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**TEMPLATE PERFORMANCE AGREEMENT FOR USE WITH PROFESSIONAL PERFORMERS**

**This template agreement is intended for use when a professional Performer is joining you for a performance, or series of performances. This template does not cover circumstances where the professional Performer is creating new work (and therefore new Intellectual Property) for or on behalf of your organisation. In those circumstances, an additional contract or clauses would be required to deal with the ownership and sharing of the IP.**

**How to use this document**

1. Insert all detail in square brackets/yellow highlight and boxes.
2. Read all comments and make the selections as appropriate. Ensure that all comments are deleted (along with this covering note) before sending to the Performer.
3. Attach any additional documents which form part of the contract or are referred to in the contract (e.g. Event schedule and programme, branding guidelines).
4. The details of the Event(s) and related arrangements should be inserted at Part A.
5. Part B sets out the standard Terms and Conditions and should not be amended (or only in minor ways).

**When using this document, please note the following:**

This template has been prepared to provide general guidance and information to Making Music members who may be engaging professional Performers from time to time. It is intended to be a starting point only and should not be considered a finalised legal document or as constituting legal advice. It is the responsibility of your organisation to seek legal advice where necessary and to carefully review the document before it is signed off.

Neither Making Music nor its legal advisors shall be liable for any decisions made or action taken in reliance on this document, or for any damage arising from its use.

**[SPACE FOR YOUR ORGANISATION’S BRANDING]**

**PERFORMANCE AGREEMENT**

**Date of contract:**

**Contract number:**

Thank you for agreeing toperform at the [*insert name of Event*]. Please read through this Agreement (including the Terms and Conditions attached) and complete and return the confirmation section at the end of **Part A – The Particulars** to confirm your agreement. In this agreement, we are referred to as the “Organisation”.

**Part A – The Particulars**

**1 The Parties**

1. **The Organisation**

|  |  |
| --- | --- |
| Full name: |  |
| Registered address: |  |
| Company No (if applicable) |  |
| Charity No (if applicable) |  |
| Phone: |  |
| VAT registration number (if applicable): |  |

1. **The Performer**

|  |  |
| --- | --- |
| Full name: |  |
| Address: |  |
| Company No (if app) |  |
| Phone: |  |
| VAT registration number (if app): |  |

1. **The Services**

In consideration for the Fees, the Performer has been engaged by the Organisation to perform the work(s) detailed below (the “**Services**”), to be performed in accordance with this Agreement (including but not limited to these Particulars (Part A), and the Terms and Conditions (Part B), and the Event Programme and Event Schedule).

1. **Event**

|  |  |  |
| --- | --- | --- |
| Event name: | [*Insert*] | the “**Event**” |
| Summary of Event: | [*Insert summary/brief description of Event, which may be a sequence of events, to set the context*] |  |
| Event dates: | [*Insert*] |  |
| Venue: | [*Insert venue details*.] | the “**Venue**” |
| Work(s) to be performed: | [*Insert*] | the “**Work**” |
| Event Schedule: | [Attached to this Agreement (as may be updated by the parties by written agreement)] / [To be agreed separately in writing] |  |
| Event Programme: | [Attached to this Agreement (as may be updated by the parties by written agreement)] / [To be agreed separately in writing] |  |

1. **Fees**

The Organisation will pay the Performer the Fees for the provision of the Services in accordance with this Agreement, being the total amount due to the Performer in respect of the Services. The Fees are exclusive of VAT. The Performer shall meet all expenses in relation to provision of the Services, except as stated below or otherwise agreed with the Organisation in writing in advance.

|  |  |
| --- | --- |
| Total Fees: | £[XXX] [plus VAT] |
| Deposit: | [*Insert any agreed deposit, or else leave blank or write “NONE”*] |
| Payment date(s) and any occurrence that needs to happen before payment is due: | [*Insert details here and make clear when payment is due e.g. £XXX after the Event in accordance with the below invoicing requirements*.] |
| Invoicing: | Fees payable by BACS within 30 days of a valid invoice from the Performer, including an invoice number and the supplier’s VAT number, full name and address. Invoices should be addressed to [insert address/email address]. |
| Agreed expenses: | [*Insert agreed expenses, or else leave blank or write “NONE”*] |

