

STATE OF NORTH CAROLINA

WAKE COUNTY

Rev. 12/11

**UNIVERSITY THEATRE CONTRACT**

THIS AGREEMENT, is made as of the date of the last signature below, by and between \_\_\_\_\_, (hereinafter referred to as "Artist"), and North Carolina State University, c/o University Theatre, Campus Box 7306, 2610 Cates Avenue, Raleigh, North Carolina 27695-7306 (hereinafter referred to as "Presenter");

WITNESSETH

THAT WHEREAS, the Presenter has engaged Artist to perform certain services;

WHEREAS, the parties hereto desire to reduce the terms of this agreement to writing;

NOW, THEREFORE, for and in consideration of the mutual promises to each other, as hereinafter set forth, the parties hereto do mutually agree as follows:

1.0 Appearances of Artist

1.1 Artist agrees to furnish and perform the services set forth in this agreement by appearing at the University Theatre on the campus of North Carolina State University in Raleigh, North Carolina and to present the following:

1.2 Artist shall present \_\_\_\_\_ at University Theatre in Raleigh, North Carolina at \_\_\_\_\_ p.m. on \_\_\_\_\_, 20\_\_\_\_ and at \_\_\_\_\_ p.m. on \_\_\_\_\_, 20\_\_\_\_.

1.3 Artist shall arrive in sufficient time for the house to be opened at \_\_\_\_\_ p.m. on \_\_\_\_\_, 20\_\_\_\_ for the performance to begin promptly at \_\_\_\_\_ p.m. and at \_\_\_\_\_ p.m. on \_\_\_\_\_, 20\_\_\_\_ for the performance to begin promptly at \_\_\_\_\_ p.m.

2.0 Payment

2.1 Presenter will pay the Artist the following sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

2.2 Payment will be made by University check at the end of the performance period. The check is to be made payable to \_\_\_\_\_.

2.3 Presenter shall, at its expense, which is in addition to the fees for appearance of Artist as set forth above, provide the following:

2.3.1 \_\_\_\_\_ scripts

2.3.2 \_\_\_\_\_ costumes

2.3.3 \_\_\_\_\_ rehearsal/performance space

2.3.4 \_\_\_\_\_

2.3.5 \_\_\_\_\_

2.3.6 \_\_\_\_\_

2.3.7 \_\_\_\_\_

2.3.8 \_\_\_\_\_

2.3.9 \_\_\_\_\_

2.3.10 \_\_\_\_\_

2.4 The parties to this Agreement agree and understand that the continuation of this Agreement is dependent upon and subject to the appropriation, allocation or availability of funds for this purpose. The parties to this Agreement also agree that in the event the Presenter, or that body responsible for the appropriation of said funds, in its sole discretion, determines in view of its total operations that available funding for the payment of the costs for this Agreement is insufficient to continue, it may choose to terminate this Agreement by giving Artist written notice of said termination, and this Agreement shall terminate immediately without any further liability to Presenter.

### 3.0 Relationship of Parties

The Artist is retained by the Presenter only for the purposes and to the extent set forth in this agreement, and Artist's relation to the Presenter shall during the term of this agreement be that of an independent contractor. Artist shall not be considered as having an employee status or as being entitled to participate in any plan, arrangement, or distributions by the Presenter pertaining to or in connection with any qualified pension plan or providing any other health or welfare plan with similar benefits for regular employees. Artist shall be responsible for the payment of any taxes due on any monies received by Artist.

#### 4.0 Liability

- 4.1 It is mutually agreed that Presenter shall not be liable in any manner for any personal injuries and/or damage to any property of Artist, (including but not limited to costumes, props, lighting, musical instruments or other equipment) which may occur without fault on the part of Presenter, its agents or employees.
- 4.2 If, through any cause, the Artist shall fail to fulfill in timely and proper manner the obligations under this agreement, the Presenter shall thereupon have the right to terminate this contract by giving written notice to the Artist of such termination and specifying the effective date thereof. Notwithstanding, the Artist shall not be relieved of liability to the Presenter for damages sustained by the Presenter by virtue of any breach of this agreement, and the Presenter may withhold any payment due the Artist for the purpose of setoff until such time as the exact amount of damages due the Presenter from such breach can be determined.

#### 5.0 Modification of Agreement

- 5.1 This contract and any documents incorporated specifically by reference represent the entire agreement between the parties and suspends all prior oral or written statements or agreements.
- 5.2 This contract may be amended only by written amendments duly executed by the Presenter and the Artist.

#### 6.0 Jurisdiction

It is agreed between the parties hereto that the place of this contract, its situs and forum, shall be Wake County, North Carolina, and in said County and of said State such matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of this agreement, shall be determined.

#### 7.0 Inability to Perform

- 7.1 In the event that the performance of any of the covenants of this agreement is prevented by acts of God, inclement weather, physical disability, the acts and regulations of public authorities, strike, civil tumult, war, epidemic, interruption or delay of transportation service, hostile foreign action, nuclear explosion or any cause beyond the reasonable control of the presenter or Artist, both Presenter and Artist shall be relieved of their obligations hereunder with respect to this engagement and shall be under no obligation to reschedule the performance(s) so prevented.
- 7.2 Should the Artist fail to perform for any reason other than those specified herein, the Artist agrees to reimburse the Presenter for costs contracted for prior to such

failure to appear. This would include costs associated with program printing, publicity, and expenses incurred in notifying membership holders of the cancellation.

