



UNIVERSITY OF MASSACHUSETTS DARTMOUTH
PERFORMER CONTRACT FOR SERVICES

This contract is made, entered into, and effective on _____ by and between the University of Massachusetts, Dartmouth (hereinafter called "University or Presenter"), an agency of the Commonwealth of Massachusetts and

(Performer or Performer's Representative legal name and address)
(Hereinafter called the "Performer" and collectively the "Parties").

If contract via Performer's Representative please provide Performer's Name: _____

This Contract is comprised of the following documents, listed in the order of precedence: (1) this Contract Terms and Conditions; (2) any Contract Riders agreed upon by the parties, as identified in Section 2, below.

1. Performance Details. The Performer agrees to perform the following services:

Description of Performance:

Date of Performance: Performer Report time: Performance Time:
Length of Performance (Hours): Performance Location:

2. Contract riders. The following riders to the Contract have been executed by duly authorized representatives of the Parties and are attached hereto and incorporated herein:

All riders attached hereto must be specifically labeled (e.g. "Attachment A, Rider No. 1, consisting of 'n' pages"). This Contract may be amended only by written agreement of the Parties, executed by the Parties' authorized representatives and in compliance with all other regulations and requirements of law.

3. The Performer shall be liable with the Performer's Representative for compliance with the terms and conditions of this Contract. Since the essence of this Contract concerns the specific individuals comprising the Performer, whose personalities and talents are recognized as unique, Presenter will pay the fee specified in this Contract only if the Performer performing is in fact the Performer agreed upon. If in the case of a group, and the entire group does not perform, or if the Performer is not the Performer specified in this Contract, payment will be withheld until an adjustment is made between Presenter and the Performer or Performer's Representative

4. Responsible University Official: The University Official exercising managerial and budgetary control for this Contract shall be:

- Name:
Title:
Email:
Phone:

5. Responsible Performer Official: The Performer Official exercising managerial and contractual control of this contract shall be:

- Name:
Title:
Email:
Phone:

6. **Payment.**

- A. The University shall compensate the Performer for the services rendered at the rate of \$_____per _____(e.g., hour, show, etc.).
- B. In no event shall the Performer be reimbursed for time other than that actually spent providing the described service(s).
- C. Payment will be made upon completion of the performance to the satisfaction of the University and submittal of an invoice.
- D. Reimbursement for Travel and Other Performer Expenses:

____All travel and meals are part of this Contract. No reimbursement will be made.

____Performer will be reimbursed for pre-approved travel in an amount not to exceed \$_____. Copies of receipts must be submitted. Any expense claimed by the Performer for which there is no supporting documentation shall be disallowed.
- E. The total of all payments made against this Contract shall not exceed \$_____.
- F. NO DEPOSITS or advance payments shall be made prior to the performance.
- G. The University's payment terms are net thirty (30) days from the date of receipt of Performer's invoice, with late penalty interest assessable at rates established by the Commonwealth after 45 days in accordance with Mass. Gen. Laws ch 29 § 29C and with Commonwealth regulation 815 C.M.R. 4.00.
- H. Massachusetts tax reporting and withholding regulations require the University to withhold 5.25% (the individual income tax rate) on payments to a performer or a performing entity when total payments made to a single social security number or federal identification number exceed \$5000 for performances during one calendar year. The University of Massachusetts Dartmouth will issue a Form 1099-MISC or Form 1042-S reflecting the tax withholding to the performer or performing entity. More information about these regulations can be obtained through the Massachusetts Department of Revenue (www.mass.gov/dor).

7. **Certification.** Performers certifies under the pains and penalties of perjury that pursuant to Mass .Gen. Laws ch.62C, §49A, that the Performer has filed all state tax returns, paid all taxes and complied with all applicable laws relating to taxes; and that pursuant to Mass. Gen. Laws ch.151A, §19A(b), has complied with all laws of the Commonwealth relating to contributions and payment in lieu of contributions to the Employment Security System; and, if applicable, with all laws of the Commonwealth relating to Worker's Compensation, Mass. Gen. Laws ch.152. Pursuant to federal law, Performer shall verify the immigration status of all workers assigned to the contract without engaging in unlawful discrimination; and Performer shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker.