1. **Duration**

|  |  |
| --- | --- |
| This Agreement will commence on: | [*Insert Start Date*] |
| And will conclude on: | [*Insert End Date – NOTE this date must be when all obligations have finished not just when the performance has finished (if there are follow up obligations).*] |
| Subject to | Early termination in accordance with the terms of the Agreement. |
| Notice Period (the period of notice required to be given by the parties to terminate (cancel) the Agreement on written notice under Condition 15.1 of Part B below). | [One month] |

1. **Specific Requirements**

|  |  |  |
| --- | --- | --- |
| The Organisation shall provide or arrange for the provision of the following to the Performer, at no additional charge except where stated below. **Agreed Requirement** | **Details** | **Costs to Performer or re-imbursement (if any)** |
| Technical requirements: | [*Insert agreed technical requirements here, e.g. lighting, PA system*] |  |
| Catering/refreshments: | *[Insert any agreed specific catering requirements.]* |  |
| Equipment: | *[Insert specific equipment agreed to be provided, e.g. chairs, music stands, piano.]* |  |
| Performer space: | [*Insert agreed specifics of space Performer can use at the Venue, including dressing rooms, showers/toilets, breakout spaces, production office,.etc.*] |  |
| Stage: | *[Insert agreed specific stage/platform requirements for performance, e.g. concert platform with full stage extension.]* |  |
| Rehearsals: | [*Insert agreed specifics/timings of Rehearsals*] |  |
| Other use of Venue: | *[Insert any other agreed use of Venue outside of the Event itself and rehearsals.]* |  |
| Travel and accommodation arrangements: | [*Insert any agreed arrangements*] |  |
| Credits: | [*Insert form of credit(s) where agreed*] |  |
| Complimentary tickets: | [*Insert agreed number, if any*] |  |

The parties may agree further additional requirements, or vary the above requirements, before the Event by agreement in writing.

1. **Publicity**

All print, media releases, broadcast, editorial, advertising and promotional materials and publicity for the Event need the Organisation’s prior written approval.

1. **Broadcasts, Live-Streams, Recordings and Photographs**

|  |
| --- |
| The Performer hereby agrees that the Organisation (and/or the Venue where agreed in advance with the Organisation) may [live broadcast (including live-stream via an appropriate platform), record the Event and/or take photographs of the Event] (some of which material may include the Performer and the Performer’s performance).  The Performer hereby agrees that Organisation (and/or the Venue where agreed in advance with the Organisation) may use any recording and/or photograph of the Event for any purpose in support of its mission, including making recordings or photographs available (directly or through a third party) to the public online, and for any promotional, documentary or archive purposes. These shall include commercial purposes [provided that, as applicable, the Performer shall be entitled to a fair and reasonable royalty in respect of such use, which the parties shall negotiate in good faith].  Please also see Condition 12. |

1. **Parties’ Representatives**

|  |  |
| --- | --- |
| **Organisation** | **Performer** |
| Name: | Name: |
| Position: | Position: |
| Phone: | Phone: |
| Email: | Email: |

1. **Contractual documentation**

The following documents form part of and are incorporated into this Agreement for services (the “**Agreement**”):

1. Part A – these Particulars
2. Part B – the Terms and Conditions
3. Event Programme
4. Event Schedule

Both the Organisation and the Performer agree that they are bound by the terms detailed in 1-4 and in the event of inconsistency between them shall be considered in the above order of precedence.

|  |  |
| --- | --- |
| Signed on behalf of | Signed on behalf of |
| **[*Insert name of your organisation*]** | **[*Insert name of Performer*]** |
| by: | by: |
| Signature of Authorised officer | Signature of Authorised [person/officer] |
|  |  |
| Name of Authorised officer (please print) | Name of Authorised [person/officer] (please print) |
|  |  |
| Date | Date |

**Part B – Terms and Conditions**

The following Terms and Conditions apply to the Agreement for the provision of Services by the Performer to the Organisation.

1. **Definitions and Interpretation**

In this Agreement (including but not limited to the Particulars and these Terms and Conditions), the following words and expressions shall have the following meanings:

“**Business Day**” means any day which is not a Saturday or Sunday, or a bank holiday;

"**Event**" means the event(s) described in the Particulars (including rehearsal(s) and performance(s) for those events;

"**Force Majeure Event**" shall mean any of the events described in Condition 17.4;

"**Services**" as defined above in the Particulars;

"**Venue**" means the venue given in the Particulars (above);

“**Work**” is as defined above in the Particulars.

