SECOND AMENDED
Operating Agreement

North Carolina State University
and
North Carolina State University Alumni Association, Inc.

This Operating Agreement (Agreement) is made between North Carolina State University (NC State) and North Carolina State University Alumni Association, Inc. (Association).

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, recently amended June 8, 2015, and as may be amended thereafter, governing University Associated Entity relationships; and

B. Association, 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 Major Associated Entity of NC State; and

C. NC State in its capacity as an Approving Institution has officially recognized and Approved Association as satisfying the standards and eligibility requirements as a Major Associated Entity of NC State; and

D. The parties desire to formalize the University Associated Entity relationship between NC State and Association in compliance with UNC Regulation 600.2.5.2[R] by setting forth the manner in which NC State is to provide support to Association and in which Association is to provide support for NC State; and

E. The capitalized terms in the 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 Association agree as follows:

1.0 Association Support of NC State

1.1 Association’s purpose is to provide support to NC State in accordance with Association’s governing documents, that support includes, but is not limited to:

1.1.1 Act in the best interest of NC State to promote the growth, progress and general welfare of NC State and its reputation
1.1.2 Foster among its present and former students a sentiment of regard for one another and a continuing connection to their alma mater, while engaging channels of communication to all alumni, friends and students of NC State.

1.1.3 Raising, receiving and administering funds for the benefit of NC State to use for its mission, educational, research, and outreach purposes, including student scholarships such as the Caldwell Fellows Program, faculty support, facilities, and programs.

1.1.4 Provide and promote student organizations to engage leadership opportunities and foster leadership training and growth for current students.

1.1.5 Assist the NC State Office of University Advancement as directed according to a mutually agreed upon plan in its fundraising, marketing, public relations, and alumni outreach activities and development programs with individuals, corporations, foundations and other appropriate organizations.

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

Association strives to foster opportunities for alumni, students, faculty, staff and university friends to become actively engaged in enriching NC State now and in the future. As a vital part of the campus community, Association strengthens ties with alumni, acting as a unifying force and conduit for increasing their interaction with their alma mater through communication, outreach, education and events.

Association publishes the *NC State Alumni Magazine* to support NC State as described above in Section 1.1. Editorial decision-making will, at all times, be undertaken in a manner indicative of the support described in Section 1.1. A Magazine Advisory Board works with the editorial staff of NC State to enhance creative content, ensure accuracy and counsel staff. The Advisory Board will have two members appointed by the Chancellor, to provide ideas for possible articles and to work with other members to resolve issues of editorial content prior to publication. In the rare instance in which a disagreement regarding editorial direction arises, the Executive Director of the Association and the Vice Chancellor for University Advancement shall make the final editorial and publishing decisions.

2.0 Use of NC State Name.

2.1 Association 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 Association communication utilizing NC State’s name and/or symbols must clearly indicate that the communication originates from the Association 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 Association 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 the Chancellor’s designee.

2.3 Association agrees to cease using NC State’s name and symbols in the event:
   2.3.1 Association 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 Association 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 2.1, above. Such revocation shall not occur until after Association 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, Association 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 Association and NC State.

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

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 regular member of the Association’s board, and on any standing committee or other committee that has delegated authority to act on behalf of the governing board.

3.3 Association agrees to cooperate with Chancellor and/or the Chancellor's designee to allow NC State to monitor the relationship between NC State and Association.

3.4 Association shall be responsible for control and management of all assets of Association, including prudent management of all gifts to Association consistent with donor intent.

3.5 NC State may remove the Approved status of Association upon 60-day advance written notice of material noncompliance with or breach of: (a) UNC Regulation; (b) the applicable policies of UNC or NC State; or (c) this operating agreement. During this time, the Approving Institution may consider and accept or reject a correction action plan submitted by the Associated Entity. If rejected, Association must dissolve as soon as practicable and cease doing business on behalf of NC State.

4.0 Association's Obligation to NC State.

4.1 Association agrees, before accepting real estate, or gifts with any restrictive terms and/or conditions that impose an obligation on NC State or the State of North Carolina or that impose an obligation to expend resources in addition to the gift to obtain prior written approval from the Vice Chancellor for Finance and Administration and the Vice Chancellor for University Advancement unless such gift otherwise complies with NC State’s Standard Operating Procedures for Acceptance of Gifts which may then be in force and effect. In addition, Association
agrees that it will not accept a gift that has any restriction that is unlawful. An assessment on certain gifts may be applied as directed by the Chancellor.

