

# BD ENTERTAINMENT PERFORMER AGREEMENT

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

Performer: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**THIS PERFORMER AGREEMENT** (the "Agreement") is entered into by and between The Blue Devils, a not-for-profit federal tax exempt organization under I.R.S. Code 501(c)(3), located at 4065 Nelson Ave, Concord, CA 94520 ("BDE" or "BD Entertainment") and the musical and/or visual performing artist listed above (the "Performer").

**NOW, THEREFORE**, in consideration of the following mutual agreements and covenants, the sufficiency of which is hereby acknowledged, Performer and BDE (collectively, the "Parties") agree as follows:

## **SECTION 1. ENGAGEMENT OF SERVICES**

(a) The term (the "Term") of this Agreement shall commence on the Effective Date and continue for one (1) year, unless terminated earlier as provided herein.

(b) Pursuant to the terms and conditions of this Agreement, BDE may, from time to time, offer Performer an opportunity to participate in a BD Entertainment performance (each, a "Performance") pursuant to a performance assignment attached hereto as **Exhibit A** (a "Performance Assignment"). Performer shall render its visual and/or music performance services set forth in each Performance Assignment it accepts (the "Services") faithfully, professionally, industriously and to the best of its ability.

(c) Performer understands and agrees that it shall not be under the influence, or in the possession of, illegal drugs or alcohol at any BDE Performance, meeting or rehearsal. Performer shall execute a BDE Medical Release and Liability Waiver, attached hereto as **Exhibit B**, prior to its participation in any BDE activities hereunder. Performer's Services will be non-exclusive to BDE and rendered as reasonably instructed to do so by BDE in all matters, including artistic taste and judgment. Notwithstanding anything to the contrary contained herein, BDE shall be under no obligation to actually utilize Performer's Services, or the results and proceeds thereof.

(d) Either Party may terminate this Agreement with or without cause, at any time upon fourteen (14) days prior written notice to the other Party. BDE also may immediately terminate this Agreement in its sole discretion at any time, for cause. For purposes of this Agreement, "cause" shall be deemed to include (i) Performer's material breach of Section 5 ("Conflict of Interest") or Section 6 ("Confidential Information"); (ii) the commission of any material act of dishonesty, fraud, misrepresentation, or other act of moral turpitude; (iii) gross carelessness or misconduct by Performer; (iv) Performer's insubordination or refusal to carry out responsibilities and duties assigned by BDE; (v) Performer being under the influence, or in the

possession of, illegal drugs or alcohol at any BDE Performance, meeting or rehearsal; and (vi) the inability of Performer to perform the Services for any reason.

## **SECTION 2. COMPENSATION**

(a) As specified on the applicable Performance Assignment, BDE will pay Performer a fee (the "Performance Fee") and its pre-approved expenses (if any) for each Performance it completes pursuant to this Agreement.

(b) Notwithstanding anything to the contrary herein, Performer acknowledges and agrees that it has no right or authority to and will not employ any person to serve in any capacity, nor contract for the rental or purchase of any musical instrument, article or material, nor make any commitment or agreement whereby BDE is required to pay any monies or other consideration or which shall otherwise obligate BDE, without the prior written consent of BDE.

## **SECTION 3. OWNERSHIP OF WORK PRODUCT**

(a) Performer hereby grants BDE the worldwide, irrevocable, perpetual, exclusive and fully-paid right to make video and/or audio recordings of its Performances or rehearsals with BDE ("Recordings"). Performer acknowledges and agrees that the rights granted hereunder shall include the worldwide, irrevocable, perpetual, exclusive and fully-paid right to edit, televise, broadcast, record, publish, copy, use, license, print, sell, distribute or otherwise exploit the Recordings in any manner and in any medium, format, form or forum, whether now known or hereafter devised, without any further compensation than as specified in Section 2 ("Compensation").

(b) Performer understands and agrees that the results and proceeds of the Services, including but not limited to the Recordings, any and all music, drill or choreography performed, written or composed by Performer hereunder (collectively, the "Work Product") shall be rendered as a "work for hire" as that term is understood under the 1976 U.S. Copyright Act, and that BDE is the owner of all right, title and interest in and to the Work Product, in perpetuity, including but not limited to all rights of copyright and copyright renewal, and any and all associated "moral rights."

