

WINSTON-SALEM STATE UNIVERSITY

ENTERTAINER AGREEMENT

This Agreement (“Agreement”) is made by and between the Winston-Salem State University (the “University”) and **Enter Name of Company / Contractor / Individual Contractor** (“Entertainer”). The University and Entertainer may be referenced collectively in this Agreement as the Parties or each individually as a Party.

WHEREAS, the University desires to enter into an agreement with Entertainer for the performance of certain professional services; and

WHEREAS, Entertainer desires to provide certain professional services to the University.

NOW THEREFORE, in exchange of the mutual promises contained herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the University and Entertainer hereby agree as follows:

1. **SERVICES.** Entertainer will provide the University with the professional services described in Exhibit A (the “Services”), attached hereto and incorporated by reference as if fully set forth herein. The parties acknowledge that the Entertainer has a unique combination of abilities to bring to this project that are not available to the University staff.
2. **TERM.** This Agreement becomes effective upon the date of last signature below and shall automatically terminate upon performance of all obligations by both parties.
3. **GRANT.** The University hereby grants permission to Entertainer to use the University facilities specified in Exhibit A during the times identified in Exhibit A for the sole purpose of preparing for and providing the Services. The University reserves the right to change the facilities so long as the new location meets the Entertainer’s expressly written needs received in conjunction with Entertainer’s execution of this Agreement.
4. **PAYMENT AND EXPENSES.** In consideration for Entertainer’s Services, the University shall compensate Entertainer as detailed in Exhibit B (the “Compensation”) upon completion of the Services. The University's payment terms are Net 30 after receipt of accurate invoice or completion of the Services, whichever is later, unless discounted payment terms are negotiated and stated in Exhibit B.

Entertainer is responsible for all travel, meals, lodging, and such other expenses as Entertainer may incur in the fulfillment of this Agreement, unless otherwise specified in Exhibit B.

Payment of compensation specified in this Agreement, its continuation or any renewal thereof, is dependent upon and subject to the allocation, appropriation or availability of funds to the University for the purpose set forth in this Agreement.

5. **TIME OF ARRIVAL.** Entertainer or Entertainer's Agent ("Agent") shall notify the University's Representative at least 48 hours prior to the hour of performance stating the exact time of arrival, location Entertainer is staying, and the method of transportation. If delays are incurred in route to the performance site that might affect the performance time, proper notification shall be given to the University's Representative as promptly as possible.
6. **ADDITIONAL EQUIPMENT.** Entertainer represents that Entertainer will not require supplemental musicians, equipment, musical instruments or other services by and/or at the expense of the University unless otherwise specified in Exhibit A.
7. **ENTERTAINER OBLIGATIONS.**
 - A. **Care of Property.** Entertainer shall be responsible for the proper custody and care of any property furnished by the University to Entertainer for use in connection with the Services, and Entertainer shall reimburse the University for loss or damage to any such property.
 - B. **Subcontracting, Assignment, and Transfer Prohibited.** Due to Entertainer's unique abilities, this Agreement is for personal services and Entertainer shall not subcontract, assign, or transfer any interest in this Agreement without prior written approval of the University.
 - C. **Compliance with Applicable Laws.** Entertainer shall comply with all federal, state, and local laws, ordinances, codes, rules, regulations, and licensing requirements applicable to the conduct of its business and the Services.
 - D. **Discrimination.** Entertainer shall comply with the University's Policy on Discriminatory Conduct located at <https://www.wssu.edu/about/offices-and-departments/division-of-institutional-integrity/legal-affairs/policies-and-procedures/chapter-900-general-university-policies/101.3.html>, and in the performance of this Agreement shall not harass or discriminate against any persons on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, political affiliation, genetic information, veteran status, disabling condition, or age.
 - E. **Foreign Nationals.** If Entertainer is a Foreign National, as defined by the United States Citizenship and Immigration Service ("USCIS"), Entertainer is required to enter the United States in proper immigration status, as defined by USCIS, in order to receive payment under this Agreement. No later than thirty (30) days prior to the Entertainer's commencement of the Services, a Foreign National Entertainer shall provide proof to the University that Entertainer is in the United States in the appropriate legal status, and this proof will include (but is not limited to) copies of the

passport identification page(s), visa stamp, I-94 entry information, and any other relevant approval notices or immigration documents issued by USCIS or any other authorized federal agency. Entertainer's failure to provide appropriate proof of appropriate lawful immigration status may result in the University's termination of this Agreement. Foreign National Entertainers may be subject to a thirty percent (30%) federal tax withholding requirement on their payment.

