement or the performance thereof, the Parties agree to reimburse the prevailing Party's reasonable attorneys' fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing Party may be entitled.

**17. NO IMPLIED WAIVER.**

The failure of either Party to insist on strict performance of any covenant or obligation under this Agreement, regardless of the length of time for which such failure continues, shall not be deemed a waiver of such Party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation.

**18. SEVERABILITY.**

Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provisions had never been contained herein.

**19. COUNTERPARTS/ELECTRONIC SIGNATURES.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of this Agreement, use of a facsimile, e-mail, or other electronic medium shall have the same force and effect as an original signature.

**20. ENTIRE AGREEMENT.**

This Agreement, together with Exhibit A hereto, constitutes the final, complete, and exclusive statement of the agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other prior and contemporaneous agreements and understandings, both written and oral, between the Parties.

**21. HEADINGS.**

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

**PERFORMER**

[SIGNATURE]

Name: \_\_\_\_\_

[(if applicable) Title:]

**CONTAGION MEDIA**

[SIGNATURE]

Name: \_\_\_\_\_

[(if applicable) Title:]

EXHIBIT A

1. PERFORMANCE DETAILS.

In exchange for the Performance Fee, as set forth in Section 1(b)(vi) to this Exhibit A, the Performer agrees to provide the Performance as follows:

(a) Performance Venue. The Performance will be held at the premises known as \_\_\_\_\_ [insert name of place (e.g., the XYZ Headquarters cafeteria, XYZ Hotel ballroom, XYZ Theatre)] (the "Venue"). The address of the Venue is \_\_\_\_\_ [insert address, including any suite number and zip code].

(b) Performance Date[s] and Time[s]. The Performance will take place on the following date[s] and time[s]:

<u>Date</u>	<u>Time</u>
_____, 20____	Between _____ [a.m.][p.m.] and _____ [a.m.][p.m.]

(c) Length of Performance. The Performance will be \_\_\_\_\_ minutes [with \_\_\_\_\_ minute breaks every \_\_\_\_\_ minutes].

(d) Description of Performance. The Performer will provide the following Performance:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

(e) Performance Content. The Performer shall have sole control and responsibility for the content of the Performance; provided however, that the Performance shall not include any of the following: [insert any restrictions on the content of the Performance (e.g., no sexually explicit music or material, no racial slurs)]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

(f) Set-up and Take-down. Set-up for the Performance shall begin \_\_\_\_\_ [minutes][hours] prior to the Performance. Take-down of the Performance shall be complete no later than \_\_\_\_\_ [minutes][hours] after the Performance.

(g) **(Optional)** [OTHER AGREED-ON DETAILS]

2. PERFORMANCE SERVICES.

(a) Contagion Media Services. Contagion Media, at its own expense, agrees to provide the following Services in connection with the Performance:

(i) Provide stage \_\_\_\_\_ feet by \_\_\_\_\_ feet for the Performance and, on the request of the Performer, for no more than \_\_\_\_\_ rehearsals.

(ii) Supply power, lighting, and sound as follows: [specify power outlets, voltage requirements, sound levels, and the like here]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

(iii) Supply equipment as follows: [specify any equipment Contagion Media will provide here]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

(iv) Supply clean, well-lighted, ventilated, dressing room[s].

(v) Provide reasonable security to protect the Performer and the Performer's property on the stage and in any backstage areas.

(vi) Provide for lodging for \_\_\_\_ night(s) in connection the the Performance.

(vii) [Provide \_\_\_\_\_ meal[s] for the Performer.

(b) Performer Services. The Performer, at its own expense, agrees to provide the following Services in connection with the Performance:

(i) Arrive at the Venue at least \_\_\_\_\_ [hours][minutes] prior to the Performance.

(ii) Control and direct the production and presentation of the Performance

(iii) Maintain the following insurance policies in the minimum amounts specified: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.]

(iv) Supply any and all equipment and personnel necessary for the Performance other than the equipment and personnel to be supplied by Contagion Media.

(v) Arrange any travel connection with the Performance and pay for any travel, lodging, or other expenses incidental to the Performance [, including meals].

(vi) (Provide Contagion Media with the Performer's biographical information and photographs.)

**COMPENSATION.**

(b) Performance Fee. As full compensation for the Performance, Contagion Media shall pay the Performer in multi-media services, provided by Contagion Media's multi-media artists. Included in these services are \_\_\_\_\_

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[SIGNATURE PAGE FOLLOWS]

By signing below, the Parties agree to comply with all of the requirements contained in this Exhibit A.

Dated: \_\_\_\_\_

**PERFORMER**

[PERFORMER NAME]

By: \_\_\_\_\_

Name:

[(if applicable) Title:]

**CONTAGION MEDIA**

[PURCHASER NAME]

By: \_\_\_\_\_

Name:

[(if applicable) Title:]