A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made from time to time under that statute or statutory provision.

A reference to writing or written includes email.

1. **Organisation Responsibilities**
   1. The Organisation shall (prior to the Event) provide a **designated contact** for this Agreement to liaise with the Performer or its representative over all relevant arrangements related to the Event.
   2. The Organisation shall use reasonable endeavours to promote and advertise the Event.
   3. The Organisation shall arrange (or shall liaise with the Venue in order to arrange) for the provision of any Special Requirements **set out in the Particulars**.
2. **Performer Responsibilities**

The Performer agrees:

* 1. to perform a quality rehearsed performance of the Work at the agreed length on the agreed dates and at the agreed times;
  2. to provide all equipment, musical instruments and other items required to provide the Services (**except as set out in the Particulars or otherwise agreed with the Organisation in writing**);
  3. to adhere to any agreed get-in, sound check, rehearsal and Event times **detailed in the Event Schedule, the Particulars or as otherwise agreed in writing in advance**;
  4. to perform the Services in willing co-operation or collaboration with such persons as the Organisation may require and to provide all details and information reasonably requested by the Organisation promptly;
  5. (where applicable) to apply, or assist the Organisation in applying, for sponsorship certificates, any other permits and consents as may be necessary to enable the Organisation to make full use of the Performer's Services;
  6. not to engage in any conduct that may, or is likely to, bring the Organisation (or any of its names or logos) or the Event into disrepute;
  7. not to do or omit to do anything which may cause the Organisation to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business or activities;
  8. not to make changes to the Event, Event Programme or the Work without the prior written consent of the Organisation;
  9. to tell the Organisation immediately if any of the information given to the Organisation becomes incorrect between the date of this Agreement and the date of the Event;
  10. not without the Organisation’s written consent to incur any liability on the Organisation's behalf; and
  11. to promptly provide any publicity/promotional materials for the Event (including biographic materials and photograph(s)), and the details of guests for any complimentary tickets set out in the Particulars, to the Organisation in accordance with the Organisation’s requests.

1. **Fees and payment**
   1. In consideration for the provision of the Services, the Organisation shall pay the Performer the Fees, which represent the total sums due to the Performer under this Agreement. It is agreed that, **except as stated in the Particulars or agreed separately between the parties in writing**, no additional payment shall be due to the Performer.
   2. All amounts payable by the Organisation exclude amounts in respect of value added tax (VAT) which the Organisation shall additionally be liable to pay to the Performer at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.
   3. The Performer shall submit invoices for the Fees (plus VAT if applicable) to the Organisation at the intervals agreed in the Particulars. Each invoice shall include all supporting information reasonably required by the Organisation.
   4. The Organisation shall pay each invoice which is undisputed, properly due and submitted to it by the Performer, within the period set out in the Particulars, to a bank account nominated in writing by the Performer.
2. **Health and Safety**

The Performer shall comply at all times with all health and safety legislation and regulations as they apply to the Event and the Venue.

