

## ASU Terms and Conditions

### Speaker-Artist-Performer

#### Standard Terms and Conditions

These Terms and Conditions (T&Cs) apply to Speaker, Artist and Performer Agreements (SAP Form) issued by the Arizona Board of Regents for and on behalf of Arizona State University (ASU) to a speaker, performer or artist (Speaker) for providing services (the Presentation) to ASU at an event (the Event). These T&Cs together with the SAP Form, any other written agreement signed by both parties, and any other documents incorporated by reference therein or herein will constitute the Agreement. Any terms not defined in these T&Cs will have the meanings set forth in the Agreement.

1. Acceptance. ASU may cancel the Agreement at any time prior to acceptance by Speaker. Speaker accepts all of the Agreement's terms and conditions, including these T&Cs, without qualification, upon the sooner of the following: 1) signing the SAP Form; 2) any other written acceptance by Speaker; or 3) beginning the performance of the Presentation. Any term or condition in any invoice, offer, or other document issued by Supplier that modifies, adds to, or changes these T&Cs is rejected, and will not be part of the Agreement unless agreed by ASU in writing.
2. Order of Precedence. In the event of an inconsistency or conflict between or among the provisions of the Agreement, the inconsistency or conflict will be resolved by giving precedence in the following order: i) the SAP Form; ii) these T&Cs; and iii) any other agreement or document signed by authorized signatories of both the parties.
3. Modifications. Any modification to the Agreement, including changes to Presentation, Event, price, terms of payment, etc. must be in an written change order or amendment signed by both parties.
4. Speaker Warranty. Speaker warrants that at all times during the Event, Speaker will personally provide Speaker's best professional efforts. Speakers' professional credentials are such that Speaker can provide the Presentation in a knowledgeable and professional manner.
5. Press Materials. Speaker will timely supply all press/promotion material requested by ASU.
6. Compliance with Law. Speaker will comply with all applicable ASU, City, County, State, and Federal laws, acts, codes, regulations and policies, including all applicable federal immigration laws and regulations.
7. Indemnity. Speaker will indemnify, defend, save and hold ASU harmless for, from, and against, any all claims, demands, suits, costs and damages (including reasonable attorneys' fees) that ASU may incur by reason of any: (a) actual or alleged infringement or violation of any copyright, or other proprietary right by Speaker; (b) claim for damages arising from Speaker's Presentation; or (c) any of Speaker's costs and liabilities arising out of the Presentation or Event, including without limitation:

travel and meal expenses; union dues; taxes; agents' commissions or other expenses or obligations; damages to Speaker's equipment or materials; compensation to third parties engaged by Speaker; compensation for lost or stolen equipment or materials; workers compensation or other insurance; and any expenses not preapproved by ASU in writing.

8. Indemnification and Liability Limitation. Because ASU is a public institution, any indemnification, liability limitation, releases, or hold harmless provisions applicable to ASU are limited as required by Arizona law, including Article 9, Sections 5 and 7 of the Arizona Constitution and Arizona Revised Statutes (ARS) §§ 35-154 and 41-621. ASU's liability under any claim for indemnification is limited to claims for property damage, personal injury, or death to the extent caused by acts or omissions of ASU.

9. Responsibility. Each party is responsible for the negligent or willful acts or omissions of its employees and agents when acting under such party's direction and supervision. ASU recognizes an obligation to pay attorneys' fees or costs only when assessed by a court of competent jurisdiction. Notwithstanding the terms of this Agreement or any other document: (i) other than for employees and agents acting under ASU's direction and supervision, ASU is not responsible for any actions of any third parties, including its students; and (ii) no person may bind ASU unless they are an authorized signatory in PUR 107, which is located at the following link:

<http://www.asu.edu/aad/manuals/pur/pur107.html>

10. Force Majeure. Neither Speaker nor ASU shall be liable to each other for failure to perform hereunder if the failure is caused by civil tumult, strike, epidemic, or any other cause beyond the reasonable control of the parties (Force Majeure). The ingestion of alcohol, opioids, illegal substances, or the like, will not be deemed an event of Force Majeure. If the Event or Presentation is cancelled due to an event of Force Majeure, the parties will make reasonable efforts to reschedule, if feasible.

11. No Assignment. Neither party may assign any rights or obligations under this Agreement without the prior written consent of the other party.

12. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. No prior or contemporaneous agreement or understanding will be effective.

13. Governing Law and Venue. This Agreement will be governed by the laws of the State of Arizona and the regulations/policies of the Arizona Board of Regents. Any contract claim or dispute arising from this Agreement is subject to Arizona Board of Regents Policy 3-809. Any proceeding arising out of or relating to this Agreement will be conducted in Maricopa County, Arizona. Speaker consents to such jurisdiction, and waives objection to venue or convenience of forum.

14. Independent Contractor. Speaker is an independent contractor and is not an employee of ASU. Neither Speaker nor any personnel of Speaker will for any purpose be considered employees or agents of ASU. Speaker is solely responsible for (i) federal self-employment taxes and all other federal and state taxes associated with such an arrangement, (ii) its actions and the actions of Speaker's personnel, and for their supervision, direction and control, payment of salary and expenses (including withholding income taxes and social security), worker's compensation, and disability benefits.

