

## AGREEMENT

**Agreement** dated as of [INSERT DATE] by and between PACE UNIVERSITY, One Pace Plaza, New York, New York 10038 (hereinafter referred to as "Pace"), and \_\_\_\_\_, with an address at \_\_\_\_\_ (hereinafter referred to as "the Director").

1 **Term.** This Agreement shall commence on [DATE] and, unless earlier terminated as authorized in Section 5, on [DATE] (the "Term").

2 **Duties.** (a) Pace hereby retains the Director to perform services set forth on Exhibit A hereto (the "Work"), which Work shall not include lobbying activities or services within the meaning of state or federal law:

Director for \_\_\_\_\_.

3 **Expertise.** The Director represents and warrants that it has sufficient staff available to perform the Work and that all individuals providing the Work have the licensure, background, training and experience to perform properly the Work to be delivered under this Agreement. The Director further represents and warrants that it owns or is licensed to use all of the intellectual property that it may transfer to Pace or otherwise include in its deliverables to Pace under this Agreement. Notwithstanding the foregoing, it is understood that Pace shall provide the requisite technical crew to realize the Director's design.

4 **Fees and Expenses.** (a) The Director hereby irrevocably appoints \_\_\_\_\_, **ADDRESS**, as the Director's sole and exclusive agent (the "Agent") with respect to the Production and authorized and directs Pace to make all design-fee payments due or to become due to the Director hereunder to and in the name of said Agent, and to accept the receipt by said Agent as full evidence and satisfaction of such payments. Accordingly, all design fee payments due to The Director pursuant to this Agreement shall be made payable to the Director's agent as follows: \_\_\_\_\_ and sent by mail to the Director's agent at the following address: \_\_\_\_\_. Federal ID# \_\_\_\_\_.

\_\_\_\_\_. (b) Notwithstanding any term or condition of this Agreement to the contrary, Agent hereby represents, warrants, and certifies that Agent has been and is duly authorized by the Director to act as the Director's agent at all times hereunder with respect to all matters set forth in this Agreement. (c) *Provided* that Pace shall first have received from the Director an original of this Agreement that shall have been countersigned by an authorized Director signatory, the Director shall be paid, as its sole and exclusive consideration hereunder, a consultancy fee of \$ \_\_\_\_\_. Said consultancy fee shall be payable in \_\_\_\_\_ installment(s) upon Pace's receipt from the Director of an invoice that, in form and substance satisfactory to Pace, shall describe the Work that the Director shall have provided to Pace in the period during the Term for which the Director seeks payment. Except as specifically provided in the Agreement, all expenses shall be borne by the the Director. the Director

shall only be entitled to reimbursement of reasonable expenses that are actually incurred and allocable solely to the Work provided to Pace pursuant to the Agreement. The the Director shall provide such reasonable evidence as Pace may request in support of the Director's claims for expense reimbursement. Final payment shall be subject to the Director's delivery to Pace of all deliverables in form and substance satisfactory to Pace. Notwithstanding the foregoing, the Director acknowledges and agrees that if the Work for which the the Director is being retained by Pace is being funded by a government or private grant, then Pace's obligation to make payments to the Director hereunder is contingent upon Pace's actual receipt of monies under such grant. No amounts, other than those set forth in this paragraph 4, shall be payable to the the Director under this Agreement.

