

Performance Agreement

This AGREEMENT (“Agreement”) is made by and between the **UNIVERSITY OF MEMPHIS**, a public university (“UM”), and _____ (“Performer,” even though there may be more than one person and/or the person signing the Agreement is a representative of Performer) who mutually agree to the following terms and conditions for the performance(s) described herein.

Name of Performer: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone(s): _____ Email: _____

Employer Identification Number or last 4 digits of Performer’s SSN: _____

NOW, THEREFORE, in consideration of the mutual promises herein contained, UM and Performer do hereby enter into this Agreement according to the provisions set out herein:

1. PERFORMANCE

1.1 Performer agrees to perform the following services:

1.2 Date of Performance: _____

1.3 Location of Performance: _____

1.4 Performance Time: _____

1.5 Length of Performance: _____

1.6 Number and Length of Breaks: _____

1.7 Set-up/Teardown Time: _____

1.8 Sound Check Time: _____

1.9 Equipment/Services Provided by UM: _____

1.10 Equipment Provided by Performer: _____

1.11 Other Particulars: _____

2. PAYMENT

2.1 Payment for all services under this Agreement shall be in the fixed sum of \$_____, payable upon invoice after satisfactory completion of the Performance. Satisfactory completion shall be determined by UM. No advance deposits or payments will be made to Performer.

2.2 Check made payable to:

W-9 must be submitted with Agreement.

2.3 UM is exempt from federal excise and State of Tennessee sales tax. Performer is responsible for the payment of all taxes assessed against Performer arising from the Performance. UM shall have no responsibility for or liability to pay taxes assessed against the Performer arising from this Agreement.

2.4 In no event shall the liability of UM under this Agreement exceed \$_____.

3. TERMS AND CONDITIONS

3.1 Performer is an independent contractor, and neither Performer nor Performer's employees, agents, or other representatives shall be considered UM employees or agents. This Agreement does not constitute and shall not be construed as constituting a partnership, joint venture association, or other affiliation or like relationship between parties that would impose liability on one party for the act or failure to act of the other party. Neither party shall have any authority, and neither party shall represent that it has authority, to assume or create any obligation, express or implied, on behalf of the other party, except as provided in this Agreement.

3.2 As an independent contractor and not an employee of UM, Performer agrees to carry adequate public liability and other appropriate forms of insurance.

3.3 Performer shall maintain documentation for all charges against UM under this Agreement. The books, records and documents of Performer, insofar as they relate to work performed or money received under this Agreement, shall be maintained for a period of three (3) full years from the date of the final payment, and shall be subject to

audit, at any reasonable time and upon reasonable notice, by UM or the Comptroller of the Treasury or their duly appointed representatives.

3.4 Performer's equipment shall remain under complete supervision, direction and control of Performer. UM assumes no responsibility for the loss of, theft of, or damage to any property of Performer or its representatives that occurs on UM property or in UM facilities.

3.5 Performer shall notify UM at least _____ days prior to the event of the expected time of arrival of Performer's materials and/or crews. In the event of late arrival of materials and/or crews Performer shall reimburse UM for any out-of-pocket expenses for stagehands and other expenses incurred on account of such delay.

3.6 Whatever equipment UM provides under the terms of this Agreement shall remain under complete supervision, direction and control of UM. Performer certifies that any equipment requested by Performer and provided by UM in accordance with this Agreement for usage at the performance will be utilized at said performance. Any equipment not utilized by Performer shall be paid for by Performer and any such costs will be deducted from the agreed upon fee prior to payment by UM.

3.7 If Performer is an individual and is not a United States citizen, Performer acknowledges that he/she must still have a social security number to receive the compensation provided herein. Further, the alien Performer understands that his/her alien status (resident alien/nonresident alien) can directly affect whether or not taxes are withheld. Therefore, Performer additionally certifies that the appropriate Internal Revenue Service form concerning tax withholding status has been filed with University Accounting Office.

3.8 In the event compensation is provided to Performer for travel, meals, lodging or the like, such compensation shall be subject to the maximum amounts and limitations specified in the UM Travel Procedures, as they may be from time to time amended, and must be agreed to by the Parties in writing.

3.9 If any portion of the UM property, facilities, and/or equipment is damaged by any act, omission, or negligence of Performer, its agents, employees, or contractors, Performer shall pay to UM upon demand a sum equal to the cost of repairing the damages and restoring the property, facility, and/or equipment to the condition existing prior to such damage. Any payments to Performer or promoting agencies shall be held until such payment is received by UM.

3.10 Performer's performance shall be subject to monitoring and evaluation by UM and/or other appropriate parties. UM reserves the right to interrupt or terminate the entertainment, or any portion therefore, if during the entertainment performance, UM determines, in its sole discretion, that such action is warranted to maintain the health, security, and welfare of persons attending the performance, and/or to ensure compliance with Federal, State or local laws or regulations or UM policies. Such action, in and of itself, shall not affect UM's obligation for payment under the terms of this Agreement; provided, however that payment may be withheld if such interruption or termination is necessary due to failure by Performer to observe Federal, State or local laws and/or UM policies.

