

WAKE COUNTY

**NORTH CAROLINA STATE UNIVERSITY
AGREEMENT**

THIS AGREEMENT (“Agreement”) made and entered into this ____ day of _____, 20____, by and between _____ (“Dance Instructor”), and North Carolina State University, c/o _____ (“NC State”).

WITNESSETH

WHEREAS, Dance Instructor 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 Dance Instructor 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 Dance Instructor agree as follows:

- 1. **Scope of Services.** Dance Instructor agrees to supply NC State with the following professional services (the “Services”):

- 2. **Term.** Dance Instructor 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, NC State shall pay Dance Instructor a fee of _____ 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 Dance Instructor written notice of said termination, and this Agreement shall terminate immediately without any further liability to NC State.

4. **Dance Instructor's Obligations.**

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

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

- c. **Compliance With Applicable Law.** Dance Instructor 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.
- d. **Protection of Education Records.** NC State has determined that Dance Instructor is a school official with a legitimate educational interest under the Family Educational Rights and Privacy Act ("FERPA"). If NC State provides Dance Instructor with "personally identifiable information" from a student's education record as defined by FERPA, 34 CFR §99.3, Dance Instructor hereby certifies that collection of this information from NC State is necessary for the performance of the Services under this Agreement. Dance Instructor 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 Dance Instructor for a period of at least five (5) years from date of violation. If Dance Instructor experiences a security breach relating to this information or if Dance Instructor re-discloses the information, Dance Instructor shall immediately notify NC State. Dance Instructor 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. NC State may terminate this Agreement at any time by providing thirty (30) days' written notice to Dance Instructor.
- b. If Dance Instructor 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 Dance Instructor and termination shall be effective upon receipt. Dance Instructor shall cease performance immediately upon receipt of such notice.
- c. In the event of early termination, Dance Instructor shall be entitled to receive just and equitable compensation only for costs incurred prior to receipt of notice of termination and for the satisfactory Services provided as of the date of termination and delivered to NC State. Dance Instructor shall be responsible to NC State for damages sustained by NC State as a result of Dance Instructor's breach of this Agreement, and NC State may withhold any payment due to Dance Instructor 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 Dance Instructor'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. **Indemnification.** Dance Instructor 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 Dance Instructor in the performance of this Agreement. This representation and warranty shall survive the termination or expiration of this Agreement.

7. **Tort Claims Act.** 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, N.C.G.S. 143-291, et seq., and NC State's assertion of sovereign immunity.

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

If to Dance Instructor: _____

11. **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.
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 Dance Instructor 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.

[SIGNATURE PAGE FOLLOWS]

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 and year first written above.

NORTH CAROLINA STATE UNIVERSITY
c/o _____

DANCE INSTRUCTOR

Recommended by:

By: _____

Name: _____

Name: _____

Title: Project Coordinator

Title: _____

Date: _____

Date: _____

Authorized by:

Name: _____

Title: Director of Materials Management

Date: _____