

**WEBER STATE UNIVERSITY (“WSU”) AGREEMENT
FOR PERFORMANCE/EVENT**

1. PARTIES: This Performance/Event Agreement (hereinafter “Agreement”) is between Weber State University, a public institution of higher education, and a body politic and corporate of the State of Utah located at 3850 Dixon Parkway Department 1013, Ogden UT 84408-1013 (hereinafter “WSU”), and the following independent contractor [redacted] located at [redacted] (hereinafter “Contractor”). WSU and Contractor are sometimes individually referred to herein and in Attachment A as a “Party” or collectively as the “Parties.”

2. WITNESSETH:

WHEREAS, WSU desires to receive certain services and goods from Contractor for an Event;

WHEREAS, Contractor desires to provide to WSU the services and goods for the Event;

NOW THEREFORE, for and in consideration of the covenants, conditions and undertakings hereinafter set forth, the parties hereby agree as follows:

3. DEFINITIONS:

3.1 “Agreement” means the following: 1) Attachment A: WSU Standard Terms & Conditions for Performance/Event; 2) Weber State University (“WSU”) Agreement For Performance/Event; 3) any other attachment mutually agreed upon and incorporated herein by reference in Section 9.

3.2 “Contractor” means the individual or entity providing the services and/or goods for the Event and/or Performance. The term “Contractor” shall include its agents, officers, employees, partners, subcontractors and Presenter. Contractor is fully liable for its agents, officers, employees, partners, subcontractors and Presenter; and said agents, officers, employees, partners, subcontractors, and Presenter are fully obligated to the same terms and conditions as the Contractor.

3.3 “Event” means herein and within Attachment A the services and goods provided to set up, stage, appear, perform, present and/or take down.

3.4 “Presenter” means the person or persons responsible for appearing, performing, and/or presenting at the Event.

4. GENERAL PURPOSE OF AGREEMENT: The general purpose of this Agreement is:

5. PERFORMANCE DATE(S): [redacted]

6. OBLIGATIONS OF WSU:

- a. Payment. WSU agrees to pay (name to appear on the check) [redacted] the amount of \$[redacted] by bank check within fifteen (15) days after the completion of the Event. Any payment adjustments due will be made by bank check within thirty (30) days following the engagement. WSU will provide a Purchase Order number to verify that payment shall be made. No deposits or advance payments can be made prior to the Event due to restrictions on the expenditure of WSU funds. In the event this Agreement is not signed and returned at a minimum of one week before the event, payment to the Contractor may be paid thirty (30) days after the Event.

b.
7. OBLIGATIONS OF CONTRACTOR:

a.

b.

8. SPECIAL CONDITIONS: The following special conditions apply to Agreement. Any conflict between a special condition and the Attachments referred to below will be resolved in favor of the special condition.

a.

9. ATTACHMENTS: The following attachments are attached hereto and made part of this Agreement. Any conflicts between Attachment A and other Attachments, if any, will be resolved in favor of Attachment A.

a. Attachment A: WSU Standard Terms & Conditions for Performance/Event

b.

10. JOINT AND SEVREAL LIABILITY: Any loss, damage, injury, liability, suits, claims and proceedings arising hereunder the Agreement are joint and several for the Contractor, its agents, officers, employees, partners, subcontractors and Presenter.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives; and Contractor acknowledges and agrees that for a person to be a duly authorized representative of WSU with executory power, said person shall be authorized according to the WSU Policy and Procedure Manual (PPM) 5-4d (see http://www.weber.edu/ppm/Policies/5-4d_Contracts.html), and WSU reserves the right, at its sole discretion, to ratify or reject an Agreement when a person acts outside of the scope of their authority.

“Licensor”

“University”

[NAME]

WEBER STATE UNIVERSITY

By _____
(Signature)

By _____
(Signature)

Name _____
(Please Print)