(c) Notwithstanding the foregoing, if the Work Product is held not to be a "work for hire" for any reason, the Work Product shall be deemed transferred and assigned to BDE by this Agreement, including, without limitation, all rights of copyright and copyright renewal. Performer agrees to execute, at BDE's request, all documents and other instruments necessary to effectuate such assignment. In the event that Performer does not, for any reason, execute such documents within a reasonable time of BDE's request, Performer hereby irrevocably appoints BDE as Performer's attorney-in-fact for the purpose of executing such documents on Performer's behalf, which appointment is coupled with an interest. If Performer has any rights, including without limitation "artist's rights" or "moral rights," in the Work Product that cannot be assigned, Performer agrees to waive enforcement worldwide of such rights against BDE. In the event Performer has any such rights, that cannot be assigned or waived, Performer hereby grants to BDE a worldwide, irrevocable, perpetual, exclusive and fully-paid license to use, reproduce, exploit, distribute, create derivative works of, publicly perform and publicly display the Work Product in any medium or format, whether now known or later developed, without any further compensation than as specified in Section 2 ("Compensation").

## **SECTION 4. PUBLICITY RIGHTS**

(a) Performer hereby consents to BDE's use of its name, likeness, voice and biographical information in connection with the exploitation of the Work Product and in connection with any promotion and advertising for BDE and its licensees and/or any ancillary products related thereto (i.e., the Recordings) in any media, whether now known or hereinafter devised, without limitation throughout the Universe and in perpetuity. Such use shall not constitute

endorsements of third party products or services without the prior written consent of Performer.

(b) Notwithstanding anything to the contrary herein, Performer acknowledges and agrees that it has no right or authority to represent BDE in any capacity, in interviews or otherwise, without the prior written consent of BDE. Accordingly, Performer shall promptly direct any and all interview or booking requests that it may receive directly to BDE.

## **SECTION 5. CONFLICT OF INTEREST**

In consideration of Performer's rights under this Agreement and in recognition of the fact that Performer will have access to BDE's confidential information, and that BDE's relationships with its clients and potential clients constitute a substantial part of its good will, Performer acknowledges and agrees that during the Term and for two (2) years following the termination or expiration of this Agreement, Performer shall not, for any reason, (i) directly or indirectly solicit or accept business from, provide musical or visual services of any kind to, or perform of the services offered by BDE for, any of BDE's clients; (ii) interfere with the business of BDE in any manner; and (iii) solicit or induce any employee or independent contractor to terminate or breach an employment, contractual or other relationship with BDE.

## **SECTION 6. CONFIDENTIAL INFORMATION**

(a) Each Party shall maintain in confidence all Confidential Information disclosed by the other Party. As used herein, "Confidential Information" shall mean information which is (i) disclosed in written or other tangible form and conspicuously marked as being confidential and/or proprietary, or (ii) the Party knew, or under the circumstances should have known, was considered confidential or proprietary by the other Party. For the avoidance of doubt, Confidential Information shall include, but not be limited to, personal information regarding BDE's clients, all correspondence, client lists, documents, books, or other materials furnished to or by BDE, the identity and contact information of BDE's clients or prospective clients, and any and all information regarding the skills and compensation of BDE's employees, contractors or agents. Each Party shall not use such Confidential Information for any purposes other than those authorized by this Agreement and shall promptly notify the other upon discovery of any unauthorized use or disclosure of Confidential Information.

(b) The obligations of confidentiality contained in Section 6(a) shall not apply to the extent that it can be established by the receiving Party ("Recipient") by competent proof that such Confidential Information: (i) was already known to Recipient, other than under an obligation of confidentiality, at the time of disclosure by the other Party; (ii) was generally available to the public or otherwise part of the public domain at the time of its disclosure; (iii) became generally available to the public or otherwise part of the public domain after its disclosure other than through any act or omission of Recipient in breach of this Agreement; (iv) was disclosed to Recipient, other than under an obligation of confidentiality, by a third party who had no obligation to the other Party not to disclose such information to others; or (v) was independently developed by Recipient.

