

**North Carolina Department of Health and Human Services/
University of North Carolina**

Master Agreement

This Master Agreement is between the North Carolina Department of Health and Human Services (DHHS) and The University of North Carolina (UNC) (hereinafter “the parties”).

WHEREAS, the parties desire to facilitate and simplify the process of contracting with each other to carry out Federal and State funded assistance programs, and

WHEREAS, the parties agree to be bound by the terms and conditions contained in this Master Agreement, and

WHEREAS, it is anticipated that the parties will execute Contracts between one another under this Master Agreement, and

NOW THEREFORE, the parties mutually agree as follows:

I. Definitions:

- A.** Contract: A Contract consists of a “DHHS/UNC Contract Form,” the appendices attached thereto and those terms and conditions incorporated by reference.
- B.** Pass-through Entity: A Pass-through Entity means an entity that provides a subaward to a Contractor to carry out a Federal program.
- C.** Contractor: An entity that expends Federal, state or other awards received from DHHS to carry out a Federal or State program, but does not include an individual that is a beneficiary of such a program. For the purposes of this Master Agreement, a Contractor is a constituent institution of UNC, the UNC General Administration or an affiliated entity of the UNC General Administration.
- D.** The Division: An administrative unit of DHHS, which issues a Contract to a Contractor under this Master Agreement.
- E.** Awarding Agency: The Awarding Agency is (a) with respect to a Federal or State grant, cooperative agreement, or cost reimbursement contract, the Federal or State agency, and (b) with respect to a Subcontract, the party that awarded the Subcontract.

- F. **Research and Development (R&D):** Research and Development is all research activities, both basic and applied, and all development activities that are performed by a Contractor entity. Research is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. The term Research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other Research and Development activities and where such activities are not included in the Instruction function. Development is the systematic use of knowledge and understanding gained from Research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.
- G. **Instruction:** The teaching and training activities of a Contractor entity. Except for “research training” as provided and included in Research and Development activities, this category includes teaching and training activities whether offered for credits toward a degree or certificate or on a non-credit basis, and whether offered through regular academic departments or separate divisions, such as a summer school or an extension division such as continuing education. Included in this function is “sponsored instruction” and training as established by grant, contract or cooperative agreement.
- H. **Other Sponsored Activities:** Activities that involve work other than defined in paragraphs F and G above, sponsored by an entity external to the Contractor.

II. **Modification of the Master Agreement**

The parties agree that the Master Agreement shall govern the parties' performance under any Contract. This Master Agreement may be modified only by written amendments by and between DHHS and UNC, which have been duly executed by the authorized representative of each of the parties. A Contract may not supersede the terms and conditions of the Master Agreement unless the Contract expressly specifies the term or condition of the Master Agreement that is to be superseded.

III. **Relationships of the Parties**

- A. **Independent Contractor:** The Contractor is and shall be deemed to be an independent contractor in the performance of a Contract under this Agreement and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Contractor represents that it has, or shall secure at its own expense, all personnel required in performing the services under a Contract under this Agreement. Such employees shall not be employees of, or have any individual contractual relationship with, the Division.

- B. Subcontracting:** The Contractor shall not subcontract any of the work contemplated under a Contract under this Agreement without prior written approval from the Division. Any approved Subcontracts shall be subject to all conditions of this Agreement. Only the Subcontractors specified in the Contractor's proposal are to be considered approved upon award of a Contract. The Division shall not be obligated to pay for any work performed by any unapproved Subcontractor. The Contractor shall be responsible for the performance of all of its Subcontractors.
- C. Assignment:** No assignment of the Contractor's obligations or the Contractor's right to receive payment hereunder shall be permitted.
- D. Beneficiaries:** Except as herein specifically provided otherwise, a Contract under this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Division and the named Contractor. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Division and Contractor that any such person or entity, other than the Division or the Contractor, receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.

