SAMPLE PERFORMANCE AGREEMENT

While this contract could be used for actual business purposes, it may not suit your situation and the laws of your state. We encourage you to seek legal advice.

This agreement contains two parts: a cover sheet addressing basic terms and a rider. We begin with an explanation of the rider and follow with the entire agreement.

CONTRACTUAL ATTACHMENT (RIDER)
Commentary and Explanations for First-Time Users

The provisions in this rider are generally optional, but having these things in writing can make the event go more smoothly for everyone. Just talking with the Purchaser about some of these issues can help both of you understand better exactly what expectations you both have for the performance. This is always a good thing since it helps avoid unpleasant surprises.

Purchaser and Artist or its Agent agree that the following provisions are incorporated into the contract to which it is attached and made a part thereof, said contract being signed and dated _____. The parties agree that the terms of this attachment prevail over the terms of any other document relating to and a part of the contract in which this attachment is incorporated.

PAYMENT AND COMPENSATION

It's important to spell out not only how much you're being paid, but also exactly when you'll get the check (or cash). You might want to ask for a 50% deposit upon signing the agreement, with the balance paid to you after the performance. Four common methods of compensation include: (1) flat fee with no percentage of ticket sales; (2) percentage of ticket sales; (3) guaranteed sum or percentage of ticket sales (whichever is higher); or (4) guaranteed sum and percentage of revenues above the guarantee. Obviously, getting a flat fee gives you more security than betting solely on a percentage of ticket sales. Filling out a W-9 form and giving your Social Security number to the Purchaser is standard procedure that most venues require for their own tax records.

1. PAYMENT AND COMPENSATION. Purchaser will make payment by check to Artist immediately after completion of the performance(s), unless otherwise previously agreed in writing by Artist and Purchaser. Payment of performance fee cannot be made until a copy of Artist's W-9 and Social Security number or federal identification number (FEIN) is provided to Purchaser.

ARTIST'S RIGHT TO TERMINATE

This ensures that you have the right to drop the gig if the Purchaser hasn't fulfilled his end of the deal up front.

2. ARTIST'S RIGHT TO TERMINATE. If Artist is entitled to deposit payment as provided above, and the deposit has not been paid within the time specified, Artist shall have the right to terminate this agreement without any further obligation upon ___ days notice.

CANCELLATION

You've agreed to do the gig, you've cleared your schedule for that night, and you've turned down other offers. You need to know that if the Purchaser cancels at the last minute you won't be losing everything you could have earned. This is what lawyers refer to as a "liquidated damages clause." It spells out ahead of time what the Purchaser's penalty for canceling is so you don't have to haggle with Purchaser later over how much you might have made playing that other gig you got called for but turned down. You should be able to get 100% compensation if the Purchaser cancels less than two weeks before the show.

3. CANCELLATION. Artist reserves the right to cancel this Agreement without obligation upon notice to

Purchaser thirty (30) days in advance of the Performance date. In the event of Artist's cancellation, the deposit payment (if any) shall be returned promptly. If Purchaser cancels the performance less than thirty (30) days before the performance, Purchaser will pay Artist ___% of the guaranteed fee for the performance. If Purchaser cancels the performance less than two weeks before the performance, Purchaser will pay Artist ___% of the guaranteed fee for the performance. The parties agree that such payments are reasonable in light of anticipated or actual harm caused by the cancellation and the difficulties of proving the actual damages to the Artist.

FORCE MAJEURE

This lets everyone off the hook if disaster strikes on the day of the show. This kind of clause was invoked frequently to cancel performances in the days just after September 11, 2001. Notice it doesn't include emergencies (including financial) within the control of either of the parties.

4. FORCE MAJEURE. Neither Artist nor Purchaser shall be liable for failure to appear or perform its obligations under this agreement in the event that such failure is caused by or due to the acts or regulations of public authorities, labor difficulties, civil tumult, inclement weather, strike, epidemic, interruption or delay of transportation service, or any other legitimate cause beyond the control of Artist and Purchaser.

SICKNESS AND ACCIDENT

If you are too sick to play the show, or if you have an accident that keeps you from playing, you're covered by this clause. Obviously, it's not in your best interests to cancel unless you are really lick or injured. "Proven detention" means the Purchaser can ask for proof of whatever kept you from performing. And note that you are obligated to return whatever deposit you have been paid if you cancel the show under these terms.

5. SICKNESS AND ACCIDENTS. Artist's agreement to perform is subject to proven detention by sickness or accident. In the event of such non-performance, the deposit payment (if any) advanced to the Artist shall be returned promptly.

