

STATE OF NORTH CAROLINA

WAKE COUNTY

Rev. 12/11

CHALLENGE COURSE CONTRACT

This Agreement is made by and between, _____
(hereinafter referred to as "the CONTRACTOR") having a principal place of business at _____, and NORTH CAROLINA STATE UNIVERSITY c/o Campus Recreation, Campus Box 8111, 2611 Cates Avenue, Raleigh, North Carolina 27695-8111, (hereinafter referred to as "NC STATE").

NC STATE and the CONTRACTOR have agreed that the CONTRACTOR will perform certain services for the NC STATE. NC STATE and CONTRACTOR desire to put the terms of their agreement in writing, so in consideration of the mutual promises to each other, and any sums to be paid, the NC STATE and the CONTRACTOR agree as follows:

1. The CONTRACTOR will use his/her best efforts to: provide Challenge Course Administration at North Carolina State University on an appointment basis from _____ - _____.

2. NC STATE agrees to utilize the CONTRACTOR for the duties described in Paragraph 1 and agrees to use its best efforts to: provide registration, facilities and equipment.

3. The CONTRACTOR is an independent contractor and not a full-time employee of NC STATE. Therefore, (a) the CONTRACTOR is not entitled to participate in any benefits, plans, arrangements, or distributions by NC STATE pertaining to or connected with any qualified pension plan or any other health or welfare plan with similar benefits for employees; (b) the CONTRACTOR is responsible for the payment of any taxes due on any payment received by him/her under this Contract; (c) the CONTRACTOR is responsible for expenses related to any injury or malady occurring to him/her arising out of the performance of this Contract; (d) the CONTRACTOR is not an agent of NC STATE and shall not hold himself/herself out to the public as such; and (e) work proposed to be performed under this contract by the CONTRACTOR shall not be subcontracted without prior written approval of the NC STATE.

4. The CONTRACTOR agrees to indemnify and hold harmless NC STATE, its trustees, employees, and agents against any liability arising from his/her performance of this Contract and/or from any breach of the Contract. Such indemnity shall include, but shall not be limited to costs arising from any litigation.

5. Each party represents and warrants to the other party that it has full right and power to enter into this Contract.

6. This Contract shall be effective from the _____ day of _____, 20____ to the _____ day of _____, 20____. NC STATE may terminate this agreement at any time,

with no further obligation to the CONTRACTOR, by giving seven (7) days written notice of termination to the CONTRACTOR, mailed to the CONTRACTOR's address set forth above or by fax to the CONTRACTOR.

7. Upon fourteen (14) days written notice to NC STATE, CONTRACTOR may terminate this Contract, or CONTRACTOR may terminate if NC STATE is in breach of any of its responsibilities defined in this Contract.

8. Neither NC STATE nor CONTRACTOR shall be liable for any failure to perform as required by this Contract if the failure is caused by any reason beyond the party's control, such as, accidents, failure of any required governmental approval, civil disorders, acts of war, acts of God, energy or other conservation measures, failure of utilities, serious illness or similar occurrences.

9. The CONTRACTOR will receive a total of \$_____ an hour as compensation for the successful completion of the services described in Paragraph 1. Payment shall be made by NC STATE check and shall be due thirty (30) days following receipt and approval of CONTRACTOR's original invoice.

10. It is understood and agreed between NC STATE and the CONTRACTOR that payment of compensation specified in this Contract is dependent upon and subject to the allocation of funds for the purpose set forth in this Contract and/or the registration of sufficient numbers of students for any course to be taught. At this time, it is believed that appropriate funds have been allocated and/or that sufficient numbers will register to compensate the CONTRACTOR for the fees described in Paragraph 9.

11. The parties agree that the place of this Contract, its situs and forum (regardless of the place of actual contract performance), is Wake County, North Carolina, and that any matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of this Agreement, shall be determined in said County and State and in accordance with the substantive law of North Carolina.

12. This Contract and the Appendices specifically described in this Contract represent the entire agreement between NC STATE and CONTRACTOR as to the subject matter of this Contract and supersede all prior oral or written statements or agreements.