IV. Performance and Termination

- A.** A Contract under this Agreement shall terminate without action by either party on the date specified in the Contract.
- B. Early Termination**

 - (i) Either party may terminate a Contract under this Agreement without cause by giving thirty (30) days written notice to the other. In that event, all finished or unfinished deliverables prepared by the Contractor shall, at the option of the Division, become the Division's property and the Division shall reimburse the Contractor for all costs properly incurred through the termination date of the Contract.
 - (ii) Either party may terminate a Contract under this Agreement in the event the other party fails to fulfill its obligations under the Contract in a timely and proper manner, provided the breaching party is given written notice describing the breach. If the breaching party fails to cure the breach within 30 days of receipt of such written notice, the Contract may be terminated upon written notice of an effective date of termination no less than 30 days from the date of this final notice. In that event, all finished or unfinished deliverables prepared by the Contractor shall, at the option of

the Division, become the Division's property and the Division shall reimburse the Contractor for all costs properly incurred through the termination date of the Contract, with the following exceptions:

- (a). After termination for cause, if Contractor's failure in performance has caused the Division to incur additional costs to rectify the failure, the Division may offset those additional costs against reimbursements to the Contractor for the Contract that is being terminated.
- (b). After termination for cause, if the Division's failure in performance has caused the Contractor to incur additional costs to rectify the failure, the Division will reimburse the Contractor for those additional costs.
- (iii). In the event of early termination of a Contract under this Agreement, the Division will not be responsible for non-cancelable commitments by the Contractor leading to costs incurred after termination unless the parties specifically agreed to such reimbursement in the Contract.
- (iv). In the event of claims against either party by a third party arising out of a Contract under this Agreement, the party whose actions gave rise to the claim shall be responsible for the defense of the claims and any ultimate liability therefore; provided, however, that neither party may waive the other's claims of sovereign immunity or similar defenses. The parties shall consult over the appropriate handling of such claims, and, in the event they cannot agree, shall seek the guidance of the Office of the Attorney General.

E. Waiver of Default: Waiver by either party of any default or breach in compliance with the terms of a Contract under this Master Agreement by the Contractor shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be modification of the terms of that Contract unless incorporated into a written modification signed by authorized representatives of the parties and attached to that Contract.

F. Availability of Funds: The parties to a Contract under this Master Agreement agree and understand that the payment of the sums specified in a Contract is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the Division. The parties further agree that in the event that funds obligated to a Contract under this Master Agreement should not become available prior to the performance of obligations by the Contractor, the result shall be a Termination Without Cause.

- G. **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 any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
- H. **Final Accounting:** If a Contract under this Master Agreement is terminated, either with or without cause, the Contractor shall complete a final accounting report to the Division within 60 days of the Contract termination date.
- I. **Survival of Promises:** All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the Master Agreement expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

V. Intellectual Property Rights

- A. **Copyrights and Ownership of Deliverables:** The Contractor shall acknowledge the Division's funding role in all publications. Subject to Contractor's right to publish the results of Research and Development, and except as otherwise required by law, the Contractor at all times agrees to protect confidentiality of all records and information in accordance with the provisions of this Master Agreement. Any Deliverables resulting from a Contract under this Master Agreement shall be the property of the Division, and the Contractor shall not distribute or reproduce for profit or allow others to profit from the Deliverables of a Contract under this Agreement. A Deliverable is a tangible item that is a product of the Research and Development activity such as a report, a guidebook, a training manual or a data set. Deliverable items to be provided by the Contractor to the Division pursuant to a Contract under this Master Agreement shall be limited to those items that are defined in the Scope of Work to a Contract. The Contractor retains a perpetual, royalty-free, non-exclusive, paid-up license to use, publish and distribute Deliverables created through a contract under this Master Agreement for its instructional and research purposes. Ownership of copyright in any and all copyrighted works, and ownership of all other results, including but not limited to data, resulting from Research and Development activities on a Contract under this Master Agreement, other than Deliverables, shall belong to the Contractor. For such non-deliverables, the Contractor hereby grants to the Division a perpetual, royalty-free, non-exclusive, paid-up license to use, publish and distribute results of work on a Contract under this Agreement for North Carolina State Government purposes only.

