

STATE OF NORTH CAROLINA

Rev 2/18

WAKE COUNTY

**NORTH CAROLINA STATE UNIVERSITY
PERFORMER AGREEMENT**

THIS PERFORMER AGREEMENT (“Agreement”) is made and entered into as of the date of the last signature below, by and between _____ (“Performer”), and **NORTH CAROLINA STATE UNIVERSITY**, c/o its _____ (“NC State”). NC State and Performer may be referred to collectively in this Agreement as the “Parties” or each individually as a “Party.”

WITNESSETH

WHEREAS, NC State desires to enter an agreement with Performer for the performance of certain professional services; and,

WHEREAS, Performer desires to provide certain professional services to NC State.

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 Performer agree as follows:

1. **Performance.** Performer agrees to supply NC State with the professional services described in **Exhibit A** (the “Services”), attached hereto and incorporated by reference as if set forth fully herein.
2. **Duties of NC State.** In order to assist Performer with its provision of the Services, NC State shall prepare and be responsible for the activities described in **Exhibit A**.
3. **Schedule of Performance.** Performer shall provide the Services as described in **Exhibit A**. In the event of a Force Majeure, as defined in Section 11, the Parties shall endeavor to reschedule Performer’s provision of the Services at mutually agreeable date(s) and time(s).
4. **Payment.** In consideration of Performer’s Services, NC State shall pay Performer a fee as detailed in **Exhibit A** (the “Fee”). 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 Performer written notice of said termination, and this Agreement shall terminate immediately without any further liability to NC State.

5. **Sale of Merchandise.** Sale of merchandise in connection with the Services, if any, shall be performed in accordance with Exhibit A.

6. **Performer's Obligations.**

a. **Care Of Property.** Performer shall be responsible for the proper custody and care of any property furnished by NC State to Performer for use in connection with the Services, and Performer shall reimburse NC State for loss or damage to any such property.

b. **Subcontracting, Assignment, And Transfer Prohibited.** Due to Performer's unique abilities, this Agreement is for personal services and Performer shall not subcontract, assign, or transfer any interest in this Agreement without prior written approval of NC State. Upon Performer's request and following prior written approval by NC State, NC State may:

- i. Forward Performer's Fee directly to any person or entity designated by Performer; or,
- ii. Include any person or entity designated by Performer as joint payee on Performer's Fee.

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

c. **Compliance With Applicable Law.** Performer 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 Performance.

d. **Foreign Nationals.** If Performer is a Foreign National, as defined by the United States Citizenship and Immigration Service ("USCIS"), Performer 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 Performer's commencement of the Services, a Foreign National performer shall provide proof to NC State that Performer 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. Performer's failure to provide appropriate proof of appropriate lawful immigration status may result in NC State's termination of this Agreement. Foreign National performers may be subject to a thirty percent (30%) federal tax withholding requirement on their payment.

7. **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 of this Agreement by the non-breaching Party.
 - b. NC State may terminate this Agreement immediately, effective upon written notice to Performer, if Performer, or any of its key personnel, is accused of or commits any act, as reasonably determined in the discretion of NC State, which would tend to bring disrespect, contempt, or ridicule upon NC State, which harms NC State's reputation, could adversely impact the performance services or NC State's programs, or which reasonably brings into question the integrity of Performer. In that event, Performer shall refund all fees paid to Performer prior to the date of termination.
 - c. 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.
8. **Indemnification.** Performer 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 Performer in the performance of this Agreement. This representation and warranty shall survive the termination or expiration of this Agreement.
9. **Intellectual Property and Copyright.** Performer warrants that its Services will 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.
10. **Independent Contractor.** Performer 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 Performer and NC State. Performer 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. As an independent contractor, Performer shall be responsible for the payment of any taxes due on any monies received by Performer.

11. **Force Majeure.** In the event that the Services or either Party's performance of any of the covenants of this Agreement is prevented by a Force Majeure, the Parties shall be relieved of their obligations hereunder. "Force Majeure" shall mean fire, earthquake, hurricane, flood, act of God, strikes, work stoppages, or other labor disturbances, riots or civil commotions, war or other act of any foreign nation, power of government, or governmental agency or authority, Performer illness, injury or death (or that of an immediate family member) or any other cause like or unlike any cause mentioned which is beyond the control of the Parties.

12. **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.

13. **Access to Persons and Records.** The State or NC State auditor may audit the records of Performer 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, 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. **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 Performer: _____

IN WITNESS THEREOF, the Parties have executed this Agreement as of the date of the last signature below.

PERFORMER

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

NORTH CAROLINA STATE UNIVERSITY

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

Acknowledged by: _____
Printed Name: _____
Title: _____
Date: _____

Exhibit A

Attach description of Services, including performance schedule, payment information, and terms applicable to the sale of merchandise.