1. **Liability**
   1. The Organisation shall not be liable for:
      1. any claim for loss of publicity or opportunity to enhance the Performer's reputation even if the Organisation delays or abandons production or exploitation of the Event; or
      2. any loss or damage to the Performer's property (including any musical instruments) or for any personal injury, illness or death caused or suffered in connection with the Performer's engagement under this Agreement unless caused by the Organisation's negligence.
2. **Insurance** 
   1. The Performer shall maintain in force insurance policies with reputable insurance companies, against all risks that would normally be insured against by a prudent performer in connection with the risks associated with this Agreement, and share with the Organisation details of that insurance as requested by the Organisation.
   2. The Performer undertakes to make good all damage to any furniture, fitting or fixtures or other property belonging to the Organisation or the Venue which may be caused or contributed to by the Performer or its staff, crew or volunteer performers.
3. **Warranties** 
   1. The Performer hereby warrants, represents and undertakes to the Organisation that:
      1. it is free to enter into and to perform this Agreement and has not entered and will not enter into any professional or other commitment which would or might conflict with or prevent the Performer from complying with this Agreement; and
      2. no material provided or contributed by or on behalf of the Performer will infringe the copyright or any other rights of any third party, nor breach any other law or regulation.
4. **Status**
   1. The Performer hereby agrees and declares that they are not an employee of the Organisation and is not a Worker within the meaning of the Working Time Regulations 1998 and that they are an independent contractor engaged under an Agreement to provide services, and indemnifies the Organisation in respect of any charge for income tax or National Insurance contributions by H M Revenue and Customs or other fiscal authority.
5. **Venue**
   1. Unless agreed otherwise with the Organisation in writing, the Performer, or a named representative, will liaise with the Organisation's representative on arrival at the Venue.
   2. The Performer shall at all times adhere to, and ensure that all its staff, crew and volunteers adhere to, with all health and safety, emergency, security and other lawful requirements and rules of the Venue and the Organisation, including any relevant policies and guidance (as updated from time to time), as notified to the Performer by the Organisation or Venue.
6. **Marketing, Media and Public Relations**
   1. The Performer shall, within timescales reasonably requested by the Organisation provide appropriate up to date publicity and promotional materials for use on the Organisation’s or the Venue’s website.
   2. The Performer shall agree in advance in writing with the Organisation the content of all media releases, broadcast, editorial and advertising of the Event on Performer/Agency publicity, including websites and social media and shall comply with the Organisation’s reasonable requests related to media and publicity.
   3. The Performer agrees to ensure performance photography commissioned by themselves or their agents is undertaken with minimum audience disruption and with no flash or audible capture sound and that it is only permitted with the Organisation’s prior agreement.
7. **Broadcasts, Live-Streams, Recordings and Photographs**

Subject to the written permission of the Performer (not to be unreasonably withheld), the Organisation (and/or the Venue where agreed in advance with the Organisation) shall be permitted to photograph, film, broadcast, live-stream and/or record rehearsals and/or the Event, and to use any such material after the Event for any purpose in support of its mission, including making recordings or photographs available (directly or through a third party) to the public online, and for any other promotional, documentary or archive purposes, including commercial purposes.

1. **Sponsorship and requirements of sponsors**

The Organisation may seek to obtain Event sponsorship for the Performer’s performance(s). If the Performer or Performer’s Management has secured, or wishes to secure, a sponsor, the Performer will advise the Organisation of the existence and identity of such sponsor as soon as practicable, and requirements to credit that sponsor will be considered and met where reasonably possible by the Organisation in liaison with the Venue.

1. **Credits**
   1. The Organisation shall ensure that, **where set out in the Particulars or otherwise agreed between the parties in writing**, due credit shall be given to the Performer in respect of its performance of the Work pursuant to this Agreement (otherwise the Organisation shall be under no obligation to credit the Performer).
2. **Cancellation and Termination**
   1. **Where the Particulars provide for the parties to terminate the Agreement on notice,** either party may do so at any point on giving the other notice in writing of not less than such period.
   2. Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
      1. the other party commits a material breach of any term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
      2. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
      3. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
   3. Without affecting any other right or remedy available to it, the Organisation may terminate the Agreement and/or suspend or cancel the Event with immediate effect by giving written notice to the Performer if:
      1. the Performer does or omits to do anything which brings or is likely to bring the Organisation into disrepute in any way;
      2. the Performer is in breach of any of the applicable statutory or regulatory requirements;
      3. the Performer fails to adhere to any of the rules and requirements relating to the Venue, including health and safety requirements;
      4. the Performer is incapacitated and unable to provide the Performer's Services for reasons of ill-health, injury, or mental or physical disability; or
      5. the Event is prevented, interrupted or delayed by a Force Majeure Event (as defined in Condition 17.4).
   4. **Offer to reschedule**. Before serving any notice to cancel under Condition 15.3.5 above (pursuant to a Force Majeure Event), the Organisation shall as far as reasonably practicable first offer the Performer in writing an alternative future date (or dates) for the Event for the Performer’s consideration, which the Organisation shall choose. The offer will be open for the Performer’s acceptance for the period the Organisation specifies.
   5. **Obligation to find a replacement**. If the Performer becomes unable to provide the Services under 15.3.4 above, or if the Performer decides to cancel for any other reason, **they shall be responsible for appointing a suitable and similarly skilled replacement, subject to the approval of the Organisation**, and for agreeing the terms of that replacement’s remuneration at no further cost to the Organisation.
   6. **Payments and obligations on cancellation**
      1. In the event of the Performer cancelling with less than any agreed period of notice given in the Particulars (if a notice period is given in the Particulars), or the Organisation cancelling the Event pursuant to Condition 15.2 or 15.3 (**except under 15.3.4 for Performer’s incapacity or 15.3.5 for a Force Majeure Event**), the Performer shall be liable to:
         1. repay to the Organisation any **deposit** paid to the Performer in respect of the Event;
         2. pay to the Organisation **100% of all costs** incurred by the Organisation in relation to the Event (including but not limited to Event publicity and production costs (up to the time of cancellation) and refunding customers), **provided that** the Organisation shall take **reasonable steps to minimise such costs**, including avoiding incurring further costs as far as reasonably possible or taking unreasonable steps that increase its costs.

