

STATE OF NORTH CAROLINA  
NEW HANOVER COUNTY

PERFORMANCE AGREEMENT

This Agreement, made and entered into this **January 1, 2011**, by and between the University of North Carolina at Wilmington, 601 S. College Road, Wilmington, NC 28403-5922, (hereinafter referred to as UNIVERSITY) and **Joe Bloggs** (hereinafter referred to as PERFORMER).

WITNESSETH

THAT WHEREAS, UNIVERSITY has engaged the PERFORMER 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 IDENTIFYING INFORMATION AND SCHEDULE**

PERFORMER DATA

Contact Name: **Jane Bloggs**  
Phone #: **910/762-3198**  
Email Address: **blogs@gmail.com**  
Federal ID/SSN #: **123-45-6789**

EVENT DATA

Event Date: **01/25/2011**  
Event Name: **Back Yard Burger Bash**  
Event Location: **Gazebo**  
Event Time: **6 pm – 8 pm**  
Performer Arrival and Set-Up Time: **5:15 pm sound check**  
Departure: (If applicable): **9 pm (after cleanup)**  
Compensation: **\$2600.00**  
Payable to: **Joe Bloggs**

## **2.0 DUTIES OF THE PERFORMER AND UNIVERSITY**

**2.1** The PERFORMER shall be responsible for the following:

Performer agrees to perform live music for student gathering. Rain date the next day.

**2.2** The UNIVERSITY shall be responsible for the following:

List of any special arrangements that we are agreeing to provide.

## **3.0 PAYMENT**

**3.1** Payment will be made by UNIVERSITY check, payable to the PERFORMER. Taxpayer Identification Number or Social Security Number of PERFORMER is required. UNIVERSITY payment terms are Net 30 days from receipt of invoice or at the conclusion of performance, whichever occurs later.

**3.2** The duties of the PERFORMER, as described in part 2.0 above, shall be completed when services are fully rendered to the satisfaction of UNIVERSITY.

**3.3** In accordance with North Carolina House Bill 57 of the 1997 session, Chapter 1997-109, the University of North Carolina Wilmington is required to withhold North Carolina income tax at the rate of four percent (4%) from the compensation of non-resident entities (Chapter C or S corporation, partnership, or limited liability company) for services performed in North Carolina in connection with a performance, as entertainment or athletic event, or the creation of a film or television program. This tax is withheld only for contracts that total \$1,500.00 or more.

## **4.0 FORCE MAJEURE**

If the FACILITY [use property location/building term consistent with terms of the contract] is rendered unsuitable for the conduct of the EVENT by reason of Force Majeure, UNIVERSITY may terminate this Agreement by written notice within five days following such casualty. UNIVERSITY shall not be responsible for any damages sustained by PERFORMER and is under no obligation to reschedule the Event, but PERFORMER shall be entitled to a refund of the DEPOSIT, if any. Force Majeure shall mean fire, earthquake, hurricane, flood, act of God, epidemics or pandemics, nuclear explosions, strikes, work stoppages, or other labor disturbances, riots or civil commotions, war or other act of any foreign nation, terrorism, power of government, or governmental agency or authority, or any other cause like or unlike any cause mentioned which is beyond the control of UNIVERSITY.

## **5.0 INCLEMENT WEATHER**

Due to the coastal location of UNIVERSITY and the potential for hurricanes, if UNIVERSITY notifies the PERFORMER within 24 hours advance of travel that inclement weather will affect the performance, UNIVERSITY will not be responsible for the performance fee or liable for any actual, consequential or special damages.

## **6.0 RELATIONSHIP BETWEEN PARTIES**

- 6.1** The PERFORMER is retained by the UNIVERSITY only for those purposes and to extent set forth in this Agreement, and PERFORMER'S relation to the UNIVERSITY shall during the term of this Agreement be that of independent contractor. PERFORMER shall not be considered as having an employee status or as being entitled to participate in any plan, arrangements, or distributions by the UNIVERSITY pertaining to or in connection with any qualified pension plan or providing any other health or welfare plan with similar benefits for regular UNIVERSITY employees. PERFORMER shall be responsible for the payment of any taxes on any monies received by the PERFORMER.
- 6.2** As an independent contractor, the PERFORMER shall be responsible for the payment of any taxes due on any monies received by him/her.
- 6.3** The PERFORMER shall be responsible for expenses related to any injury or malady occurring to him/her or his/her employees, while on UNIVERSITY property, during the period of this Agreement.
- 6.4** The PERFORMER agrees to indemnify and hold harmless UNIVERSITY, its trustees, employees, and agents against any liability arising from the subject matter of this Agreement and from any breach of the duties described in the Agreement. Such indemnity shall include, but shall not be limited to costs arising from any litigation.
- 6.5** The PERFORMER shall not assign or transfer any interest in this Agreement.
- 6.6** Each party represents and warrants to the other party that it has full right and power to enter into this Agreement.
- 6.7** The PERFORMER understands that he/she/it is not an agent of UNIVERSITY and shall not hold himself/herself out to the public to be an agent of UNIVERSITY.
- 6.8** The PERFORMER shall be required to comply with all laws, ordinances, codes, rules, regulations and licensing requirements that are applicable to the conduct of his/her business, including those of Federal, State and local agencies having jurisdiction and/or authority.