13. It is the responsibility of the employing organization or individual CONTRACTOR to ensure that anyone who is eligible for payment for services or honorarium possesses the appropriate visa, which allows payment under United States law.

14. This Contract may be amended only by written amendments signed by the CONTRACTOR and NC STATE.

15. The State or NC STATE auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with North Carolina General Statute §147-64.7 and Session Law 2010-194, Section 21.

16. If NC STATE provides the CONTRACTOR with personal identifiers as listed in N.C.G.S. §132-1.10 and in N.C.G.S. §14-113.20(b) or any other legally confidential information, CONTRACTOR hereby certifies that collection of this information from NC STATE is necessary for the performance of CONTRACTOR's duties and responsibilities on behalf of NC STATE under this Contract. CONTRACTOR further certifies that it shall maintain the confidential and exempt status of any social security number information, as required by N.C.G.S. §132-1.10(c)(1), and that it shall not re-disclose personally identifiable information as directed by State and Federal laws. Failure to abide by legally applicable security measures and disclosure restrictions may result in the interruption, suspension and/or termination of the relationship with CONTRACTOR for a period of at least five (5) years from date of violation. If CONTRACTOR experiences a security breach, as defined in N.C.G.S. §75.61(14), relating to this information, in addition to the CONTRACTOR's responsibilities under the NC Identity Theft Protection Act, CONTRACTOR shall immediately notify NC STATE with the information listed in N.C.G.S. §75-65(d)(1-4) and shall fully cooperate with NC STATE. CONTRACTOR shall indemnify NC STATE for any breach of confidentiality or failure of its responsibilities to protect confidential information. Specifically, these costs may include, but are not limited to, the cost of notification of affected persons as a result of its unauthorized release of NC STATE data provided to CONTRACTOR pursuant to the Contract.

17. If NC STATE provides the CONTRACTOR with "personally identifiable information" from a student's education record as defined by the Family Educational Rights and Privacy Act ("FERPA") and its implementing regulation 34 CFR §99.3, CONTRACTOR hereby certifies that collection of this information from NC STATE is necessary for the performance of CONTRACTOR's duties and responsibilities on behalf of NC STATE under this Contract. In this instance, NC STATE considers CONTRACTOR a school official with a legitimate educational interest under FERPA. CONTRACTOR further certifies that it shall maintain the confidential status of education records in their custody, and that it shall not re-disclose personally identifiable information as directed by FERPA. Failure to abide by legally applicable security measures and disclosure restrictions may result in the interruption, suspension and/or termination of the relationship with CONTRACTOR for a period of at least five (5) years from date of violation. If CONTRACTOR experiences a security breach relating to this information or if CONTRACTOR re-discloses the information, CONTRACTOR shall immediately notify NC STATE. CONTRACTOR shall indemnify NC STATE for any breach of confidentiality or failure of its responsibilities to protect the personally identifiable information. Specifically, these costs may include, but are not limited to, the cost of notification of affected persons as a result of its unauthorized release of NC STATE data provided to CONTRACTOR pursuant to the Contract.

18. If NC STATE provides any data to CONTRACTOR pursuant to this Agreement then CONTRACTOR shall preserve and maintain the data to the extent needed to fulfill NC STATE's obligations under the North Carolina Public Records Act and under the Federal and North

Carolina Rules of Civil Procedure, including specifically that CONTRACTOR shall immediately preserve and maintain data (and any generated email correspondence) upon NC STATE's request or upon notice of litigation and further CONTRACTOR shall make available all data that NC STATE may specify within the time limits required.

IN WITNESS THEREOF, the parties have executed this agreement in duplicate originals, one of which is retained by each of the parties, effective the ____ day of _____, 20____.

CONTRACTOR

**NORTH CAROLINA STATE UNIVERSITY
c/o Campus Recreation**

Recommended by:

Name: _____
Title: _____
Date: _____

Name: _____
Project Coordinator
Date: _____

Name: _____
Title: _____
Date: _____