

NORTH CAROLINA MUSEUM OF ART FOUNDATION

STREET 2110 Blue Ridge Road Raleigh, NC 27607-6494
MAIL 4630 Mail Service Center Raleigh, NC 27699-4630
TEL 919.839.6262 FAX 919.733.8034 WEB ncartmuseum.org



MUSIC AT THE MUSEUM PERFORMANCE AGREEMENT

This Agreement is made and entered into as of April 29, 2021, by and between _____ (hereinafter referred to as "Artist") and the North Carolina Museum Of Art Foundation, Inc. (hereinafter referred to as "Purchaser"). The Parties to this Agreement may be referred to together as the "Parties," and each individually as a "Party."

It is understood and mutually agreed between the Parties as follows:

The Purchaser hereby engages the Artist to perform in the Music at the Museum Series Season Finale Performance (the "Performance") on June 21-22 and July 19-20, 2021, to be premiered July 27, 2021 at the North Carolina Museum of Art (the "Engagement") upon all the terms and conditions hereinafter set forth.

This Engagement is the culmination of the Music at the Museum Series Contest (the "Contest") hosted by Purchaser and ComeHear NC. Artist is being offered the Engagement because he/she is a Contest finalist.

1. ENGAGEMENT VENUE

North Carolina Museum of Art
2110 Blue Ridge Road
Raleigh, NC 27605-4630

VENUE CONTACT: Janette Hoffman (Talent Buyer)
EMAIL: janette.hoffman@ncdcr.gov
CELL: 828.508.7435

2. DATES OF ENGAGEMENT: TBA (June 21, June 22, July 19 or July 20, 2021)

- | | |
|----------------------|-----|
| a. Number of Shows: | 1 |
| b. Show Schedule: | TBA |
| c. Announce Date: | TBA |
| d. Blocking Date: | TBA |
| e. Performance Date: | TBA |

3. PERFORMANCE PRODUCTION

Artist will supply all musical and other equipment required for performance. Artist will provide an individual to be responsible for sound during the Performance.

4. COMPENSATION:

Purchaser will compensate Artist with a \$1,000 USD flat fee (the "Flat Fee") in exchange for Artist's Performance at the Engagement and Artist's agreement to grant Purchaser the rights to audio, visual, and written media featuring Artist as described Section 5 herein.

Purchaser will pay Artist the Flat Fee within thirty (30) days after the Engagement has been completed. Artist must have delivered executed contract at or before the time of the Engagement. The Flat Fee will be paid by Purchaser to Artist via check or deposit. No cash payments will be made.

The State of North Carolina requires 4% income-tax withholding to be deducted from any payments relating to performances by non-resident individuals or entities exceeding \$1,500 per year. Payments of deposits and Artists' fees will be made net of the required withholding. Please supply IRS Form W-9 Request for Taxpayer Identification Number and Certification (available at www.irs.gov/pub/irs-pdf/fw9.pdf). Please note that the withholding tax shall be applied to deposits made to an out-of-state entity representing artists who are North Carolina residents.

5. RIGHTS TO AUDIO, VISUAL, AND WRITTEN MEDIA

Purchaser reserves the right for its staff photographers to photograph the Performance and the Engagement. Images may be used for Museum and partner publications and publicity exclusively. Partners include but are not limited to ComeHearNC and PBS NC.

Artist grants Purchaser the right to use in promotional material for the Performance and/or in Museum publications and publicity any material submitted as part of Artist's application for the Contest, including, but not limited to, any video performance and/or introductory video submitted by and/or featuring Artist and/or his/her band members, if any.

Artist agrees to participate in one or more filmed interviews, which will be aired as part of the Performance and may be used in promotional materials for the Performance and/or in Museum publications and publicity.

Artist, Purchaser, and Purchaser's affiliates and partners, including, but not limited to ComeHearNC and PBS NC have the right to use any footage related to the Performance and/or Artist's application for the Contest for promotional use.

