

PERFORMANCE AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between the Airport Foundation MSP (the "AFMSP"), and _____ a corporation/individual/_____, with a regular place of business at _____, ("Performer").

WHEREAS, the AFMSP desires to have live performances at the Minneapolis-St. Paul Airport ("MSP") for the enjoyment of the flying public; and

WHEREAS Performer desires to have a forum in which to perform his/her/its art;

NOW THEREFORE, the AFMSP and Performer, for the consideration hereinafter named, agree as follows:

ARTICLE 1. GENERAL DESCRIPTION OF WORK

The AFMSP agrees to and hereby does retain Performer, and Performer agrees, to perform at MSP as described herein and such services as may from time to time be specifically requested and authorized by the AFMSP staff. All performance agreements are subject to airport access and security requirements.

ARTICLE 2. TERM, SCHEDULE, AND LOCATION

Once executed, this Agreement shall govern all performances by Performer at MSP. This Agreement is cancelable by the AFMSP or Performer at any time upon 10 days advance written notice to the other party for any misconduct; otherwise upon 30 days advance written notice.

The Performance Schedule will be mutually agreed upon in advance of any performances. AFMSP agrees to not charge any admission or other entrance fees to any performances.

Performances shall be made at locations as determined by AFMSP. The AFMSP agrees to furnish the locations and assures that the location will be visible and audible to the general public. The AFMSP shall ensure that the designated locations are kept clean and neat, and meet the operational needs of the Performer, including all necessary electrical and lighting requirements. The AFMSP reserves the right to relocate all or any portion of the performance locations. No designated storage space is provided by AFMSP, but Foundation will provide temporary storage space for equipment and materials, if needed.

ARTICLE 3. SIGNAGE AND EQUIPMENT

Signage allowed shall be two (2) floor banners or signs indicating the name of Performer. The design, size and placement of such sign shall be approved by the AFMSP, in its sole discretion, in advance of any performance. Table-top signage is also permitted with advance approval by the AFMSP. At the conclusion of each performance, Performer shall promptly remove all signage.

Performer shall be responsible for the acquisition, shipping, and assembly of all instruments or other equipment.

ARTICLE 4. PERFORMANCE REQUIREMENTS

Performer acknowledges and agrees that all performances must comply with the requirements set forth in this Agreement.

Performances and music volume levels will not unreasonably interfere with the operations of MSP or the business of its tenants. The AFMSP, in its sole discretion, may at any time regulate Performer's volume.

Performances should be appropriate for the MSP audience and people of all ages, and must comply with the AFMSP Performance Guidelines. If AFMSP has a question about whether a performance meets the terms of this Agreement and such question cannot be answered prior to the performance, the AFMSP reserves the right to immediately cancel the performance in question until the AFMSP and Performer resolve the issue.

Performer must not interfere with the orderly and efficient flow of passenger traffic, or with the operation of the airport.

AFMSP may impose additional reasonable time, place, and manner regulations for purposes including passenger safety and convenience. Performer shall also abide by any regulations and/or directions of the Metropolitan Airports Commission (MAC).

ARTICLE 5. LICENSES

Performer hereby grants AFMSP and MAC a license for the use of Performer's performance throughout the duration of each of Performer's performances at MSP. In addition, AFMSP and MAC may promote Performer's performances through their websites, brochures, images, news releases or any other means. Performer agrees that AFMSP and MAC may photograph, record, simulcast, and otherwise distribute Performer's Performances and use any such reproductions for publicity or promotional purposes in printed material, catalog/brochures, on social media, digital displays and on the Internet, with no compensation to Performer.

The AFMSP shall ensure that all necessary performance licenses are obtained by MAC from Performing Rights Organizations ("PRO's") for Performer's use at MSP only, among other uses. It shall be Performer's obligation to check the repertoires of each PRO providing a license to the AFMSP to ensure that only properly licensed music is performed.

Performer understands and acknowledges that Performer's performances may be photographed, recorded, distributed, and/or posted on social media by the general public, the press and others.

ARTICLE 6. COMPENSATION, SALES & PARKING

AFMSP shall pay to Performer \$_____ per performance. Performer shall submit request for payment(s), and the AFMSP will make payments within 30 days of receipt of request. Checks will be written by the AFMSP to the persons or entities stipulated on the requests for payments.