- B. Patents and Inventions:** Any invention or discovery made or conceived in the performance of a Contract under this Agreement (hereinafter called "*INVENTION*"), and any patent granted on such *INVENTION* shall be jointly or individually owned by the Contractor and/or Division in accordance with the following criteria:
- (i) Title to any *INVENTION* made or conceived jointly by employees of both the Contractor and the Division in the performance on a Contract under this Agreement (hereinafter called "*JOINT INVENTION*") vests jointly in the Contractor and the Division.
 - (ii) Title to any *INVENTION* made or conceived solely by employees or students of either the Contractor or the Division in the performance of a Contract under this Agreement vests in the party whose employees or students made or conceived the *INVENTION* or discovery.
- C. Publication:** The Contractor and its investigators are free to publish papers dealing with the results of Research and Development projects, if any, sponsored by a Contract under this Agreement. However the Division must be given thirty (30) days to review such papers prior to any publication thereof, to protect its proprietary, confidential or patentable information. The Division must respond to the Contractor within thirty (30) days of receipt of notification of proposed publication or public disclosure.
- D. Similar Research:** Nothing in a Contract under this Agreement may be construed to limit the freedom of the Contractor or of its researchers who are participants under the Contract from engaging in similar research made under grants, contracts, or agreements with parties other than the Division.
- E. Federal Intellectual Property Bankruptcy Protection Act:** The Parties agree that the Division shall be entitled to all applicable rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

VI. Compliance with Applicable Laws

- A. Compliance with Laws:** Both parties agree to comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of their business, including those of federal, state, and local agencies having jurisdiction and/or authority.
- B. Health Insurance Portability and Accountability Act (HIPAA):** If the Division determines that some or all of the Contractor's activities or

records within the scope of a Contract under this Agreement are subject to the Health Insurance Portability Act of 1996, P.L. 104-91, as amended ("HIPAA"), or its implementing regulations, it may give the Contractor written notice identifying the activities or records so affected. The Contractor agrees that if it receives such notice, the Contractor will either execute such agreements and practices as either party may require to ensure compliance with HIPAA, or that either party may give notice of Termination Without Cause.

- C. Representations and Certifications:** The Contractor, by signature affixed to a Contract issued under this Agreement, certifies its compliance with the applicable regulatory requirements listed below. The Contractor agrees to immediately report to the Division any changes in its compliance status. The Contractor must flow these requirements down to any lower tier subcontractors. (CFR refers to the Code of Federal Regulations, USC refers to United States Code and E.O. refers to executive order.)
- (i) **Equal Employment Opportunity:** The Contractor shall comply with all federal and State laws relating to equal employment opportunity.
 - (ii) **Protection of Human Subjects:** Any activity under a Contract under this Agreement that involves the use of human subjects is governed by applicable policies and federal regulations. The Contractor agrees that any human research protocol conducted under a Contract under this Agreement must be reviewed and approved by a designated Institutional Review Board (IRB) and certifies that this IRB is in full compliance with all relevant federal regulations. The Contractor further certifies that it has in place all required programs or procedures for education and training in the protection of human subject research and that the Contractor's investigator and other individuals (or any substitute investigators) have completed any required education and training.
 - (iii) **Promoting Objectivity in Research:** Pursuant to the requirements of 45 CFR Part 50, Subpart F and 45 CFR Part 94 for Health and Human Services awards, the Contractor will rely on its Institutional Policy for Financial Conflict of Interest (FCOI).
 - (iv) **Federal Debt:** Pursuant to the requirement of OMB Circular A-129, the Contractor is not delinquent on any Federal debt.
 - (v) **Debarment and Suspension:** Pursuant to Executive Order 12549 and its implementing rule, the Contractor presently is not debarred, suspended, proposed for debarment, declared ineligible or

voluntarily excluded from covered transactions by any Federal department or agency (45 CFR 74 and 76).

- (vi) **Lobbying:** Pursuant to 31 USC 1352 and 18 USC 1913, no federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Contract issued under this Agreement. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection a Contract under this Agreement, the Contractor must complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (vii) **Drug Free Workplace:** Pursuant to sections 5151-5160 of the Drug-Free Workplace Act of 1988, Public Law 100-690, Title V, Subtitle D. 41 USC 701 et seq, 7 CFR Part 3017, the Contractor will provide a drug-free workplace.
- (viii) **Environmental Tobacco Smoke:** Pursuant to Public Law 103-227, Part C-Environmental Tobacco Smoke, the Contractor prohibits smoking in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan or loan guarantee.
- (ix) **Family Educational Rights and Privacy Act (FERPA):** The parties shall comply with the applicable requirements of 20 U.S.C. s. 1232g.
- (x) **Verification of Work Authorization:** The Contractor complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

D. Federal Flow-through Funds: Where applicable, the Parties agree to give the highest order of precedence to the Federal regulations applicable to them when a Division acts as a Pass-through Entity on Federal Assistance funds for any work being accomplished by awarding a Contract under this Agreement. The parties recognize that the administration of

Federal Assistance funds is governed by the Code of Federal Regulations, 2 CFR Part 200.