8. **Independent Contractor Status.** The Performer is an independent contractor and not an employee or agent of the University. The Performer is not subject to UNIVERSITY's control as to the means and methods of accomplishing the work to be performed hereunder, but UNIVERSITY may specify and control the result to be accomplished including any specifications, standards, or requirements. No act or direction of the University shall be deemed to create an employer/employee or joint employer relationship. The University shall not be obligated under any contract, subcontract, or other commitment made by the Performer.

9. **Termination.**

A. **Without Cause.** This Contract may be terminated without cause by the University by giving written notice to the other at least thirty (30) calendar days prior to the performance date.

B. **Performer Cancellation.** If for any reason beyond the cancellation clause contained herein, this contract is

cancelled by Performer or a change of date is required by the Performer for any reason other than the Force Majeure the Performer agrees to reimburse the Presenter for any out-of-pocket expenses incurred by Presenter immediately upon presentation of a statement of such expenses to the Performer or Agent.

10. **Insurance Requirements.** Required _____ Not Required ____

If insurance is required the following terms apply:

The Performer shall purchase and maintain at its sole cost and expense throughout the term of this Agreement adequate insurance coverage, to include but not be limited to the following types and amounts of coverage:

- a. The following minimum insurance coverage is required.
 - i) Workers' Compensation Insurance in compliance with applicable federal and state laws, including Employers Liability Insurance with limits of at least one million dollars (\$1,000,000) per occurrence.
 - ii) Automobile Liability Insurance covering owned, non-owned, and hired vehicles with combined limits for bodily injury and property damage of at least one million dollars (\$1,000,000) per accident. The policy must be endorsed to include the University as an additional insured.
 - iii) Commercial General Liability Insurance including contractual liability coverage specifically covering this Agreement, written on an occurrence form, with combined limits for bodily injury, personal injury, and property damage of at least two million dollars (\$2,000,000) per occurrence and four million dollars (\$4,000,000) per aggregate. The policy must be endorsed to include the University as an additional insured.
- b. All insurance maintained by the Performer pursuant to this Agreement shall be written by insurance companies licensed to do business in the Commonwealth of Massachusetts. If the Performer determines that any such insurance needs to be placed with surplus lines carriers not licensed by the Commonwealth of Massachusetts, written permission from the University is required. All insurance companies to be used by the Performer must have a Best's Rating of not less than A- and be reasonably acceptable to the University.
- c. If requested by the University in writing, the Performer shall furnish certified copies of the aforementioned policies to the University's designated representative.
- d. All insurance maintained by the Performer shall provide that insurance for the benefit of the University shall be primary and the University's own insurance shall be non-contributing. The Performer shall provide the University with certificates of insurance evidencing the above referenced insurance policies within ten (10) days of the execution of this Agreement.
- e. The certificates shall contain an unequivocal provision that the University shall be given thirty (30) days prior written notice of cancellation, material change, or non-renewal of the coverage.
- f. Performer shall cause its subcontractors to purchase, carry, and maintain all insurance coverage and coverage limits that Section requires Performer to have.
- g. Performer's and/or Performer's subcontractor's failure to provide or to continue in full force the insurance that this section requires shall be a material breach of this Agreement and may, at the sole determination of the University, result in termination of this Agreement for cause.

