

SECOND AMENDED
Operating Agreement

North Carolina State University
and
NC State University Partnership Corporation

This Operating Agreement (Agreement) is made between North Carolina State University (NC State) and NC State University Partnership Corporation (Associated Entity).

RECITALS

- A. NC State is an institution of higher education and a constituent institution of the University of North Carolina (UNC) subject to the UNC Board of Governors' Code and the UNC Policy Manual, including UNC Regulation 600.2.5.2[R] (UNC Regulation) adopted 16 November 2005, amended 25 July 2014, and as may be amended thereafter, governing University Associated Entity relationships; and
- B. Associated Entity, as a North Carolina nonprofit corporation qualified under Section 501(c)(3) of the Internal Revenue Code and existing for the purposes of aiding and promoting educational and charitable purposes and lawful activities of NC State, is a Special Purpose Associated Entity of NC State; and
- C. NC State in its capacity as an Approving Institution has officially recognized and approved Associated Entity as satisfying the standards and eligibility requirements as a Special Purpose Associated Entity of NC State; and
- D. The parties desire to formalize the University Associated Entity relationship between NC State and Associated Entity in compliance with UNC Regulation 600.2.5.2[R] by setting forth the manner in which NC State is to provide support to Associated Entity and in which Associated Entity is to provide support for NC State; and
- E. The capitalized terms in this Agreement shall have the same meaning as defined in UNC Regulation 600.2.5.2[R] unless otherwise stated herein. The Chancellor may delegate authority for NC State obligations and approvals at his discretion.

TERMS

In consideration of the mutual covenants, promises and conditions herein contained, and for good and valuable consideration the adequacy of which is hereby acknowledged, NC State and Associated Entity agree as follows:

1.0 Associated Entity Support of NC State.

- 1.1 Associated Entity's sole purpose is to provide support to NC State in accordance with Associated Entity's governing documents, which support includes, but is not limited to the following purpose:
 - 1.1.1 The Corporation is organized and shall be operated exclusively to support and for the benefit of NC State with the aims of creating new knowledge

and improving the lives of the people of North Carolina and exercising those powers consistent therewith granted to non-profit corporations by the laws of the State of North Carolina; ;

1.1.2 Promoting the future development of NC State.

1.1.3 Performing other acts as may be deemed appropriate by NC State.

2.0 Use of NC State Name.

2.1 Associated Entity may use the name of NC State as well as NC State's logo, informal seal, and other symbols and marks of NC State, in connection with services rendered by it for the benefit of NC State in accordance with NC State's trademark regulation and rule. Any Associated Entity communication utilizing NC State's name and/or symbols must clearly indicate that the communication originates from the Associated Entity and not NC State. All uses of NC State's name and/or symbols shall be subject to oversight and approval by NC State, which may withhold permission for particular uses at its sole discretion.

2.2 Associated Entity shall not delegate the authority to use NC State's name or symbols to any person or entity without the prior written approval of the Chancellor or Chancellor's designee.

2.3 Associated Entity agrees to cease using NC State's name and symbols in the event:

2.3.1 Associated Entity dissolves or its Approved status is removed;

2.3.2 This Agreement is terminated as provided below (unless the parties agree otherwise); or,

2.3.3 Associated Entity ceases to be a nonprofit corporation under North Carolina law or ceases to be recognized by the Internal Revenue Service as described in Section 501(c)(3) of the Internal Revenue Code.

2.3.4 The Chancellor revokes such authority for failure to conform with the requirements of section 2.1, above. Such revocation shall not occur until after Associated Entity is provided notice of its failure to conform and a reasonable opportunity to cure such non-conformance.

2.4 Notwithstanding the provisions of section 2.1, Associated Entity agrees that it will not offer any course or seminar using NC State University's name without first obtaining prior written permission from the Chancellor or Chancellor's designee.

3.0 Relationship between Associated Entity and NC State.

3.1 NC State agrees to encourage and maintain the independence of Associated Entity and, at the same time, foster the cooperative relationship between NC State and Associated Entity.

3.2 At least one Senior Academic Officer or Senior Administrative Officer of NC State or a designee of the Chancellor must sit as an ex-officio voting or regular member of the Associated Entity's board and any standing committee or other committee that has delegated authority to act on behalf of the Associated Entity's governing board.

