



# University of North Carolina School of the Arts Foundation Professional Services Agreement

The University of North Carolina School of the Arts Foundation, ("UNCSAF") and \_\_\_\_\_ ("Contractor"), \_\_\_\_\_, enter into this Professional Services Agreement ("Agreement") which is made \_\_\_\_\_.

In consideration of the mutual promises in this Agreement, the parties agree to the following:

1. **REPRESENTATION:** The Contractor represents that the contractor is not a current employee of UNCSAF.

2. **SERVICES:** The Contractor shall perform, in a manner satisfactory to UNCSAF, the following Professional Services ("Services"):

See Addendum A for Scope of Work associated with this Agreement.

3. **ADDITIONAL PERSONNEL:** Contractor shall be wholly responsible for the work to be performed. Contractor shall secure all personnel required in performing the Services under this Agreement at Contractor's own expense. Such personnel will not be employees of, or have any individual contractual relationship with UNCSA or UNCSAF. Notwithstanding the above, this section may be modified in the Scope of Work.

4. **TERM:** The term of this contract shall be \_\_\_\_\_ through \_\_\_\_\_.

5. **PAYMENT:** UNCSAF shall pay contractor \_\_\_\_\_

(\$ \_\_\_\_\_ ) for providing the Services. In addition, UNCSAF will handle:

- Travel or out-of-pocket expenses will be reimbursed up to \$ \_\_\_\_\_.
- On-campus housing will be provided to the Contractor during the course of this Agreement and the amount may be reported as income on the 1099.

**TOTAL CONTRACT VALUE** (payment for services + travel reimbursement)

- Payment will be in accordance with the following partial payment schedule:
- Payment occurs after receipt of agreement and completion of the Services.

**6. INDEPENDENT CONTRACTOR STATUS AND TAXES:** Contractor is an independent contractor of UNCSAF. UNCSAF is not required to withhold federal or state tax or social security on payments made to independent contractors. Contractor will be sent a form 1099-Misc. at the end of the calendar year if the payments made during the year aggregate to more than six hundred dollars (\$600.00). Back up withholding is required if the independent contractor does not furnish UNCSAF with a taxpayer identification number. If Contractor is not a resident of North Carolina and is not otherwise exempt from federal income taxation or exempt under N.C. General Statute § 105-163.3, UNCSAF shall withhold a 4% nonresident income tax from payment(s) greater than one thousand five hundred dollars (\$1,500) to Contractor during any one calendar year for personal services in the form of a performance, an entertainment or athletic event, a speech (including an academic lecture), or the creation of a film, radio, or television program, in accordance with N.C. General Statutes §§ 105-163.1 and 105-163.3. If Contractor is exempt from federal income taxation, Contractor must provide to UNCSAF a copy of its determination letter from the IRS, which indicates that Contractor has been granted tax-exempt status, with this Agreement when Contractor signs and returns this Agreement to UNCSAF. If Contractor is exempt from State of North Carolina income taxation, Contractor must provide to UNCSAF a copy of its Certificate of Exemption from the North Carolina Department of Revenue, which indicates that Contractor has been granted tax-exempt status, with this Agreement when Contractor signs and returns this Agreement to UNCSAF.

**7. COPYRIGHT OWNERSHIP:**

**THERE IS NO COPYRIGHT ASSOCIATED WITH THIS AGREEMENT**

**COPYRIGHT IS OWNED BY UNCSAF**

It is expressly understood and agreed that the copyright(s) in any tangible work-product and tangible expression (Work) created pursuant to this contract, at whatever state of completion, shall be owned by UNCSAF, as the creator/author of the Work, as a "work for hire" as defined in 17 USC 101, and/or by specific assignment of all interests in the Work by execution of this contract. It is further agreed that the physical Work is owned by UNCSAF, and it may use the Work in any manner, and Contractor waives all future rights, including the rights of attribution and integrity.

Notwithstanding the above, UNCSAF makes no claim to any copyright ownership or interest in any work Contractor has created independently and uses as background intellectual property in the Work.

**COPYRIGHT IS OWNED BY CONTRACTOR**

The Parties agree that the Contractor owns all claimable rights in:

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Contractor  GRANTS  DOES NOT GRANT UNCSAF and the University of North Carolina School of the Arts ("UNCSA") any and all exclusive rights necessary to produce, perform, record, broadcast, and display the Work within the state of North Carolina as outlined below. The Contractor explicitly grants UNCSAF and UNCSA all rights necessary to license the Work to UNCTV and any other third party necessary in order to perform, display or broadcast the Work on UNCTV. The parties agree to negotiate in good faith concerning any other broadcast or performance opportunities and agree to negotiate reasonable compensation. Nothing in this Agreement is intended to impinge on any of the Contractor's other rights in the Work, including audiovisual exploitation of the Work (distinct from the exploitation explicitly contemplated under this Agreement).

**Exclusive UNCTV Broadcast License within North Carolina (if granted):**

5 Years

In Perpetuity

**8. ASSIGNMENT AND DELEGATION:** Contractor shall not assign any interest in this contract without UNCSAF's prior written consent. The Services to be performed by the Contractor, or Contractor's personnel secured pursuant to paragraph 2 of this Agreement, may not be delegated to a subcontractor without UNCSAF's prior written approval. This Agreement shall be binding upon the parties, their respective legal representatives, successors, and assigns.

**9. TERMINATION:** UNCSAF may terminate this Agreement for any reason, provided that Contractor shall be paid for satisfactory services rendered under this Agreement prior to the effective date of its cancellation.