PROMOTION AND PRODUCTION

This makes it the Purchaser's responsibility to do all the advertising and promo for your show. This doesn't mean you can't choose to do some promotion on your own, just that you aren't expected to do it. It also gives you control over the choice of any of your music or pictures that are being used to promote you. You can make sure that the Purchaser uses your most recent recording to promote you rather than the basement recording you made when you were 13.

6. PROMOTION AND PRODUCTION. Purchaser shall be responsible for all matters pertaining to the promotion and production of the scheduled engagement, including but not limited to venue rentals, security, and advertising. Purchaser agrees to promote the scheduled performance(s) and will use its best efforts to obtain calendar listings, feature articles, interviews of Artist, reviews of the performance and Artist's recordings in all local prints, radio, and television media. Purchaser shall forward all copies of clippings, reviews, and posters to Artist. Artist agrees that Purchaser may use Artist's name, pictures, photographs, recordings, and other likenesses in connection with advertising and publicizing the engagement(s) hereunder, but such use shall not be without prior approval of Artist.

TICKETS AND TICKET SALES

This is especially important if you're getting a percentage of the box office take. Giving away lots of free tickets eats into your potential profits. It also allows unscrupulous promoters to take the free tickets and sell them, keeping the proceeds for themselves. On the other hand, if you're just starting out, being generous with free tickets can help fill up the room and create buzz on the night of the show.

7. TICKETS AND TICKET SALES. Purchaser agrees that tickets shall be consecutively numbered and shall be available at the following prices: _____. Artist's representative shall have the right to inspect all ticket records and to be present in the box office prior to and during the performance. Free admission shall not exceed _____ percent of total tickets.

COMPLIMENTARY TICKETS
Having a few comps to hand out is one of the perks of being a performer, but some of the concerns from the previous item apply here, too.

8. COMPLIMENTARY TICKETS. Unless otherwise agreed, Purchaser will allow ___ guests per band member, with a maximum of ___ tickets.

SALE OF MERCHANDISE
This gives you the opportunity to sell your disc or your t-shirts, or your autobiography to the audience. Standard practice is to give the Purchaser a cut of anywhere from 15-40% of gross sales.

9. SALE OF MERCHANDISE. A fee of _____ percent of gross sales will be paid to Purchaser by Artist for all merchandise, such as souvenir programs, books, photographs, recordings and other merchandise related to the Artist, sold immediately before, during or after the performance at the Venue. This fee will be paid to Purchaser upon completion of selling. Purchaser shall not permit any other sale or distribution of merchandise bearing Artist's trademarks or image. Purchaser shall provide a six-foot table and two chairs, or other accommodations mutually determined to be appropriate to the venue, for merchandise sales. Merchandise will be prominently placed so as to maximize sales.

VIDEO AND AUDIO TAPING
This is one of the most important parts of the contract. Recordings of your work have real value. You should be very protective about letting people make and use recordings of your work. Some venues routinely record "Reps archival purposes." Archival purposes do not include commercial release of the material in a "Great Performances of Jack's Pub, 2003" CD. If you agree to let archival recording happen, make sure you negotiate what happens (how much you get paid) if the recording is ever used for a commercial purpose. Recording issues can be complex; talking with an attorney is a very good idea if you have any questions.

10. VIDEO AND AUDIO TAPING. Purchaser shall not, and shall not permit any person to, record, broadcast or digitally stream in any manner whatsoever, Artist's performance without prior express written consent from Artist. Artist and/or his designees shall have the right to record the performance and to use the recordings as Artist sees fit. Purchaser shall have no interest or rights of any kind whatsoever in or to any such recordings of Artist's performance during this engagement.

TECHNICAL RIDER
This additional document sets out the specifics of your lighting and sound reinforcement needs.

11. TECHNICAL RIDER. Sound and/or lighting equipment and/or services shall be set forth in more detail in a Technical Rider signed by both parties and attached and incorporated hereto.

DRESSING ROOM and HOSPITALITY
This is basic language. If you have special needs and/or have the bargaining power to get special treatment, spell out the details here.

12. DRESSING ROOM. Purchaser shall provide _____ safe, clean dressing room(s) with lock(s). Special arrangements shall include: _____.

13. HOSPITALITY. Unless otherwise indicated, Purchaser will provide an allowance of hot and cold beverages in the dressing room for the sole use of band and crew members. Special arrangements shall include: _____.

SECURITY

This places responsibility on the Purchaser to make sure that you and your stuff will be safe.