- 5 **Termination.** Either party may terminate this Agreement with thirty (30) days prior written notice to the other party. The Director hereby acknowledges and agrees that, anything to the contrary notwithstanding, in the event of such termination, Pace shall only be liable for, and the Director agrees only to retain, payment of the portion of the fee earned as a result of Work actually and satisfactorily performed through the effective date of termination.
- 6 **No Employment Relationship Created.** Notwithstanding any term(s) to the contrary of this or any other agreement(s) by, between, and among the parties, it is expressly understood, acknowledged, and agreed that the Agreement is not intended to nor does it create an employment contract for any purpose, including, but not limited to, those of applicable law, between Pace, on the one hand, and the Director and any of the Director's employees, on the other, nor does it create a joint relationship or partnership within the meaning of applicable law between the parties hereto. Neither the Director nor its employees are entitled to benefits that Pace provides for Pace employees. Pace is interested only in the results to be achieved and the conduct and control of the Work shall be solely with the Director. The Director shall be permitted to engage in any business and perform services for its own accounts, *provided* that the Work is not compromised. Except as specifically permitted in this Agreement, no party shall use the name or trademarks of the other parties or incur any obligation or expense for or on behalf of the other parties without such other party's or parties' prior written consent in each instance.
- 7 **No Withholding.** The Director is solely and exclusively responsible for the satisfaction of the Director's own local, state, and federal income tax and Social Security withholding that may be applicable to the amounts payable by Pace under this Agreement.
- 8 **Confidentiality.** During the course of performance of the Agreement, the Director may be given access to information that relates to Pace's past, present and future research, development, business activities, products, services, technical knowledge and personally identifiable student and employee information. All such information shall be deemed to be "Confidential Information" unless otherwise indicated by Pace in writing at or after the time of disclosure. The Director may use the Confidential Information only in connection with the specific duties authorized pursuant to this

Agreement. Access to the Confidential Information shall be restricted to those of the Director's personnel, representatives and consultants on a need-to-know basis solely in connection with the Director's internal business. The Director further agrees that the Director shall (i) take all necessary steps to inform any of the Director's personnel, representatives or consultants to whom Confidential Information may be disclosed of the Director's obligations hereunder and (ii) cause said personnel, representatives and consultants to agree to be bound by the terms of this Agreement by executing a confidentiality agreement containing the same restrictions contained herein or some other method acceptable to Pace. The Director agrees to protect the confidentiality of the Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind. The Director agrees to notify Pace of any unauthorized use or disclosure of Confidential Information and to take all actions reasonably necessary to prevent further unauthorized use or disclosure thereof. The terms of this Section 8 shall survive the expiration or termination of this Agreement.

These requirements apply to any subcontractors or agents the Director uses in the performance of the Work and it is the Director's responsibility to assure that all such subcontractors and agents comply with all such requirements.

- 9 **Assignment.** The Director shall not assign its duties hereunder without the prior written consent of Pace.
- 10 **Binding Effect.** This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns.
- 11 **Compliance With Laws.** The Director warrants on its behalf and that of its subcontractors, employees, and agents that it shall comply with all applicable federal, state, and local laws, ordinances, rules, regulations and codes, including, but not limited to, the Family Educational Rights and Privacy Act of 1974 (the "Buckley Amendment") with respect to personally identifiable student education records; the Health Insurance Portability and Accountability Act with respect to medical records; the Gramm-Leach-Bliley Act with respect to student financial information; and applicable provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 relating to Equal Employment Opportunity, section 402 of the Vietnam Era Veterans Readjustment Act of 1974, as amended, and section 503 of the Rehabilitation Act of 1973. The Director and its subcontractors, employees and agents shall obtain and maintain in full force and effect, all necessary permits, licenses, and authorizations required by governmental and quasi- governmental agencies. The Director shall advise Pace of all permits and licenses required to be obtained in Pace's own name for the Work to be provided hereunder, and shall cooperate with Pace in obtaining the same.
- 12 **Compliance With Pace Policies.** The Director and its subcontractors, employees, and agents shall comply with all Pace policies and procedures with respect to the Director's activities under or in connection with this Agreement, including, but not limited to, Pace's Information Technology Appropriate Use Policy and security policies.