**10. COMPLIANCE:** Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the Services to be performed.

**11. CONFIDENTIALITY:** Contractor agrees that all knowledge, data, instruments, documents, studies, or reports prepared or assembled for UNCSAF or received from UNCSAF, UNCSAF's employees, other consultants, or other contractors of UNCSAF, by virtue of the performance of this Agreement, are, for all purposes, strictly confidential and held in confidence solely for UNCSAF's benefit and use and may not be used by Contractor directly or indirectly or disclosed to any person except with UNCSAF's prior written permission.

**12. MODIFICATIONS:**

- a. **Amendments:** Any modifications to this Agreement, not arising out of an operation of law, must be in writing and signed by Contractor and a duly sworn agent of UNCSAF.
- b. **Severability:** Each provision of this Agreement is intended to be severable. If any court of competent jurisdiction determines that one or more provisions of this Agreement, or any part thereof, is or are invalid, illegal, unenforceable, or in conflict with the law of said jurisdiction, such determination shall not affect or impair the validity, legality, and enforceability of any other provision of this Agreement and this Agreement shall be given full force and effect while being construed as if such invalid, illegal, unenforceable, or conflicting provision(s) had not been contained within it. If the scope of any provision in this Agreement is found to be too broad to permit enforcement of such provision to its full extent, Contractor and UNCSAF consent to judicial modification of such provision and enforcement to the maximum extent permitted by law.

**13. FORCE MAJEURE:** Neither party shall be liable for any delay or failure in performance whatsoever (other than a payment obligation) due to events outside of that party's reasonable control, including, without limitation, acts of God, earthquakes, labor disputes, shortage of supplies, riots, war, fire, epidemics, delays of common carriers, or other circumstances beyond its reasonable control. If such an event makes performance impossible, all obligations under this Agreement (other than for payment of services performed prior to the occurrence of the event) shall cease.

**14. NOTICE:** Any notices pursuant to this Agreement shall be given in writing via either United States Postal Mail or hand delivery. Notice will be effective with respect to the United States Postal Mail on the completion of the third (3rd) business day following the date of deposit with the United States Postal Service. Notice will be effective with respect to hand delivery upon delivery. Any notices pursuant to this Agreement shall be delivered to the Foundation Office located at 1533 S. Main Street, Winston Salem, NC 27127 for UNCSAF and to the Contractor at:

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**15. INDEMNITY AND REIMBURSEMENT:** Contractor shall indemnify UNCSAF from any claims, suits, damages, liabilities, injuries, expenses (including, without limitation, reasonable attorney's fees), or losses arising out of or resulting from Contractor's negligent acts or omissions in performing this Agreement. Contractor shall reimburse UNCSAF for any loss or damage to UNCSAF's property, property of third parties, or personal injuries caused by the acts or omissions of Contractor, Contractor's agents, or Contractor's employees during the performance of this Agreement.

**16. CHOICE OF LAW:** This Agreement, and all claims arising under and related to this Agreement, will be governed by, construed, and interpreted in accordance with the laws of North Carolina without reference to principles of conflict of laws.

**17. FORUM:** The determination of any claim, dispute, or disagreement that may arise out of the interpretation, performance, or breach of this Agreement will be subject to enforcement and interpretation solely in a court of competent jurisdiction sitting in Forsyth County, North Carolina.

**18. MERGER:** This Agreement states the final and exclusive agreement between the parties and supersedes all prior negotiations and agreements except as prescribed below. The following documents shall be considered part of this Agreement although the documents may not be attached physically: 1) Contractor's completed W9 Form; 2) Contractor's completed UNCASF Temporary Employee or Independent Contractor Certification Form 301. If any term(s) of this Agreement should conflict with the terms of any attached documents, exhibits, or riders, this Agreement shall supersede and control all terms and conditions of this Agreement and any subsequent addenda thereto.

**19. HEADINGS:** The headings of the sections, paragraphs, and subparagraphs of this Agreement are for convenience only and shall not affect the construction or interpretation of any of its provisions.

**20. AVAILABILITY OF FUNDS:** It is understood and agreed between the parties that the payment of compensation specified in this Agreement, its continuation or any renewal or extension thereof, is dependent upon and subject to the availability of funds to the UNCASF for said purpose.

**21. USE OF CONTRACT FOR ADVERTISING:** Contractor may not use this Agreement for advertising purposes without the prior written approval of UNCASF.

**22. USE OF NAMES AND MARKS:** Contractor will not use the marks or names of UNCSA for any purposes without prior written approval of UNCASF.

**23. POLICIES:** Contractor understands and agrees that Professional Service Agreements are regulated by University of North Carolina School of the Arts' Policy 306 (Independent Contractors) and Policy 603 (Conflicts of Interest). Information on these policies can be found at [www.uncsa.edu/mysa/policy-manual/](http://www.uncsa.edu/mysa/policy-manual/).

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To evidence the parties' agreement to this Agreement, they have executed and delivered it as of the date(s) below with the intention that it shall be effective and accurate as of the date set forth in the preamble.

**Contractor**

\_\_\_\_\_

\_\_\_\_\_

Date

**University of North Carolina School of the Arts Foundation**

\_\_\_\_\_

\_\_\_\_\_

Cindy Liberty, Director

Date

**Last Revision:** January 24, 2018

**Please return the signed Agreement prior to the rendering of Services, as unauthorized services are not guaranteed payment.**

Return to:

University of North Carolina School of the Arts  
1533 S. Main Street  
Winston Salem, North Carolina 27127

# Addendum A SCOPE OF WORK

Define, in full detail, all work to be completed as part of this Professional Services Agreement.