VII. Confidentiality

To the extent permitted by law, in the event that during the performance of a Contract under this Agreement, the Contractor must acquire or is given medical records, personnel information or other items exempt from the NC Public Records Act or otherwise protected by law from disclosure, the Contractor agrees to keep such records confidential and not divulge or make available to any individual or organization without the prior written approval of the Division. Subject to and as limited by the terms of this Master Agreement, the Contractor reserves the right to use the results of all Research and Development, Instruction and Other Sponsored Activities provided on a Contract under this Agreement for its teaching, research and publication purposes, provided such use is otherwise permitted by applicable law.

In the event that during the performance of a Contract under this agreement, the Contractor must acquire or is given access to confidential data that is owned by NC DHHS, the following shall apply:

- A. **Data Security:** The Contractor shall adopt and apply data security standards and procedures that comply with all applicable federal, state, and local laws, regulations and rules.
- B. **Duty to Report:** The Contractor shall report a suspected or confirmed data security breach, relevant to the Contract, to the Division's Contract Administrator within twenty-four (24) hours after the breach is first discovered, provided that the Contractor shall report a breach involving Social Security Administration data or Internal Revenue Service data within one (1) hour after the breach is first discovered. During the performance of this Contract, the Contractor is to notify the Division Contract Administrator of any pending investigations or reviews of the Contractor by any federal Office of Civil Rights (OCR) if relevant to the Contract.
- C. **Cost Borne by the Contractor:** If any applicable federal, state or local law, regulation or rule requires the Contractor to give written notice of a security breach to affected persons, the Contractor shall bear the cost of the notice.

VIII. Oversight

- A. **Access to Persons and Records:** To the extent required by law, the Contractor agrees to provide the North Carolina State Auditor, the Division, the Department of Health and Human Services, all applicable

federal agencies, or their agents, with access to relevant persons and records for the purpose of monitoring, evaluating, or auditing Contracts under this Agreement and the Contractor's performance, and for all other purposes required by law, regulation or policy.

- B. Record Retention:** The Department of Health and Human Services' basic records retention policy requires all records related to Contracts under this Master Agreement to be retained for a minimum of three years following submission of the final financial report, if applicable, or three years following the submission of a revised financial report. Also, if any litigation, claim, negotiation, audit, disallowance action, or other action involving a Contract under this Master Agreement has been started before expiration of the three year retention period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three year period, whichever is later. Contractor may destroy files in accordance with this retention requirement and its own records retention schedule unless it has received notice of an extended retention period.

IX. Fiscal Matters

The allowability of costs on a Contract under this Agreement will be determined in accordance with the Code of Federal Regulations, 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and any other applicable laws and regulations. Costs for which prior approval is required will be contingent upon the Division receiving like approval of those specific costs from the applicable funding source. In the event the Contractor is in noncompliance with applicable audit requirements of the funding source, the Division may withhold payment of invoices pending resolution of the noncompliance issue.

The Contractor assumes the responsibility for reimbursement to the Division a sum of money equivalent to the amount of any expenditures disallowed should the Awarding Agency or other authorized representative rule through audit exception or other formal review that the expenditures from funds allocated to the Contractor for direct and/or indirect costs were not made in compliance with stated terms and conditions of a Contract under this Agreement.

A. Limitation of Funds:

- (i) The parties acknowledge that a Contract under this Agreement may be incrementally funded to essentially reflect the funding actions of the Awarding Agency.

- (ii) The Division is not obligated to reimburse the Contractor for costs incurred in excess of the not-to-exceed amount specified in a Contract.
- (iii) The Contractor is not obligated to continue performance of a Contract under this Agreement or otherwise incur costs in excess of the not-to-exceed amount of a Contract.
- (iv) The Division assumes the responsibility for giving the Contractor notice of any circumstances that would call into question the availability of anticipated future funding.

