

PERFORMANCE AGREEMENT

AGREEMENT dated _____ this day of _____ 2011.

BETWEEN <name of artist> ("The Artist")

AND <name of Promoter> ("The Promoter")

BACKGROUND

The Promoter wishes to engage the services of the Artist for a live performance at an event it is producing and the Artist agrees to provide such services on the terms and conditions set out in this Agreement.

THE PARTIES AGREE:

1. THE EVENT

The Promoter is producing an event at the venue and on the date and time as set out in Item 1 of the Schedule which is attached to and forms part of this Agreement ("the Schedule")

2. ARTIST'S OBLIGATIONS

The Artist warrants that it is free to enter into this Agreement and to fully perform the Agreement.

In consideration of the Artist's Fee and associated which is set out in Item 2 of the Schedule which is attached to and forms part of this Agreement ("the Schedule") the Artist agrees to give a live performance in accordance with Item 3 of the Schedule ("the Performance") at the Event.

Where the Artist consists of two or more members the individual members agree to be jointly and severally bound by the terms of this Agreement on the same terms as the Artist.

Where this Agreement is being entered into by an agent or manager on behalf of the Artist, that agent or manager warrants that they have the authority to bind the Artist.

3. PROMOTER'S OBLIGATIONS AND RIGHTS

In consideration of the Artist entering into this Agreement the Promoter agrees to pay to the Artist the Artist's Fee, and to supply the accommodation, transport, technical and personal rider items as set out in Item 2 of the Schedule.

The Promoter agrees to provide all production facilities for the Performance, including but not limited to sound and lighting equipment. The same will be of proper quality and in good working order. The Promoter must ensure with the P.A supplier that the Artist has access and control of the front of house P.A and the master volume levels on the front of house.

The Promoter shall ensure that its agents use all reasonable care and skill in the handling of the Artist's equipment.

The Promoter will provide a proper number of attendants and stewards to ensure the sufficient supervision of the venue and to prevent the entry of undesirables and ensure proper conduct of the audience, the safety of the Artist, the preservation of order and provide appropriate stage security and will provide a safe properly constructed and sheltered area for each performance.

The Promoter will indemnify the Performer against any loss, damage or injury, actual or consequential of whatever kind arising wholly or in part from the default of the Contractor in complying with these conditions or from any trespass negligent act of omission of the Promoter his agents or any person under his supervision, direction or control.

The Promoter will be responsible for satisfying any demands of the Australian Performing Right Association in relation to any royalties which may be claimed by that body for the music to be used at the performance.

Proper dressing room facilities are to be provided if so required by the Artist.

3. ARTIST'S, ACCESS, TRANSPORTATION, EQUIPMENT AND INSURANCE

The Artist agrees that it/he/she is responsible for its/his/her own transportation and the provision of instruments and backline (as that term is commonly used in the music industry) for the Performance.

The Artist shall be responsible for insurance for its/his/her own equipment and instruments.

The Artist, their agents, employees and contractors shall be allowed access to the venue at the time specified in Item prior to the Event for the purposes of setting up equipment and sound checking.

4. ARTIST'S BILLING

The Artist shall receive that billing as set out in Item 4 of the Schedule in all advertising and publicity issued by or under the control of the Promoter.

5. LIKENESS, PERSONAL APPEARANCES AND INTERVIEWS

The Promoter shall have the right to use the Artist's name, pre-approved likeness and biographical material with respect to the Artist's Performance and the promotion of the Event provided that nothing in this paragraph shall entitle the Promoter to use the Artist's name or likeness to endorse any product or service other than with respect to the Event.

The Artist agrees to make itself/himself/herself available upon reasonable notice from the Promoter for a limited number of promotional activities and/or personal appearances and/or interviews for the promotion of the Event.

6. RECORDING OF THE ARTIST'S PERFORMANCE

The Promoter shall not be entitled to record any part of the Artist's Performance.

7. CANCELLATION OF PERFORMANCE

In the event the Promoter cancels the Performance for any reason whatsoever other than breach by the Artist the following shall apply:

If the cancellation is not later than 45 days before the date set for the performance, the deposit may be retained by the Artist;

If the cancellation is within 45 days of the date set for the performance the Artist will be entitled to the full Fee as specified.

Until such time as a deposit has been paid the Artist shall not be bound by this Agreement and may cancel at any time.