- 3.3 Associated Entity agrees to cooperate with Chancellor and/or the Chancellor's designee to allow NC State to monitor the relationship between NC State and Associated Entity.
- 3.4 Associated Entity shall be responsible for control and management of all assets of Associated Entity.

4.0 Associated Entity's Obligation to NC State.

- 4.1 Associated Entity agrees, to consult with the Vice Chancellor of Research, Innovation and Economic Development (ORIED) or designee before accepting any contract or specific grant, as those terms are defined in the Standard Operating Procedures for Acceptance of Gifts. Associated Entity shall neither solicit, apply for nor accept any contract or specific grant in the name of the Associated Entity unless it receives prior written approval from the Vice Chancellor of ORIED or designee.
- 4.2 Associated Entity shall obtain, operate, and maintain its accounting, development activities, and other information on NC State-compatible data processing equipment, peripheral hardware and software. The President of the Associated Entity shall be the custodian of these records, and assigned employees of NC State will have access to them only for the purposes of providing services to the Associated Entity. Notwithstanding the foregoing, Associated Entity shall maintain ownership of and control access to any information it collects that constitutes a trade secret under N.C. Gen. Stat. § 66.152 and shall comply with N.C.G.S. § 132-1.2. The assigned NC State employees shall keep any Associated Entity's confidential and proprietary information secret and not disclose the records to any third party, except with consent or as authorized by law. Associated Entity agrees that it will comply with any and all applicable regulations or schedules that NC State may establish from time to time that govern the retention and destruction of documents, similar to the series types of records maintained by the Associated Entity including electronic files, and that prohibit destruction of documents if an investigation or audit or litigation is anticipated or underway.
- 4.3 Associated Entity shall administer its funds and make distributions to NC State and its associated entities in accordance with policies, regulations and procedures established by NC State and the Associated Entity as may be established and revised from time to time, in collaboration with NC State. Associated Entity agrees not to provide funds from unrestricted sources to NC State programs except through a granting process approved by the Chancellor or as requested by the Chancellor. Associated Entity agrees that all transfers of funds from Associated Entity to NC State must be documented in writing or electronically in a form that has a retrievable transaction trail.
- 4.4 All officers of Associated Entity are University employees, resulting in implied control by the University. As such, Associated Entity is subject to annual review by state auditors and is included in NC State's audited financial statements.

5.0 Limitations on Associated Entity.

- 5.1 Associated Entity agrees not to make any payments or to provide any non-salary or deferred compensation, to any NC State employee, except for approved expense reimbursements, without prior written approval by an authorized NC State representative and Associated Entity agrees to abide by NC State's Policy on Non-Salary and Deferred Compensation (POL05.15.03) and UNC Policy 300.1.1 concerning the prohibition of payments to specified officers or employees.
- 5.2 Associated Entity officers and employees who have check signing authority or who handle cash or negotiable instruments must be bonded in an amount determined to be reasonable by the Associated Entity board and NC State.
- 5.3 In consultation with NC State's Insurance and Risk Management personnel, Associated Entity must purchase general liability and directors/officers insurance in an amount determined to be commercially reasonable.
- 5.4 Associated Entity must not engage in any activities not permitted to be carried on (a) by an organization exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 and its Regulations as they now exist or as they may hereafter be amended, or (b) by an organization contributions to which are deductible under Section 170(c)(2) of the Code and Regulations as they now exist or as they may hereafter be amended, or (c) by a corporation created under the North Carolina Nonprofit Corporation Act, Chapter 55A of the North Carolina General Statutes, as amended from time to time.
- 5.5 Associated Entity must provide a financial or construction audit to Chancellor or designee and to the Vice President for Finance of the University of North Carolina at the Vice President's request, or to the governing board of the University at the request of the chair of the governing board, before issuance of any debt to construct or manage facilities for the University. The Chancellor or designee must also provide prior approval before issuance of any such debt.

6.0 NC State Support of and Obligations to Associated Entity.

- 6.1 NC State shall provide Associated Entity with office space under such terms and at such locations, as are mutually acceptable, including utilities and janitorial services.
- 6.2 NC State shall provide an Employees Dishonesty bond in an amount determined from time to time by the parties for any NC State employee providing substantial services to Associated Entity.
- 6.3 NC State shall provide operational services to Associated Entity of the type provided to NC State departments on a cost reimbursement basis including, but not limited to, access to NC State telephone system, maintenance from the facilities services, printing services, computing services, NC State mail system,

and other service providers. Associated Entity shall provide reimbursement for such services in accordance with normally established rates for NC State departments. The parties shall develop a budget annually based on projected services required by Associated Entity.