3.11 In the event that either party is unable to perform its obligations under this Agreement as a result of Force Majeure, neither party shall be liable to the other for direct or consequential damages resulting from lack of performance. Force Majeure shall mean fires, earthquakes, floods, acts of God, strikes, work stoppages or other labor disturbances, riots or civil commotions, acts of terrorism or other hostilities, litigation, war or any other act of any foreign nation, power of government or governmental agency or authority, or any other cause like or unlike any cause mentioned above which is beyond the control of either party. In the event of such non-performance for any reasons stated herein, the monies, if any, advanced to Performer hereunder, shall be returned.

3.12 If Performer fails to fulfill Performer’s obligations under this Agreement for any reason, including but not limited to sickness, injury, or delay of transportation, or if Performer violates any of the terms of this Agreement, UM shall have the right to immediately terminate this Agreement and withhold payments in excess of fair compensation for any satisfactory authorized work completed as of the date of termination. Notwithstanding the above, Performer shall not be relieved of liability to UM for damages sustained by virtue of any breach of this Agreement by Performer. In no event shall UM be liable for any indirect, consequential, incidental, lost profits or like expectancy damages of any kind under the terms of this Agreement.

3.13 The performance may be canceled at the mutual written agreement of the Parties. In addition, either party may cancel this Agreement with _____ days written notice without penalty. In that event of cancellation under this Paragraph 3.13, Performer shall be entitled to receive just and equitable compensation for any satisfactory authorized work completed as of the date of termination. In no event shall UM be liable for any indirect, consequential, incidental, lost profits or like expectancy damages of any kind under the terms of this Agreement.

3.14 Notice(s) shall be directed to the appropriate parties at the following addresses:

University	Performer
Name:	Name:
Department:	
Street:	Address:
City, State, Zip:	City, State, Zip:
Phone:	Phone:
Email:	Email:

3.15 UM shall not purchase or provide alcoholic beverages or tobacco products for Performer or Performer’s employees, agents, or guests, regardless of request. UM is a Limited Tobacco-Use Campus. The use of tobacco is prohibited on all UM campuses, except in certain locations. Performer and Performer’s employees, agents, and guests are expected to abide by the UM policy. The policy, HR5066, may

be found

here: <https://memphis.policytech.com/dotNet/documents/?docid=560&public=true>.

3.16 Performer shall, at its own expense, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances and all other governmental requirements. Failure to comply with this Section shall result in immediate termination of this Agreement by UM.

If at any time from the date of this Agreement to the end of the Performance, Performer is involved in any situation or occurrence which subjects Performer to public scandal, disrepute, widespread contempt, public ridicule, or which is widely deemed by members of the general public, to embarrass, offend, insult or denigrate individuals or groups, or that will tend to shock, insult or offend the community or public morals or decency or prejudice UM in general, then UM shall have the right, in its sole discretion, to take any action it deems appropriate, including, but limited to, terminating this Agreement.

3.17 UM has the right to tape and/or record the performance; however, such tapes or recordings shall only be used for archival and/or educational purposes for the benefit of UM's students, faculty, and staff. If UM elects to record the performance, it may supply a copy to the Performer upon the Performer's written request.

3.18 UM does not presently have a SESAC, Inc., music license; therefore, Performer agrees that it or any person it may provide will not perform copyrighted music or work for which SESAC, Inc., is the performance rights licensing agency without providing UM with prior written consent of SESAC, Inc.

Performer assures that all necessary copyright royalty licenses have been obtained from ASCAP, BMI, SESAC and any other performing rights organization or the copyright owner for the performance to be presented under the terms of this Agreement. In that regard, Performer assumes full responsibility for payment of any and all copyright royalties due for the entertainment performance hereunder.

Performer further agrees to assume full responsibility and to indemnify, hold harmless and defend UM and the State of Tennessee from and against any and all claims, demands, or suits which may be brought for copyright infringement allegedly arising in course of the performance presented under the terms of this Agreement. Such indemnification shall extend to both criminal and civil actions and shall include any and all losses, liabilities, damages, penalties, court costs or attorney's fees incurred by the UM as a result of such infringement.

UM shall promptly notify Performer of any such claim against UM or the State of Tennessee. The settlement or compromise of any claim brought against UM or the State of Tennessee shall be subject to the approval of the appropriate State officials, as required by T.C.A. § 20-13-103.

3.19 Souvenirs, programs, T-shirts, jackets or other apparel, photos or other any other merchandise or concessions may only be sold by Performer if mutually agreed in writing by Performer and UM.

3.20 UM shall have complete control over advertising, billing and promotion of performance. Performer hereby grants UM the right to use Performer's name, recorded

voice, biographical materials, pictures, and likeness for advertising, promotion and publicity purposes in connection with the performance. Performer shall not authorize or release any advertising or promotional materials relating to the performance without the advance written consent of UM.