14. SECURITY. Purchaser shall provide adequate security so as to guarantee the safety of the audience and the Artist. Purchaser will ensure that no unauthorized persons will have access to the stage or backstage area, and the band will provide names of persons or guests authorized to be backstage. Purchaser shall be responsible for any theft or damage to the equipment of Artist that may occur during the time that the equipment is a located on Purchaser's premise. Special arrangements shall include: _____.

BACKGROUND MUSIC

This allows you to set the right tone for your appearance and manage the crowd to maximize your own effect.

15. BACKGROUND MUSIC. Artist shall approve all background music played before and after Artist's performance.

PYROTECHNIC DEVICES

The dangers of improper use of pyrotechnics are obvious. Laws regarding their use vary from state to state and locality to locality. Make sure you know the applicable laws if these devices will be part of your show. Everything relating to pyrotechnic use should be in writing.

16. PYROTECHNIC DEVICES. No pyrotechnic devices shall be used without the prior express written consent of both Artist and Purchaser. Any such device shall be subject to applicable fire laws and shall be administered by a person with professional experience in pyrotechnics. Purchaser shall be responsible for obtaining all applicable permits.

INDEPENDENT CONTRACTORS

This is another tax-related clause. This just spells out the fact that the Purchaser is not your "employer" for tax purposes. Details of performance and break times should be worked out and agreed upon in Part I of the contract.

17. INDEPENDENT CONTRACTORS. Artist acknowledges that it is an independent contractor and not an employee of the Purchaser and shall be responsible for all taxes. Purchaser shall control the times and division of the performance, and Artist shall control the manner, means, and details of such performance.

INSURANCE

This makes the Purchaser responsible for all insurance related to the gig so that if anything happens to you, the audience, or the venue during the course of your show, it is covered by the Purchaser's insurance. When the Purchaser "indemnifies" you, it means that if you personally are sued because of something that happens at the show, the Purchaser has to cover claims against you. The exception is if you do something that could be considered "willful or intentional that causes injury or damages."

18. INSURANCE. Purchaser shall obtain and maintain, at its own expense, adequate personal injury and property damage liability insurance coverage and such coverage shall extend to all activities related to Artist's engagement and performance, including time of set up and take down. Except for claims arising from Artist's willful or intentional acts, Purchaser shall indemnify Artist for any third party claims.

NO PERSONAL LIABILITY OF PURCHASER'S REPRESENTATIVES OR AGENTS
This means that none of the "little guys" you deal with in the course of the agreement are personally responsible to you for your fee. That responsibility lies with the Purchaser himself or his company.

19. NO PERSONAL LIABILITY OF PURCHASER'S REPRESENTATIVES OR AGENTS. Any representative of Purchaser executing this contract as Purchaser or an agent thereof shall not be held personally liable for the payment of any costs or fees related to this contract.

ASSIGNMENT, ENTIRETY OF AGREEMENT, GOVERNING, JURISDICTION, AND MEDIATION
This is the "fine print" which says: 1. You cannot get someone else to play this gig in your place without the consent of the Purchaser; 2. What's on these pages is the whole contract; 3. If we want to add or change anything we have to do it in writing and sign it; 4. We're bound by our state's law, and if we need to go to court over anything in this contract, we do it at "home." 5. If we have a dispute and we live in Missouri or Southwestern Illinois, you can use VLAA's mediation service to help resolve it. Don't forget that if you ever run into arts-related problems, you can contact VLAA for a referral to legal assistance.

20. ASSIGNMENT, ENTIRETY OF AGREEMENT, GOVERNING, JURISDICTION, AND MEDIATION. This agreement cannot be assigned or transferred without the written consent of artist. This agreement constitutes the entire agreement between the parties. No modification shall be enforceable except in writing and signed by the parties hereto. This agreement shall be governed by the laws of the state of _____. In the event any dispute arising under this agreement results in litigation, arbitration, or mediation, such action or proceeding shall be brought within the state or federal courts of _____. Mediation of any dispute arising from this agreement shall be conducted in accordance with the rules of the Arts Resolution Services, a program of the St. Louis Volunteer Lawyers and Accountants for the Arts.

SEVERABILITY
This says that even if one clause of the contract turns out to be invalid, the rest of the contract is in force.

21. SEVERABILITY. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provisions or application, and to this end the provisions of this Agreement are declared to be severable.

REPRESENTATIVE'S AUTHORITY TO CONTRACT
This says that whomever signs on your behalf (if it's not you) has the authority to do so and that her signature binds you to the terms in the contract. If possible, always try to have at least the bandleader sign it, if not all band members.