Performer shall be entitled to sell its Recorded Music or Other Merchandise, as permitted by AFMSP. Performer shall obtain AFMSP's approval before placing any item for sale. This approval is not to be unreasonably withheld. It is recommended that Performer have a person, other than Performer, on duty during all performances to conduct sales transactions. If Performer wishes to sell signed CDs, Performer must sign CDs prior to performing, during breaks, or after performing. The purpose of this provision is to avoid interruptions in performance.

Parking will be provided by AFMSP.

ARTICLE 7. COMPLIANCE WITH ALL LAWS

Performer shall comply with all laws, ordinances, regulations and rules of the Federal, State, and local government including those of the AFMSP and MAC that may be applicable to performance of this Agreement. Other than as provided in Article 5, Performer shall obtain and pay for all permits, licenses, or other authorizations required by authority of law in connection with its professional services performed under this Agreement.

ARTICLE 8. DISPUTE RESOLUTION

In the event of an irreconcilable dispute under this Agreement, which is not resolvable through informal means, the parties may, upon written agreement, submit to the resolution process set out in this provision. Once the parties have agreed to the resolution process, each party shall have seven (7) calendar days to designate one representative, who shall have authority to act on that party's behalf. If either party fails within that time to inform the other party in writing of its designation, the other party is free to pursue all other legal and equitable remedies.

Within ten (10) calendar days of designation of the representative, the representatives shall meet and shall entertain such presentation of testimony and other evidence as Performer and the AFMSP may wish to present with respect to the dispute. Within seven (7) calendar days after the close of such presentation, the representatives shall resolve the dispute or either party is free to pursue all other legal and equitable remedies. When the representatives resolve the dispute, their decision shall be final and conclusive.

Should the representatives be unable to agree on a resolution of the dispute, then the parties are free to pursue all other legal and equitable remedies. Each party's costs for the dispute resolution shall be borne by the respective party.

If the parties do not agree in writing to the resolution process set out above, either party is entitled to pursue any other legal or equitable remedies available.

ARTICLE 9. DAMAGES AND DELAYS

Performer agrees that no charges or claim for damages shall be made by Performer against AFMSP and MAC, members of its Board, and its officers, agents, employees, volunteers and commissioners for any damages or hindrances from any cause whatsoever other than contribution or indemnity claims for bodily injury during any performance under this Agreement. Delays or hindrances, if any, shall be compensated for by an extension of time for such reasonable period as the AFMSP may determine to be equitable in the circumstances, and the opportunity for renegotiation of compensation.

ARTICLE 10. INDEPENDENT CONTRACTOR

Performer in performance of work hereunder operates as an independent contractor and covenants and agrees that Performer will conduct its business consistent with such status, that Performer will neither hold itself out as nor claim to be an officer or employee of the AFMSP or MAC by reason hereof, and that Performer will not by reason hereof, make claim, demand nor shall Performer apply for any right or privilege applicable to an officer or employee of the AFMSP or MAC, including, but not limited to, unemployment insurance benefits, social security coverage or retirement membership or credit.

ARTICLE 11. ASSIGNMENT

Performer may not assign or otherwise transfer its rights and/or its duties and responsibilities under this Agreement unless the AFMSP consents in writing, signed by its authorized representative, and then only upon such conditions as may be included in such consent.

ARTICLE 12. INDEMNIFICATION

Performer shall indemnify, defend, and hold completely harmless MAC and its Commissioners, officers, agents and employees, the AFMSP and its, officers, agents and employees (collectively "Indemnitees") from and against any and all liabilities, losses, damages, suits, actions, claims, charges, judgments, settlements, fines or demands of any person arising by reason of injury or death of any person or damage to any property (or any allegation or claim of such injury, death, or damage to any property), including all reasonable costs for investigation and defense thereof (including, but not limited to, investigative fees, attorney's fees, court costs and expert fees), of any nature whatsoever arising out of or as a result of Performer's activities under this Agreement, or the acts or omissions of Performer's officers, agents, employees, contractors, subcontractors, licensees or invitees, regardless of where the injury, death or damage may occur in connection with this Agreement. Performer is not obligated to indemnify an Indemnitee against any damages, judgment or other liability to the extent a court of competent jurisdiction decides such damages, judgment or other liability result from the Indemnitee's negligence or intentional acts.

