# SERVICES AGREEMENT

THIS SERVICES AGREEMENT (hereinafter “Agreement”) is made by and between the State University of New York, an educational corporation organized and existing under the laws of the State of New York, and having its principal place of business located at H. Carl McCall SUNY Building, Albany, New York 12246 for and on behalf of State University of New York at Cortland having its principal place of business located at 22 Graham Avenue, Cortland, New York 13045 (“SUNY”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Speaker”), an individual with a mailing address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

W I T N E S S E T H:

WHEREAS, SUNY desires to engage the services of the Speaker as more particularly described in the Schedule of Performances (“SOP”) attached hereto as Exhibit B and incorporated herein by reference (“Services”); and

WHEREAS, Speaker has agreed to provide the Services.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein made, the sufficiency of which is acknowledged, the parties agree as follows:

1. **Speaker’s Services**. (a) Performances. Speaker will provide the Services described in the SOP (Exhibit B) in accordance with the terms and conditions set forth in this Agreement. Speaker will comply with all applicable SUNY regulations and policies and with all applicable laws, rules, orders, regulations, and requirements of Federal, State and municipal governments including the provisions contained in Exhibit A. If necessary, Speaker will obtain and keep in force, at its sole cost and expense, any permits or licenses which may be required by any local, state or federal governmental body.(b)Safety. Speaker will not bring to the Location any material, substance, equipment or object which is likely to endanger the life of, or cause bodily injury to, any person on the premises or which is likely to constitute a hazard to property. SUNY has the right to refuse to allow any such material, substance, equipment or object to be brought onto the premises and the further right to require its immediate removal from the premises if found**.** Speaker will not use open flames or pyrotechnic devices during the performance or otherwise on SUNY premises. (c)Travel and Housing**.** Speaker will notify SUNY of Speaker’s travel arrangements, arrival times, lodging arrangements and other pertinent information concerning the Speaker’s whereabouts a reasonable time prior to the specified first performance time. Unless otherwise specifically provided for in this Agreement, all transportation and housing arrangements will be made by Speaker, at Speaker’s expense. (d) Advertising Material. If Speaker provides SUNY with advertising material (such as cuts, press material, circulars, window cards or posters) a sufficient timeprior to the date of the Performance(s), SUNY may distribute and display such materials as SUNY deems advisable for purposes of promoting the Performance(s). Upon request, SUNY will return unused materials to Speaker following the last Performance**. [(e) Grant of License to SUNY. Speaker understands and agrees that SUNY may photograph, video record and/or audio record the Speaker and/or the Performance(s), in whole or in part, and hereby grants to SUNY an irrevocable, royalty-free right and license to make such recordings and to use, publish and otherwise display any such recordings together with Speaker’s name, image and likeness for any purpose in any form or format and via any distribution method including but not limited to SUNY’s website, electronic mail, YouTube Channel, radio station, and/or any marketing and promotional materials.**
2. **SUNY Obligations.** SUNY will provide the Speaker with the facilities, equipment, services, and accommodations more particularly described in the SOP (Exhibit B).
3. **Fees.** SUNY will pay Speaker those fees set forth in the SOP (Exhibit B) (the “Fees”). Unless specifically provided for otherwise in Exhibit B, payment to Speaker shall be made within thirty (30) after the last performance indicated on the SOP (Exhibit B) and receipt of an invoice. SUNY is not authorized to provide deposits or down payments.
4. **Term and Termination.** (a) Term. The term of this Agreement (“Term”) shall begin on\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_(“Effective Date”) and end on the date of the last performance indicated on the SOP (Exhibit B) or \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ (“Expiration Date”), whichever is later. (b) Termination. (1) By SUNY. SUNY may terminate this Agreement early, without penalty, upon prior written notice to Speaker for any reason including cause, unavailability of funds or convenience. Speaker shall not be entitled to an early termination fee equal.(2) By Speaker. Speaker may terminate this Agreement upon thirty (30) days prior written notice in the event that SUNY breaches a material provision of this Agreement and fails to cure such breach within thirty (30) days after receipt of detailed written notice of such breach. (c) Survival of Terms. The terms of this Agreement shall survive the termination or expiration of this Agreement to the extent reasonably necessary to carry out the intent of the parties as indicated therein.
5. **Failure to Perform.** Speaker will be under no liability for failure to appear or perform, and SUNY will be under no liability to provide payment, in part or in whole, in the event that Speaker is unable to provide the Services due to the physical disability or illness of the Speaker or due to acts or regulations of public authorities (including inclement weather resulting in declared State of Emergency or regional driving ban), labor difficulties, civil tumult, strike, epidemic, interruption or delay of travel services, war conditions or any other similar or dissimilar cause beyond the control of Speaker and SUNY. If Speaker fails to perform, appear or present for any reason other those specifically provided for herein, then Speaker shall reimburse SUNY for any actual, documented expenses incurred by SUNY in connection with the engagement including, but not limited to, printing of tickets, advertising, rental of location, production, promotion, catering, charges for personnel, equipment and costs incurred in notifying the public that the performance has been postponed or cancelled. An invoice for all such expenses shall be sent to Speaker with substantiation no later than thirty (30) days after the contracted date of the performance with reimbursement to SUNY to be sent no later than ten (10) business days following Speaker’s receipt of such statement.