11. **Political Activity Prohibited.** The Performer may not use any Contract funds and none of the services to be provided by the Performer may be used for any partisan political activity or to further the election or defeat of any candidate for public office.
12. **Assignment and Delegation.** The Performer shall not assign or in any way transfer any interest in this Contract without the prior written consent of the University, nor shall the Performer subcontract any service without the prior written approval of the University. Any purported assignment of rights or delegation of performance in violation of this Section is VOID.
13. **Nondiscrimination in Employment.** The Performer shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation or a person who is a member of, applies to perform, or has an obligation to perform service in a uniformed military service of the United States, including the National Guard on the basis of that membership, application or obligation. The Performer agrees to comply with all applicable Federal and State employment statutes, rules and regulations
14. **Severability.** If any provision of this Contract is declared or found to be illegal, unenforceable, or void, then both Parties shall be relieved of all obligations under that provision. The remainder of the Contract shall be enforced to the fullest extent permitted by law.
15. **Choice of Law.** This Contract is entered into in the Commonwealth of Massachusetts, and the laws of the Commonwealth, without giving effect to its conflicts of law principles, govern all matters arising out of or relating to this Contract and all of the transactions it contemplates, including, without limitation, its validity, interpretation, construction, performance and enforcement.
16. **Forum Selection.** The Parties agree to bring any action arising out of or relating to this Contract or the relationship between the Parties in the state courts of the Commonwealth of Massachusetts which shall have exclusive jurisdiction thereof. The Performer expressly consents to the jurisdiction of the state courts of the Commonwealth of Massachusetts in any action brought by the Commonwealth or the University arising out of or relating to this Contract or the relationship between the Parties, waiving any claim or defense that such forum is not convenient or proper. This paragraph shall not be construed to limit any other legal rights of the Parties.
17. **Force Majeure.** Neither party shall be liable to the other or be deemed to be in breach of this Contract for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of nature or of a public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. Dates or times of performance shall be extended to the extent of delays excused by this section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.
18. **Indemnification of University.** The Performer shall defend, indemnify, and hold harmless the Commonwealth, the University, its Trustees, Officers, servants, and employees from and against any and all claims, liability, losses, third party claims, damages, costs, or expenses (including attorneys' and experts' fees) arising out of or resulting from the performance of the services performed by the Performer, its agents, servants, employees, or subcontractors under this Contract, provided that any such claims, liability, losses, third party claims, damages, costs, or expenses are attributable to bodily injury, personal injury, pecuniary injury, damage to real or tangible personal property, resulting therefrom and caused in whole or in part by any intentional or negligent acts or omissions of the Performer, its employees, servants, agents, or subcontractors. The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the Commonwealth and/or the University that would otherwise exist. The University shall give the Performer prompt and timely notice of any claims, threatened or made, or any law suit instituted against it which could result in a claim for indemnification hereunder. The extent of this Contract of indemnification shall not be limited by any obligation or any term or condition of any insurance policy. The obligations set forth above shall survive the expiration or termination of this Contract.
19. **Risk of Loss.** The Performer shall bear the risk of loss of any Performer materials used for a Contract and for all deliverables and work in process.
20. **Tax Exempt Status.** The University is exempt from federal excise, state, and local taxes; therefore, sales to the University are exempt from Massachusetts sales and use taxes. If the University should become subject to any such taxes during the term of this

Contract, the University shall reimburse the Performer for any cost or expense incurred. Any other taxes imposed on the Performer on account of this Contract shall be borne solely by the Performer.

- 21. **Waivers.** All conditions, covenants, duties and obligations contained in this Contract can be waived only by written agreement. Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party.
- 22. **Amendments.** This Contract may be amended only by written agreement of the Parties, executed by the Parties' authorized representatives and in compliance with all other regulations and requirements of law.
- 23. **Entire Agreement.** The Parties understand and agree that this Contract and its attachments or amendments (if any) constitute the entire understanding between the Parties and supersede all other verbal and written agreements and negotiations by the Parties relating to the services under this Contract.

Employees of the University shall not be held personally or contractually liable by or to the Performer under any term or provision of this Contract or because of any breach thereof. This Contract is not binding until signed by an authorized University official.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their respective duly authorized representatives as of the date first above written.

UNIVERSITY OF MASSACHUSETTS
Dartmouth (Campus)

PERFORMER
_____ (Name)

Sig: _____

Sig: _____

Name: _____

Name: _____

Title: _____

Title: _____

(Authorized University Official)