



University Performer Terms and Conditions

- 1. Line and Lighting Plot.** The Performer or Performer's Representative shall deliver a stage plot and a light plot, if applicable, to Presenter at least four (4) weeks in advance of the performance. Stage plot refers to the staging requirements of a performance and light plot to lighting placement and color schemes.
- 2. Payment Terms.** 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.
- 3. Tax Reporting.** 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).
- 4. Liability.** The Performer shall be liable with the Performer's Representative or Producer 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
- 5. Certification.** Performers certifies under the pains and penalties of perjury 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.
- 6. 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

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relationship. The University shall not be obligated under any contract, subcontract, or other commitment made by the Performer.

7. Termination:

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

B. Cancellation Impairment. If Performer arrives at the performance site under the influence of intoxicating beverages, narcotics or drugs, to the extent where, in the judgment of the Presenter, (s) he may not be able to perform as herein agreed, then Presenter may cancel the performance, and Performer agrees to indemnify and save harmless Presenter for any damages, claims, judgments and other costs and financial losses incurred by Presenter arising out of such failure to perform.

C. 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.

8. **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.
9. **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.
10. **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
11. **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.

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12. **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.
13. **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.
14. **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.
15. **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.
16. **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. Neither the University of Massachusetts Dartmouth nor any of its staff assume any liability or responsibility for damage or theft of any property of the Artist(s).

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17. **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.
18. **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.
19. **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.
20. **Sound Levels.** The Presenter reserves the right to determine acceptable sound levels and audio quality for amplified productions. When requested, Performer agrees to adjust sound levels immediately and in accordance with instructions by the Presenter's designated representative.
21. **Equipment.** The Presenter is not responsible for any equipment not specifically stated in this Contract. The Performer or Performer's Representative agrees that if (s) he does not use the equipment required in this Contract and rented by Presenter, (s) he shall pay for all rental costs of said equipment.
22. **Announcements.** The Performer understands that the Presenter has the right to announce to the audience any information that Presenter deems necessary. Performer agrees that there will be no announcement in regard to merchandise sales.
23. **Open of Facilities.** Performer agrees that the facilities will be open to the general public no later than one half-hour before the performance. Performer further understands that it is the University's policy to allow patrons with disabilities to be seated at the time of their arrival whether or not the house has been officially opened. Performer shall be notified should early seating for disabled patrons be necessary.
24. **Sponsorships.** Should the Performer have sponsorship specifically for the tour of which this engagement is a part, the Presenter will have sole authority to determine the manner in which the sponsorship is recognized. Should tour sponsorship be in conflict with pre-existing University agreements, policies or procedures, Performer's sponsorship requirements will not be recognized by the Presenter.
25. **Promotion.** For the purpose of effectively promoting this event, Performer or Performer's Representative authorizes Presenter to reproduce promotional material, program copy, photos and slides provided by Performer or Performer's Representative.

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26. **Sales of Merchandise.** Subject to the consent of Presenter, Performer shall have the right to sell souvenir booklets, tee-shirts, CDs, audio and/or video tapes, and other Performer-related non-food items (hereinafter "Souvenirs") in the hall lobby at the performance. The sale of these souvenir booklets or other mementos, including the personnel to sell these items, is the sole responsibility of Performer.

A.) Presenter shall be entitled to the following:

1) When merchandise is brought and sold by Performer or Performer's Representative, 15% of the gross receipts of such sales shall be paid to Presenter's Representative immediately following the performance. It is the Performer's or Performer's Representative's responsibility to take unsold merchandise with them following the performance.

2) When merchandise is brought by Performer or Performer's Representative but sold by Presenter's staff, 20% of the gross receipts of such sales shall be paid to Presenter's Representative immediately following the performance. It is the Performer's or Performer's Representative's responsibility to take unsold merchandise with them following the performance.

B.) Presenter reserves the right to inventory all souvenirs in and out to determine sales.

27. **Travel Expenses.** The Presenter is not obligated to arrange, provide, or pay for any transportation, housing, or any other local expenses, except as specifically agreed to on the face of the Contract. The Presenter will work with the Performer or Representative to fulfill the requests as outlined in any hospitality riders to the best of its ability. The University reserves the right to alter any hospitality rider to bring it in line with University policies and cannot legally provide alcoholic beverages.

28. **Recordings.** Presenter agrees that it will not authorize the use of any video or audio recording equipment by the audience to record Performer's performance in the venue. Presenters agrees that any request for video or audio recording for the use of broadcasting, archiving, etc. will be made in writing to the Performer or Performer's Representative prior to the performance. Furthermore, the Presenter agrees that any recording will be done with available lighting and sound in such a manner as not to detract from performance or distract the audience.