

ADDENDUM D: {artist.name}

**COVID-19 WAIVER OF LIABILITY HOLD HARMLESS AND
INDEMNIFICATION AGREEMENT**

ARTIST, on behalf of it/his/herself, the individual members of ARTIST, their respective successors and assigns, hereby acknowledges and agrees to the following:

1. ARTIST understands the hazards of the novel coronavirus (“COVID-19”) and ARTIST is familiar with the Centers for Disease Control and Prevention (“CDC”) guidelines regarding COVID-19. ARTIST acknowledges and understands that the circumstances regarding COVID-19 are changing from day to day and that, accordingly, the CDC guidelines are regularly modified and updated and ARTIST accepts full responsibility for familiarizing it/his/herself with the most recent updates.
2. Notwithstanding the risks associated with COVID-19, which ARTIST readily acknowledges, ARTIST hereby willingly chooses to provide the services pursuant to ARTIST’s Performance Contract (the “CONTRACT”) with _____ (“_____”).
3. ARTIST acknowledges and fully assumes the risk of illness or death related to COVID-19 arising out of ARTIST services under the terms of the CONTRACT. ARTIST, for it/his/herself, the individual member of ARTIST and on behalf of their respective family, estate, heirs, executors, administrators, assigns and personal representatives hereby forever release, waive, discharge and covenant not to sue _____ and _____’s successors and assigns, and the respective officers, directors, agents and employees of each of the foregoing (the “_____ Released Parties”) from any and all liability, claims, demands, actions, and causes of action whatsoever, directly or indirectly arising out of or related to any loss, damage, or injury, including death, that may be sustained by ARTIST related to COVID-19 whether caused by the negligence of the _____ Released Parties, any third party or otherwise, while performing ARTIST’s services under the terms of the CONTRACT.
4. ARTIST, to the extent permitted by the law and constitution of the State of

Louisiana, agrees to defend, indemnify and hold harmless _____ and _____'s successors and assigns, and the respective officers, directors, agents and employees of each of the foregoing (the "_____ Indemnitees"), from and against any claims, loss, damages, injuries, liabilities, costs and expenses, including reasonable attorneys' fees and court costs they may suffer, resulting from or arising out of, wholly or in part; any bodily injury, illness, death, loss of use, monetary loss, or any other injury from or related to the infection of COVID-19 whether caused by the negligence of the _____ Indemnities or otherwise. ARTIST will reimburse _____, _____'s affiliates and _____ Indemnitees, on demand, for any payment made at any time after the date hereof in respect of any liability or claim in respect of which _____ Indemnities entitled to be indemnified.

5. It is ARTIST's express intent that this COVID-19 Waiver of Liability Hold Harmless and Indemnification Agreement shall bind any assigns and representatives, and shall be deemed as a RELEASE, WAIVER, and DISCHARGE AND COVENANT NOT TO SUE the _____ Released Parties. This Agreement and the provisions contained herein shall be construed, interpreted and controlled according to the laws of the State of Louisiana. **ARTIST HEREBY KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A JURY TRIAL OF ANY DISPUTE ARISING IN CONNECTION WITH THIS AGREEMENT.**

IN SIGNING THIS AGREEMENT, ARTIST ON BEHALF OF IT/HIS/HERSELF AND THE INDIVIDUAL MEMBERS OF ARTIST ACKNOWLEDGES AND REPRESENT THAT ARTIST has read the foregoing COVID-19 Waiver of Liability Hold Harmless and Indemnification Agreement, understands it and signs it voluntarily as ARTIST's own free act and deed; and no oral representations, statement, or inducements, apart from the foregoing written agreement have been made.

IN WITNESS WHEREOF, ARTIST, on behalf of it/his/herself and the individual members of ARTIST has signed this COVID-19 Waiver of Liability Hold Harmless and Indemnification Agreement on this _____ day of _____, 2020.