8. TERMINATION.

- A. Following notice and a reasonable opportunity to cure, either Party's failure to comply with any of the terms and conditions of this Agreement is grounds for immediate termination by the non-breaching Party.
- B. The University may terminate this Agreement immediately, effective upon written notice to Entertainer, if Entertainer, or any of its key personnel, is accused of or commits any act, as reasonably determined in the discretion of the University, that would tend to bring disrespect, contempt, or ridicule upon the University, that harms the University's reputation, could adversely impact the performance Services or the University's programs, or that reasonably brings into question the integrity of Entertainer. In that event, Entertainer shall refund all fees paid to the University prior to the date of termination.
- C. If Entertainer terminates this Agreement or requires a change in the date of the Services, the Entertainer agrees to reimburse the University for any noncancelable expenses it has incurred within thirty (30) days following receipt of the University's invoice.
- D. The University may terminate this Agreement at any time by providing thirty (30) days' written notice to the Entertainer or the Agent.
- E. All promises, requirements, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or terminate date of this Agreement unless specifically provided otherwise herein, or unless superseded by applicable federal or state statutes of limitations.

- 9. INDEPENDENT CONTRACTOR.** Entertainer shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees in connection with its Services. Nothing herein is intended or shall be construed to establish any agency, partnership, or joint venture between Entertainer and the University. Entertainer represents that it has, or will secure at its own expense, all personnel required in performing the Services under this Agreement. Such employees shall not be employees of or have any individual contractual relationship with the University. As an independent contractor, Entertainer shall be responsible for the payment of any taxes due on any monies received by Entertainer.

10. **OTHER AREA APPEARANCES.** It is agreed that Entertainer shall request prior written approval from the University for all public appearances by the Entertainer during the time period commencing forty-eight (48) hours prior to the first performance and continuing twenty-four (24) hours after the final performance contemplated in this Agreement, in or about the City of Greensboro, North Carolina.
11. **USE OF ALCOHOL OR DRUGS.** Entertainer(s) will not be allowed to perform and shall be deemed in breach of this Agreement if the Entertainer or any member of Entertainer's group is under the influence of alcohol or drugs while providing the Services.
12. **USE OF NAMES AND MARKS; ADVERTISING.** Entertainer will not use the marks or names of the University for any purposes without prior written approval of the University and shall not use this Agreement for advertising purposes without the prior written approval of the University.
13. **SALES COMMISSION.** Entertainer may sell records, photographs, and other souvenirs prior to the performance, during intermission, and after the performance subject to a University twenty percent (20%) concession commission.
14. **UNION FEES.** Union fees, welfare, and insurance obligations of Entertainer are a part of the cost of production and are included in Entertainer's compensation specified in this Agreement. The University shall not be responsible for the payment of these obligations.
15. **TAX WITHHOLDING.** The University acknowledges and agrees that under North Carolina law non-resident (out-of-state) contractors are subject to a compensation withholding assessment amounting to four percent (4%) of any annual compensation greater than \$1,500.00 for the following services: a performance; an entertainment or athletic event; a speech; the creation of a film, radio, or television program.
16. **INTELLECTUAL PROPERTY.** Entertainer warrants that its Services will not infringe the copyright of others and hereby releases, discharges and holds harmless the University, its employees and agents, all persons acting under its authority, and those for whom it is acting, from all claims, causes of action and liability of any kind, in law or equity, based upon or arising out of the Services or this Agreement including, without limitation, claims of libel, slander, invasion of privacy, right of publicity, defamation, trademark infringement, and copyright infringement.
17. **INSURANCE AND PERMITS.** Without limiting or diminishing the Entertainer's obligation to indemnify or hold the Winston-Salem State University and the State of North Carolina harmless, Entertainer shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverages as may be applicable during the term of this Agreement. For purposes of this Section 17 only, University herein refers to the Winston-Salem State University, and its officers, board of trustees, employees, elected or appointed officials, agents or representatives as Additional Insureds.

- A. **Workers' Compensation:** If the Entertainer has employees as defined by the State of North Carolina, the Entertainer shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of North Carolina. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the University and State of North Carolina.
- B. **Commercial General Liability:** Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of the University's performance of its obligations hereunder. Policy shall name the University as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.
- C. **Vehicle Liability:** If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Entertainer shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the University as Additional Insureds.
- D. **Insurance Requirements for Aviation Services Including Unmanned Aircraft's (Drones):** Coverage shall be at least as broad as:
- 1) Aviation Liability Insurance on an "occurrence" basis, including products and completed operations, property damage, bodily injury with limits no less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate. This coverage may also be provided by endorsement to a Commercial General Liability policy. In that event then:
 - 2) Commercial General Liability: Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
 - 3) If the owner/operator of the unmanned aircraft maintains broader coverage and/or higher limits than the minimums shown above, the University requires and shall be entitled to the broader coverage and/or higher limits maintained by the owner/operator. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the University.