8. NOTICE

Any notice under this Agreement shall be in writing and delivered, emailed or sent by registered post to the relevant party at the addresses set out in item 7 of the Schedule. Notices shall be deemed to have been received either when personally served, on transmission of fax or 2 days after being sent by mail, or if by email when receipt is acknowledged by the intended recipient

9. MISCELLANEOUS

Indemnity

Each party undertakes to indemnify the other and agrees to keep the other indemnified against all liabilities, claims, demands, actions, costs, damages or expenses incurred in defending and/or settling (subject to any settlement being made with the prior written consent of the indemnifying party) and claim, dispute, action, writ or summons arising out of any breach by that party of any of the terms of this Agreement.

In the event of any claim, dispute, action, writ or summons in connection with clause 9.1(a) above each party agrees to provide full details to the other party at the earliest opportunity.

Arbitration or Mediation

If any dispute shall arise on any matter connected with this Agreement, the same shall be referred to arbitration pursuant to the provision of the Arbitration Act 1996 or any Act in amendment or substitution thereof, or, if the parties agree, the matter shall be resolved by mediation. The selection of arbitrator shall be by consent or in the event of disagreement thereon by the Chief Executive of the NZ Music Commission.

Amendments and Alterations

This Agreement supersedes all previous agreements, representations, understandings or promises and sets out all the terms agreed by the parties. Any amendment or alteration to this Agreement must be in writing and signed by an authorised signatory of each party.

No Partnership or Employment

This Agreement shall not be deemed to create any partnership or employment relationship between the parties.

Severability

The intention of the parties is to create a binding agreement. If this Agreement shall be rendered invalid at any time by one or more of the provisions contravening any statute, regulation, by-law or ordinance or contravening or offending any provision of law or equity, any such provision/s shall to the necessary extent be read down or excised from this Agreement and the remainder of the clauses shall remain in force.

Personal Liability

If the Promoter is entering into this Agreement in the Promoter's capacity as a director or shareholder or employee of a company then the Promoter firstly warrants that they have the authority to bind the company and further agrees that (s)he remains at all times personally liable (along with the company) to pay and indemnify the Artist from all loss, cost, solicitor/client costs or demand suffered or incurred by Artist as a result of the breach by the Promoter of any of its obligations under this Agreement, including, but not limited to, payment of the Performance Fee.

READ, AGREED AND UNDERSTOOD

SIGNED by

For and on behalf of

Date:

Witness:

Address:

Occupation:

SIGNED by _____

THE ARTIST or the duly authorised agent of THE ARTIST

Date: _____

Witness: _____

Address: _____

Occupation: _____

SCHEDULE

Item 1: The Event:

Venue:
Date:
Performance Time:
Load In Time:
Soundcheck:

Item 2: Artist's Payment:

Fee Based

In consideration for the Artist's services under this Agreement the Promoter agrees to pay to the Artist a performance fee of \$ (the "Fee") + GST as follows:

- (a) A Non-refundable retainer of \$ + GST to be paid to the Artist, immediately upon execution of this Agreement (the "Retainer"); and
- (b) The balance of the Performance Fee being \$ + GST to be paid to the Artist immediately prior to the commencement of the Performance. The Artist reserves the right to cancel this Agreement if either the Retainer or the balance are not paid in the times specified.

Transport

The Promoter will organise and supply the Artist with free transportation to and from the Venue, including all transfers and baggage costs. All flights within New Zealand organised by the Client must be booked on Air New Zealand only.

Where reasonably possible, the flights for the Artist should be "direct flights".

If flights are not supplied by x the Artist shall be entitled to cancel this agreement and the promoter shall forfeit the retainer.

Backline

The Client will pay for and supply the following backline/production equipment for the Artist:

Rider

The Client will pay for and supply the following backstage rider for the Artist:

Accommodation

Accommodation for the Artist shall be organized and paid for by the Client. The Client must ensure the accommodation meets, at least, the following conditions:

- (a) x Star accommodation;
- (b) Checkout time for the Artist is no earlier than 1.00pm on the day of departure (a 10.00am check out time is expressly unacceptable by the Artist); and
- (c) The accommodation must have a self contained bathroom and bedroom area. A "backpackers" is expressly unacceptable by the Artist

If any amount payable to Artist under this Agreement is not received within the time specified in above, the Promoter shall pay interest on the outstanding amount at the rate of 18% per annum until payment of the Fee is made in full.

Item 3: Performance

The Artist shall be required to perform for approximately _____ unless otherwise agreed in writing.

Item 4: Billing

The Artist's billing in any and all advertising for the Concert shall be

Item 5: Notices

Artist's contact details

Address: _____

Telephone: _____

Fax: _____

Mobile: _____

Email: _____

Promoter's contact details

Address: _____

Telephone: _____

Fax: _____

Mobile: _____

Email: _____