- 13 **Proprietary Rights.** Except for live stage performances of the Production produced by Pace on or about \_\_\_\_\_ through \_\_\_\_\_ inclusive, in the immediate presence of an audience and except for publicity, including but not limited to radio, internet and television advertising, of the production or the Production, Pace's subscription seasons, other institutional advertising and/or archival use, The Director grants Pace no rights of use or reproduction of the Work.
- 14 **Indemnification.** The Director agrees to defend, indemnify, and hold harmless Pace University, its successors and assigns, and their respective trustees, officers, employees and agents (the "Indemnified Parties") to the fullest extent permitted by law from and against any and all claims or demands whatsoever, including associated costs, expenses, and reasonable attorneys' fees incurred on account thereof, that may be asserted by the Director's employees, employees of the Director's subcontractors or agents, or any other persons ("Claimants") for loss, damage, death, or injury to persons or property arising in any manner out of or incident to the Director's acts or omissions in the performance or nonperformance of this Agreement, except for Claims arising from Pace's sole and gross negligence or its willful misconduct. Without limiting the generality of the preceding sentence of this Section 14, Consultant agrees to defend, indemnify, and hold harmless the Indemnified Parties from and against Claims that may be asserted by Claimant(s) for Losses arising from Consultant's infringement in the course of Consultant's performance or nonperformance hereunder of any third-party intellectual- property rights, including, but not limited to, those of copyright.
- 15 **Cooperation.** The parties agree to cooperate with each other in connection with any internal investigations by Pace or the Director of possible violation of their respective policies and procedures and any third party litigation, except that Pace shall not be required to have any contact with any Union or Union representatives of The Director's employees or subcontractors or participate in any Union grievance or other proceedings relative to the Director's employees or subcontractors except as a fact witness.

16 **Insurance.** (a) Where the Director requires the use of a vehicle in the performance of work under this Agreement, the Director shall, at all times during the term hereof and at its own expense, keep in full force and effect automobile liability insurance, in amounts acceptable to Pace, for property damage, bodily injury or death. The Director shall provide Pace with evidence of such insurance upon request.

(b) In addition to Worker's Compensation, as may be required by law, the Director shall carry Commercial General Liability insurance in the minimum amount of one million dollars (\$1,000,000.00), covering all of the Director's activities related to this Agreement. the Director's liability policies shall name Pace as an additional insured. the Director shall provide Pace with certificates of insurance evidencing the aforesaid coverage, prior to commencing Work pursuant to this Agreement. The amounts of insurance required to be obtained by the Director hereunder shall not constitute a limitation on the indemnification obligations of the Director.

(c) For unincorporated Workers: The Director shall be responsible for her, his, or its own health, accident, vehicle and other insurance.

17 **Governing Law and Jurisdiction.** Except as may be preempted by federal law, this Agreement shall be governed by the laws of the State of New York, without regard to its choice of law principles. Litigation of all disputes between the parties arising from or in connection with this Agreement shall be conducted in a court of appropriate jurisdiction in the State of New York, County of New York.

18 **Notices.** All notices to Pace University in connection with this Agreement shall be sent to:

[INSERT NAME OF RELEVANT PACE ADMINISTRATOR(S)]  
Pace University  
One Pace Plaza  
New York, NY 10038

with simultaneous copies (which shall not constitute notice) to:

Pace University  
One Pace Plaza  
New York, NY 10038  
Attn.: Vice President for Finance

and

Pace University  
One Pace Plaza  
New York, NY 10038  
Attn.: University Counsel

All notices to the Director in connection with this Agreement shall be sent to: \_\_\_\_\_

- 19 **Entire Agreement**. This Agreement, together with any exhibits or addenda annexed hereto, is the sole, complete, and exclusive expression of the parties' intent with respect to the subject matter hereof. This Agreement may be amended or modified only by a writing countersigned by authorized representatives of each party.
- 20 **Billing**. "The Director shall receive title-page billing in all programs for the theatrical production to which this Agreement relates. The Director's biography shall appear in the biography section of the program for each production and each biography shall be subject to the Director's approval prior to printing, said approval not to be unreasonably withheld, delayed, or conditioned.
- 21 **Severability**. If a court holds any provision of this Agreement to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect and the parties shall amend this Agreement to give effect to the stricken clause to the maximum extent possible.
- 22 **No Waiver**. Failure of either party to enforce any of its rights hereunder shall not constitute a waiver of such right(s) or of any other rights and shall not be construed as a waiver or relinquishment of any such provisions, rights, or remedies; rather, the same shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**PACE UNIVERSITY**

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**SIGNATURE OF WORKER**

By:

Joseph A. Capparelli

Name:

VP Finance & Controller

Date:

Date:

**Workers' Compensation Insurance Statement**

I hereby represent and warrant to Pace University that I am exempt from any and all otherwise-applicable requirement(s) that I carry workers' compensation insurance..

Signature \_\_\_\_\_ Print

Name \_\_\_\_\_

**EXHIBIT A**

[INSERT DESCRIPTION OF WORKER'S DUTIES]