E. General Insurance Provisions - All lines:

- 1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of North Carolina and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the University risk manager. If the University's risk manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.
- 2) The Entertainer must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceed \$500,000 per occurrence each such retention shall have the prior written consent of the University risk manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the University, and at the election of the University's risk manager, Entertainer's carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the University, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- 3) Entertainer shall cause Entertainer's insurance carrier(s) to furnish Winston-Salem State University with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the University risk manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that a minimum of thirty (30) days written notice shall be given to Winston-Salem State University prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If Entertainer insurance carrier(s) policies do not meet the minimum notice requirement found herein, Entertainer shall cause Entertainer's insurance carrier(s) to furnish a 30-day Notice of Cancellation Endorsement.
- 4) In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the University receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. Entertainer shall not commence operations until the University has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all

endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.

- 5) It is understood and agreed to by the parties hereto that the Entertainer's insurance shall be construed as primary insurance, and the University's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.
- 6) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the University reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the University risk management's reasonable judgment, the amount or type of insurance carried by the Entertainer has become inadequate.
- 7) Entertainer shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- 8) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the University.
- 9) Entertainer agrees to notify the University of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

18. GOVERNING LAW; EXCLUSIVE JURISDICTION. This Agreement and the rights and obligations of the Parties hereto shall be interpreted, construed and enforced in accordance with the laws of the State of North Carolina, and the exclusive venue for any legal proceedings arising from or incident to this Agreement shall be the state courts sitting in Forsyth County, North Carolina.

19. FORCE MAJEURE. Notwithstanding any other term of this Agreement, if either Party's performance of obligations under this Agreement is materially hampered, interrupted, or interfered with; or is made illegal, impossible, or so difficult or expensive as to be commercially impracticable by an act of *force majeure*, then upon demonstrating the exercise of reasonable diligence to comply with its obligations under this Agreement, the affected party shall be excused from performance or underperformance of this Agreement.

For purposes of this provision, any such cause shall constitute *force majeure* and shall include, but not be limited to, the following: act of God; unavoidable accident; epidemic, pandemic or public health emergency; fire; casualty; lockout; act of public enemy or terrorism; war, riot or civil commotion; enactment of law or order of governmental instrumentality; strike or other labor dispute; earthquake, tornado, hurricane, inclement weather, or other event of a catastrophic nature that requires the closure of, or limitation of services on, the University campus; or, other cause of a similar magnitude; or the

enactment, issuance, or operation of any municipal, county, State, or federal law, ordinance or executive, administrative, governmental, or judicial regulation, order or decree; any local or national emergency; or, any other unforeseeable event beyond the Parties' control.

Both parties agree to follow US Government guidelines regarding COVID-19 pandemic precautions. In the event that the CDC recommends against large in-person gatherings or nonessential air travel, the event will be rescheduled to a mutually agreeable date or reformatted appropriately to comply with guidelines.

20. **NOTICES.** All notices shall be in writing and addressed to the party to receive such notice at the address given below, or such other address as may hereafter be designated by notice in writing. Notices may be sent by email, fax, hand delivery, private overnight mail service, or registered or certified U.S. mail.

If to the University:

Enter Name of WSSU Employee
Enter Employee Title
Enter Street Address
Enter City / State / Zip
Enter Employee Telephone Number
Enter Employee Email Address

If to the Entertainer or Agent:

Enter Name of Company / Contractor / Individual Contractor
Enter Name of Contact
Enter Street Address or PO Box
Enter City / State / Zip
Enter Telephone Number
Enter Fax Number (delete if not applicable)
Enter Email Address

21. **ENTIRE AGREEMENT.** This Agreement states the entire agreement between the parties as of the date of the final signature below in respect to the subject matter of the agreement and supersedes any previous written or oral representations, statements, negotiations, or agreements.
22. **SEVERABILITY.** If any part of this Agreement is held to be in violation of any law, the provisions held to be invalid shall be of no force and effect, but all other provisions of this Agreement shall continue to be binding on the parties.

