

WAKE COUNTY

**NORTH CAROLINA STATE UNIVERSITY
INDEPENDENT CONTRACTOR AGREEMENT**

THIS INDEPENDENT CONTRACTOR AGREEMENT (“Agreement”) is made as of the date of the last signature below (the “Effective Date”) by and between **NORTH CAROLINA STATE UNIVERSITY**, on behalf of its _____ (“NC State”) and _____ (“Contractor”). NC State and Contractor may be referenced collectively in this Agreement as the “Parties” or each individually as a “Party.”

WITNESSETH

WHEREAS, Contractor has submitted to NC State a proposal for the performance of certain services; and,

WHEREAS, NC State desires to enter into an agreement with Contractor for the performance of these services.

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, NC State and Contractor agree as follows:

1. **Scope of Services.** Contractor agrees to supply NC State with the services described in **Exhibit A** (the “Services”), attached hereto and incorporated by reference as if fully set forth herein.
2. **Term.** Contractor shall commence providing the Services on _____, 20__, and shall terminate on _____, 20__ (the “Term”).
3. **Payment.** In consideration of the Services provided pursuant to this Agreement and upon receipt and approval of an invoice from Contractor, NC State shall pay Contractor a fee not to exceed _____ Dollars (\$_____). 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 NC State for the purpose set forth in this Agreement. The Parties agree that in the event NC State, or that body responsible for the appropriation of said funds, in its sole discretion, determines in view of its total operations that available funding for the payment of the costs for this Agreement is insufficient to continue, it may choose to terminate this Agreement by giving Contractor written notice of said termination, and this Agreement shall terminate immediately without any further liability to NC State.

4. **Contractor's Obligations.**

- a. **Key Personnel.** Contractor shall not substitute key personnel assigned to the performance of this Agreement without the prior written approval of NC State. Contractor's individual(s) designated as key personnel for the purposes of this Agreement is/are _____.
- b. **Care Of Property.** Contractor shall be responsible for the proper custody and care of any property furnished by NC State to Contractor for use in connection with the provision of Services, and Contractor shall reimburse NC State for loss or damage to any such property.
- c. **Subcontracting, Assignment, And Transfer Prohibited.** Due to Contractor's unique abilities, this Agreement is for personal services and Contractor shall not subcontract, assign, or transfer any interest in this Agreement without prior written approval of NC State. Upon Contractor's request and following prior written approval by NC State, NC State may:
 - i. Forward Contractor's payment directly to any person or entity designated by Contractor; or,
 - ii. Include any person or entity designated by Contractor as joint payee on Contractor's payment.

In no event shall such approval and action obligate NC State to anyone other than Contractor. Contractor shall remain responsible for all obligations under this Agreement.

- d. **Workmanship and Quality of Services.** Contractor shall perform the Services in a workmanlike and professional manner, to the reasonable satisfaction of NC State, that conforms with the scope of work described in Exhibit A and all prevailing industry, commercial, academic, and professional standards.
- e. **Compliance With Employment Regulations.** Contractor shall comply with all federal and state requirements concerning equal opportunity and non-discrimination in employment and shall treat all employees equally without regard to their age (40 and older), color disability, gender identity, genetic information, national origin, race, religion, sex (including pregnancy), sexual orientation, or veteran status.
- f. **Compliance With Applicable Law.** Contractor 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 provision of the Services.

5. **Termination.**

- a. NC State may terminate this Agreement at any time by providing thirty (30) days' written notice to Contractor.
- b. If Contractor shall fail to provide the Services or fulfill its obligations in a timely and proper manner under this Agreement for any reason, including the voluntary or involuntary declaration of bankruptcy, NC State shall have the right to terminate this Agreement upon written notice to Contractor and termination shall be effective immediately upon receipt. Contractor shall cease performance immediately upon receipt of such notice.
- c. In the event of early termination, Contractor shall be entitled to receive just and equitable compensation only for costs incurred prior to receipt of notice of termination and for the Services satisfactorily rendered as of the date of termination and delivered to NC State. Contractor shall be responsible to NC State for damages sustained by NC State as a result of Contractor's breach of this Agreement, and NC State may withhold any payment due to Contractor for the purpose of setoff until such time as NC State can determine the exact amount of damages due NC State as a result of Contractor's breach.
- d. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the expiration or termination date of this Agreement unless specifically provided otherwise herein, or unless superseded by applicable federal or state statutes of limitations.

6. **Liability**

- a. Contractor shall indemnify, defend, and hold harmless NC State, its trustees, officers, agents, and employees, from liability of any kind, including all claims and losses for injuries to persons or damage to property accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by Contractor in the performance of this Agreement. This representation and warranty shall survive the termination or expiration of this Agreement.
- b. NC State's liability for bodily injury, property damage or any other matter sounding in tort is determined in accordance with the provisions, procedures, and limits of the North Carolina Tort Claims Act, Article 31 of Chapter 143 of the North Carolina General Statutes. NC State does not waive its sovereign immunity or any rights or defenses under the North Carolina Tort Claims Act.