4.2 Association agrees to consult with the Vice Chancellor of Research, Innovation and Economic Development (ORIED) or designee before accepting any contracts or specific grant, as those terms are defined in the Standard Operating Procedures for Acceptance of Gifts. Association shall neither solicit, apply for nor accept any contract or specific grant in the name of the Association unless it receives prior written approval from the Vice Chancellor of OREID or designee.

4.3 Association agrees to advise prospective donors of restricted gifts that acceptance of such gifts is conditioned upon NC State’s approval if the gift requires NC State approval under section 4.1 or 4.2. Association also agrees to follow NC State’s criteria and procedures for naming facilities and programs before promising a donor any such opportunity.

4.4 Association agrees to coordinate with and receive prior approval from the Office of University Advancement or other appropriate NC State Offices regarding funding goals, programs, and campaigns and agrees to comply with NC State POL03.00.01-02 and the Standard Operating Procedures for Acceptance of Gifts, as amended from time to time. To enable coordination and compliance, members of the University Advancement staff shall have reasonable direct access to all documents and records of the Association in accordance with its generally applicable confidentiality and non-disclosure policies. This coordination includes collection of Association membership dues and NC State annual fund solicitations. Enhanced partnership between these two activities should be focused on increased revenues, more efficient solicitation and collection efforts, improved alumni communication and development of potential major donors.

4.5 Association shall obtain, operate, and maintain accounting, development activities, alumni and donor records, and other information on NC State-compatible data processing equipment, peripheral hardware and software. The President of the Association 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 Association, of donor recognition and as requested by the Chancellor. Association and NC State acknowledge the importance of accurate alumni data and will collaboratively 'continue' efforts to update and improve data collection and retention within the NC State database. Notwithstanding the foregoing, Association shall maintain ownership of and control access to any prospect and donor information it collects that constitutes a trade secret under NC Gen. Stat. § 66.152 and shall comply with N.C.G.S. § 132-1.2. The assigned NC State employees shall keep any Association’s confidential and proprietary information secret and not disclose the records to any third party, except with consent or as authorized by law. Association agrees that it will comply with 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 Association, including electronic files and that prohibit destruction of documents if an investigation, audit or litigation is anticipated or underway.
4.6 Association 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 Association as may be established and revised from time to time, in collaboration with NC State. Association 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 through the General Fund Budget Process. Association agrees that all transfers of funds from Association to NC State must be documented in writing or electronically in a form that has a retrievable transaction trail.

5.0 Limitations on Association.

5.1 Association 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 Foundation 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 Association officers and employees who have check signing authority or who handle cash or negotiate instruments must be bonded in an amount determined to be reasonable by the Association board and NC State.

5.3 In consultation with NC State’s Insurance and Risk Management personnel, Association must purchase general liability and directors/officers insurance in an amount determined to be commercially reasonable.

5.4 Association 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 Association may not acquire debt in excess of five hundred thousand dollars ($500,000.00) that is not publicly traded without prior approval from the Chancellor or designee and after notifying the Vice President of Finance of the University of North Carolina.

6.0 NC State Support of and Services to Association.

6.1 NC State shall provide Association 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 Employee Dishonesty bond in an amount determined from time to time by the parties for any NC State employee providing substantial services to Association.
6.3 NC State shall provide operational services to Association 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 facilities services, printing services, computing services, University mail system, and other service providers. Association 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 Association.

6.4 NC State shall provide reasonable support to Association 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 Association. The Association 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 Association for a specified purpose, NC State agrees to use such funds received for the specific purpose consistent with donor intent.

6.6 Association agrees that when NC State personnel provide services for Association and there arises a conflict between NC State University and Association, the NC State employee must comply with the policies, regulations and directives of the University; provided said employee shall notify Association in ample time to remedy the conflict or approve the intended action when feasible. If prior notification is not feasible, Association shall be promptly notified in writing of the conflict and action taken.

6.7 The Executive Director of Association will serve as a member of the University Council of NC State.

7.0 Association Budgets, Audits and Reporting.

7.1 Association 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 budget process or as such annual budgets may be otherwise duly created and adopted. If requested, the Association shall meet with the Chancellor or designee to review and agree on the proposed annual operations and capital budgets, as well as any subsequent proposed material changes to the budget(s).

