

**RULES FOR APPLICATION TO AND PARTICIPATION IN THE  
FAIRMONT OPERA HOUSE  
Bacontown THROWDOWN 2022**

Fairmont Opera House, Inc., a Minnesota 501(c)3 non-profit corporation (the "FOH") is proud to host its Bacontown Throwdown on September 23, 2022 (the "Event") at the Fairmont Opera House, located at 45 Downtown Plaza, Fairmont, MN 56031 (the "Venue"). Bands from around Minnesota and Iowa are invited to apply for the Bacontown Throwdown Contest (the "Contest"). The top five bands will be chosen to perform live at the Event for a chance to win the grand prize and the title of "Bacontown Throwdown Champion 2022".

**RULES FOR APPLYING FOR THE CONTEST**

1. **Application:** In order to be eligible to participate in the Contest, applicants should email a short video or audio recording of the applicant's band ("Entry") to FOH, c/o Blake Potthoff, Executive Director, at [director@fairmontoperahouse.org](mailto:director@fairmontoperahouse.org) no later than May 13, 2022. Additionally, each individual member ("Member") of the band (the "Band") applying to participate must agree to abide by the following rules (the "Rules") in applying for the Contest and, if selected, at all times during the Member's participation in the Event.
2. **Eligibility:** To become an eligible band, each Member must be able to attend the Event in person. If the applicant is under the age of 18, a legal guardian must grant consent by signing as well. The Band may submit and perform original and non-original works. This Contest is subject to all applicable federal, state, and local laws and regulations. Entries that are not in accordance with the guidelines as stated herein or are not received by May 13, 2022 will be ineligible. The FOH reserves the right, in its sole discretion, during or upon completion of the Contest entry period, to request that any applicant resubmit his/her Entry which fails to comply with the Entry Requirements, as defined below. Any waiver of any obligation hereunder by FOH does not constitute a general waiver of any obligation to participants. FOH reserves the right to waive the Contest entry requirements set forth herein in its sole discretion. FOH's employees, officers and directors and their immediate families (parents, children, siblings, and spouses) and members of their household (whether or not related) are not eligible to enter the Event.
3. **License to use Entry:** By entering the Contest, each Member hereby grants FOH an irrevocable, transferable, and royalty-free license to, and FOH shall have full right and power to, copy, publish, broadcast, display, distribute, use, edit, translate, alter, combine with other material, reuse and adapt any or all portions of the Entries in any way and for any purpose whatsoever, at any time, now or in the future, in any media now known or hereafter devised throughout the world in any manner whatsoever and for any purpose. By entering, each Member acknowledges that his/her Entry may be posted on the FOH website and social media, at FOH's sole discretion. FOH has no obligation to use or post an Entry submitted.
4. **Entry guidelines:** By submitting an Entry, each Member hereby represents and warrants that his/her Entry conforms to the entry requirements set forth below ("Entry Requirements"):
  - a. Entry cannot be sexually explicit or suggestive, unnecessarily violent or derogatory of any ethnic, racial, gender, religious, professional or age group, profane or pornographic, contain nudity or any materially dangerous activity;
  - b. Entry cannot promote alcohol, illegal drugs, tobacco, firearms/weapons (or the use of any of the foregoing), or any activities that may appear unsafe or dangerous;
  - c. Entry cannot be obscene or offensive, endorse any form of hate or hate group;
  - d. Entry cannot defame, misrepresent, or contain disparaging remarks about FOH, the sponsors of the Event or their respective products or services, or other people, products, services, or companies;
  - e. Entry cannot infringe on trademarks, logos, or trade dress owned by others;
  - f. Entry cannot advertise or promote any brand or product of any kind, without permission;
  - g. Entry cannot contain any personally identifiable information, such as license plate numbers, email addresses or street addresses;
  - h. Entry cannot contain copyrighted materials owned by others (including photographs, sculptures, painting and other works of art or images published on or in websites, television, movies, or other media)

without permission from the copyright holder unless it is covered by the license granted by a Performing Rights Organization (PRO) such as ASCAP, BMI, or SEESAC;

- i. Entry cannot infringe on the right of publicity of any person, living or dead, without permission; and
- j. Entry cannot depict, and cannot itself, be in violation of any law.

Any Entry that, in the sole opinion of FOH, is deemed to be inappropriate for publication, incomplete, illegible, false, deceptive or garbled, or otherwise fails to satisfy the Entry Requirements is ineligible. Notwithstanding anything herein to the contrary, FOH shall not have any duty to inquire into or investigate whether the Entry Requirements have been met, nor shall FOH be responsible or liable for the contents of any Entry or any claims arising therefrom.