Name _____

Title _____

Title _____

Date _____

Date _____

ATTACHMENT A
WSU STANDARD TERMS & CONDITIONS
FOR PERFORMANCE/EVENT

1. **EVENT SET UP.** All persons or props included under this Agreement for the Event to take place are required to be at the designated Event site at the earlier of either (i) no later than thirty (30) minutes before the scheduled start time or (ii) in enough time prior to the beginning of the Event to be ready to begin on time and fulfill the Agreement as scheduled.
2. **PERFORMANCE.** Contractor agrees that timing is a material element of performance of the Agreement. In the event that (i) a delay of more than fifteen (15) minutes occurs past the scheduled starting time for any reason other than those stated in Sections 3 and/or 4 or (ii) Presenter fails to appear, perform or present for any reason other than those stated in Sections 3 and/or 4, Contractor acknowledges and agrees this is a material breach of the Agreement and agrees to reimburse WSU for any and all actual, direct, and/or indirect costs incurred by WSU arising out of this breach. All such costs shall be presented in a statement to the Contractor no later than thirty (30) days after the date of the Event with reimbursement to WSU to be sent no later than ten (10) days following receipt of such statement by the Contractor. Nothing herein shall be construed as prohibiting WSU from pursuing any other remedies at law or in equity which it may have with respect to any breach or threatened breach.
3. **FORCE MAJUERE.** Neither WSU nor the Contractor shall be held liable and do hereby release one another from any and all claims, demands, agreements, and liabilities whatsoever that each may have had for failure to appear if such failure is caused by or is due to serious accident, natural or human-made catastrophe (riots, strikes, etc.), acts of God or any other similar condition beyond the personal control of either Party. If either Party is unable to perform any of its obligations under this Agreement due to events beyond its reasonable control, WSU shall have the right to reschedule the Event at a time mutually agreed upon with the Contractor. Contractor will not be compensated for any expenses incurred for the original date of performance.
4. **NON-PERFORMANCE CAUSED BY WSU.** In the event that Presenter does not appear for reasons controlled by WSU other than material breach of this Agreement or Sections 3, Contractor agrees that, at the sole discretion of WSU, the Parties may reschedule the Event or WSU will provide payment.
5. **EVENT TAKE DOWN.** Contractor shall be responsible for all set up, tear down, and supervision of equipment provided by Contractor for the Event. Contractor will provide appropriate amount of staff and supervision for all activities to ensure the safety of all individuals and the proper functioning of equipment.
6. **SAFETY PRECAUTIONS.** Contractor will use all reasonable and appropriate safety precautions in the performance of this Agreement and any additional safety requirements required by WSU. If Contractor fails to provide such safety precautions, Contractor acknowledges and agrees that Contractor committed a material breach of the Agreement and WSU may unilaterally terminate the performance and this Agreement without reimbursing the Contractor for actual expenses.
7. **PROPERTY ACCESS.** WSU grants Contractor, as applicable, a limited nontransferable license to access WSU property only to the extent necessary to provide the goods and services for the Event under this Agreement. Contractor agrees to not exceed the scope of this license and to abide by applicable WSU policies, which are available online at <http://www.weber.edu/ppm/>, and govern any activity involving access to WSU property including, but not limited to policies related to drugs, alcohol, discrimination, harassment, and technology usage, violation of which may be deemed a material breach of this Agreement. With no penalties, additional fees, risk of breach of the Agreement, or without assuming any duty of care, WSU may revoke this license without notice and immediately escort off Contractor and/or eliminate access to WSU property and/or terminate the Agreement for cause when the Contractor: (i) exceeds the scope of the license of this Section; (ii) violates any applicable WSU policy; (iii) violates any federal or state law; (iv) materially breaches this Agreement; (v) or creates risk of damage to persons or WSU property. Contractor must include this provision in every subcontract or purchase order relating to the Event to ensure that its subcontractors are bound by this provision.
8. **NONAPPROPRIATION OF FUNDS.** The Contractor acknowledges WSU cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to WSU is reduced due to an order by the Legislature, Governor, Board of Regents, or is required by State law, or if federal funding (when applicable) is not provided, WSU may terminate this Agreement or proportionately reduce the services and purchase obligations and the amount due from WSU upon 30 days written notice. In the case that funds are not appropriated or are reduced, WSU

will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and WSU will not be liable for any future commitments, penalties, or liquidated damages.

9. **CONFLICT OF INTEREST.** Contractor represents that none of its officers or employees are officers or employees of Weber State University unless disclosure regarding such has been made in accordance with UCA Section 67-16-8, 1953, as amended.
10. **PUBLIC INFORMATION.** WSU is a governmental entity and thus subject to the Government Records Access and Management Act of the Utah Code, Section 63G-2-101 et seq., 1953, as may be amended (“GRAMA”). Pursuant to GRAMA, certain records within WSU’s possession or control (including the Agreement) may be subject to public disclosure. WSU hereby informs Contractor that any person or entity that provides WSU with records that such person or entity believes should be protected from disclosure for business reasons must, pursuant to Section 63G-2-309 of GRAMA, provide to WSU, with the record, a written claim of business confidentiality and a concise statement of reasons supporting such claim. Notwithstanding any provision to the contrary in the Agreement, WSU may disclose any information or record to the extent required by GRAMA or otherwise required by law, and to WSU’s attorneys, accountants, consultants on a need-to-know basis.
11. **PROCUREMENT ETHICS.** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to WSU is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of WSU, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6-1002, Utah Code Annotated, 1953, as amended).
12. **TRAVEL:** When applicable, reimbursement for travel costs shall be limited to amounts authorized by the State of Utah and WSU for airfare and per diem rates for employee travel.
13. **COPYRIGHT LICENSES AND UNION FEES.** If applicable, any royalty fees, BMI, ASCAP, SESAC, AGVA, or union dues which may be required in addition to the compensation for services agreed upon are the responsibility of the Contractor. Contractor warrants and represents that it has all licenses and rights necessary to perform the Event. Should any infringement action arise out of the performance of the Event, Contractor further warrants and represents that it shall solely bear any costs associated with any infringement action and shall indemnify WSU from any said infringement action.
14. **REPRODUCTION AND DISTRIBUTION RIGHTS.** Written permission of WSU shall be required for any filming, broadcasting, recording or reproduction by radio, television, or any other device of the Event by the Contractor, agent, or any other person. Contractor authorizes and grants WSU all rights necessary for WSU to record the Event and to make it available for download to students and the public through internet podcasts and other means of viewing, and to use such recordings in other formats and contexts in connection with education of students and the public by the University, including a non-exclusive, perpetual, royalty free license for recording, copying, creation of derivative works, public performance, public display and distribution of such recordings.
15. **RELEASE AND ASSUMPTION OF RISK FORM.** Contractor shall require each participant to sign the attached release and assumption of risk form, ATTACHMENT B and shall provide all forms to WSU immediately following the Event.
16. **USE OF NAME.** Presenter authorizes WSU the right to use Presenter’s name, biography, photograph(s) and likeness for advertising, press, and promotional purposes by any means or medium.
17. **UNIVERSITY MARKS, LOGOS, NAME.** Contractor must obtain prior written approval from WSU for any use of WSU’s name, logos, or marks in advertising, testimonials, or other promotional materials.
18. **APPROPRIATE MATERIAL.** The Contractor acknowledges that the Event will occur in Davis County and/or Weber County, Utah, minors may be in the audience to the Event, and the material shown shall be appropriate for all audiences according to the contemporary community standards of Davis County and Weber County, Utah.
19. **RULES, REGULATIONS, AND LAWS.** Contractor, employees, agents, and volunteers of the Contractor shall obey all rules and regulations of WSU and all laws, federal or state, while on WSU property.