B. Payment Provisions:

- (i) Upon execution of a Contract under this Agreement, the Contractor shall submit to the Division Contract Administrator a monthly reimbursement request and, upon approval by the Division, receive payment within 30 days. If this contract is terminated, the Contractor shall complete a final accounting report and return any unearned funds to the Division within 60 days of the contract termination date. The Division shall have no obligation for payments based on expenditure reports submitted later than 60 days after termination or expiration of the contract period.
- (ii) For Contracts established on a State fiscal year basis, upon execution of this contract, the Contractor shall submit to the Division Contract Administrator, a monthly reimbursement request for services rendered the previous month and, upon approval by the Division, receive payment within 30 days. The Division must make all payments to the Contractor by June 30. Therefore, the Contractor shall submit any adjusted reimbursement request for services, the final request for reimbursement and return any unearned funds, relating to this contract period, to the Division no later than June 18 of the year in which the contract terminates. The Division shall have no obligation for payment of reimbursement request received later than June 18. If this contract is terminated prior to the original end date, the Contractor is required to submit a final reimbursement report and to return any unearned funds to the Division within 60 days of the contract termination date or no later than June 18. All payments are contingent upon fund availability.

X. Miscellaneous

- A. Choice of Law:** The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, are governed by the laws of North Carolina. The Division, by

signing this Agreement, and Contractor, by signing Contracts issued under this Agreement, agree and submit, solely for matters concerning this Agreement and Contracts issued under this Agreement, to the exclusive jurisdiction of the courts of North Carolina and agree, solely for such purpose, that the exclusive venue for any legal proceedings shall be Wake County, North Carolina. The place of this Agreement and all Contracts and transactions relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

- B. Amendment:** Contracts under this Agreement may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of the Division and the Contractor. The Purchase and Contract Divisions of the NC Department of Administration and the NC Department of Health and Human Services shall give prior approval to any amendment to a Contract awarded under this Agreement through those offices.
- C. Severability:** In the event that a court of competent jurisdiction holds that a provision or requirement of a Contract under this Agreement violates any applicable law, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of a Contract under this Agreement shall remain in full force and effect.
- D. Headings:** The Section and Paragraph headings in this Agreement are not material parts of the Agreement and should not be used to construe the meaning thereof.
- E. Key Personnel:** The Contractor shall not replace any of the key personnel assigned to the performance of a Contract under this Agreement without the prior written approval of the Division. The term “key personnel” will be applicable to specific persons identified by name in the Contractor’s proposal and any other persons subsequently identified as key personnel by the written agreement of the parties.
- F. Care of Property:** The Contractor agrees that it shall be responsible for the proper custody and care of any property consigned by the Division to the Contractor for use in connection with the performance of a Contract under this Agreement. At the termination of a Contract under this Agreement, the Contractor shall contact the Division for instructions as to the disposition of such consigned property and shall comply with these instructions, which are to be reasonable.

G. Travel Expenses: Reimbursement to the Contractor for travel mileage, meals, lodging and other travel expenses incurred in the performance of a Contract under this Agreement shall not exceed the rates published in the applicable State rules.

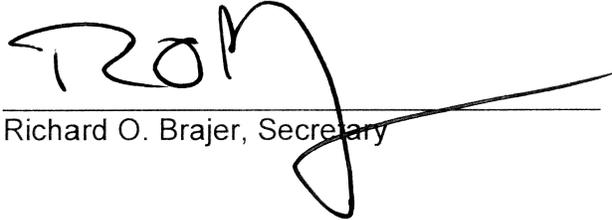
H. Sales/Use Tax Refunds: If eligible, the Contractor and all subawardees shall: (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of a Contract under this Agreement, pursuant to G.S. 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before submission of any invoice.

XI. Advertising

Neither party to this Agreement or any Contract awarded under this Agreement shall use the award of a Contract under this Agreement as a part of any news release or commercial advertising without the express written consent of the other party. Notwithstanding the above, nothing in this paragraph is meant to restrict the Contractor's reporting or other duties and obligations under North Carolina or Federal Law.

IN WITNESS WHEREOF, the parties have caused this Master Agreement to be executed as of the date first written by their duly authorized representative.

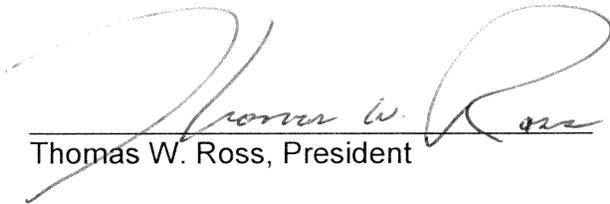
THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES



Richard O. Brajer, Secretary

12/11/2015
Date

THE UNIVERSITY OF NORTH CAROLINA



Thomas W. Ross, President

11/24/2015
Date

Approved as to form: Cari O. [Signature]
UNC Legal Affairs