5. **Representations and Warranties:** By submitting an Entry, each Member represents and warrants that: (a) if the Entry contains his/her original work, the Entry does not infringe upon the copyrights, trademarks, rights or privacy, publicity or other intellectual property or other rights of any person or entity; (b) publication of the Entry via various media, including web or social media posting, will not infringe on the rights of any third party; and (c) the covered song is a part of a PRO's inventory or is an original composition.
6. **Contest Judging:** Eligible Entries will be judged by FOH and the Top 10 entries will be selected. FOH and the public will vote to determine the Top 5 entries, which will participate in the Event for a chance to win the grand prize.

#### **RULES FOR PARTICIPATING IN THE EVENT**

7. **Winning Applicant Notification:** Applicants with the five winning Entries will be notified by [director@fairmontoperahouse.org](mailto:director@fairmontoperahouse.org) no later than July 15, 2022 of their eligibility to perform at the Event. Each Member will be required to complete, sign, and return the Consent to Authorized Use and Release of Liability, attached hereto as Exhibit A (the "Consent"), within seven (7) days of notification. Each Member must return the sign Consent in order for the Band to be eligible to perform at the Event.
8. **Performance Line-Up:** Each Band will be entitled to perform 1-3 songs at the Event, constituting no more than 12 minutes' total. No later than 15 days prior to the Event, the Band must submit the names of all songs to be performed at the Event. FOH reserves the right to object to any song the Band intends to perform at the Event. If FOH so objects, the Members agree not to perform that song at the Event.
9. **Performance Guidelines:** Each Band will be responsible for coordinating load in, setup, and line check with the Venue. The Venue will provide a house drum set and bass amplifier for each band to use, which must remain on stage during each performance. All sound, lighting, and technical assistance will be provided. FOH is not responsible for any loss or damage to the Band's personal equipment used during the Event.

If a Band is selected to participate in the Event, each Member of such Band represents and warrants that the Band's performance at the Event will conform to the Entry Requirements. By agreeing to perform at the Event, each Member represents and warrants that : (a) if the Band intends to perform an original work, the original work does not infringe upon the copyrights, trademarks, rights of privacy, publicity or other intellectual property or other rights of any person or entity; (b) publication of the Band's performance at the Event via various media, including web and social media posting, will not infringe on the rights of any third party; (c) each Member will not violate any applicable federal, state, or local law or regulation; (d) each Member will abide by all of the rules of the Venue on the day of the Event.

10. **Publicity/Authorized Uses:** As a condition to participating in the Event, each Member shall agree to the terms of the Consent regarding Photographs, Name and Likeness.
11. **Ownership of Recordings:** As a condition to participating in the Event, each member shall agree to the terms of the Consent regarding Recordings.
12. **Prize Details:** The Events will be judged by a panel of five judges. The judges will select the Top Five Winning Bands at the Event in their sole discretion based on each Band's performance. A "People's Choice" winner will also be selected by the judges at their sole discretion. All prize details will be determined in FOH's sole and absolute discretion. All prizes are non-transferable, may not be substituted, except in FOH's sole discretion, and cannot be redeemed for cash. If a prize, or any portion thereof, cannot be awarded for any reason, FOH reserves

the right to substitute a prize with another prize of equal or greater value. Applicable federal, state, local, and other taxes and fees associated with the prizes and any expenses related to the acceptance and use of prizes and not specified in these Rules are the sole responsibility of the winners. Unclaimed prizes will not be awarded.

13. **Awarding of Prizes:** Top Five and People's Choice winners each receive these awards.

- a. Winner \$1500, Open for night two of Bacontown Throwdown, Headline FOH 2023 New Year's Eve Party, Live Demo Recording at FOH
- b. 1<sup>st</sup> Runner Up \$1000, 2 opening gigs at FOH events
- c. 2<sup>nd</sup> Runner Up \$750, 1 opening gig at FOH event
- d. 3<sup>rd</sup> Runner Up \$500, up to 3 Footlight Lounge and Bar events at FOH
- e. 4<sup>th</sup> Runner Up \$250, up to 3 Footlight Lounge and Bar events at FOH
- f. People's Choice Plaque