20. **DRUGS AND ALCOHOL.** The use of alcohol and controlled substance on WSU property is restricted. Use of alcohol or controlled substance by Contractor, employees, agents, volunteers, or participants will not be allowed during the Event or while such individuals are present on WSU property.
21. **INDEPENDENT CONTRACTORS.** Except for the contractual obligations set forth herein, WSU does not accept any responsibility for the supervision, direction, or control of the Event or the manner, means and/or details by which said Contractor carries out the terms of this agreement. It is understood that the Contractor signs this agreement in the capacity of an independent contractor and not as an employee of WSU and the Contractor agrees to assume all liabilities normally accruing thereto.
22. **LIABILITY AND INDEMNIFICATION.** Contractor fully understands and agrees that WSU is not in any way responsible for any loss or damages suffered by Contractor in the course of this Event. Contractor specifically waives any claim against WSU, its boards, officials, officers, employees, agents, and volunteers, and agrees to defend, indemnify, and hold harmless such from any and all lawsuits, claims, damages, liabilities, cost, and expenses, including attorney's fees, and for any such liability which is caused in whole or in part by Contractor's acts, omissions, or negligence of Contractor, Contractor's agents, volunteers, employees, or any person participating in Event. This includes claims of copyright violation.
23. **INSURANCE.** Contractor at its sole cost and expense, shall secure and maintain adequate insurance coverage to protect WSU from any losses or claims which may arise out of the Contractor's services at the Event, with limits of at least \$1,000,000 per occurrence, \$2,000,000 general aggregated. This certificate must be provided at least 10 days prior to the Event and include WSU as an additional insured. All Events must be approved by WSU risk management.
24. **ASSIGNMENT.** Contractor shall not assign or transfer services to be performed under this Agreement without the prior written approval of WSU.
25. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Utah which shall be the forum for any lawsuit arising from or incident to this Agreement. Parties consent to such exclusive jurisdiction.
26. **SEVERABILITY.** If any part of this Agreement is held to be illegal, void, or unenforceable for any reason, such holding shall not affect the validity and enforceability of any other part of this Agreement. The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
27. **CONFLICT OF TERMS.** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the Agreement terms and conditions, the order of precedence shall be: 1) Special Conditions in the Weber State University (WSU) Agreement For Performance/Event; 2) Attachment A: WSU Standard Terms & Conditions for Performance/Event; 3) WSU Contract Signature Page(s); 4) WSU Additional Terms & Conditions, if any; 4) Contractor's proposal/bid response (incorporated into Contract by reference); and, 5) Contractor Terms & Conditions, if any.
28. **ENTIRE AGREEMENT.** This Agreement including all Attachments, and documents incorporated by reference hereunder, and the related WSU solicitation (if any) constitutes the entire agreement between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. Each Party acknowledges that no representation, inducement, promise or agreement has been made, orally or otherwise, by any other Party, or anyone acting on behalf of any other Party, unless such representation, inducement, promise or agreement is embodied in this Agreement expressly or by incorporation. This Agreement may only be modified or amended if the amendment is made in writing and is signed by both Parties. It is specifically understood and agreed by the Parties that WSU may, at its discretion, attempt to fulfill the requirements of any rider or other terms and conditions submitted by Contractor to WSU, but that such other rider or terms and conditions is not part of this Agreement and is not binding upon WSU unless and until both parties agree in writing.