7.2 Association bylaws must provide for an audit committee that has no NC State or Association employee as a member. The audit committee must receive the report of the independent CPA firm that conducts the Association’s annual audit and prepares the relevant tax forms for submission by the Association. If practical, the audit committee should have a member who has financial expertise.

7.3 Association agrees, in consultation with NC State’s Treasurer, to select a certified public accounting firm that is in good standing with the North Carolina Board of CPA Examiners and with substantial experience in performing audits for
organizations of similar scope and complexity to the Association, to serve as Association’s independent auditor and to complete a full and complete annual audit of its finances and operations.

7.4 Association agrees to provide to the Chancellor, annually on or before December 31 or, if not available on or before December 31, as soon as practical when available.

7.4.1 The annual audit report, management letters and responses to management letters, and the publicly disclosed portions of Association's IRS Form 990;

7.4.2 The list of Association governing board, officers, and employees;

7.4.3 The names of officers and governing board members of all Association associated or affiliated entities, if any.

7.4.4 Within 90 days of the issuance of the audit report with audit findings or a management letter, Association must demonstrate to the Chancellor and to the Vice Chancellor for Finance and Administration 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 Association's losing its approved status.

7.5 Association agrees to allow the Chancellor or Chancellor’s designee access to all Association documents at reasonable times, and to provide timely such other reports and any other information as requested by the Chancellor.

8.0 Conflicts of Interest.

Association will establish and maintain conflicts 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 Association, and persons doing business with Association and establishing required ethical standards for members of the governing Board of Association. Such policies shall provide that (a) all transactions (other than expense reimbursements set forth in 5.1), between Association and an officer, director, or employee of Association, must be approved by the Association board; (b) no Association officer, director, or employee having a private business interest in an Association business transaction may be involved in the decision with respect to whether Association should enter into such transaction; (c) no Association scholarship or fellowship award may be made to an officer, director, or employee of Association or to a family member of such person unless the recipient of the award is determined eligible by an independent awards committee.

9.0 Compliance with NC State policies and regulations and Association Bylaws and policies.

Both NC State and Association agree to comply with the policies, regulations and procedures of the UNC System and NC State pertaining to the Associated Entities, including amendments thereto. NC State shall provide Association with changes or amendments to policies and regulations as soon as practical to allow the Association 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. Association 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 Association 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 Association 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. Association shall maintain ownership of and control access to any records, including donor and prospect information, it collects that constitute a trade secret under N.C.G.S. § 66-152.

12. **Indemnification.**

Association 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 Association's performance of this Agreement to the extent any such claim, damage, liability, injury, expense, demand or judgment is caused by Association or any NC State employee acting at the direction of Association 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 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 without cause upon 90 days written notice to the other party. If NC State removes the Approved status of Association, the Association must dissolve as soon as practicable and this Agreement shall then terminate.

14. **Dissolution.**

It is the intent of Association that it has perpetual existence. In the event of dissolution of Association, all assets and property which remain after the discharge of the Association's liabilities shall be paid over or distributed by the Board of Directors to North Carolina State University or to another Approved Associated Entity of NC State organized to support the University or any of its Colleges, Schools, or Departments and shall be used or distributed for no other object or purpose whatsoever. This dissolution provision must be contained in the Association's Bylaws or Articles of Incorporation.

15. **Compliance with Applicable Law and Non-Discrimination.**

Association agrees to comply with all executive orders, federal, state and local rules, regulations, and laws, as currently in effect and as may be amended from time to time. Association 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.**

Association 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 7004  
Raleigh, NC 27695-7004  
Attn: Vice Chancellor for University Advancement

North Carolina State University  
Campus Box 7201  
Raleigh, NC 27695-7201  
Attn: Vice Chancellor for Finance & Administration

To Association:

North Carolina State University Alumni Association, Inc.  
Campus Box 7503  
Raleigh, NC 27695-7503  
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.

18. This agreement supersedes all prior operating agreements.

IN WITNESS WHEREOF, NC State and the authorized representative(s) of Association have executed this Agreement on this 30th day of June, 2015.

North Carolina State University  
By: W. Randolph Woodson, Chancellor

North Carolina State Alumni Association, Inc.  
By: Gary Upchurch, President

By: Charles D. Leffler, Vice Chancellor for Finance and Administration  
By: Ralph E. Suggs, Association Executive Director

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ATTEST:
By: Patricia J. Teal, Secretary

ATTEST:
By: Perry Saffan, Secretary-Treasurer