- 6.4 NC State shall provide reasonable support to Associated Entity including assigning personnel consistent with the support outlined above and based upon an annual budget plan agreed to by the parties. Employees of NC State shall remain for all purposes employees of the University, even when assigned to assist with operations of the Associated Entity. The Associated Entity shall not pay or compensate in any way an NC State employee unless prior approval has been granted by the Chancellor or Chancellor's designee in accordance with NC State's policies. Approved reimbursement expenses may be paid as appropriate.
- 6.5 When NC State receives funds from Associated Entity for a specified purpose, NC State agrees to use such funds received for the specific purpose.
- 6.6 Associated Entity agrees that when NC State personnel provide services for the Associated Entity and there arises a conflict between NC State University and the Associated Entity, the NC State employee must comply with the policies, regulations, and directives of the University; provided that said employee shall notify the Associated Entity in ample time to remedy the conflict or approve the intended action when feasible. If prior notification is not feasible, the Associated Entity shall be promptly notified in writing of the conflict and action taken.

7.0 Associated Entity Budgets, Audits and Reporting.

- 7.1 Associated Entity agrees to create and adopt an annual operations budget, and an annual capital budget if any, through its regular participation in the annual general fund process or as such annual budgets may be otherwise duly created and adopted. The proposed annual operations and capital budget must be submitted to the Chancellor or designee for review and approval prior to adoption and effective date, as well as any subsequent amendments to the budget(s).
- 7.2 Associated Entity agrees to select a certified public accounting firm that meets the approval of NC State's Treasurer, to serve as the Associated Entity's independent auditor and to complete a full and complete annual, or as requested, audit of its finances and operations.
- 7.3 Associated Entity agrees to provide to the Chancellor of, annually on or before December 31 or, if not available on or before December 31, as soon as practicable when available:
 - 7.3.1 The annual audit report, management letters and responses to management letters, and the publicly disclosed portion of Associated Entity's IRS Form 990;
 - 7.3.2 The list of Associated Entity governing board, officers, and employees;
 - 7.3.3 Within 90 days of the issuance of the audit report with audit findings or a management letter, Associated Entity must demonstrate to the Chancellor and to the Vice Chancellor for Finance and Business that satisfactory

progress has been made to implement a corrective action plan. Failure to receive an unqualified audit opinion, to comply with the reporting requirements of this regulation, or to satisfactorily implement a corrective action plan in response to an audit finding or management letter may result in Associated Entity's losing its approved status.

7.3.4 A copy of the current Articles of Incorporation, Articles of Organization, Bylaws, and other governing documents, and any revisions or amendments.

7.4 Associated Entity agrees to allow the Chancellor or Chancellor's designee access to all Associated Entity documents and records at reasonable times, and to provide timely such other reports and any other information as requested by the Chancellor.

8.0 Conflicts of Interest.

Associated Entity will establish and maintain conflict of interest and ethics policies, which must be approved by NC State, pertaining to its relationship with NC State, members of the governing board of the Associated Entity, and persons doing business with the Associated Entity and establishing required ethical standards for the members of the governing board of the Associated Entity. Such policies shall provide that (a) all transactions (other than expense reimbursements set forth in 5.1), between Associated Entity and an officer, director, or employee of Associated Entity, must be approved by the Associated Entity Board; (b) no Associated Entity officer, director, or employee having a private business interest in an Associated Entity business transaction may be involved in the decision with respect to whether the Associated Entity should enter into such transaction.

9.0 Compliance with UNC and NC State policies and regulations and Associated Entity Bylaws.

Both NC State and Associated Entity agree to comply with the policies and regulations and procedures of the UNC System and NC State pertaining to the Associated Entities, including amendments thereto. NC State shall provide the Associated Entity with changes or amendments to policies and regulations as soon as practicable to allow the Associated Entity the opportunity to make required changes to ensure continued adherence to said policies and regulations, but in no event less than fifteen days prior to their effective date. Associated Entity agrees to provide NC State with a copy of its Articles of Incorporation and Bylaws and shall provide any proposed amendments as soon as possible but in no event less than fifteen days prior to the meeting of the Associated Entity at which they are considered for adoption.