This Condition 15.6 does not apply if the Performer is cancelling for a Force Majeure Event (as defined in Condition 17)).

For the avoidance of doubt, postponement of the Event caused by the Performer and not previously agreed in writing with the Organisation, will qualify as a cancellation by the Performer for the purposes of this Condition 15.6.

* + 1. In the event of the Organisation cancelling with less than the agreed period of notice as provided in 15.1, the Organisation will pay all Fees due to the Performer under this Agreement.
  1. Termination or expiry of the Agreement shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry.
  2. Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.

1. **Dispute resolution**
   1. For the purposes of this Condition, a “**Dispute**” shall mean any dispute arising out of or in connection with the Agreement other than a dispute over payment of Fees.
   2. If a Dispute between the parties arises out of or in connection with the Agreement, either party may provide the other party with details in writing and request a meeting between Authorised representatives of the parties, who shall endeavour to resolve the matters in dispute as soon as possible.
   3. All negotiations in relation to a Dispute shall be strictly confidential.
2. **General**
   1. **Entire agreement**. The Agreement (including the Particulars and these Terms and Conditions, and all the documents referred to in either) constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements and assurances.
   2. **Variation**. No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their Authorised representatives).
   3. **Assignment and subcontracting**. This Agreement is personal to the Performer and the Performer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement without the prior written approval of the Organisation. If the Organisation consents to any subcontracting by the Performer, the Performer shall remain responsible for all acts and omissions of its subcontractors as if they were its own.
   4. **Force majeure**.
      1. Neither party shall be liable for any failure or delay in providing facilities or services, or any breach of this Agreement by it, as a result of unforeseeable events or matters outside its reasonable control, including (without limitation) any strike, lock out or other industrial action, fuel or energy shortages, failure of water or energy supply, war or terrorism, earthquake, fire, storm, explosion, flood, exceptional weather conditions, Act of God, epidemic or pandemic (including national or local lockdown), action of any Government (national or local) or Government agency or shortage of materials or goods (“**Force Majeure Event**”).
      2. The party affected by the Force Majeure Event shall, as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
   5. **Waiver**.
      1. A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
      2. A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.
   6. **Severance**. If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Condition shall not affect the validity and enforceability of the rest of the Agreement.
   7. **Notices**.
      1. A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, **if sent by email, on the next Business Day after transmission**.
      2. The Organisation’s and Performer’s respective representatives for the purposes of the Agreement, and their contact details, are set out in the Particulars.
      3. The Organisation’s and Performer’s representatives shall each have authority to contractually bind the party he or she represents upon all matters relating to the Services.
      4. Each party may change its representative from time to time by serving at least three days’ prior written notice to the other with the above updated contact details.
      5. This Condition shall not apply to the service of any proceedings or other documents in any legal action.
   8. **Third party rights**. The Agreement does not give rise to any rights under the Agreements (Rights of Third Parties) Act 1999 to any person to enforce any term of the Agreement where not a party to the Agreement.
   9. **No partnership or agency**. Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between either of the parties, constitute either party the agent or employer of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
   10. **Counterparts**. The Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement.
   11. **Governing law**. The Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with, the law of England and Wales.
   12. **Jurisdiction**. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.