

WGI INDEPENDENT CONTRACTOR AGREEMENT

EFFECTIVE DATE: _____

INDEPENDENT CONTRACTOR NAME: _____

DBA Company Name (if applicable): _____

Mailing Address: _____

THIS INDEPENDENT CONTRACTOR AGREEMENT (the "Agreement") is entered into by and between Winter Guard International, a not-for-profit federal tax-exempt organization under I.R.S. Code 501(c)(3), located at 1994 Byers Road, Dayton, OH 45342 ("WGI") and the Independent Contractor listed above (the "Independent Contractor").

NOW, THEREFORE, in consideration of the following mutual agreements and covenants, the sufficiency of which is hereby acknowledged, Independent Contractor and WGI (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, WGI may, from time to time, offer Independent Contractor an opportunity to provide a service to WGI pursuant to a Service Assignment attached hereto as **Exhibit A** (a "Service Assignment"). Independent Contractor shall render their services (the "Services" set forth in each Service Assignment) it accepts faithfully, professionally, industriously, and to the best of their ability.
- (c) Independent Contractor understands and agrees to follow all WGI policies including but not limited to the Code of Conduct for WGI Personnel attached hereto as **Exhibit B** ("Code of Conduct for WGI Personnel") and **Exhibit C** ("Participant Protection Policies"). Independent Contractor's Services will be non-exclusive to WGI and rendered as reasonably instructed to do so by WGI in all matters, including artistic taste and judgment. Notwithstanding anything to the contrary contained herein, WGI shall be under no obligation to actually utilize Independent Contractor'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. WGI 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) Independent Contractor's material breach of Conflict of Interest or 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 Independent Contractor; (iv) Independent Contractor's insubordination or refusal to carry out responsibilities and duties assigned by WGI; (v) Independent Contractor being under the influence, or in the possession of, illegal drugs or alcohol, including without limitation, marijuana (regardless of whether marijuana is legal in the jurisdiction of services) at any WGI performance, meeting, event, rehearsal, show or any and all locations where services are being rendered; and (vi) the inability of Independent Contractor to perform the Services for any reason.
- (e) WGI reserves the right to cancel any event for any reason. In these situations, the Independent Contractor will be paid a cancellation fee per the Service Assignment should the event be canceled after January 1. In the event of inclement weather, the Independent Contractor is not authorized to travel until approved by WGI. If travel is approved and event is later canceled, Independent Contractor will receive equivalent of one day minimum payment for services per the Service Assignment.
- (f) WGI and all of its Circuit Partners are not-for-profit organizations. WGI strongly believes that leaders in the marching arts should remain focused on meeting the needs of participants, not the needs of business owners. A for-profit business' mission is fundamentally incompatible with the mission of WGI. Because the values of an organization are given life only through the people associated with the organization, WGI cannot recognize dual allegiance to both WGI and for-profit businesses that attempt to operate similar events outside our network of Circuit Partners. Individuals who choose to be engaged with these businesses will, through that action, be subject to immediate termination for cause by WGI.

SECTION 2. COMPENSATION

- (a) As specified on the applicable Service Agreement, WGI will pay Independent Contractor a fee (the "Service Fee") and pre-approved expenses (if any) for each service pursuant to this Agreement.
- (b) Notwithstanding anything to the contrary herein, Independent Contractor acknowledges and agrees that they have no right or authority to and will not employ any person to serve in any capacity, nor make any commitment or

agreement whereby WGI is required to pay any monies or other consideration or which shall obligate WGI, without the prior written consent of WGI.

SECTION 3. OWNERSHIP OF WORK PRODUCT

- (a) Independent Contractor hereby grants WGI the worldwide, irrevocable, perpetual, exclusive and fully paid right to make video and/or audio recordings ("Recordings") of the Events and Performances hereunder, and Independent Contractor's participation therein. Independent Contractor acknowledges and agrees that the rights granted hereunder shall include the worldwide, irrevocable, perpetual, exclusive and fully-paid 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) Independent Contractor understands and agrees that the results and proceeds of the Services, including but not limited to any Recordings (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 WGI 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 WGI by this Agreement, including, without limitation, all rights of copyright and copyright renewal. Independent Contractor agrees to execute, at WGI's request, all documents and other instruments necessary to effectuate such assignment. In the event that Independent Contractor does not, for any reason, execute such documents within a reasonable time of WGI's request, Independent Contractor hereby irrevocably appoints WGI as Independent Contractor's attorney-in-fact for the purpose of executing such documents on Independent Contractor's behalf, which appointment is coupled with an interest. If Independent Contractor has any rights, including without limitation "artist's rights" or "moral rights," in the Work Product that cannot be assigned, Independent Contractor agrees to waive enforcement worldwide of such rights against WGI. In the event Independent Contractor has any such rights, that cannot be assigned or waived, Independent Contractor hereby grants to WGI 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) Independent Contractor hereby consents to WGI'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 WGI 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 Independent Contractor.
- (b) Notwithstanding anything to the contrary herein, Independent Contractor acknowledges and agrees that it has no right or authority to represent WGI in any capacity, in interviews or otherwise, without prior written consent of WGI. Accordingly, Independent Contractor shall promptly direct any and all interview or booking requests that it may receive directly to WGI.
- (c) Notwithstanding anything to the contrary contained herein, WGI hereby grants Independent Contractor the right during the Term of this Agreement to identify themselves as an Independent Contractor of WGI on Independent Contractor's website and in any publicly filed document, press release and/or any other marketing material. Subject to WGI's prior written approval in each instance, Independent Contractor shall have a non-exclusive, perpetual, world-wide and fully paid license to utilize limited excerpts of the Work Product, solely for non-commercial demonstration purposes.