#### GENERAL

14. **No Tampering; Right to Cancel, Modify:** FOH, any Event sponsors, and each of their parents, subsidiaries and affiliated companies, advertising and promotion agencies, and all of their respective officers, directors, employees, representatives and agents ("Contest Parties") shall not have any obligation or responsibility with regard to: (a) Entries that contain inaccurate information or do not comply with or violate the Rules; (b) Entries, prize claims or Consents that are lost, late, incomplete, illegible, unintelligible, damaged or otherwise not received by the intended recipient, in whole or in part, due to computer, human or technical error of any kind; (c) Members who have committed fraud or deception in entering or participating in the Contest or claiming a prize; (d) telephone, electronic, hardware, software, network, internet or computer malfunctions, failures or difficulties; (e) any inability of the winner to accept a prize for any reason; or (f) a prize that cannot be awarded due to delays or interruptions due to Acts of God, natural disasters, terrorism, weather or any other similar event beyond FOH's reasonable control.

FOH reserves the right, at its sole discretion, to disqualify any Member or Band it finds to be tampering with the entry process or operation of the Contest or to be acting in an unsportsmanlike or disruptive manner, or with intent to threaten, abuse or harass any other person or to otherwise disrupt the Contest in any manner. If FOH determines, in its sole discretion, that technical difficulties or unforeseen events compromise the integrity or viability of the Contest, FOH reserves the right to terminate the relevant portion of the Contest and/or the entire Contest. If the Contest is terminated or modified due to technical difficulties or unforeseen events, notice will be emailed to each participating Member at the email address provided to FOH.

15. **Joint and Several Liability:** Each Member agrees to be jointly and severally liable to FOH for all losses and indemnification claims incurred by FOH and for all representations and warranties made by the Band.

16. **Indemnification:** The Members, jointly and severally with the other Band Members, agree to indemnify and hold harmless FOH and any Contest Parties (collectively, the "Indemnitees"), from and against any expense, cost, damage, loss, fine, penalty, liability or judgment, including reasonable attorneys' fees, suffered or incurred by the Indemnitees as a result of any claim, demand, action, arbitration, suit or similar proceeding ("Claim") alleging that the Entry or the Members' performance at the Event infringes or misappropriates any copyright, trademark, patent, trade secret or other proprietary right of such third party.

The Members, jointly and severally with the other Band Members, agree to indemnify and hold harmless the Indemnitees from and against any Claim that arises from or is in connection with (i) a breach of the representations and warranties, covenants or obligations contained herein or in the Consent, (ii) any Member's failure to perform his/her responsibilities as contained herein, and (iii) any Member's negligence or willful or intentional misconduct.

17. **Limitation of Liability:** THE AGGREGATE LIABILITY OF FOH ARISING AT ANY TIME UNDER THESE RULES OR THE CONSENT SHALL NOT EXCEED \$1000. IN NO EVENT SHALL FOH BE LIABLE WITH RESPECT TO ITS OBLIGATIONS UNDER OR ARISING OUT OF THESE RULES OR THE CONSENT FOR CONSEQUENTIAL, EXEMPLARY, PUNITIVE,

SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA/PROGRAMS, COMPUTER FAILURE, LOSS OF WORK PRODUCT OR ANY AND ALL OTHER DAMAGES OR LOSSES WHETHER DIRECTLY OR INDIRECTLY CAUSED, EVEN IF FOH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

18. **Miscellaneous:** All matters arising out of or relating to these Rules shall be governed by and construed in accordance with the internal laws of the State of Minnesota without giving effect to any choice on conflict of law provision or rule (whether or the State of Minnesota or any other jurisdiction). In addition, any dispute relating to the Contest (including these rules) shall be brought to the appropriate state or federal court having jurisdiction over the subject matter located in Fairmont, Minnesota. Participants hereby irrevocably consent to the personal jurisdiction of said courts and waive any claim of forum non conveniens or lack of personal jurisdiction they may have.
19. **Changes to these rules:** These Rules are subject to occasional revision, and if FOH makes any material changes to these Rules, FOH will notify each Member of any material changes by posting notice of the changes on FOH's website, and/or, in our sole discretion, by email.

## EXHIBIT A

### CONSENT TO AUTHORIZED USE AND RELEASE OF LIABILITY

The individual named below (referred to as “I” or “me”) desires to participate in the Bacontown Throwdown on September 23, 2022 at Fairmont Opera House, located at 45 Downtown Plaza, Fairmont Minnesota, 56031 (the “Activity”) provided by Fairmont Opera House, Inc., a Minnesota 501(c)3 non-profit organization (“FOH”). As lawful consideration for being permitted by FOH to participate in the Activity, I agree to all the terms and conditions set forth in this agreement (the “Agreement”). The Rules for Application to and Participation in the FOH Bacontown Throwdown 2022 are hereby incorporated by reference into this Agreement in their entirety. If I am under the age of 18, my guardian grants consent by signing below.

