

**INSTRUCTION AGREEMENT**

**THIS INSTRUCTION AGREEMENT** (the "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."

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

**WHEREAS**, NC State desires to enter into an agreement with Contractor for the performance of these professional 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 professional services described as follows (the "Services"): \_\_\_\_\_

- 2. **Term.** Contractor shall commence providing the Services on \_\_\_\_\_, 20\_\_\_\_ (the "Commencement Date"), and shall terminate on \_\_\_\_\_, 20\_\_\_\_ (the "Term").

- 3. **Payment.** In consideration of the Services provided pursuant to this Agreement, NC State shall pay Contractor a fee not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). Payment shall be made by NC State within thirty (30) days of NC State's receipt and approval of an invoice from Contractor. Payment of compensation specified in this Agreement 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. **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.
- b. **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.
- c. **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 Section 1 of this Agreement and all prevailing industry, commercial, academic, and professional standards.
- d. **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.
- e. **Protection of Education Records.** NC State has determined that Contractor is a school official with a legitimate educational interest under the Family Educational Rights and Privacy Act ("FERPA"). If NC State provides Contractor with "personally identifiable information" from a student's education record as defined by FERPA, 34 CFR §99.3, Contractor hereby certifies that collection of this information from NC State is necessary for the performance of the Services under this Agreement. Contractor further certifies that it shall maintain the confidential status of education records in its 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 NC State's 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.

5. **Termination.**

- a. This Agreement may be terminated (i) by NC State upon seven (7) days' written notice to Contractor or (ii) by Contractor upon fourteen (14) days' written notice to NC State.
- 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 all loss, cost, and expense in connection with or arising out of any liability or claim of liability for injury or damages to persons or property sustained or claimed to have been sustained by anyone whomsoever, by reason of the performance of this Agreement, or by any act or omission of the Contractor or any of its officers, agents, employees, guests, patrons, or invitees. 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. **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.

8. **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 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. Contractor is responsible for expenses related to any injury or malady occurring to it arising out of the performance of the Services. As an independent contractor, Contractor shall be responsible for the payment of any taxes due on any monies received by it.

9. **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:        \_\_\_\_\_  
                                     \_\_\_\_\_  
                                     \_\_\_\_\_  
                                     \_\_\_\_\_

10. **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.
11. **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.
12. **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.
13. **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.
14. **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.
15. **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.

16. **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: \_\_\_\_\_