3.21 Performer warrants that no part of the total Agreement amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to Performer in connection with any work contemplated or performed relative to this Agreement.

The Performer acknowledges, understands, and agrees that this Agreement shall be null and void if the Performer is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Performer is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

3.22 T.C.A. § 12-3-309 prohibits State entities from contracting to acquire goods or services from any person who knowingly utilizes the service of illegal immigrants in the performance of the contract and by signing this Agreement, the Performer attests, certifies, warrants, and assures that the Performer shall not knowingly utilize the services of illegal immigrants in the performance of this Agreement.

3.23 The parties agree to comply with Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 11,246 of the Americans with Disabilities Act of 1990, and the related regulations to each. The parties mutually agree that in the engagement of this Agreement they will not discriminate or permit discrimination against any person or group of persons on the basis of race, religion, creed, color, sex, age, disability, veteran status, or national origin, or in any other manner prohibited by the laws of the United States or the State of Tennessee.

3.24 This Agreement may be modified only with written approval of Performer and UM. Any Riders and/or Addendums/Amendments, including but not limited to, music addendums, performance riders, professional services agreements, and/or performance contracts, shall only become an integral part of this Agreement and incorporated herein, if attached hereto and signed by both UM and Performer.

3.25 The appearance by Performer is for the program set forth herein and for no other program or activity. Performer shall not contract with a third party for a performance that will conflict with the Performance contained herein. Performer shall not contract to perform at another venue located within one hundred (100) miles of UM within thirty (30) days of the date of the Performance, unless UM consents in writing to such additional performance.

3.26 This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Tennessee as the site for performance of this Agreement without regard to its conflict of laws.

Any and all claims against the State of Tennessee, including UM or its employees, for injury, damage, expenses or attorney's fees shall be heard and determined by the

Tennessee Claims Commission in the manner prescribed by law. Damages recoverable against UM shall be limited expressly to claims paid by the Claims Commission pursuant to T.C.A. § 9-8-301 et seq.

3.27 Performer shall indemnify, hold harmless, and defend UM, its trustees, officers, faculty, students, agents, and employees against any and all damages, suits, actions, claims, liabilities, losses, judgments, costs, and expenses arising out of or relating to (i) any personal or bodily injury (including death) or property damage caused by Performer's negligent, willful, or unlawful acts or omissions or breach of this Agreement or (ii) any third-party claims relating to the event, advertising, product liability claims, or infringement of any trademark, copyright, patent, trade secrets or nonproprietary right of a third party (including, without limitation, defamation, libel, or violation of privacy or publicity) excluding damages, suits, actions, claims, liabilities, losses, judgments, costs, and expenses arising out of or relating to UM's own negligent acts or omissions, willful misconduct, breach, or infringement.

3.28 Performer shall not assign or subcontract any of its obligations under this Agreement without the advance written consent of UM. Any unauthorized assignment shall be void. UM shall have the right, but not the obligation to terminate this Agreement, without waiver of any other right or remedy, upon notice of Performer's assignment in violation of this Section.

3.29 This Agreement is subject to the below listed Rider(s) and/or Addendum(s) which are attached hereto and incorporated by reference into this Agreement, the terms of which have been agreed to by and between the parties:

1. Attestation Re Personnel used in Contract Performance
2. _____
3. _____

3.30 If any provision of this Agreement shall be determined to be contrary to law, void, invalid, unenforceable, or illegal for any reason by a body having jurisdiction over the parties, it shall be ineffective only to the extent of such determination and the validity and enforceability of all the remaining provisions shall not be affected thereby.

3.31 The persons signing this Agreement on behalf of UM and Performer represent and warrant that they have the legal authority to sign this Agreement and to obligate Performer and UM to the covenants and conditions of this Agreement.

3.32 This Agreement prevails in the event of conflict with Performer's rider, contract, or addendum. To the extent that any of the terms and conditions contained in artist's rider, contract, or any other addendums provided by Artist, or his/her agent, contradict any of the terms of this Agreement, UM expressly rejects such contradictory or additional terms.

3.33 This Agreement, including any addendums attached hereto and agreed to by the Parties, constitutes the entire understanding between the parties and all other prior negotiations, representations, and understandings are superseded hereby. Neither

THE UNIVERSITY OF
MEMPHIS[®]

party was induced to enter into this Agreement by any statements or representations not contained in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate counterpart original by their duly authorized representations this _____ day of _____, _____.

PERFORMER

UNIVERSITY OF MEMPHIS

By: _____

By: _____

Print Name

Nick A. Pappas

Print Name

_ Print Title

Exec. Director of Procurement & Contract Services

Print Title

_ Date

Date

ATTACHMENT 1

University of Memphis

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

CONTRACT NUMBER: (University will insert number)	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

**SIGNATURE &
DATE:**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.