## 8.0 Complimentary Tickets

Presenter will provide \_\_\_\_\_ (\_\_\_) complimentary ticket vouchers for the production for use by Artist and will hold them at the Box Office until fifteen (15) minutes prior to the performance. Any tickets not picked up by this time will be released for sale.

## 9.0 Federal ID Number

9.1 Artist herein provides Presenter with a bona fide Federal Income Tax Number for Individuals(s), Bank or Company that receives payment: Federal ID# \_\_\_\_\_.

9.2 A Federal Identification Number must also be provided on an accompanying W-9 form(s) for each check Presenter is required to issue.

## 10.0 Termination

The Presenter may terminate this agreement for cause at any time with 30 days notice in writing from Presenter to Artist.

## 11.0 Indemnification

The Artist shall indemnify and save harmless the Presenter, its officers, its agents, and its employees from all loss, cost, and expense arising out of any liability or claim of liability for injury or damages to persons or property sustained or claimed to have been sustained by any one whomsoever, by reason of the use or occupancy of University Theatre, whether such use is authorized or not, or by any act or omission of Artist or any of its officers, agents, employees, guests, patrons, or invitees. Artist shall pay for any and all damage to the property of the Presenter, or loss or theft of such property, done or caused by such persons.

## 12.0 Access to Persons and Records

The State or Presenter auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with North Carolina General Statute §147-64.7 and Session Law 2010-194, Section 21.

## 13.0 Availability of Funds

The parties to this Agreement agree and understand that the continuation of this Agreement is dependent upon and subject to the appropriation, allocation or availability of funds for this purpose. The parties to this Agreement also agree that in the event Presenter, or that body responsible for the appropriation of said funds, in its sole discretion, determines in view of its total operations that available funding for the payment of the costs for this Agreement is insufficient to continue, it may choose to terminate this Agreement by giving Artist written notice of said termination, and this Agreement shall terminate immediately without any further liability to Presenter.

#### 14.0 Preservation of Records

If Presenter provides any data to Artist pursuant to this Agreement then Artist shall preserve and maintain the data for a period of three (3) years or as indicated in a litigation hold letter issued by Presenter, to fulfill Presenter's obligations under the North Carolina Public Records Act and under the Federal and North Carolina Rules of Civil Procedure. Artist shall immediately preserve and maintain data (and any generated email correspondence) upon Presenter's request or upon notice of litigation or audit and further Artist shall make available all data that Presenter may specify within the time limits required.

#### 15.0 Privacy

15.1 If Presenter provides the Artist with personal identifiers as listed in N.C.G.S. §132-1.10 and in N.C.G.S. §14-113.20(b) or any other legally confidential information, Artist hereby certifies that collection of this information from Presenter is necessary for the performance of Artist's duties and responsibilities on behalf of Presenter under this Contract. Artist further certifies that it shall maintain the confidential and exempt status of any social security number information, as required by N.C.G.S. §132-1.10(c)(1), and that it shall not re-disclose personally identifiable information as directed by State and Federal laws. Failure to abide by legally applicable security measures and disclosure restrictions may result in the interruption, suspension and/or termination of the relationship with Artist for a period of at least five (5) years from date of violation. If Artist experiences a security breach, as defined in N.C.G.S. §75.61(14), relating to this information, in addition to the Artist's responsibilities under the NC Identity Theft Protection Act, Artist shall immediately notify Presenter with the information listed in N.C.G.S. §75-65(d)(1-4) and shall fully cooperate with Presenter. Artist shall indemnify Presenter for any breach of confidentiality or failure of its responsibilities to protect confidential information. Specifically, these costs may include, but are not limited to, the cost of notification of affected persons as a result of its unauthorized release of Presenter data provided to Artist pursuant to the Contract.

15.2 If Presenter provides the Artist with "personally identifiable information" from a student's education record as defined by the Family Educational Rights and

Privacy Act (“FERPA”) and its implementing regulation 34 CFR §99.3, Artist hereby certifies that collection of this information from Presenter is necessary for the performance of Artist’s duties and responsibilities on behalf of Presenter under this Contract. In this instance, Presenter considers Artist a school official with a legitimate educational interest under FERPA. Artist further certifies that it shall maintain the confidential status of education records in their custody, and that it shall not re-disclose personally identifiable information as directed by FERPA. Failure to abide by legally applicable security measures and disclosure restrictions may result in the interruption, suspension and/or termination of the relationship with Artist for a period of at least five (5) years from date of violation. If Artist experiences a security breach relating to this information or if Artist re-discloses the information, Artist shall immediately notify Presenter. Artist shall indemnify Presenter for any breach of confidentiality or failure of its responsibilities to protect the personally identifiable information. Specifically, these costs may include, but are not limited to, the cost of notification of affected persons as a result of its unauthorized release of Presenter data provided to Artist pursuant to the Contract.

IN WITNESS THEREOF, the parties have executed this Agreement as of the date of the last signature below as indicated by the signatures of their authorized representatives.

ARTIST

NORTH CAROLINA STATE UNIVERSITY  
c/o University Theatre

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_