6. **Other Performances and Outreach.** (a) No performance will be given by Speaker within a sixty (60) mile radius of the SUNY Location (“restricted zone”) either six (6) months before or six (6) months following the Performance(s) herein (“restricted period”) without the express written consent of SUNY. (b) If a performance within the restricted zone is scheduled after the restricted period, no announcement of any kind of that performance may be made until after the last Performance provided for herein. (c) Speaker will notify SUNY of all proposed outreach, marketing and promotional activity related to the Performance and all such outreach activities related materials are subject to the prior written approval of SUNY.
7. **Insurance.** (a) Speaker will obtain and maintain during the Term workers’ compensation and disability benefits coverage for the benefit of such employees providing Services as required by applicable law. (b) Speaker will obtain and maintain during the Term comprehensive general liability insurance from an insurance company licensed by the State of New York with a rating of at least “A-“ as published with Standard & Poors with limits no less than One Million Dollars ($1,000,000) per claim and Two Million Dollars ($2,000,000) in the aggregate. Upon request, such policy will name SUNY as an additional insured, designate SUNY as loss payee, and contain a provision that SUNY shall receive prior written notice of any material change, cancellation or expiration of such policy. (c) Performer will deliver certificates of insurance for the stated coverage at least ten (10) business days prior to the first scheduled performance date.
8. **Representations and Warranties.** Speaker represents and warrants that Speaker has full right and authority to enter into this Agreement and perform the Services.
9. **Indemnification.** Speaker will indemnify, defend and hold harmless SUNY, its officers, employees and agents without limitation, from and against any and all damages, expenses (including reasonable attorneys’ fees), claims, judgments, liabilities, losses, awards, and costs arising out of or related to this Agreement and resulting from Speaker’s negligence, intentional misconduct and/or breach of this Agreement. SUNY reserves the right to join in the defense of any such claim, demand or suit at its own expense.
10. **Parties’ Relationship.** The relationship of Speaker to SUNY arising out of this Agreement will be that of an independent contractor. Nothing herein will be deemed to render either party an agent, joint venture or partner of the other and neither party will have the power or authority to enter bind the other**.** Additionally, Speaker will be solely responsible for the supervision, daily direction and control of its employees and will have sole responsibility for the payment of salary (including withholding of income taxes and social security), workers compensation, disability benefits, and all other benefits for its personnel and Performer’s personnel will not be considered employees of SUNY.
11. **Assignment /Amendment.** It is understood by the parties that this Agreement is intended to secure the personal performance of the Speaker and that this Agreement may not be assigned, in whole or in part, by the Speaker without first obtaining the prior written consent of SUNY which may be granted or withheld in SUNY’s sole discretion. This Agreement may not be amended unless such amendment is in writing signed by both parties.
12. **Governing Law/Venue.** This Agreement shall be interpreted according to the laws of the State of New York. The parties agree to bring any action arising from or related to this Agreement in a New York State court of competent jurisdiction and Speaker hereby agrees to submit to such court’s jurisdiction.
13. **Severability.**  If any provision of this Agreement is held to be illegal or invalid for any reason by a court of competent jurisdiction, then such illegality or invalidity shall not affect the remaining portions of the Agreement unless it would prevent accomplishment of the objectives and purposes of the Agreement.
14. **Waiver.** The failure of a party to enforce or comply with a provision of this Agreement shall not be deemed a waiver of any such provision unless such waiver is in writing and signed by such party.
15. **Notice.** Any notice to parties hereunder must be in writing, signed by the party giving it, and served either personally, by certified mail, postage-paid, return receipt requested or by nationally recognized overnight courier addressed to such party at the address first set forth above. Either party may change its address upon written notice to the other. All notices become effective when received by the addressee, or five (5) days after delivered to the post office or courier service, whichever is sooner.
16. **Exhibit A** This Agreement shall be subject to the terms and conditions set forth in SUNY Standard Contract Clauses “Exhibit A” annexed hereto and incorporated herein by reference. If any terms or conditions of this Agreement shall be inconsistent with those set forth in Exhibit A, then Exhibit A shall control.
17. **Disclosure.** This Agreement is subject to disclosure if a request is made under the New York State Freedom of Information Law (FOIL).
18. **Access to Records.** Speaker agrees that SUNY or its designee, after final payment under this Agreement, shall have access to and the right to examine any books, documents, papers and records of Speaker involving the Agreement or any Services to be performed hereunder for a period of six (6) years after the date of the last service payment by SUNY.
19. **Iran Divestment Act.** By entering into this Agreement, Speaker certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/ Offerers Pursuant to The New York State Iran Divestment Act of 2012” list (“Prohibited Entities List”) and that it will not utilize any subcontractor that is identified on the Prohibited Entities List. SUNY reserves the right to pursue a responsibility review with Speaker should it appear on the Prohibited Entities List during the Term.
20. **Integration.** This Agreement, together with Exhibits A and B constitutes the entire agreement of the parties hereto and all previous communications between the parties, whether written or oral, with reference to the subject matter of the Agreement are hereby superseded.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) indicated below.