Artist grants Purchaser and its affiliates and partners, including, but not limited to, ComeHearNC and PBS NC, the rights to:

- Livestream the Performance on YouTube or any similar live-streaming platform;
- Permanently host the Performance and any related promotional video featuring Artist on YouTube or a similar streaming platform; and
- Use, for promotional purposes or in Museum publications or publicity, any and all audio-visual footage obtained in connection with this Agreement or the Contest in perpetuity.

6. INDEMNIFICATION:

To the extent allowed by law, Purchaser shall indemnify and hold harmless Artist from any and all loss, cost and expense arising out of any liability for injury or damages to persons or property sustained or claimed to have been sustained by anyone whomsoever by reason of Purchaser's willful or negligent act(s) or omission(s) arising out of the use or occupation of the facilities herein above described, or by reason of any act or omission on the part of Purchaser and its officers, agents, or employees.

To the extent allowed by law, Artist shall indemnify and hold harmless Purchaser from any and all loss, cost and expense arising out of any liability for injury or damages to persons or property sustained or claimed to have been sustained by anyone whomsoever by reason of the willful or negligent act(s) or omission(s) of Artist and/or its employees, agents, and independent contractors arising out of the use or occupation of the above described facility.

7. HARASSMENT

Purchaser is committed to providing their employees a work environment free from unlawful workplace harassment. By entering into this Agreement, Artist agrees that it, including its employees, agents, and independent contractors, will not engage in speech or conduct that is defined as unlawful workplace harassment as indicated below: Unlawful Workplace Harassment is unwelcome or unsolicited speech or conduct based upon race, sex, creed, religion, national origin, age, color, or disability that creates a hostile work environment or circumstances involving quid pro quo. Hostile Work Environment is one that a reasonable person would find hostile or abusive and one that the particular person who is the object of the harassment perceives to be hostile or abusive. Hostile work environment is determined by looking at all of the circumstances, including the frequency of the allegedly harassing conduct, its severity, whether it is physically threatening or humiliating, and whether it unreasonably interferes with an employee's work performance. Quid Pro Quo harassment consists of unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

8. CANCELLATION

~~If the Artist cancels the engagement for any reason, with or without cause, without Purchaser's express agreement, in writing, Artist shall reimburse Purchaser for all unrecoverable out of pocket expenses incurred by it to promote and produce the event.~~

If Purchaser cancels the engagement for any reason, with or without cause, Purchaser will retain all applicable rights to use audio, visual, and/or written material as set forth in Section 5, but retains no obligation to pay Artist the Flat Fee.

9. FORCE MAJEURE

Neither the Artist nor Purchaser shall be liable for failure to appear, present or perform if such failure is caused by or due to Acts of God (e.g., pandemic, epidemic, volcanic eruption, fire, flood, blizzard, hurricane, tornado, earthquake, severe inclement weather); physical disability; the acts and regulations of public authorities; labor dispute, lockout, strike, embargo, civil tumult; war or act of terrorism, including chemical or biological warfare, hostile foreign action, nuclear explosion; interruption or delay of transportation service, or any cause beyond the reasonable control, and is not caused by the negligence, intentional conduct or misconduct of the defaulting party, and the defaulting party has exercised all reasonable efforts to avoid or remedy such force majeure. The defaulting party must provide written notice of the force majeure event to the remaining parties within two (2) days of such event.

10. INCLEMENT WEATHER

In the event that the performance is likely to be rendered impossible, hazardous or otherwise prevented or impaired due to inclement weather, then Purchaser will exercise all reasonable efforts to reschedule the performance.

11. **SECURITY:**

Security shall be under the direction of the venue security director and lead security guard. NCMA employs law enforcement officers who use their discretion in enforcing laws and ordinances.

BY: X _____
SIGNATURE OF PURCHASER
Valerie Hillings
North Carolina Museum of Art Foundation, Inc.
4630 Mail Service Center
Raleigh, NC 27699-4630

BY: X _____
SIGNATURE OF ARTIST REPRESENTATIVE
Artist
c/o _____
Address