



Users' Guide to the UNCOSA Professional Services Agreement

Use: Employees should use the UNCOSA Professional Services Agreement (PSA) to arrange for independent contractor services, including those of guest artists. Thus, the first step is to determine whether the person performing services will be working for UNCOSA as a temporary employee or as an independent contractor. To make this determination requires application of twenty factors the IRS has identified as determining factors. The PSA **may not be used** for temporary employees, and the PSA should only be executed after the relevant Form 303 has all required signatures.

Completing the PSA: The UNCOSA Professional Services Agreement is a locked form; the user may only add or edit information in certain fields. Fields where the user can edit information are gray in color and set off with angled brackets (e.g. << Insert Contractor's Name >>). Each field contains a description of the information the user should enter in that field. To insert or change the text within a field, simply click on the field and insert the new text. Do not leave any field blank. A click on non-editable text will move the cursor to the next field. Users can move between fields by either clicking on the next field or by using the TAB key.

Routing: In most cases, after the contracting department completes all the PSA form's fields, the department should obtain the contracting party's signature. **Before** an authorized employee¹ signs the PSA, the General Counsel must approve the PSA as to form. If General Counsel approves the completed PSA as to form, she will sign it and forward it to the authorized signing employee indicated on the form. **NOTE:** The General Counsel's signature is **insufficient** to bind UNCOSA and only signifies approval of the completed PSA as to its form. If the General Counsel does not approve the completed PSA as to form, she will contact the contracting department to address and help remedy any issues with the completed PSA. The authorized signing employee will sign the document and furnish a copy to the originating department.

Modifications: The General Counsel must approve any modifications except for those required to complete the form.

UNCOSA is a state institution; it is illegal and/or against North Carolina policy to include certain terms in a contract to which UNCOSA is a party. Thus, the following terms contained in the PSA cannot be modified by General Counsel:

- Paragraph 6 regarding the withholding of tax for out-of state residents;
- Paragraph 14 regarding indemnification of the Contractor;
- Paragraph 15 regarding the law governing the PSA;
- Paragraph 16 regarding the forum of lawsuits; or
- Paragraph 19 regarding the availability of funds.

¹ See Contracts and Authority to Sign, Policy # 109, for more information concerning employees authorized to sign contracts on behalf of the University.

Additionally, because of North Carolina law and/or policy, UNCSEA may not allow contract riders or modifications to include clauses which:

- Subject UNCSEA to liability beyond the Torts Claim Act;
- Require arbitration or other forms of alternative dispute resolution;
- Limit UNCSEA's ability to contract with another party after the expiration of the PSA;
- Limit the Contractor's liability;
- Operate as acceleration clauses;
- Require UNCSEA to pay liquidated damages or cancellation fees;
- Stipulate that a breach of contract by UNCSEA would cause irreparable harm and/or justify injunctive actions; or
- Operate to shorten the statute of limitations for filing a breach of contract claim.