10. Effect of Agreement; Modification.

This Agreement (and its attachments, if any) contains all the terms between the parties and may be amended only in writing signed by an authorized representative of both parties.

11. Confidentiality.

Neither Associated Entity nor NC State shall disclose or use any private, confidential, proprietary, or trade secret information provided from one to the other except as required in and by the terms of this Agreement or as required by law. Associated Entity shall maintain ownership of any control access to any records it collects that constitute a trade secret under N.C.G.S. § 66-152.

12. Indemnification.

Associated Entity shall indemnify and hold harmless NC State, its Board of Trustees, officers, employees, agents, and students in their official and personal capacities, from and against any and all claim, damage, liability, injury, expense, demands, and judgments, including court costs and attorney's fees, arising out of Associated Entity's performance of this Agreement to the extent any such claim, damage, liability, injury, expense, demand or judgment is caused by the Associated Entity or any NC State employee acting at the direction of the Associated Entity Board or the President of the Associated Entity Board. This provision shall continue beyond termination or expiration of this Agreement.

13. Term and Termination.

The initial term of this Agreement shall be five (5) years from the day written below and shall be automatically renewed for successive one (1) year terms, unless and until either party gives ninety (90) days written notice to the other party of its intent not to renew for a new term. Either party shall have the continuing right to terminate this Agreement at any time without cause upon 90 days written notice to the other party. If NC State removes the Approved status of Associated Entity, the Associated Entity must dissolve as soon as practicable and this Agreement shall then terminate.

14. Dissolution.

It is the intent of the Associated Entity that it has perpetual existence. In the event of dissolution of the Associated Entity, including removal of Approved status, all assets and property which remain after the discharge of the Associated Entity's liabilities and unless otherwise designated by the donor of an asset shall be paid over or distributed by the Board of Directors to NC State or to another Approved Associated Entity of NC State organized to support the University and shall be used or distributed for no other object or purpose whatsoever. This dissolution provision must be contained in the Associated Entity's Bylaws and Articles of Incorporation.

15. Compliance with Applicable Law and Non-Discrimination.

Associated Entity agrees to comply with all applicable federal, state and local rules, regulations, and laws, as currently in effect and as may be amended from time to time. Associated Entity further agrees not to discriminate in any manner on the basis of sex, race, creed, age, color, national origin, religious belief, disability, status as a disabled veteran, or veteran of the Vietnam era, sexual orientation, gender identity, or genetic

information, and to comply with all non-discriminatory laws and policies that NC State promulgates and to which NC State is subject.

16. Whistle Blower Protection.

Associated Entity must have a confidential and anonymous mechanism to encourage individuals to report any inappropriateness within the entity's financial management and must prohibit punishment of or retaliation against any employee for reporting problems.

17. Notice.

Any notice to either party hereunder must be in writing signed by the party giving it, and shall be deemed given when sent via electronic means such as e-mail, sent by facsimile, or mailed postage prepaid by U.S. Postal Services first class, certified, or express mail, or other overnight mail service, or hand delivered, when addressed as follows:

To NC State:

North Carolina State University
Campus Box 7201
Raleigh, NC 27695-7201

Attn: Vice Chancellor for Finance and Business

To Associated Entity:

NC State University Partnership Corporation
Campus Box 7235
Raleigh, NC 27695-7235

Attn: President of Board of Directors

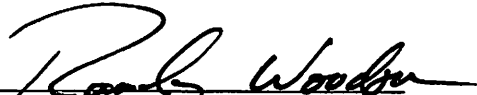
Or to such other addressee as may be hereafter designated by written notice. All such notices shall be effective only when received or refused by the addressee.

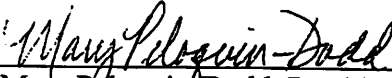
(Signatures appear on the following page.)

IN WITNESS WHEREOF, NC State and the authorized representative(s) of Associated Entity have executed this agreement on this 10th day of December, 2014.

North Carolina State University

NC State University Partnership Corporation

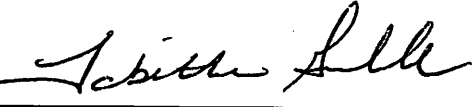
By: 
W. Randolph Woodson, Chancellor

By: 
Mary Peloquin-Dodd, President

ATTEST:

ATTEST:

By: 
Patricia J. Teal, Secretary

By: 
Tabitha Groelle, Assistant Secretary