SPEAKER STATE UNIVERSITY OF NEW YORK

at Cortland

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dated:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dated:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Acknowledgement (speaker – INDIVIDUAL)**

STATE OF NEW YORK )

) SS:

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_ before me personally came \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to me known, who being duly sworn, did depose and say that s/he resides at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; that s/he is the individual who executed the foregoing instrument and that s/he signed his/her name thereto.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

**EXHIBIT A**

**SUNY Standard Contract Clauses**

**EXHIBIT B**

**SCHEDULE OF PERFORMANCES**

pERFORMANCES and rehearsals.

Speaker shall conduct **[one (1)] \_\_\_\_\_** public performance(s) as follows:

tITLE OF PERFORMANCE(S): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

dATES, CURTAIN TIMES AND LENGTH OF PERFORMANCE(S):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

LOCATION: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

FEES

Speaker shall receive the following fees for each Performance listed above:

Performance Fees: SUNY agrees to pay for the services of the Speaker the sum of $\_\_\_\_\_\_\_ (USD). The Fees are inclusive of all expenses including hotel, local transport, flights, per diem, etc., unless specifically listed below.

Travel Expenses: SUNY will provide one (1) hotel room for one (1) night and ground transportation to and from airport, hotel and the location of the performance.

**IF** APPLICABLE Additional **Terms and Conditions**

Equipment. SUNY agrees to furnish the lighting, drapery and public address system for use at the performance, as required.

House Programs. SUNY will provide a program for the Performance(s). Copy to be included in the house program must be furnished by Speaker to SUNY no later than six (6) weeks prior to the Performance(s). The printed program shall be subject to the space and design limitations of the standard house programs. Speaker shall be consulted as to the material that will be edited if such a necessity arises.

Facility. SUNY agrees, at its own expense, to furnish the Location at the times(s) and date(s) for performance(s) set forth in this SOP. The Location will be well heated, lighted, clean and in good order, with all necessary security, ushers, and a clean dressing room for Speaker. **[SUNY will also provide ticket takers, ticket sellers at the time of performance, as well as ticket sellers for advance and box office sales, both in the box office and at any place other than the Location at which advance sales may be made.]**

Reproduction. Speaker will not film, broadcast, record or reproduce the Speaker’s performance by radio, television, digital recording or any other device or means. Except as expressly provided for in the Agreement, SUNY will exercise reasonable efforts to prevent the broadcasting, recording or reproduction by radio, television or any other device of Speaker’s performance, or any part thereof.

Curtain Time/ Starting Time. All performances will start on time unless delays are caused by unusual technical difficulties or extreme weather conditions. Under no circumstance will a performance begin or the intermission end without the express verbal permission of the SUNY house manager. SUNY reserves the right to announce to the audience a delay in performance starting time should such a delay occur.

Smoking, Alcoholic Beverages, Controlled Substances. There shall be no smoking, alcoholic beverages or controlled substances on or about the sound mix and/or light platform, or on or about the stage and dressing room areas, or in any other areas within the Location. Service of all alcoholic beverages requires approval of the University Alcohol Review Board. Local, state and federal law prohibit the unlawful possession and/or distribution of controlled substances, stimulants, LSD, hallucinogenic substances, and marijuana. Individuals (Performer and crew) found in violation of either the prohibition on possession and/or distribution of any controlled substances or non-approved alcohol are subject to immediate removal from the premises by Campus Public Safety. Performer’s violation of this paragraph shall be deemed a material breach of this Agreement.

Equipment and Limitations of Facility. Performers will not require any equipment other than that specified in SUNY’s technical information sheets for the Location. Performer accepts all equipment and physical limitations of the Location unless specified as unsatisfactory prior to the signing of this Agreement.

Concessions/ Merchandise. The sale of any concession items or merchandise at the Location including, but not limited to, souvenir programs, librettos, recordings, books, magazines, newspapers, beverages, candies, foods, novelties or photographs or similar items remain under the control of SUNY. The sale of such items must be approved by SUNY in advance. Sales must be made in the lobby areas so designated. Sales may not take place in seating areas or outside of buildings and will be conducted without loud hawking. **[Speaker will pay SUNY twenty percent (20%) of net sales received from any such sales (after deducting taxes). If SUNY provides sales personnel at Speaker’s request, then SUNY will receive thirty percent (30%) of net sales of such items (after deducting taxes). SUNY will collect sales tax unless other written arrangements are made prior to the engagement. All amounts payable to SUNY under this provision shall be payable in cash to SUNY at the conclusion of the engagement.]** SUNY shall have the right to sell its own merchandise at any Performance(s).