

Instructions for Completing Performance Agreement

Performance services can be obtained by departments without going through Procurement & Contracting Services using the attached form and following the conditions and instructions below. This agreement may not be used if the performance has already occurred. In that case, please submit a confirming order justification form and requisition to Procurement & Contracting Services.

Allowable use:

- This agreement **may only** be used for a performer in one of these categories: magicians, clowns, actors, comedians, dancers, musicians, DJs, and singers.
- This agreement **may not** be used for any of the following, which must come through Business & Revenue Contracts due to liability issues:
 - sound technician services
 - performances involving fire or other incendiary device
 - performances involving acrobatic devices, including high-wire, stilts, ropes, etc.
 - performances involving connection of performer equipment to UC Davis owned sound systems
- This agreement **must** be signed by the performer, and **is not** appropriate for signature by a performer's agent
- This agreement may not be modified in any way. If the performer requests modifications, please submit a KFS Requisition for review by Business & Revenue Contracts, with a copy of the performer's proposed modifications attached. (Note: In order for it to route to Business & Revenue Contracts for review, either select a restricted performance commodity code or mark the "Restricted" indicator on the item line.)

If you are unsure whether the performer service you are procuring is allowable on this form, contact the Business & Revenue Contracts group for guidance (contact information below).

Procedures:

1. Contact the performer and make your arrangements
2. Complete the "[Independent Contractor \(Individual\) Pre-Hire Information Form](#)" if contracting with an individual.
 - a. Please respond to each of the IRS classification factors as accurately as possible. Note: Checking one or more boxes in the "Employee" category will not preclude an agreement.
 - b. If the contractor is a current or former UC Davis employee, please contact a member of the Business & Revenue Contracts team to discuss prior to completing the Performance Agreement form.
3. Complete the Performance Agreement form
 - a. A complete description of the performance must be included in section one of the Performance Agreement. It is not sufficient to state that a musical or dance performance will be provided. Remember, the performer cannot be held to any requirements not specified in the agreement. While not a comprehensive list, some details to consider including are:

- i. What kind of dance, musical performance, etc., will be provided?
 - ii. What instrument is to be played?
 - iii. What genre of music will be played?
 - iv. Are any specific songs to be played or scenes/plays to be performed?
4. Obtain the signature of the performer on the form
5. Complete a Kuali Requisition (REQS) document, using commodity code **8215PERF**. You must include the dates of the performance(s) and a complete description of the performance on the Requisition.
6. Scan the signed Performance Agreement form and attach to your Requisition and, if applicable, the "[Independent Contractor \(Individual\) Pre-Hire Information Form](#)" and attach to your Requisition.
 - a. **The vendor name (performer) on the signed agreement and the KFS Requisition (REQS) must match.**
7. Provide the performer with a copy of the completed Purchase Order (PO) generated by your Requisition

Note: If your Requisition is for \$5000 or more, it will continue to come to Procurement & Contracting Services, instead of going straight to a PO after all approvals.

Contact information for the Business & Revenue Contracts group is available [on our website](#).

UC Davis Agreement # _____

PERFORMANCE AGREEMENT

THIS PERFORMANCE AGREEMENT is entered into on the date last signed below by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, on behalf of its Davis campus _____ hereinafter known as University or UC and _____ hereinafter known as Performer or Contractor.

In consideration of the following terms, it is agreed that:

1. Performer shall provide _____
2. Date/Time/Arrival. Performer shall perform on _____, _____ between the hours of ____:____ and ____:____ at _____. Performer should allow sufficient time for set-up and preparation and must be ready to perform at the time specified; failure to do so may result in cancellation of performance or reduction of Performer's fee, at University's sole option. Should Performer's appearance occur in conjunction with other acts, except as otherwise agreed, order of appearance shall be determined by University. Department rehearsal requirements including date, time and location, if applicable:

3. Payment. University shall pay Performer \$_____, less applicable state and federal taxes, including state income tax subject to withholding pursuant to California Revenue and Taxation Code sections 18661-18677. University shall make all reasonable efforts to pay Performer immediately following performance.
 - 3.1 Authorized Signature. The person signing this agreement warrants that he/she has full authority to bind Performer, and any other person affected thereby, to this agreement. University shall not be liable for payment to any other person performing under this agreement, or to any third party, even if University is advised of the possibility of a claim on behalf of such person.
 - 3.2 Questions Regarding Performance. Questions regarding Performer's obligations or payment should be addressed to: _____, by phone at (____) ____ - ____, or by e-mail at _____@ucdavis.edu.
4. Fair Wage/Fair Work. If the Performance will be performed at one or more UC Locations, do not involve furnishing goods, and are not subject to extramural awards containing sponsor-mandated terms and conditions, Contractor warrants that it is in compliance with applicable federal, state and local working conditions requirements, including but not limited to those set forth in sections 4.1, and 12 herein, and that Contractor pays its employees performing the Performance no less than the UC Fair Wage. Contractor agrees UC may conduct such UC Fair Wage/Fair Work interim compliance audits as UC reasonably requests, as determined in UC's sole discretion. Contractor agrees to post UC Fair Wage/Fair Work notices, in the form supplied by UC, in public areas (such as break rooms and lunch rooms) frequented by Contractor employees who perform Performance. For Performances that exceed \$100,000 annually and are not subject to prevailing wage requirements, Contractor will, a) at Contractor's expense, provide an annual independent audit performed by Contractor's independent auditor or independent internal audit department in compliance with UC's required audit standards and procedures (<http://insidepublicaccounting.com/newsletters/ipa-100-and-ipa-200/>), concerning Contractor's compliance with this provision, and b) ensure that in the case of a UC interim audit, its auditor makes available to UC its UC Fair Wage/Fair Work work papers for the most recently audited

time period. Contractor agrees to provide UC with a UC Fair Wage/Fair Work certification annually, in a form acceptable to UC, no later than ninety days after each one year anniversary of the agreement's effective date, for the twelve months immediately preceding the anniversary date.