7. **Insurance.**

- a. During the Term of this Agreement, Contractor, at its sole cost and expense, shall purchase and maintain the following policies:
 - i. General liability insurance with combined single limits coverage for bodily injury and property damage of not less than \$1 million dollars per occurrence, \$2 million aggregate; and,
 - ii. Worker's compensation insurance, where required by North Carolina law; and,
 - iii. Such insurance as required from city, county, state or federal laws, codes or regulations.
- b. All insurance required in this paragraph shall be issued in the name of Contractor with NC State and the State of North Carolina named as additional insureds or loss payees, using ISO Form 2026, or equivalent. Contractor shall provide each policy or certificate of the policy issued on Accord Form 25, or equivalent, together with evidence of payment of premiums to NC State prior to the commencement of this Agreement, and upon renewal of the policy, not less than thirty (30) days before expiration of the term of the policy. Additionally, each policy shall have an endorsement that the policy shall not be canceled or materially changed without a least thirty (30) days' prior written notice to NC State and an endorsement to the fact that no act or omission of Contractor shall invalidate the interest of NC State.
- c. All insurance policies required to be purchased under this Agreement shall be issued by insurance companies with an A.M. Best rating of "A" or better, and shall be issued by companies qualified to do business in the State of North Carolina.

8. **Intellectual Property and Copyright.**

- a. All intellectual property, including but not limited to, patentable inventions, patentable plants, novel plant varieties, copyrightable works, mask works, trademarks, service marks and trade secrets invented, developed, created or discovered by Contractor in performance of this Agreement shall be the property of NC State.
- b. Copyright in and to any copyrightable work, including, but not limited to, copy, art, negatives, photographs, designs, text, software, or documentation created as part of Contractor's provision of Services shall vest in NC State. Works of authorship and contributions to works of authorship created by Contractor in connection with its provision of Services are hereby agreed to be "works made for hire" within the meaning of 17 U.S.C. 201. However, if NC State is not able to obtain copyright ownership under the statutory provisions for "works made for hire," then Contractor hereby assigns to NC State all right, title, and interest in such works and contributions.

- c. Contractor agrees to provide NC State with any and all reasonable assistance which NC State may require to file patent applications, to obtain copyright registrations, or to perfect its title in any such inventions or works, including the execution of any documents submitted by NC State.
- d. Contractor warrants that its Services do not infringe the copyright of others and agrees to release, discharge and hold harmless NC State, 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.

9. **Confidential Information**

- a. Contractor acknowledges that in connection with Contractor's Services, NC State, another governmental agency, university, or a company may disclose to Contractor confidential and proprietary information and trade secrets, and that the Contractor may also create such information within the scope and in the course of performing the Services ("Confidential Information"). Such Confidential Information may include, but is not limited to, research data, notebooks, drawings, technology, know-how, marketing plans, business plans, and any other information the disclosure of which could cause competitive harm to the owner.
- b. Contractor agrees that during the Term of this Agreement and for a period of five (5) years thereafter, Contractor will not disclose, disseminate, publicly divulge, or publish any Confidential Information without the owner's written consent. Further, the Contractor will not use the Confidential Information for any purpose other than this Agreement.
- c. Notwithstanding the above, Confidential Information shall not include any information which:
 - i. was at the time of disclosure part of the public domain by publication or otherwise; or
 - ii. became part of the public domain after disclosure to Contractor by publication or otherwise, except by breach of this Agreement; or
 - iii. was already lawfully in Contractor's possession at the time it was received under this Agreement; or
 - iv. was lawfully received from a third party who was under no obligation of confidentiality; or
 - v. was independently developed by Contractor without reference to Confidential Information; or
 - vi. is required to be disclosed by law, regulation or judicial process.

d. Upon termination of the Agreement, all records, drawings, notebooks and other documents pertaining to Confidential Information, whether prepared by the Contractor or others, shall be returned to NC State or the owner.

10. **Independent Contractor.** Contractor 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 provision of the Services. Nothing herein is intended or shall be construed to establish any agency, partnership, or joint venture between Contractor and NC State. Contractor 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 NC State.

11. **Notices.** All notices shall be hand delivered, sent by private overnight mail service, or sent by registered or certified U.S. mail 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:

If to NC State: Director of Materials Management
North Carolina State University
Campus Box 7212
Raleigh, NC 27695-7212

If to Contractor: _____

12. **Force Majeure.** Neither Party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign action, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

13. **Entire Agreement.** This Agreement contains the entire agreement of the Parties and there are no representations, inducements or other provisions other than those expressed herein. All changes, additions or deletions to this Agreement shall be in writing and executed by the authorized representatives of both Parties.

14. **No Waiver.** The waiver by NC State of any agreement, condition, or provision contained in this Agreement will not be deemed a waiver of any subsequent breach or any other agreement, condition, or provision contained in this Agreement, nor will any custom or practice that may develop between the Parties in the administration of the terms of this Agreement be construed to waive or lessen the right of NC State to insist upon Contractor's performance in strict accordance with the terms of this Agreement.

15. **Access to Persons and Records.** The State or NC State auditor may audit the records of Contractor during and after the term of this Agreement to verify accounts and data affecting fees or performance in accordance with North Carolina General Statutes §143-49(9) and §147-64.7.
16. **Governing Law.** 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, without regard for its conflict of laws provisions, and the exclusive venue for any legal proceedings arising from or incident to this Agreement shall be the state courts sitting in Wake County, North Carolina.
17. **Severability.** Should any provision of this Agreement be declared illegal, void, or unenforceable under North Carolina law, or shall be considered severable, the Agreement shall remain in force and be binding upon the Parties hereto as though the said provision had never been included.
18. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will constitute an original, but all of which together will constitute one instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Contractor and NC State have executed this Agreement as of the date of the last signature below as indicated by the signatures of their authorized representatives.

CONTRACTOR

By: _____
Name: _____
Title: _____
Date: _____

**NORTH CAROLINA STATE
UNIVERSITY**

By: _____
Name: _____
Title: _____
Date: _____

Acknowledged by:

Name: _____
Title: _____
Date: _____

EXHIBIT A

Scope of Services