SIGNATURE: _____

NAME: _____

Here's a good one, from the Promoter Side:

6) Force Majeure/Termination: Notwithstanding any other provision in this Agreement, neither party shall be liable to the other for any failure of performance hereunder caused by an event of force majeure, which shall include an Act of God, epidemic, pandemic, insurrection or civil disorder, war or military operations, national or local emergency, act or omissions of governments, or other competent authority, industrial disputes of any kind, fire, explosion, flood, subsidence, inclement weather, acts of omissions of persons or bodies for whom neither party is responsible, or any other cause whether similar or dissimilar outside of either party's control. **In the event of a force majeure event, the Term shall be suspended for a period of time equal to the duration of the force majeure event and for up to six months thereafter, after which either party may elect to terminate this Agreement with no liability, provided that in the event that LICENSEE is in an un-recouped position with respect to the Advance or any production or capitalization costs hereunder, LICENSOR shall not be entitled to exercise such termination right unless and until LICENSEE is reimbursed for its un-recouped balance or waives its right thereto.**

In the event that LICENSEE is unable or unwilling to proceed with the production and presentation of the Tour prior to such time as any portion of the Advance is payable hereunder due to the current pandemic, other force majeure, or any other reason, LICENSOR's sole remedy hereunder shall be the termination of this Agreement.

Here's a FM clause from a major show "buyer", that was "worked out between the parties" after COVID hit because the show owner have received a portion of their money and promoter doesn't have an easy way to get it back, based on the language.

In the event that the performance of any of the provisions of this Agreement shall be prevented or interfered with by an act of God, fire or national or local calamity, the acts or regulations of any public authority or labor union, labor difficulties or strike, war, epidemic, storm or inclement weather, or any other cause not due to the gross negligence or willful act of either Party that renders such performance impossible, Producer and Presenter shall be relieved of their obligations hereunder with respect to the performance(s) so prevented because of such cause. In the event VENUE decides the Theater should be closed because of fire, national or local calamity or any similar "Act of God", neither party shall have any financial claim on the other resulting from losses during the period of closing. In such event Producer will not have to reschedule.

This was the money clause that gave teeth to the FN clause: Presenter agrees to pay Producer a total sum of Five Hundred Thousand Dollars and Zero Cents (\$500,000.00) (the "Fixed Guarantee") for sixteen (16) performances payable by wire transfer as follows:

- i. Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00) payable five (5) business days after the execution hereof by Producer.

Here is another clause that includes refunds of out of pocket costs:

Force Majeure: Notwithstanding any other provision in this Agreement, neither party shall be liable to the other for any failure of performance hereunder caused by an event of force majeure, which shall include an Act of God, **epidemic**, insurrection or civil disorder, war or military operations, national or local emergency, act or omissions of governments, or other competent authority, industrial disputes of any kind, fire, explosion, flood, subsidence, inclement weather, acts of omissions of persons or bodies for whom neither party is responsible, or any other cause whether similar or dissimilar outside of either party's control (each, a "Force Majeure Event"). In the event of any Force Majeure Event, the Term shall be suspended for a period of time equal to the duration of the Force Majeure Event and for up to one (1) month thereafter, to the extent necessary, provided that if such Force Majeure Event continues and the agreement remains suspended for at least two (2) months, either party may elect to terminate the Term of this Agreement with no liability, **provided that Licensor shall be entitled to retain any previously paid portions of the Guarantee to the extent it has incurred costs related to furnishing the Show hereunder.**

Major project/longer clause:

Licensee, Owner or Artist, as applicable, will not be deemed in breach of this Agreement to the extent the performance of its obligations is delayed or becomes impossible or commercially impractical by reason a "Force Majeure Event". "Force Majeure Event" means the serious illness or injury continuing for more than 120 days, consecutively, debilitating disability or death of Artist other than self-inflicted or otherwise caused by Artist or the occurrence of an event outside the reasonable control of Licensee, Owner, or Artist, as applicable, such as an accident, an act or regulation of a public authority, fire, riot or civil commotion, lockout or strike or other labor dispute, disease, **epidemic (including health epidemic)**, act of terrorism or imminent threat thereof, substantial interruption in, or substantial delay or failure of, technical facilities, failure or substantial delay of necessary transportation services, war conditions, emergencies, acts of God. During the duration of any Force Majeure Event, the party invoking it may suspend those obligations that become **impossible commercially or impractical** to perform by reason of the Force Majeure Event. **In the event of any such suspension, the running of the Term and the Retention Period, specific dates, periods and time requirements referred to in this Agreement will be postponed or extended accordingly until the end of the Force Majeure Event.**

If any suspension invoked by Owner under this paragraph continues for more than 9 months, Licensee may terminate its obligations under this Agreement by notice given to Owner, and Licensee shall be deemed to have fulfilled all of its obligations under this Agreement, other than those obligations which survive the Term of this Agreement, as of the date of such notice, provided, however, that Licensee's rights to otherwise exploit the rights granted to it hereunder shall continue for the Term and Retention Period. In addition, Licensee shall be entitled to recover, and Owner

and Artist shall return all deferred payments, unrecouped Advances and a pro-rated (based on credit given for the elapsed portion of the Term and Retention Period) portion of all non-recoupable payments; the calculation of such recovery shall be made by Licensee following the end of the Retention Period and Owner shall make such payment of the sum due promptly following Licensee's written request therefor.

SUMMERFEST

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1. Operational Protocols. Artist and all of Artist's personnel, guests and subcontractors shall comply, with all guidelines, rules, regulations, and health and safety protocols imposed by Promoter related to the use and occupancy of [insert venue], the operation of the Event and/or any standards related to any public health emergency (collectively, "Operational Protocols"). Operational Protocols may include, without limitation, staggered arrival and departure times, temperature checks, pre-sanitization requirements, physical distancing, masks/face coverings, modified food & beverage service and handling, and requiring persons developing or exhibiting symptoms to leave the venue. Notwithstanding implementation of the Operational Protocols, Artist acknowledges that an inherent risk of exposure to COVID-19 exists in any public place where people are present.
2. Force Majeure. A "Force Majeure Event" is defined as an event beyond either party's reasonable control, that makes performance of this Agreement impossible, impractical, unfeasible or unsafe, including without limitations, illness, injury or death of Artist or a member of Artist's immediate family; theft, loss, destruction, or breakdown of collateral owned or leased by Artist or Promoter; act or regulation of public authority; fire, flooding, earthquake, hazardous conditions, riot or civil commotion, lockout, strike, or other labor dispute; disease, epidemic, pandemic (e.g. COVID-19, Ebola, SARS), and/or the lack of a readily available vaccine(s) for an epidemic or pandemic; substantial interruption in, delay or failure of necessary production or distribution facilities not within Artist's or Promoter's reasonable control, and/or similar or dissimilar cause beyond Artist's or Promoter's reasonable control; war conditions; act of public enemy or terrorism; emergencies or acts of God; or any other cause that is beyond the control of the parties.
3. Additional Clause [for hard-ticket events] To the extent that sellable capacity set forth in the offer is reduced in order to comply with requirements and/or recommendations of any applicable governmental authority, Purchaser/Promoter shall have the right to either: (a) cancel the engagement without penalty or further obligation, and receive a refund of any advance/deposit payments made; or (b) adjust the consideration payable for Artist's performance in order to compensate for such reductions to capacity and potential box office receipts.