4.1 Premises where Performance are Provided.

A. Cleaning Up. Contractor will at all times keep UC premises where the Performance are performed and adjoining premises free from accumulations of waste material or rubbish caused by its employees or work of any of its sub-suppliers, and, at the completion of the Performance; will remove all rubbish from and about the premises and all its tools, scaffolding, and surplus materials, and will leave the premises "broom clean" or its equivalent, unless more exactly specified. In case of dispute between Contractor and its sub-suppliers as to responsibility for the removal of the rubbish, or if it is not promptly removed, UC may remove the rubbish and charge the cost to Contractor.

B. Environmental, Safety, Health and Fire Protection. Contractor will take all reasonable precautions in providing the Performance to protect the health and safety of UC employees and members of the public and to minimize danger from all hazards to life and property, and will comply with all applicable environmental protection, health, safety, and fire protection regulations and requirements (including reporting requirements). In the event that Contractor fails to comply with such regulations and requirements, UC may, without prejudice to any other legal or contractual rights of UC, issue an order stopping all or any part of the performance of the Performance; thereafter a start order for resumption of performing the Performance may be issued at UC's discretion. Contractor will not be entitled to make a claim for extension of time or for compensation or damages by reason of or in connection with such stoppage. Contractor will have sole responsibility for the safety of all persons employed by Contractor and its sub-suppliers on UC premises, or any other person who enters upon UC premises for reasons relating to the Agreement. Contractor will at all times maintain good order among its employees and all other persons who come onto UC's premises at Contractor's request and will not engage any unfit or unskilled person to provide the Performance. Contractor will confine its employees and all other persons who come onto UC's premises at Contractor's request or for reasons relating to the Agreement and its equipment to that portion of UC's premises where the Performance are to be performed or to roads leading to and from such work sites, and to any other area which UC may permit Contractor to use. Contractor will take all reasonable measures and precautions at all times to prevent injuries to or the death of any of its employees or any other person who enters upon UC premises at Contractor's request. Such measures and precautions will include, but will not be limited to, all safeguards and warnings necessary to protect workers and others against any conditions on the premises that could be dangerous and to prevent accidents of any kind whenever the Performance are being performed in proximity to any moving or operating machinery, equipment or facilities, whether such machinery, equipment or facilities are the property of or are being operated by, Contractor, its sub-suppliers, UC or other persons. To the extent compliance is required, Contractor will comply with all relevant UC safety rules and regulations when on UC premises.

5. Indemnification. The parties shall defend, indemnify, and hold one another, their officers, agents, or employees, harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or

claims for injury or damages of one party are caused by or results from the negligent or intentional acts or omissions of the indemnifying party, its officers, agents or employees.

6. Force Majeure. Neither University nor Performer shall be liable for damages suffered by the other party because of University's or Performer's failure to perform if failure is due to any cause beyond that party's control.
7. Notice. Notices shall be directed to the appropriate parties at the following addresses:

7.1 Regarding Performance. Correspondence or inquiries regarding performance or payment should be directed to the following addresses:

UNIVERSITY	PERFORMER
Name: _____	Name: _____
Department: _____	Mailing Address: _____
Street: _____	
City, State Zip: _____	City, State, Zip: _____
Telephone: (____)____-_____	Telephone: (____)____-_____
E-mail: _____	E-mail: _____

8. Federal Exclusion Warranty. Performer warrants that he/she is not excluded from participation in any governmental sponsored program, including, without limitation, the Medicare, Medicaid, or Champus programs (<http://exclusions.oig.hhs.gov/search.html>) and the Federal Procurement and Non-procurement Programs (<https://www.sam.gov/index.html/##11>). This agreement shall be subject to immediate termination in the event that Performer is excluded from participation in any federal healthcare or procurement program.
9. Relationship of Parties. The parties to this agreement shall be and remain at all times independent contractors, neither being the employee, agent, representative, or sponsor of the other in their relationship under this agreement.
10. Assignment. Performer may not assign or transfer this agreement, or any interest or claim, without the prior written approval of University. The withholding or granting of such approval is totally discretionary with University. If University consents to such assignment or transfer, the terms and conditions of this agreement shall be binding upon any assignee or transferee.
11. Governing Law. This agreement shall be construed pursuant to California law.
12. Equal Opportunity Affirmative Action. Contractor will abide by the requirements set forth in executive orders 11246 and 11375. Where applicable, Contractor will abide by 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), incorporated by reference with this statement: **“This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.”** With respect to activities occurring in the state of California, Contractor agrees to adhere to the California Fair Employment and Housing Act. Contractor will provide UC on request a breakdown of its labor force by groups as specified by UC, and will discuss with UC its policies and practices relating to its affirmative action programs. Contractor will not maintain or provide facilities for employees at any establishment under its control that are

segregated on a basis prohibited by federal law. Separate or single-user restrooms and necessary dressing or sleeping areas must be provided, however, to ensure privacy.

13. Amendment. No change in any term or condition of this agreement shall become effective unless by amendment in writing signed by both parties.
14. Entire Agreement. This agreement constitutes the entire understanding of the parties respecting the subject matter hereof and supersedes any prior understanding or agreement between them, whether written or oral, regarding the same subject matter.

AGREED:

PERFORMER

By: _____
(authorized signature)

Print name: _____

Title: _____

Date: _____