SECOND AMENDED
Operating Agreement

North Carolina State University
and
NC State Investment Fund, Inc.

This Operating Agreement (Agreement) is made between North Carolina State University (NC State) and the NC State Investment Fund, Inc. (Fund).

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 June 2014, and as may be amended thereafter, governing University Associated Entity relationships; and

B. The Fund, as a North Carolina nonprofit corporation qualified under Section 501(c)(3) of the Internal Revenue Code effective August 11, 1998, and existing for the purposes of supporting NC State by operating an investment fund for the purpose of investing assets designated for investment therein by any charitable nonprofit foundation, association, trust, endowment or fund that is organized and operated primarily to support the University (“Participant”), is a Major Associated Entity of NC State; and

C. NC State in its capacity as an Approving Institution has officially recognized and Approved the Fund 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 the Fund in compliance with UNC Regulation 600.2.5.2[R] by setting forth the manner in which NC State is to provide support to Fund and in which the Fund 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 the Fund agree as follows:

1.0 Fund’s Support of NC State.

1.1 The Fund’s sole purpose is to provide support to NC State and Participants in accordance with the Fund’s governing documents, which support includes, but is not limited to:
1.1.1 Investing and administering assets for NC State, or any charitable, nonprofit foundation, association, trust, endowment or fund that is organized and operated primarily to support NC State, to use for its mission, educational, research, and outreach purposes;
1.1.2 Performing other acts as may be deemed appropriate by NC State.

1.0 Use of NC State Name.

2.1 The Fund 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 Fund communication utilizing NC State’s name and/or symbols must clearly indicate that the communication originates from Fund 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 The Fund 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 The Fund agrees to cease using NC State’s name and symbols in the event:

2.3.1 The Fund 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 The Fund 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 the Fund 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, the Fund agrees 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 the Fund and NC State.

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

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

3.3 The Fund agrees to cooperate with the Chancellor and/or the Chancellor’s designee to allow NC State to monitor the relationship between NC State and the Fund.
3.4 Fund shall be responsible for control and management of all assets of the Fund, including prudent management of the assets.

3.5 NC State may remove the Approved status of Fund upon 60-day advance written notice of material noncompliance with or breach of: (a) applicable UNC Regulations currently existing or hereafter amended; (b) applicable policies of NC State University; or (c) the agreement(s) referenced in UNC Policy 600.2.5.2[R] B.2. and F.1. During the 60-day notice period, the University will consider, and may either accept or reject, corrective actions plans submitted by the Fund. If rejected, Fund shall cease operating on behalf of NC State or its various colleges, units or departments, as required by and consistent with the terms of its Approved status and applicable UNC GA Regulations.

4.0 Fund’s Obligation to NC State.

4.1 The Fund shall obtain, operate, and maintain its accounting, investment activities, and other information on NC State-compatible data processing equipment, peripheral hardware and software. The Fund shall be the custodian of its records, and assigned employees of NC State will have access to them only for the purpose of providing services to the Fund, and as requested by the Chancellor. Notwithstanding the foregoing, Fund shall maintain ownership of and control access to any investment information it collects that constitutes a trade secrets 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 Fund’s confidential and proprietary information secret and not disclose the records to any third party, except with consent or as authorized by law. The Fund 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 Fund, including electronic files, and that prohibit destruction of documents if an investigation, audit or litigation is anticipated or underway.

4.2 The Fund shall administer its funds and make distributions to NC State and Participants in accordance with policies, regulations, and procedures established by NC State and the Fund as may be established and revised from time to time, in collaboration with NC State. The Fund agrees that all transfers of funds from the Fund to NC State or Participants must be documented in writing or electronically in a form that has a retrievable transaction trail.

5.0 Limitations on the Fund.

5.1 The Fund 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 Fund agrees to abide by NC State’s policy on Non-Salary and Deferred Compensation (POL05.15.03) and UNC’s Policy 300.1.1 concerning the prohibition of payments to specified officers or employees.

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

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

6.0 **NC State Support of and Services to the Fund.**

6.1 NC State shall provide the Fund 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 the Fund.

6.3 NC State shall provide operational services to the Fund 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. The Fund shall provide reimbursement for such services in accordance with normally established rates for NC State departments.

6.4 NC State shall provide reasonable support to the Fund including assigning personnel consistent with the support outlined above. Employees of NC State shall remain for all purposes employees of the university, even when assigned to assist with operations of the Fund. The Fund 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 the Fund for a specified purpose, NC State agrees to use such funds received for the specified purpose.

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

7.1 The Fund agrees to create and adopt an annual operations budget, and capital budget if applicable.

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

7.3 The Fund agrees to select a certified public accounting firm that meets the approval of NC State's Treasurer, to serve as the Fund's independent auditor and to complete a full and complete annual audit of its finances and operations.

7.4 The Fund agrees to provide to the Chancellor, annually on or before December 31, or if not available on or before December 31, as soon as practicable when available:

7.4.1 The annual audit report, management letters and responses to management letters, and the publicly disclosed portions of the Fund's IRS Form 990;
7.4.2 The list of the Fund's governing board, officers, and employees;
7.4.3 Within 90 days of the issuance of the audit report with audit findings or a management letter, the Fund 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 the Fund losing its Approved status.
7.4.4 A copy of the current Articles of Incorporation, Articles of Organization, Bylaws, and other governing documents, and any revisions or amendments.

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

8.0 Conflicts of Interest.

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

Both NC State and the Fund 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 the Fund with changes or amendments to policies and relations as soon as practicable to allow the Fund 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. The Fund 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 Fund at which they are considered for adoption.


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 the Fund 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. Fund shall maintain ownership of and control access to any records, including investment manager information, it collects that constitute a trade secret under N.C.G.S. § 66-152.

12. Indemnification.

The Fund 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 the Fund’s performance of this Agreement to the extent any such claim, damage, liability, injury, expense, demand, or judgment is caused by the Fund or any NC State employee acting at the direction of the Fund’s Board, or the Chair of the Fund. 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 Fund, the Fund must dissolve as soon as practicable and this Agreement shall then terminate.


It is the intent of the Fund that it has perpetual existence. In the event of dissolution of the Fund, either voluntary or involuntary, all assets and property which remain after the discharge of the Fund’s liabilities shall be distributed back to the Participants based on their investment in the Fund or to a successor corporation of the Fund. This dissolution provision must be contained in the Fund’s Bylaws and Articles of Incorporation.
15. **Compliance with Applicable Law and Non-Discrimination.**

The Fund 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. The Fund 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, 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.**

The Fund 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  
Holladay Hall Suite B  
Attn: Vice Chancellor for Finance and Business

To the Fund:

NC State Investment Fund, Inc.  
Campus Box 7207  
1210 Varsity Drive  
Suite 202  
Attn: President of Members Board

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.
IN WITNESS WHEREOF, the authorized representative(s) of NC State and the NC State Investment Fund, Inc. have executed this Agreement on this 2nd day of December, 2015.

North Carolina State University

By: Randy Woods
   W. Randolph Woodson, Chancellor

By: Mary Pelougine-Dodd
   Mary Pelougine-Dodd, Interim Vice
   Chancellor for Finance and Business

ATTEST:

By: Patricia J. Teal, Secretary

NC State Investment Fund, Inc.

By: Stanhope Kelly, Chair

By: Jill A. Tasaico, Secretary