22. REPRESENTATIVE'S AUTHORITY TO CONTRACT. By signing this document, the representative and/or agent of the Artist hereby represent that such person is duly authorized and that the Artist agrees to be bound by the provisions of this Agreement. It is expressly understood and agreed that in acting hereunder solely in the capacity of representative or agent of Artist, said person is not a party to this contract and shall not be liable or responsible in any way for the omissions of Artist, nor for any failure by Artist to adequately perform or comply with any term or condition hereof.

Performance Agreement

THIS AGREEMENT for the personal services of performing artists on the engagement described below between the undersigned _____, as purchaser of performance services ("Purchaser") and the undersigned artist or ensemble and /or its agent ("Artist") is made this _____ day of _____, _____.

A. BASIC TERMS:

1. Name of Artist: _____
   Address: _____
   City: _____State:_____Zip:_____
   Telephone: _____ FAX: _____
   E-mail address: _____

2. Place of Engagement: _____

3. Date(s) of Services: _____

4. Number of sets and duration: _____

5. Time for load-in:_____

6 Time for sound check: _____

B. PAYMENT OF ARTISTIC FEES:

1. Compensation Agreed Upon: _____

2. Amount of Deposit:_____ Date Due:_____

3. Time of Payment: Fees will be paid by Purchaser's' check to be presented to Artist after performance on _____.

4. Artist requests its check be made payable to: _____.

5. Artist's Social Security Number or Employer Identification Number: _____. Attached W-9 must be completed and returned in order for payment to be processed.

6. The Purchaser's Contractual Provisions are attached and incorporated herein. Purchaser requires that a representative of the Artist sign and return the attached provisions, which are an integral element of this Agreement.

Artist_____	Purchaser:_____
By:_____	By:_____
Name:_____	Name:_____
Title: _____	Title: _____

CONTRACTUAL ATTACHMENT

Purchaser and Artist or its Agent agree that the following provisions are incorporated into the contract to which it is attached and made a part thereof, said contract being signed and dated _____. The parties agree that the terms of this attachment prevail over the terms of any other document relating to and a part of the contract in which this attachment is incorporated.

1. PAYMENT AND COMPENSATION. Purchaser will make payment by check to Artist immediately after completion of the performance(s), unless otherwise previously agreed in writing by Artist and Purchaser. Payment of performance fee cannot be made until a copy of Artist's W-9 and Social Security number or federal identification number (FEIN) is provided to Purchaser.

2. ARTIST'S RIGHT TO TERMINATE. If Artist is entitled to deposit payment as provided above, and the deposit has not been paid within the time specified, Artist shall have the right to terminate this agreement without any further obligation upon ___ days notice.

3. CANCELLATION. Artist reserves the right to cancel this Agreement without obligation upon notice to Purchaser thirty (30) days in advance of the Performance date. In the event of Artist's cancellation, the deposit payment (if any) shall be returned promptly. If Purchaser cancels the performance less than thirty (30) days before the performance, Purchaser will pay Artist ___% of the guaranteed fee for the performance. If Purchaser cancels the performance less than two weeks before the performance, Purchaser will pay Artist ___% of the guaranteed fee for the performance. The parties agree that such payments are reasonable in light of anticipated or actual harm caused by the cancellation and the difficulties of proving the actual damages to the Artist.

4. FORCE MAJEURE. Neither Artist nor Purchaser shall be liable for failure to appear or perform its obligations under this agreement in the event that such failure is caused by or due to the acts or regulations of public authorities, labor difficulties, civil tumult, inclement weather, strike, epidemic, interruption or delay of transportation service, or any other legitimate cause beyond the control of Artist and Purchaser.

5. SICKNESS AND ACCIDENTS. Artist's agreement to perform is subject to proven detention by sickness or accident. In the event of such non-performance, the deposit payment (if any) advanced to the Artist shall be returned promptly.

6. PROMOTION AND PRODUCTION. Purchaser shall be responsible for all matters pertaining to the promotion and production of the scheduled engagement, including but not limited to venue rentals, security, and advertising. Purchaser agrees to promote the scheduled performance(s) and will use its best efforts to obtain calendar listings, feature articles, interviews of Artist, reviews of the performance and Artist's recordings in all local prints, radio, and television media. Purchaser shall forward all copies of clippings, reviews, and posters to Artist. Artist agrees that Purchaser may use Artist's name, pictures, photographs, recordings, and other likenesses in connection with advertising and publicizing the engagement(s) hereunder, but such use shall not be without prior approval of Artist.

7. TICKETS AND TICKET SALES. Purchaser agrees that tickets shall be consecutively numbered and shall be available at the following prices: _____. Artist's representative shall have the right to inspect all ticket records and to be present in the box office prior to and during the performance. Free admission shall not exceed _____ percent of total tickets.