SECTION 5. 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 groups participating in WGI, all correspondence, sponsor and donor lists, documents, rulebooks, or other materials furnished to or by WGI, the identity and contact information of WGI's sponsors or potential sponsors, and any and all information regarding the skills and compensation of WGI'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 5(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 6. INDEPENDENT CONTRACTORS

- (a) Independent Contractor's relationship with WGI 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 7. REPRESENTATION AND WARRANTIES

- (a) 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, Independent Contractor represents and warrants that (i) it has the right and unrestricted ability to assign the Work Product to WGI 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 8. HOLD HARMLESS

- (a) Independent Contractor acknowledges and fully understands it will engage in activities that involve risk of serious injury, including permanent disability or death, which might result not only from its action, inaction or negligence, but also the action, inaction or negligence of others and/or the condition of any premises and hazards of travel by air, train, bus, automobile, and other means, including but not limited to walking and/or driving or being driven to and from events and other activities, and furthermore, that there may be other unknown risks that are not reasonably foreseeable at this time.
- (b) Accordingly, the Independent Contractor understands and agrees to defend and hold harmless WGI, their trustees, directors, officers, agents and employees, individually and collectively, from and against all claims, suits, losses, injuries, damages, liabilities, obligations and causes of action, of whatever kind, arising in any manner whatsoever, out of, or in connection with activities of WGI, but not limited to travel or participation in any WGI events; their performance of this Agreement; for any breach of this Agreement or for the negligent or willful acts or omissions of their trustees, directors, officers, agents, employees, volunteers, or participants.
- (c) The Independent Contractor acknowledges that the Independent Contractor has read the above Hold Harmless section and understands that the Independent Contractor has given up substantial rights by signing this document and sign below voluntarily.

SECTION 9. INDEMNIFICATION

- (a) WGI agrees to defend, indemnify and hold harmless the Independent Contractor from and against any and all claims and controversies, of any kind whatsoever, and all loss, liability, expenses, costs or damages, including reasonable attorneys' fees and costs, required by law or arising from WGI's breach of any representations, warranties and/or agreements that WGI has made hereunder.
- (b) Except as limited by law, the Independent Contractor agrees to defend, indemnify and hold harmless WGI from and against any and all claims and controversies, of any kind whatsoever, and all loss, liability, expenses, costs or damages, including reasonable attorneys' fees and costs, arising from the Independent Contractor's breach of any representations, warranties and agreements/or that the Independent Contractor has made hereunder.

SECTION 10. MISCELLANEOUS

- (a) The parties agree that this Agreement shall be construed under the laws of the State of Ohio, and the parties further agree that the federal and state courts located in Ohio shall have exclusive and sole jurisdiction to resolve all disputes arising under or related to this Agreement. The parties irrevocably consent to the jurisdiction of the federal and state courts located in Ohio and agree that such courts are the only proper venue for the resolution of disputes between them.
- (b) Independent Contractor shall not assign, sell, mortgage, or pledge any or all of its rights or obligations under this

Agreement without the prior written consent of WGI. WGI 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 WGI'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 Production Assignment, the terms of the applicable Production 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 WGI of a breach of any provision of this Agreement by Independent Contractor shall not operate or be construed as a waiver of any other or subsequent breach by Independent Contractor. 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) Independent Contractor'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 WGI for which there will be no adequate remedy at law; and, in the event of such breach, WGI 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 OHL, 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 WGI shall also be sent to WGI's legal counsel, Law Offices of Taft Stettinius & Hollister, 40 North Main Street, Suite 1700, Dayton, Ohio 45423-1029.
- (f) The rights and obligations contained in Section 3 ("Ownership of Work Product"), Section 4 ("Publicity Rights"), Section 5 ("Confidential Information"), and Section 7 ("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:

WINTER GUARD INTERNATIONAL, INC.

INDEPENDENT CONTRACTOR

Signature

Signature

Print Name

Print Name

Date

Date

Cell Phone