15. Recordings; Use of Name and Likeness. Both parties may record the Presentation for internal

records. No recording of the Presentation, either visual or audio, will be made by or on behalf of Speaker for the purposes of profit or significant distribution without prior written approval from ASU. ASU may require an additional payment for the privilege, and may require Speaker to sign a filming/recording agreement. ASU may record the Presentation on video tape, audio tape, film, photograph or any other medium, use Speaker's name, likeness, voice and biographical material in connection with these recordings for purposes within the ASU mission, including education and research, and exhibit or distribute the recording in whole or in part without restrictions or limitation for any educational or promotional purpose that ASU deems appropriate.

16. No Revenue Sharing. Speaker will not participate in any revenues associated with the Presentation or Event. This includes: sponsorship, ticketing, ticketing fees, ASU concessions revenues, and any other revenue streams that may be associated with the Event.

17. Non-discrimination. The parties will comply with all applicable laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. **If applicable, the parties will 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, 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, national origin, protected veteran status or disability.**

18. Conflicts of Interest. If within 3 years after the execution of this Agreement, Speaker hires or retains as an employee or agent any ASU representative who was significantly involved in negotiating, securing, drafting, or creating this Agreement, then ASU may cancel this Agreement as provided in ARS § 38-511. Notice is also given of ARS §§ 41-2517 and 41-753.

19. Arbitration in Superior Court. The parties agree to arbitrate disputes filed in Arizona Superior Court that are subject to mandatory arbitration pursuant to ARS § 12-133. ARS § 12-1518 requires this provision in all ASU agreements.

20. Records. To the extent required by ARS § 35-214, the non-ASU parties to this Agreement will retain all records relating to this Agreement. Speaker will make those records available at all reasonable times for inspection and audit by ASU or the Auditor General of Arizona during the term of this Agreement and for 5 years after the completion of this Agreement. The records will be provided at ASU in Tempe, Arizona, or another location designated by ASU on reasonable notice to Speaker.

21. Failure of Legislature to appropriate. In accordance with ARS § 35-154, if ASU's performance under this Agreement depends on the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, ASU may provide written notice of this to Speaker and cancel this Agreement without further obligation of ASU. Appropriation is a legislative act and is beyond ASU's control.

22. Weapons, Explosives, and Fireworks. ASU prohibits the use, possession, display or storage of any weapon, explosive device or fireworks on all land and buildings owned, leased, or under the control of ASU or its affiliated entities, in all ASU residential facilities (whether managed by ASU or another

entity), in all ASU vehicles, and at all ASU or ASU affiliate sponsored events and activities, except as provided in ARS § 12- 781, or unless written permission is given by ASU's Police Chief or a designated representative. Speaker will notify all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees or licensees of Speaker of this policy, and Speaker will enforce this policy against all such persons and entities. ASU's policy is at [asu.edu/aad/manuals/pdp/pdp201-05.html](http://asu.edu/aad/manuals/pdp/pdp201-05.html).

23. Privacy; Educational Records. Student educational records are protected by the U.S. Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA). Speaker will not require any ASU students or employees to waive any privacy rights (including under FERPA or the European Union's General Data Protection Regulation (GDPR)) as a condition for receipt of any educational services, and any attempt to do so will be void. Speaker will comply with FERPA and will not access or make any disclosures of student educational records to third parties without prior notice to and consent from ASU or as otherwise provided by law. If this Agreement requires or permits Speaker to access or release any student records, then, for purposes of this Agreement only, ASU designates Speaker as a "school official" for ASU under FERPA, as defined in FERPA and its implementing regulations. In addition, any access or disclosures of student educational records by Speaker or any Speaker Parties must comply with ASU's definition of legitimate educational purpose. If Speaker violates this section, Speaker will immediately notify ASU.

24. Gratuities. Speaker will not give or offer any gratuities, in the form of entertainment, gifts or otherwise, or use an agent or representative of Speaker to give or offer a gratuity, to any officer or employee of the State of Arizona with a view toward securing an agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such Agreement. If ASU determines that Speaker has violated this section, ASU may, by written notice to Speaker, cancel the Agreement. If the Agreement is canceled by ASU pursuant to this section, ASU will be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the costs incurred by Speaker in providing gratuities.

25. Authorized Presence Requirements. As required by ARS § 41-4401, ASU is prohibited from awarding a contract to any contractor or subcontractor that fails to comply with ARS § 23-214(A) (verification of employee eligibility through the e-verify program). Speaker warrants that it and its subcontractors comply fully with all applicable immigration laws, rules, and regulations that relate to their employees and their compliance with ARS § 23-214(A). A breach of this warranty will be a material breach of this Agreement that is subject to penalties up to and including termination. ASU retains the right to inspect the papers of any contractor or subcontractor employee hereunder to ensure compliance with this warranty.

26. Tobacco-Free University. ASU is tobacco-free. For details visit [asu.edu/tobaccofree](http://asu.edu/tobaccofree).

27. Title IX Obligation. Title IX protects individuals from discrimination based on sex, including sexual harassment. ASU fosters a learning and working environment built on respect and free of sexual harassment. ASU's Title IX Guidance is available online. Speaker will: (i) comply with ASU's Title IX Guidance; (ii) provide ASU's Title IX Guidance to any Speaker Parties reasonably expected to interact with ASU students or employees, in person or online; and (iii) ensure that all Speaker Parties comply with ASU's Title IX Guidance. For details visit <https://www.asu.edu/titleIX/Vendors-and-an-Environment-of-Respect-Title-IX.pdf>.