23. **INDEMNIFICATION.** Entertainer hereby agrees to indemnify, defend and hold harmless the State of North Carolina, the Board of Governors of North Carolina, Winston-Salem State University, its Trustees, officers, employees, agents and all successors of the above named entities, from all claims, actions, causes of action, demands, rights, damages, costs, sums of money, accounts, covenants, contracts, promises, attorneys' fees and all liabilities or obligations of any kind or nature whatsoever at law, in equity, or otherwise, arising out of or relating to this Agreement.
24. **AUDITOR'S ACCESS.** Auditors for the State of North Carolina or Winston-Salem State University shall have access to persons and records resulting from this Agreement in accordance with N.C.G.S. § 147-64.7.
25. **EQUAL OPPORTUNITY FOR VEVRAA PROTECTED VETERANS.** **This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**
26. **AMENDMENTS.** Any modifications to this Agreement, including, but not limited to, modifications made on the face of this Agreement must be in writing signed by both parties.
27. **MERGER.** This Agreement states the final and exclusive agreement between the parties and supersedes all prior negotiations and agreements for the Services.
28. **SEVERABILITY.** If any provisions or portions thereof are declared invalid, illegal, or unenforceable, this Agreement will be construed as if such invalid, illegal, or unenforceable provisions were removed.
29. **HEADINGS.** The headings of the sections, paragraphs, and subparagraphs of this Agreement are for convenience only and do not affect the construction or interpretation of any provisions.
30. **EXECUTION OF COUNTERPARTS.** This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile or e-mail transmission of a ".pdf" format data file, such signature shall be valid with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.
31. **DEBARMENT.** Neither the Contractor nor any of its Affiliates (a) has been debarred by the State or Federal government, (b) is subject to debarment proceedings by the State or Federal government or (c) will use, in any capacity, in connection with the activities to be performed under this Agreement, any Person that has been debarred, or who is the subject of debarment proceedings by the State or Federal government. If either Party learns that a Person performing on its behalf under this Agreement has been debarred by the State or Federal government, or has become the subject of debarment proceedings by the State or

Federal government, such Party shall promptly notify the other Party and shall prohibit such Person from further performance on its behalf under this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective authorized representatives.

WINSTON-SALEM STATE UNIVERSITY

Signature: _____

Name: _____

Title: _____

Date: _____

ENTER NAME OF COMPANY / CONTRACTOR / INDIVIDUAL CONTRACTOR

Signature: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A
to
ENTERTAINER AGREEMENT
between
WINSTON-SALEM STATE UNIVERSITY
and

ENTER NAME OF COMPANY / CONTRACTOR / INDIVIDUAL CONTRACTOR

SERVICES

The Entertainer shall provide the following service(s) as directed by **Enter Name of Principal Investigator or Other WSSU Employee**, the University's Authorized Representative under this Agreement:

Use this area and, if needed, onto other pages, to enter a detailed description of the services being provided by the Contractor. If milestones are expected/required, indicate the milestone and the timeframe for each here.

EXHIBIT B
to
ENTERTAINER AGREEMENT
between
WINSTON-SALEM STATE UNIVERSITY
and

ENTER NAME OF COMPANY / CONTRACTOR / INDIVIDUAL CONTRACTOR

COMPENSATION

- In section 1, define how we will pay the Entertainer. The University does not prepay services or make deposits for services.
- If discounted payment terms are negotiated, include those terms as a bullet in #1.
- In section 2, choose the travel, lodging, incidentals applicable to this agreement.
- **Delete these instructions upon completing this section.**

1. FUND NUMBER: Enter Fund Number Here

ACCOUNT NUMBER: Enter Account Number Here

GRANT TRACKING NUMBER: Enter Grant Tracking Number Here (if applicable)

GRANT AWARDED FROM: Enter Grant Awarded From Here (if applicable)

Upon satisfactory completion of the services designated in Exhibit A, and any attachments, and upon receipt of an itemized invoice of prior services rendered, the University shall compensate Entertainer for services performed under this Agreement:

Choose *one* of the editable fields below to use and *delete* the other fields, *along* with this sentence.

at the rate of \$Insert Dollar Amount per hour, such rate to remain fixed for the term of this Agreement.

at a fee of \$Insert Dollar Amount per event, such amount to remain fixed for the term of this Agreement.

at the fixed sum of \$Insert Dollar Amount.

at the rate of \$Insert Dollar Amount per hour, not to exceed \$Insert Total Contract Amount for the duration of the Agreement.

in the total amount of \$Insert Dollar Amount, in accordance with the scheduled shown: List Milestones With Payment Amounts or Percentages

As an agency of the State of North Carolina, the University may not make any advance payment(s) or deposit(s) prior to the completion of contracted services. Payment will be made exclusively by University check mailed to the address on this Agreement. State law prohibits the University from agreeing to any acceleration clauses.

[Choose the option below that applies, delete the others and this sentence.]

2. Entertainer is responsible for all travel, meals, lodging in the fulfillment of this Agreement.
OR

Upon receipt of an itemized invoice, the University will reimburse Entertainer for travel, lodging, and meals consistent with state regulations concerning travel expense reimbursement. Entertainer must submit receipts to the University for reimbursement. Reimbursement may not exceed:

- \$Enter Dollar Amount for transportation to and from the Agreement site
- \$Enter Dollar Amount per day for rental of vehicles for a maximum of number of days
- \$Enter Dollar Amount for lodging for a maximum of Enter Number of Nights Allowed of nights