17. INDEMNIFICATION/ASSUMPTION OF LIABILITY/INSURANCE:

A. ARTIST shall indemnify, protect, defend and hold harmless FESTIVAL, its parent, subsidiaries and affiliated entities, and its and their respective directors, officers, employees, agents, successors and assigns (the "Indemnified Parties") from and against, any and all claims, liabilities, losses, damages, injuries, demands, actions, causes of action, suits, proceedings, judgments, fines and expenses, including reasonable attorneys' fees, court costs and other legal expenses including, without limitation, those costs incurred at the trial and appellate levels and in any bankruptcy, reorganization, insolvency or other similar proceedings, and other legal expenses (collectively, "Claims") arising from or connected with: (i) any alleged or actual breach by ARTIST of any provision hereof or the inaccuracy of any warranty or representation made by ARTIST herein; (ii) any act or omission to act by ARTIST, its employees, agents or representatives directly or indirectly related to its performance of this CONTRACT; (iii) any act or omission relating to the ARTIST's performance of services; or (iv) any claim by a third party that the Performances constitute an infringement of the rights of such third party; provided however, ARTIST shall not be liable to the extent the Claims are caused by the sole gross negligence and intentional acts or omissions of the FESTIVAL or its employees, agents or representatives.

B. ARTIST shall be liable for the payment of any and all copyright royalties and fees. ARTIST shall defend and hold harmless FESTIVAL against any and all costs, losses, damages, attorney fees and/or claims for infringement or violation of any copyright or proprietary right whatsoever. ARTIST assumes financial responsibility for damages to the premises, equipment or properties of FESTIVAL that results from the intentional or negligent acts or omission by ARTIST, its agents, its employees, or its representatives. FESTIVAL may deduct repair or replacement costs as an expense to ARTIST at settlement from ARTIST's compensation.

C. ARTIST expressly assumes all risks inherent to the rendition of the services hereunder, and releases FESTIVAL from all liability from such, including, without limitation, risk of injury to ARTIST and its personal property while engaged in the services pursuant to this CONTRACT, except for and to the extent of any liability that is due solely to the gross negligence or willful misconduct of FESTIVAL. Without limiting the generality of the assumption and waiver of liability of the previous sentence, ARTIST further agrees to execute the COVID-19 Waiver of Liability Hold Harmless and Indemnification Agreement attached hereto as ADDENDUM D.

D. ARTIST shall be liable for all copyright royalties and fees and defense, and defend and hold harmless FESTIVAL against any and all costs, loss, damages,

attorney fees and/or claims of infringement or violation of any copyright or proprietary right whatsoever.

E. FESTIVAL will maintain appropriate insurance coverage and policies applicable to its general liability and liquor law liability.

21. FORCE MAJEURE: The EVENT is rain or shine. If, however, the EVENT is cancelled due to an event of force majeure, including without limitation, fire, flood, pandemic (including but not limited to COVID-19), epidemic, earthquake, hurricane, explosion, labor dispute or strike, act of God or public enemy, equipment failure, riot or civil disturbance, terrorism, threat of terrorism, bomb threat, periods of national mourning, war (declared or undeclared), or any federal, state or local government law, order or regulation, order of any court or jurisdiction, or other cause beyond the control of FESTIVAL (each a “Force Majeure Event”), then FESTIVAL will be relieved of all obligations to ARTIST hereunder. Neither ARTIST nor ARTIST’s representative will have any claim against FESTIVAL in the event the EVENT is cancelled as a result of a Force Majeure Event. In the event of ARTIST’s cancellation due to a serious illness, ARTIST will provide FESTIVAL with a letter from ARTIST’s physician specifying the anticipated length of time of ARTIST’s incapacity so that an alternative performance date/time may be arranged or a replacement artist may be secured. In the event of any cancellation as a result of a Force Majeure Event, FESTIVAL and ARTIST shall cooperate in good faith to establish an alternative date for ARTIST’s performance, provided that neither party shall be in breach hereof should the parties be unable to schedule such an alternative date. **Notwithstanding the foregoing, in all cases of cancellation as a result of a Force Majeure Event, ARTIST shall immediately return to FESTIVAL any amounts previously advanced to ARTIST hereunder and no further obligation shall exist between the parties.**