AFMSP shall give reasonable notice to Performer of any such claim or action and the Performer shall use legal counsel that is acceptable to and approved by the AFMSP and MAC. MAC and the Airport Foundation MSP, at their option, shall have the right to select its own counsel or to approve joint counsel as appropriate (considering potential conflicts of interest) and any experts for the defense of claims.

The provisions of this section shall survive the expiration or early termination of this Agreement.

ARTICLE 13. INSURANCE

13.1 Required Insurance

Performer shall provide and maintain, at its own cost and expense:

- A. Comprehensive general liability insurance, including contractual liability for bodily injury or property damage, with a combined single limit of not less \$1,000,000.00 for each occurrence.
- B. Adequate insurance against loss or damage by fire and other various risks on any equipment located at MSP.

All policies shall be specifically endorsed to provide that the coverage obtained by virtue of this Agreement will be primary and that insurance carried by the AFMSP shall be excess and non-contributory. Performer shall provide to the AFMSP certificates of insurance and any renewals thereof prior to performances taking place at MSP, which evidences the required coverage.

All such policies shall name the AFMSP and MAC as additional insureds.

13.2 Workers' Compensation Insurance

Indicate which of the following applies by checking the appropriate box:

- I will carry workers' compensation insurance.
- I do not intend to carry workers' compensation insurance.

ARTICLE 14. NONEXCLUSIVITY

The rights granted to Performer are nonexclusive. The AFMSP reserves the right to enter into agreements with other persons or firms to perform services at the Airport including those provided herein. However, Performer may not enter into any agreement, perform any work, or otherwise perform a function that would create or imply a conflict of interest or otherwise harm the AFMSP or MAC, members of its Board, and its officers, agents, employees, volunteers and commissioners.

ARTICLE 15. SECURITY

Performer, its employees, agents, contractors and/or subcontractors must meet the requirements of the Airport Police Department with regard to security badging access. All security badging questions must be referred to the Airport Police Department Badging Office at 612-467-0623.

Performer, its employees, agents, and contractors shall, at its own expense, abide by all Transportation Security Administration ("TSA") or MAC security requirements, ordinances or security directives, including but not limited to, security badge qualifications, access, display, and use, restrictions on sale of dangerous items and limited security area access abilities.

The security of the airport environment, especially in the sterile area, requires constant vigilance and control by MAC. Pursuant to TSA requirements, MAC is only allowed to permit access to the sterile area to individuals who have a business purpose inside the area.

Performer understands and agrees that in the event the TSA assesses a civil penalty or fine against MAC or AFMSP for any violation of Transportation Security Regulations or other federal statute as a result of any act or failure to act on the part of Performer or its employees, agents, and/or subcontractors, Performer will reimburse MAC in the amount of the civil penalty finally assessed plus any documented costs for defending the civil penalty, including reasonable internal or external attorneys' fees. MAC and the AFMSP will provide Performer notice of the allegation, investigation or proposed or actual civil penalty. Failure of Performer to reimburse MAC or AFMSP within one hundred twenty (120) days of receipt of written notice of the assessed civil penalty shall result in the cancellation of this Agreement.

ARTICLE 16. WAIVER, JURISDICTION, AND SAVINGS CLAUSE

A waiver by either party of any provision of this Agreement in any instance shall not be deemed to waive it for the future. All remedies, rights, undertakings, and obligations contained in this Agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, undertaking, or obligation of either party.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota excluding any laws that might direct the application of the laws of any other jurisdiction. The parties hereby consent to the jurisdiction of the courts in the State of Minnesota for the purpose of all actions arising under or in connection with this Agreement.

If any provision of this Agreement is held to be void, invalid or inoperative, such provision shall not affect any other provision hereof, and the remainder of this Agreement shall be effective as though such void, invalid or inoperative provision had not been contained herein.

ARTICLE 17. ENTIRE AGREEMENT

This Agreement is subordinate to the MSP Arts and Culture Master Plan, dated April 2017 (Master Plan). This Agreement incorporates by reference the terms of the Master Plan, and Performer agrees to be bound by the obligations in the Master Plan assigned to the AFMSP. This Agreement, including the Master Plan, contains the entire understanding between the parties with respect to the contents hereof, superseding any prior agreements and writings with respect to such subject matter, and may not be changed other than by an agreement in writing signed by authorized representatives of Performer and the AFMSP.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

AIRPORT FOUNDATION MSP

Witness: _____ By: _____

Name: _____

Title: _____

PERFORMER

Witness: _____ By: _____

Name: _____

Title: _____