#### Consent to Authorized Uses

Photographs, Name and Likeness: I hereby irrevocably permit, authorize, and license FOH and its affiliates to display, publicly perform, exhibit, transmit, broadcast, reproduce, record, photograph, digitize, modify, alter, edit, adapt, exploit, and otherwise use and permit others to use my name, organization of employment, testimonials, biographical information, application entry, image, likeness, appearance, voice, and other personal characteristics and all materials created by or on behalf of FOH that incorporate any of the foregoing (“Materials”) on a perpetual basis throughout the world and in any medium or format whatsoever now existing or hereafter created, without further consent from or royalty payment or other compensation to me.

I hereby irrevocable grant to FOH a gratis use license from my entire right, title and interest, if any, in and to the Materials and all copyrights in the Materials arising in any jurisdiction throughout the world. I acknowledge and agree that I have no right to review or approve Materials before they are used by FOH, and that FOH has no liability to me for any editing or alteration of the Materials. FOH has no obligation to use the Materials or to exercise any rights given by this Agreement.

Recordings: I acknowledge and agree that if a recording of my performance at the Activity is made by FOH or on behalf of FOH (the “Recording”) will be owned by FOH. I hereby waive in favor of FOH, all right of “Droit Moral” or “Moral Rights of Authors” or any similar rights or principles of law that I may now or later have to the Recording. I acknowledge and understand that FOH reserves the right to alter, change or modify the Recording, in its sole discretion.

#### Release from Liability

Waiver and Release of Liability: By participating in the Activity, I agree to release and hold harmless FOH, its officers, directors, shareholders, employees, volunteers, agents, affiliates, successors, assigns, venue and property owners or operator upon which the Activity takes place, and each of their respective parent, subsidiary and affiliated companies, officers, directors, partners, shareholders, members, agents, employees, and volunteers (collectively, “Releasees”) from any and all liability, claims, demands, actions or rights of action, which are related to, or are in any way connected with, my participation in the Activity, including, but not limited to, claims for libel, defamation, invasion of any rights of privacy, violation of right of publicity, physical or emotional injury or distress, or any similar claim or cause of action in tort, contract, or any other legal theory, now known or hereafter known in any jurisdiction throughout the world (collectively, “Claims”) arising directly or indirectly from (i) the Releasees’ exercise of their rights under this Agreement or any other agreement with me, (ii) the Releasees’ use and exploitation of any photographic images and video and audio recordings of my performance during the Activity, and (iii) my participation in the Activity, whether or not resulting in whole or in part from the negligence of the Releasees or any other person.

I further agree, promise and covenant not to make or bring any such Claim against FOH or any other Releasee arising from or connected with my participation in the Activity and forever release and discharge FOH and all other Releasees from liability under such claims.

Indemnification: I shall defend, indemnify, and hold harmless FOH and all other Releasees against any and all losses, damages, liabilities, deficiencies, claims, actions, judgements, settlements, interest, awards, penalties, fines, costs, or

expenses of whatever kind, including reasonable attorney fees, fees, the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any action, arising out of or resulting from any claim of a third party related to the Activity.

Miscellaneous: If any term or provision of the Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of the Agreement, or invalidate or render unenforceable such term or provision in any other jurisdiction. All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of Minnesota without giving effect to any choice or conflict of law provision or rule (whether of the State of Minnesota or any other jurisdiction). In addition, any dispute relating to the Contest (including these Rules) shall be brought in the appropriate state or federal court having jurisdiction over the subject matter located in Fairmont, Minnesota. Participants hereby irrevocably consent to the personal jurisdiction of said courts and waive any claim of forum non conveniens or lack of personal jurisdiction they may have.

BY SIGNING, I ACKNOWLEDGE THAT I HAVE READ AND UNDERSTOOD ALL OF THE TERMS OF THIS AGREEMENT, I HAVE EXECUTED THIS RELEASE WILLINGLY.

By:

Artist/Band Name:

Date:

Member:

Print Name

Signature

Name & Signature of Guardian if Under 18

Member:

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Signature

Name & Signature of Guardian if Under 18

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