8. COMPLIMENTARY TICKETS. Unless otherwise agreed, Purchaser will allow ___ guests per band member, with a maximum of ___ tickets.

9. SALE OF MERCHANDISE. A fee of _____ percent of gross sales will be paid to Purchaser by Artist for all merchandise, such as souvenir programs, books, photographs, recordings and other merchandise related to the Artist, sold immediately before, during or after the performance at the Venue. This fee will be paid to Purchaser upon completion of selling. Purchaser shall not permit any other sale or distribution of merchandise bearing Artist's trademarks or image. Purchaser shall provide a six-foot table and two chairs, or other accommodations mutually determined to be appropriate to the venue, for merchandise sales. Merchandise will be prominently placed so as to maximize sales.

10. VIDEO AND AUDIO TAPING. Purchaser shall not, and shall not permit any person to, record, broadcast or digitally stream in any manner whatsoever, Artist's performance without prior express written consent from Artist. Artist and/or his designees shall have the right to record the performance and to use the recordings as Artist sees fit. Purchaser shall have no interest or rights of any kind whatsoever in or to any such recordings of Artist's performance during this engagement.

11. TECHNICAL RIDER. Sound and/or lighting equipment and/or services shall be set forth in more detail in a Technical Rider signed by both parties and attached and incorporated hereto.

12. DRESSING ROOM. Purchaser shall provide _____ safe, clean dressing room(s) with lock(s). Special arrangements shall include:
_____.

13. HOSPITALITY. Unless otherwise indicated, Purchaser will provide an allowance of hot and cold beverages in the dressing room for the sole use of band and crew members. Special arrangements shall include:
_____.

14. SECURITY. Purchaser shall provide adequate security so as to guarantee the safety of the audience and the Artist. Purchaser will ensure that no unauthorized persons will have access to the stage or backstage area, and the band will provide names of persons or guests authorized to be backstage. Purchaser shall be responsible for any theft or damage to the equipment of Artist that may occur during the time that the equipment is a located on Purchaser's premise. Special arrangements shall include:
_____.

15. BACKGROUND MUSIC. Artist shall approve all background music played before and after Artist's performance.

16. PYROTECHNIC DEVICES. No pyrotechnic devices shall be used without the prior express written consent of both Artist and Purchaser. Any such device shall be subject to applicable fire laws and shall be administered by a person with professional experience in pyrotechnics. Purchaser shall be responsible for obtaining all applicable permits.

17. INDEPENDENT CONTRACTORS. Artist acknowledges that it is an independent contractor and not an employee of the Purchaser and shall be responsible for all taxes. Purchaser shall control the times and division of the performance, and Artist shall control the manner, means, and details of such performance.

18. INSURANCE. Purchaser shall obtain and maintain, at its own expense, adequate personal injury and property damage liability insurance coverage and such coverage shall extend to all activities related to Artist's engagement and performance, including time of set up and take down. Except for claims arising from Artist's willful or intentional acts, Purchaser shall indemnify Artist for any third party claims.

19. NO PERSONAL LIABILITY OF PURCHASER'S REPRESENTATIVES OR AGENTS. Any representative of Purchaser executing this contract as Purchaser or an agent thereof shall not be held personally liable for the payment of any costs or fees related to this contract.

20. ASSIGNMENT, ENTIRETY OF AGREEMENT, GOVERNING, JURISDICTION, AND MEDIATION. This agreement cannot be assigned or transferred without the written consent of artist. This agreement constitutes the entire agreement between the parties. No modification shall be enforceable except in writing and signed by the parties hereto. This agreement shall be governed by the laws of the state of _____. In the event any dispute arising under this agreement results in litigation, arbitration, or mediation, such action or proceeding shall be brought within the state or federal courts of _____. Mediation of any dispute arising from this agreement shall be conducted in accordance with the rules of the Arts Resolution Services, a program of the St. Louis Volunteer Lawyers and Accountants for the Arts.

21. SEVERABILITY. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provisions or application, and to this end the provisions of this Agreement are declared to be severable.

22. REPRESENTATIVE'S AUTHORITY TO CONTRACT. By signing this document, the representative and/or agent of the Artist hereby represent that such person is duly authorized and that the Artist agrees to be bound by the provisions of this Agreement. It is expressly understood and agreed that in acting hereunder solely in the capacity of representative or agent of Artist, said person is not a party to this contract and shall not be liable or responsible in any way for the omissions of Artist, nor for any failure by Artist to adequately perform or comply with any term or condition hereof.

Artist_____

Purchaser_____