



**toronto
musicians'
association**
LOCAL 149 AFM

Contract #:

Live Performance Contract

This contract is for the personal services of musicians, made on _____, between the undersigned engager (hereinafter called the 'Engager') and _____ musician(s) (hereinafter called the 'Musicians') represented by the undersigned representative (hereinafter called the 'Leader').

It is acknowledged by all parties named herein that the Engager contracts for the musical services of the Musicians, and agrees to render collectively their services as musicians under the leadership of _____, according to the following terms and conditions:

Type of Engagement: _____
 Artist/Group Name: _____
 Place of Engagement: _____
 Address: _____
 Capacity of Engagement: _____
 Performance Date(s): _____ Hours: _____
 Rehearsal Date(s): _____ Hours: _____

Engager:
 Address: _____
 Phone: _____ Email: _____
 Signature: _____
 Signatory's Name: _____
 Initial to agree to the terms & conditions (See attached Schedule 1): _____

Leader
 Name: _____
 Address: _____
 Phone: _____ Email: _____
 Signature: _____

Musician Details, Fees and Charges: Please complete the provided TMA Worksheet.

Total Fees Agreed Upon (incl. HST): \$ _____
 Payment Schedule (Specify Dates):
 Advance Payment: \$ _____ due on _____ Non-Refundable after: _____
 Final Payment: \$ _____ due on _____ No Cancellation after: _____

Pension paid by leader on behalf of the Engager:

SCHEDULE 1 – TERMS AND CONDITIONS

INTERPRETATION:

"AFM" means the American Federation of Musicians of the United States and Canada;

"TMA" means the Toronto Musicians' Association, Local 149 of the AFM

"MPFC" means the Musicians' Pension Fund of Canada;

"Engagement" means the rendering of musical services, including performing, rehearsing, directing and music preparation, within the jurisdiction of the TMA and under the terms and conditions specified herein;

"Leader" means the Musician who (a) is a member of the TMA, (b) accepts and signs this contract on behalf of themself and all Side Musicians on the engagement, and (c) performs on the engagement;

"Engager" means the person who contracts the Musicians for musical services under the terms and conditions specified herein, and includes employer, purchaser, producer, promoter and contractor;

"Musician" means a member of the AFM who renders musical services under the terms and conditions specified herein, and includes Leader and Side Musician;

"Side Musician" means the Musician who (a) is represented by the Leader with respect to this contract, and (b) performs on the engagement in a support or back-up capacity;

Words importing the singular include the plural and vice versa.

AFM AND TMA SECURITY: To the extent permitted by applicable law, nothing in this contract shall be construed so as to interfere with any obligation owed by the Musicians to the AFM and TMA, pursuant to their Constitutions and Bylaws.

PENSION CONTRIBUTION: The parties hereto acknowledge that the Total Fee includes the Engager's contribution to the MPFC on behalf of the Musicians named herein, with the amount stipulated meeting the TMA's requirements applicable to this Engagement. The parties hereto further acknowledge that this contribution is to be either deducted from the Total Fee and paid by the Engager by a separate cheque made payable to the Musicians' Pension Fund of Canada or included in the payment of the Total Fee and delivered by the Leader to the TMA's office.

PAYMENT: Unless specified as an earlier date in the payment schedule set out herein, the Engager will make full and proper payment for the Engagement to the Leader within fifteen (15) days of completion of the Engagement or at the end of each week of an Engagement of two (2) or more weeks. On behalf of the Engager, the Leader will distribute the amount received from the Engager to the Musicians within forty-eight (48) hours of receipt thereof and will remit the Engager's contribution to the MPFC to the TMA's office within seven (7) days of receipt thereof.

ADVANCE PAYMENT: Upon the request of the Leader, the Engager will make an advance payment in accordance with the payment schedule set out herein or will deposit satisfactory guarantee thereof in the TMA's office.

OVERTIME: The parties hereto acknowledge that the Total Fee applies only to the services and worktime specified herein and that the Musicians are not bound in any way to provide the Engager with any additional services or worktime. The parties hereto further acknowledge that payment for any additional worktime will be calculated at a rate not less than the TMA overtime rate applicable to this Engagement and due in conjunction with the Final Payment.

DEFAULT PAYMENT: The Engager will pay the TMA an amount equal to two and one-half percent (2.5%) of any amount owing under this contract for each month in default, payment of which is due in conjunction with the default amount.

