

PERFORMANCE AGREEMENT

AGREEMENT made as of _____, 20___, between Kingsborough Community College Association, Inc., located on the campus of Kingsborough Community College (“College”) at 2001 Oriental Blvd, Brooklyn, NY 11235 (“Association”), and the artist listed below (“Artist”) by and through its agent and legal representative, if an agent is listed below (“Agent”).

ARTIST	
Name of artist/company	
Contact Person (if other than above)	Title
Address	
Phone Number	E-mail Address
EIN/SS#	
AGENT (if any)	
Name of Agent	
Contact Person (if other than above)	Title
Address	
Phone Number	E-mail Address
PERFORMANCE SERVICES	
Description of Performance	
Date(s) of Performance	Time(s) of Performance
Location of Performance	
FEE	
Fee for services	Travel or other agreed expenses

Riders are attached to this Agreement: Yes No

The terms and conditions of this Agreement follow on the next page.

TERMS

In consideration of the mutual covenants and conditions herein contained, the parties agree as follows:

1. PERFORMANCE SERVICES

(a) The Artist shall provide the performance services ("Services") on the date(s) and time(s), and at the location, set forth on page one of this Agreement.

(b) No substitution of artists or speakers will be allowed without the prior written consent of the Association. The Association reserves the rights either to cancel the performance or renegotiate the fee with an appropriate reduction if substitutes appear for any or all the principals constituting the Artist.

2. PAYMENT

(a) The Association will pay Artist a fee for all Services in the amount set forth on page one of this Agreement. Payment to Artist is due after completion of the Services and will be made by check to the Artist unless the Artist provides other instructions in writing that are approved by the Association.

(b) If the Artist does not begin the Services at the starting time noted above, the Association reserves the right to: (i) terminate this Agreement; (ii) reschedule the performance(s) for another date; or (iii) permit the Services to be rendered. If the Association decides to permit the Services to be rendered, the Services must be for the full length of time identified in this Agreement, or at the option of the Association, the Services will be rendered for a shorter period and the Artist will be paid in an amount pro-rated to reflect the actual time the Services were rendered. The Association is solely responsible for the payment to the Artist, and none of the College, The City University of New York ("University"), the City of New York, the State of New York, or their respective agents, employees, officers, directors, and trustees are parties to this Agreement, nor are any of them responsible for such payment.

(c) The amount of travel expenses approved by the Association, if any, are indicated on page one of this Agreement and will be paid to the Artist by the Association upon submission of receipts.

3. AGENT'S WARRANTY. If this Agreement is signed by the Agent, the Agent warrants that it has full and current legal authority to act on behalf of Artist.

4. TERMINATION.

(a) Either party may terminate this Agreement by written notice if the other party defaults in the performance or observation of any material term or condition of this Agreement. A party's failure to exercise this remedy upon the default of the other party will not be deemed a waiver of the non-breaching party's right to terminate this Agreement in the event of a future default. Any termination by Association under this Section 4(a) shall also be deemed a cancellation of Services by Artist subject to Section 4(b).

(b) In the event that Artist cancels its performance of the Services or otherwise fails to fulfill its responsibilities pursuant to this Agreement for reasons other than stated in Section

14(g), Artist shall reimburse Association for any and all expenses related to the Services incurred by Association prior to such cancellation or failure.

5. **COMPLIANCE WITH RULES AND REGULATIONS.** The Artist is an invitee on College property for the purposes of rendering the Services. The Artist agrees to comply with all rules, regulations and policies of the College and the Association, and to comply with lawful directives of representatives of the College and Association acting in their official capacity, including without limitation security and guest policies, tobacco policies, and volume levels for amplifiers and speakers that may be used by the Artist. The deliberate failure by the Artist, its agents, officers, or employees to comply with lawful directives issued by representatives of the College and Association in their official capacity and for the purpose of public order will constitute a breach of this Agreement.

6. **SECURITY.**

(a) All security for the performance, if held on College premises, will be made under the control and supervision of the College. Frisking or other searches are not permitted, except by law enforcement officials. Any special security arrangements must be approved by the President of the College or his/her designee prior to the performance.

(b) Neither Association or University shall be liable in any manner for any personal injuries and/or damage to any property of Artist, Artist's performers or other personnel, unless caused solely by the negligent act or omission of an agent or employee of Association or the College.

7. **LICENSES AND PERMITS.** The Artist must, at its expense, procure in advance of the performance of the Services, any and all licenses, certificates, permits and approvals required for the proper and lawful conduct of the Services ("Permits"), including without limitation, any and all Permits required in connection with performance, display or other use of another's intellectual property. For the avoidance of doubt, this means that the Artist is responsible for procuring and paying for all rights for the performance, including but not limited to, music, script, performers, stage direction, choreography, scenic, costume and lighting design, etc. At the Association or the College's request, the Artist must submit the Permits for inspection. The Artist must at all times comply with the terms and conditions of each Permit.

8. **INDEPENDENT ENTITY**

(a) Notwithstanding any other provisions of this Agreement, the Artist's status is that of an independent contractor and not that of an employee or agent of the sponsoring student organization, the Association, the College, or the University. All personnel furnished by the Artist under this Agreement, if any, shall at all times be deemed to be employees of the Artist, and the Artist shall be responsible for their work, direction, and compensation. Nothing in this Agreement shall be construed to impose any liability or duties upon the Association for the performance of services by any third party hired or otherwise engaged by the Artist.

(b) Nothing in this Agreement shall impose any tax liability upon the Association, including, but not limited to, federal, state, and local income taxes, unemployment insurance, or social security tax, incurred by the Artist. The Artist agrees to indemnify the Association and hold it harmless from any and all claims for such payments by taxing authorities, including but not limited to fines, penalties, levies, and assessments, for failure to withhold or remit such payments.

9. **NON-DISCRIMINATION.** The Artist agrees that in performance of the Services, it will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status, and that it will comply with all applicable laws, rules, regulations and ordinances of the United States and the State and City of New York with respect to the Services.

10. **CONFLICT OF INTEREST.** The Artist represents that no monetary or other form of remuneration has been given, offered or promised to anyone in order to induce the Association to enter into this Agreement, and that during the performance of this Agreement, no remuneration will be given, offered or promised to any trustee, director, officer, employee, student, or agent of the Association, College, or University, or to any other director, officer, employee, or person whose salary is payable in whole or in part from the treasury of the City or State of New York.

11. **INDEMNIFICATION.** The Artist shall protect, indemnify, and hold harmless the Association, the College, the University, and the City and State of New York, and their respective directors, officers, employees, agents, students, and invitees, from any and all claims, suits, causes of action, liabilities, losses, damages, and expenses (including, but not limited to, attorney's fees and court costs in connection with any such matters) to which any or all of them may be subjected arising out of or relating to: (a) injury to person or property, or wrongful death, that may result from any negligence, intentional wrongdoing, malpractice, or incompetence of the Artist, or anyone employed or engaged by the Artist, in connection with the performance of the Services; or (b) any breach by the Artist of this Agreement or any of the Artist's representations or warranties set forth in this Agreement.

12. **INSURANCE.** The Artist shall procure and maintain with a licensed carrier authorized to do business in New York (a) workers compensation insurance covering its employees, if any, as required by law and (b) commercial general liability insurance for personal injury (including death) and property damage with a combined single limit of at least \$ 1,000,000 per occurrence and \$2,000,000 in the aggregate. The commercial general liability policy shall cover all liability assumed by the Artist under this Agreement. The policy shall name the Association, the College, the University, and the City and State of New York as additional insureds. The Artist shall provide proof of such coverage in advance of the performance of the Services.

13. **TAPING, ETC.** The Artist hereby authorizes the Association and the College to photograph, videotape, audiotape, and/or otherwise document by any such means as are now available or may be available in the future, the Artist's performance and to use this documentation in whole or in part, for the University's educational, research, archival and promotional purposes.

14. **MISCELLANEOUS.**

(a) The Artist's obligations under this Agreement may not be assigned, subcontracted, or transferred without the prior written consent of an authorized representative of the Association.

(b) This Agreement, including its exhibits and riders, all of which are incorporated into the Agreement, contains the entire understanding of the parties hereto, supersedes all previous oral or written understandings, representations, or agreements to the extent that they

related to the subject matter of this Agreement, and may not be modified by either party unless such modification is in writing and signed by an authorized representative of each party.