## **SECTION 7. INDEPENDENT CONTRACTORS.**

Performer's relationship with BDE is that of an independent contractor, and nothing in this Agreement is intended to, or should be construed to, create a partnership, agency, joint venture or employment relationship.

## **SECTION 8. REPRESENTATIONS AND WARRANTIES**

Each Party warrants, represents, covenants and agrees that it is free to enter into and perform this Agreement, and that it is not, and will not be under any disability, restriction or prohibition, contractual or otherwise, with respect to its right to (i) execute this Agreement; (ii) grant all of the rights hereunder; and (iii) fully perform each term hereof. Furthermore, Performer represents and warrants that (i) it has the right and unrestricted ability to assign the Work Product to BDE as set forth in Section 3 ("Ownership of Work Product"); and (ii) the Work Product will not infringe upon any copyright, patent, trademark, right of publicity or privacy, or any other proprietary right of any person, whether contractual, statutory or common law. Each Party agrees to defend, indemnify and hold harmless the other Party, from and against any and all claims, controversies, of any kind whatsoever and all loss, liability, expenses, costs or damages, including reasonable attorneys' fees and costs, arising from its breach of any of the representations, warranties, and agreements it has made under this Agreement.

## **SECTION 9. MISCELLANEOUS**

(a) This Agreement shall be governed in all respects by the laws of the State of California, as such laws are applied to a transaction between residents of that state.

(b) Performer shall not assign, sell, mortgage, or pledge any or all rights or obligations under this Agreement without the prior written consent of BDE. BDE may freely assign this Agreement or any of its rights or obligations hereunder, in whole or in part, to any person, firm or corporation. This Agreement shall inure to the benefit of BDE's successors, licensees, and assigns.

(c) This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between the Parties relating to this subject matter and supersedes all prior or contemporaneous oral or written agreements concerning such subject matter. The terms of this Agreement will govern the Services; provided, however, that in the event of any conflict between the terms of this Agreement and any Performance Assignment, the terms of the applicable Performance Assignment will control. This Agreement may only be changed by mutual agreement of authorized representatives of the Parties in writing. Section headings are for the convenience only and shall not constitute part of this Agreement. The waiver by BDE of a breach of any provision of this Agreement by Performer shall not operate or be construed as a waiver of any other or subsequent breach by Performer. Should any provision of this Agreement be held by a court of law to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.

(d) Performer's obligations under this Agreement are of a unique character that gives them particular value; breach of any of such obligations will result in irreparable and continuing damage to BDE for which there will be no adequate remedy at law; and, in the event of such breach, BDE will be entitled to seek injunctive relief and/or a decree for specific performance, and such other and further relief as may be proper (including monetary damages if appropriate).

(e) Any notice or other communication required or permitted under this Agreement shall be in writing, shall be deemed to have been given or made and shall be deemed sufficient in all respects when delivered personally or one (1) business day after placed in the United States mail, certified, return receipt requested, postage prepaid, or by overnight courier, such as Federal Express or DHL, and sent to the address of the Parties set forth herein or at such other address as shall be given in writing pursuant to this section. Notwithstanding the foregoing, a courtesy copy of any notice of any material breach by BDE shall also be sent to BDE's legal counsel, Law Offices of Lee Rudnicki, Esq., 9595 Wilshire Blvd., Suite 900, Beverly Hills, CA 90212

(f) The rights and obligations contained in Section 3 ("Ownership of Work Product"), Section 4 ("Publicity Rights"), Section 5 ("Conflict of Interest"), Section 6 ("Confidential

Information), and Section 8 ("Representations and Warranties") shall survive any termination or expiration of this Agreement.

BY SIGNING THIS AGREEMENT, EACH PARTY ACKNOWLEDGES AND AGREES THAT THEY HAVE READ AND FULLY UNDERSTOOD THIS AGREEMENT, AND THAT THEY HAVE EITHER CONSULTED WITH AN ATTORNEY REGARDING ANY QUESTIONS IT MAY HAVE OR HAVE VOLUNTARILY ELECTED NOT TO DO SO.

**UNDERSTOOD AND AGREED:**

**BD ENTERTAINMENT**

**PERFORMER**

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\_\_\_\_\_  
print name

\_\_\_\_\_  
print name

SSN: \_\_\_\_\_