**7.0 MERCHANDISE SALES POLICY AND COMMISSION**

- 7.1** UNIVERSITY provides volunteer sellers for PERFORMERS' merchandise, and also makes provision for credit card sales if artist desires. All merchandise sold on premises is subject to a 20% commission to the hosting venue, without exception.
- 7.2** Taxes – UNIVERSITY shall not be responsible for the payment of any taxes arising out of or connected with the use of the facility by the PERFORMER, including but not limited to sales tax on merchandise. The PERFORMER shall be responsible and be required to pay upon demand to UNIVERSITY an amount sufficient to discharge all taxes which may arise from or in connection with the PERFORMER's use of the facility.

## **8.0 INSURANCE – *Accept by Initialing Option #1 or Option #2***

### ***Option #1 \_\_\_\_\_ (requires a certificate of insurance)***

At all times during the event, PERFORMER is required to have a policy of comprehensive liability insurance, including public liability, bodily injury, and property damage, written by a company licensed to do business in the State of North Carolina, covering the use contemplated by this agreement with combined single limits of no less than \$1,000,000 per occurrence and \$3,000,000 aggregate. The PERFORMER shall name the UNIVERSITY, including its trustees, officers, agents and employees as Additional Insured's for the said purpose and use of this Agreement. PERFORMER agrees that the insurance will be primary coverage and will contain no terms allowing the insurer to be subrogated to the rights of any injured or damaged person or entity insofar as said Worker's Compensation insurance to meet the requirements of the Worker's Compensation law of North Carolina where applicable. Certificates of Insurance evidencing such insurance coverage shall be provided to the University upon request.

### ***Option #2 \_\_\_\_\_***

UNIVERSITY is self-funded with respect to any claims which might be made in conjunction with or arising out of this Agreement including liability. UNIVERSITY has no liability or accident insurance that covers the artist during the activities in this Agreement. The PERFORMER accepts and assumes all responsibility for risk and personal injury, illness, death, or damage to themselves, their property or others' person or property arising from participation in the activities in this Agreement.

## **9.0 REPAIRS**

The PERFORMER shall be liable for all damage to buildings, grounds, fields, and equipment, or injuries or death to persons, incident to PERFORMER's use of UNIVERSITY's facilities under this Agreement. The artist shall make no temporary or permanent modifications to the UNIVERSITY's facilities without the prior written consent of UNIVERSITY.

## **10.0 JURISDICTION**

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

## **11.0 MODIFICATION OF AGREEMENT**

**11.1** This contract and any documents incorporated specifically with reference represent the entire agreement between the parties and suspend all prior oral or written statements or agreements.

**11.2** This contract may be amended only by written amendments duly executed by the PERFORMER and UNIVERSITY.

## 12.0 ARCHIVAL/EDUCATIONAL DOCUMENTATION

The PERFORMER agrees to allow limited documentation in the form of photographs or video, to be used by UNVERSITY for archival and educational purposes only. (Any photography would be done without flash and would generally be shot during rehearsal, if applicable. Any photos taken during performance would be from wings and would not interfere with PERFORMER's performance or audience sight-lines.)

## 13.0 RECORDINGS/RECORDS MADE BY PERFORMER

Any photograph, video recording or other media of performances to be taken by PERFORMER arising from this Agreement – in particular, those that include recognizable campus images and logos -- must be approved expressly by UNVERSITY, whose permission shall not be unreasonably withheld.

UNIVERSITY's trade and service marks are an essential part of the UNIVERSITY's visual identity and are protected logo's, marks, and branding – capturing these marks in any media and subsequently broadcasting, re-broadcasting, or a performance containing the use of these marks or images is expressly prohibited. The unauthorized use of UNIVERSITY's registered marks will result in an infringement suit seeking statutory damages and penalties.

## 14.0 TECHNICAL SERVICES

Technical crew employed by UNVERSITY shall report to and remain under direct supervision of UNVERSITY at all times. The artist shall have control over artistic qualities of performance; however, UNVERSITY shall control facility with respect to sound levels, heating and cooling levels, etc.

## 15.0 TERMINATION

The UNIVERSITY may terminate this agreement for cause at any time with 30 days notice in writing from the UNIVERSITY to the PERFORMER.

## 16.0 TO BE COMPLETED BY PERFORMER

### 16.1 Independent Contractor

1. YES NO Are you related by blood or marriage to a UNCW employee or officer?  
If yes, name & department: \_\_\_\_\_
2. YES NO Do you have a business association with a UNCW employee or officer?  
If yes, name & department: \_\_\_\_\_
3. YES NO Are you a retired State employee?  
If yes, date of retirement: \_\_\_\_\_
4. YES NO Within this calendar year, have you been employed by UNCW or any other State agency?  
If yes, separation date: \_\_\_\_\_
5. YES NO Within this calendar year, have you been a UNCW undergraduate or graduate student employee, or graduate assistant?
6. YES NO Do you work exclusively for UNCW and not offer your services to the general public as part of a trade or business?

**16.2 Residency Status for tax purposes**

If Agent represents a nonresident alien or is a nonresident alien, back up withholding of 30% federal and 4% state is required to be withheld from payment unless the appropriate IRS exemption forms are submitted and approved prior to service being rendered.

Are you an Agent, either US or Foreign, who will be providing a foreign national person or group of persons to perform the above described event/service?

\_\_\_\_ Yes \_\_\_\_ No If yes, the Tax Compliance Office is to be contacted.

**IN WITNESS THEREOF**, the authorized representatives of the parties have executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**PERFORMER**

**UNIVERSITY OF NORTH CAROLINA AT WILMINGTON**

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
Mary E. Forsythe

\_\_\_\_\_  
(Printed Name)

Title: Director Purchasing Services

\_\_\_\_\_  
(EIN or SSN# )

Date: \_\_\_\_\_

Date: \_\_\_\_\_