(c) Waiver by either party of a breach of any provision of, or right under, this Agreement shall not operate or be construed as a waiver of any other or subsequent breach of the same provision or right, or of any other provision or right under this Agreement.

(d) If any provision of this Agreement, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision that can be given effect without the invalid provision or application, and to this end the provisions hereof shall be severable.

(e) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(f) This Agreement is governed and construed in accordance with the laws of New York State, without regard to principles relating to conflicts of law, except where the Federal supremacy clause requires otherwise. The courts of the State of New York in New York County and the United States District Court for the Southern District of New York shall have exclusive jurisdiction over the parties hereto with respect to any dispute or controversy between them arising under or in connection with this Agreement.

(g) This Agreement and the obligations of the parties are subject to conditions beyond their reasonable control, including without limitation illness, accidents in transportation or otherwise, failure of instruments or equipment, fire, flood, strikes, riot, acts of God, etc. If either party is prevented from carrying out its obligations under this Agreement for such reason, neither party will be under any obligation to present the performance at a different time, nor to compensate the other for any services or expenses incurred in connection with such performance.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have signed this Agreement as of the day and year first written above.

ASSOCIATION

ARTIST

By: _____
(Signature)

By: _____
(Signature)

(Printed Name and Title)

(Printed Name and Title)



TYPE OR PRINT INFORMATION NEATLY. PLEASE REFER TO INSTRUCTIONS FOR MORE INFORMATION.

Part I: Vendor Information

1. Legal Business Name: (As it appears on IRS EIN records, IRS Letter CP575, IRS Letter 147C -or- Social Security Administration Records, Social Security Card) _____

2. If you use DBA, please list below: _____

3. Entity Type (Check one only):

<input type="checkbox"/> Non-Profit Corporation	<input type="checkbox"/> Corporation/ LLC	<input type="checkbox"/> Government	<input type="checkbox"/> City of New York Employee	<input type="checkbox"/> Personal Service Corporation	<input type="checkbox"/> Individual/ Sole Proprietor	<input type="checkbox"/> Trust
<input type="checkbox"/> Joint Venture	<input type="checkbox"/> Partnership/ LLC	<input type="checkbox"/> Single Member LLC (Individual)	<input type="checkbox"/> Resident/Non-Resident Alien	<input type="checkbox"/> Non-United States Business Entity	<input type="checkbox"/> Estate	

Part II: Taxpayer Identification Number & Taxpayer Identification Type

1. Enter your TIN here: (DO NOT USE DASHES) _____

2. Taxpayer Identification Type (check appropriate box):

<input type="checkbox"/> Employer ID Number (EIN)	<input type="checkbox"/> Social Security Number (SSN)	<input type="checkbox"/> Individual Taxpayer ID Number (ITIN)	<input type="checkbox"/> N/A (Non-United States Business Entity)
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Part III: Vendor Addresses

1. 1099 Address:	Number, Street, and Apartment or Suite Number	City, State, and Nine Digit Zip Code or Country
2. Account Administrator Address:	Number, Street, and Apartment or Suite Number	City, State, and Nine Digit Zip Code or Country
3. Billing, Ordering & Payment Address:	Number, Street, and Apartment or Suite Number	City, State, and Nine Digit Zip Code or Country

Part IV: Exemption from Backup Withholding and FATCA Reporting (See Instructions)

Exemption Code for Backup Withholding _____ Exemption Code for FATCA Reporting _____

Part V: Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct Taxpayer Identification Number, and
- I am not subject to Backup Withholding because: (a) I am exempt from Backup Withholding, or (b) I have not been notified by the IRS that I am subject to Backup Withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to Backup Withholding, and
- I am a US citizen or other US person, and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Sign Here:

_____	_____	_____
Signature	Phone Number	Date
_____	_____	_____
Print Preparer's Name	Phone Number	Contact's E-Mail Address:

FOR SUBMITTING AGENCY USE ONLY

Submitting Agency Code: _____ Contact Person: _____

Contact's E-Mail Address: _____ Telephone Number: () _____

Payee/Vendor Code: _____ 6 _____