NOTICE OF CANCELLATION: Unless specified as an earlier date in the payment schedule set out herein, the period of notice for cancellation of the Engagement is two (2) weeks prior to the start date of the Engagement or, if the Engagement has commenced, the specified duration of the Engagement up to a maximum period of two (2) weeks from the time of notice. When the Engager has not provided the Leader with notice within the period specified herein, the Engager will pay the Amount Payable.

SUBSTITUTION: The Engager hereby authorizes that, at any time prior to or during the Engagement, the Leader may make a substitution of a Side Musician who, because of personal or professional reasons, is unable to provide any or all of the services specified in this contract. The Engager hereby further authorizes that, upon commencement of the Engagement and with the approval of the Leader, Side Musicians may substitute themselves for personal or professional reasons for the remainder of the Engagement or any portion thereof.

ELECTRONIC MEDIA: No performance, rehearsal or music preparation work shall be recorded, reproduced, or transmitted from the place of performance, in any manner or by any means whatsoever, in the absence of a specific written agreement with or approved in writing by the AFM or TMA relating to and permitting such recording, reproduction or transmission. In the case of a local broadcast Engagement, the Engager is prohibited from any use, including first use, re-use or new use, of any recorded or videotaped performance or music preparation work in a format, on a medium of telecommunication, for a territory or during a term other than that which is specified herein or authorized by the TMA. Permission to use the audio

and/or visually recorded performance or music preparation work in the manner specified herein or authorized by the TMA shall not be construed as any assignment or waiver of any right or interest held by the Musicians in relation to that recorded or videotaped performance or music preparation work.

ENFORCEMENT: This contract, and the terms and conditions contained herein, may be enforced by the Engager, by the Leader and by each Side Musician whose name appears on this contract, or whose musical services are accounted for in this contract and who, upon accepting the Engagement, agrees to be bound as if named herein. Upon the request of the Engager at the time of the Engagement, the Leader will provide the name of any Side Musician who is accounted for but not named herein and any other information deemed relevant under the terms of this contract.

DISPUTE RESOLUTION: Any and all disputes, claims or controversies arising out of or in connection with this contract, or in respect of any defined legal relationship associated therewith or derived therefrom, will be referred to and finally resolved by arbitration. The party desiring arbitration shall request the President of the TMA to name a single arbitrator and to propose the rules of procedure. The cost of the arbitration, except those costs personally incurred by a party in the presentation of their case, shall be shared equally by the Engager and the Musicians.

REPRESENTATIONS AND WARRANTIES: The Engager represents that there does not exist against them, in favour of any AFM member, any unpaid award, in whole or in part, issued by an arbitrator or court on any claim of any kind arising out of any musical services rendered. It is agreed that no AFM member will be required to render any services specified herein for the Engager as long as any such award remains outstanding. The Engager hereby covenants and agrees to obtain and pay, prior to the Engagement specified herein, all and any licences and fees required to be obtained by or to be paid to any person or organization entitled under the *Copyright Act* to require such licensing and/or payment of fees with respect thereto, and to accept and comply with, in connection to the Engagement specified herein, all and any employer obligations under applicable workers' compensation and occupational health and safety laws. The Engager hereby further covenants and agrees to indemnify and save harmless the Musicians of and from any claims or assessments now or hereafter made by any person, organization, or governmental authority or agency with respect to this Engagement, other than the payment of income tax in respect thereof.

FORCE MAJEURE: A delay in or failure of performance by either party hereto, other than the payment of money, will not constitute a default, nor will either party hereto be held liable for loss or damage, if and to the extent that such delay, failure, loss or damage is caused by an occurrence beyond the reasonable control of such party, including but not limited to proven sickness or accident to any Musician, delay of transportation services or accident to means of transportation, riots, strikes, epidemics, acts of God, compliance with any act, regulation, order or request of any governmental authority or agency, or any other causes, whether direct or indirect, not within the reasonable control of such party, and which by the exercise of reasonable diligence such party is unable to prevent. The Engager agrees that any Musician, whose services under this contract are prevented, suspended, or stopped for any reason recognized under this provision or for any obligation owed to the AFM and TMA, pursuant to their Constitutions and Bylaws, shall be free to accept any other engagement with any other engager without any restraint, hindrance, penalty, obligation, or liability whatever.

SEVERABILITY: If any provision of this contract is determined at any time by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision or part thereof shall be severable from this contract and the remainder of this contract will be construed as if such invalid, illegal or unenforceable provision or part thereof had been deleted here from.

COUNTERPART EXECUTION: This contract may be executed in one or more counterparts all of which when taken together will constitute one and the same contract, and one or more of such counterparts may be delivered electronically.

GOVERNING LAW: This contract and all matters arising hereunder shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein.