

**DUKE/UNIVERSITY OF NORTH CAROLINA
MASTER AGREEMENT Version 01-01**

This Master Agreement is between Duke University and the constituent institutions of The University of North Carolina and The University of North Carolina.

WHEREAS, Duke University, the Office of the President of the University of North Carolina and its sixteen constituent institutions desire to facilitate and simplify the process of contracting with each other, and

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

WHEREAS, it is anticipated that constituent institutions will affect Subagreements with Duke University this Master Agreement. A Subagreement consists of a Subagreement Cover Sheet attached hereto as Appendix 1 and the elements deemed generally appropriate to establish a meaningful and prudent contractual relationship which collectively constitute an obligation for the **FUNDING INSTITUTION** to pay the amounts described and for the **RECIPIENT** to perform the work defined on the Subagreement Cover Sheet and in the Appendices attached thereto and

WHEREAS, the parties are referred to in this Master Agreement as follows: The **FUNDING INSTITUTION** is the party issuing a Subagreement for the conduct of a sponsored activity pursuant to this Master Agreement, the **RECIPIENT** is the party accepting a Subagreement, and the **SOURCE** is the party providing the funding to the **FUNDING INSTITUTION** about which a Subagreement relates, and

WHEREAS, the parties desire to enter into this Master Agreement for the mutual benefits reasonably expected to be gained therefrom;

NOW THEREFORE, the parties hereto mutually agree as follows:

I. REPRESENTATIONS AND CERTIFICATIONS:

RECIPIENT, by signature affixed to a Subagreement, certifies that:

- A. Pursuant to the requirement of OMB Circular A-129, it is not delinquent on any Federal debt.
- B. Pursuant to Executive Order 12549 and its implementing rule, it presently is not debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.
- C. 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 the Subagreement. 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 with the Prime Award, grant, contract or cooperative agreement, the **RECIPIENT** must complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying."

D. It has implemented a written and enforced conflict of interest policy consistent with the National Science Foundation Policy, "Investigator Financial Disclosure Policy," as published in the Federal Register, July 11, 1995, and with any subsequent amendments to the policy.

E. It is in compliance with the Drug-Free Workplace Act of 1988, Public Law 100-690, Title V, Subtitle D. 34 CFR Part 85, and Subpart F.

F.. It agrees to notify **FUNDING INSTITUTION** immediately if there is any change of status in (a) through (e) above.

II. ASSURANCES

A. Civil Rights and Equal Employment Opportunity: The **RECIPIENT** must comply with Title VI and VII of the Civil Rights Act of 1964, and Executive Order 11246 and certifies that it has a valid Assurance of Compliance on file with the DHHS {Form HHS 441 or 690}. For any contract entered into pursuant to a Subagreement, the **RECIPIENT** agrees to incorporate by reference paragraphs {1} through {7}, Part II, Subpart B, section 202, Executive Order 11246.

B. Protection of Human Subjects: Any activity under a Subagreement that involves the use of human subjects is governed by applicable policies and federal regulations. The **RECIPIENT** agrees that any human research protocol conducted under a Subagreement 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 **RECIPIENT** 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 **RECIPIENT'S** investigator and other individuals (or any substitute investigators) have completed any required education and training.

C. Vertebrate Animals: Pursuant to the Animal Welfare Act and the Public Health Service Policy on Humane Care and Use of Laboratory Animals, **RECIPIENT** agrees that any animal research protocol conducted under a Subagreement must be reviewed and approved by **RECIPIENT'S** Institutional Animal Care and Use Committee (IACUC) and certifies that this IACUC is in full compliance with all federal regulations and has an approved Assurance on file with DHHS.

D. Health Insurance Portability and Accountability Act: The **RECIPIENT** agrees that, if some or all of the activities within the scope of a Subagreement issued under this Master Agreement are subject to the Health Insurance Portability and Accountability Act of 1996, P.L. 104-91, as amended ("HIPAA"), or its implementing regulations, it will comply with the HIPAA requirements and will execute such agreements and practices as may be required to ensure compliance.

III. EXAMINATION OF RECORDS

The **RECIPIENT** must retain financial records, supporting documents and other records pertinent to a Subagreement in accordance with applicable laws and policies, but in any event for a period of no less than three (3) years from the date of submission of the final expenditure report. Records pertaining to audits, appeals, litigation or settlement of claims arising out of performance of a Subagreement must be retained in accordance with applicable laws and policies, but in any event until such audits, appeals, litigation or claims have been settled. All financial records, supporting documents and other documents applicable to a Subagreement must be available at all reasonable times for inspection, review, and audit by **FUNDING INSTITUTION** or its authorized representative, the **SOURCE** or its authorized representative and the authorized representative of the federal government, unless such disclosure is prohibited by law.

IV. AUDIT

Audits will be conducted in compliance with standards established by OMB Circular A-133.

V. USE OF NAMES

Neither party to a Subagreement may use the names, service marks, trademarks, or logos of the other party (or any of its investigators) or any derivative thereof, in any public announcement, advertising, or promotional sales literature without the prior written consent of the other party.

VI. MODIFICATION OF MASTER AGREEMENT

No waiver, alteration or modification of any of the provisions of this Master Agreement shall be binding unless mutually agreed upon by Duke University, The University of North Carolina Office of the President and each of the sixteen constituent institutions that comprise the University of North Carolina System. Any such changes must be expressed in written amendments to this Master Agreement, and must be signed by the authorized representatives of each of the parties. However, any term or provision of this Master Agreement is subordinate to any conflicting term or provision of an individual Subagreement that is fully executed by the parties to the Subagreement.

VII. MODIFICATION OF SUBAGREEMENT

No waiver, alteration or modification of any of the provisions of a Subagreement is binding unless mutually agreed upon between **FUNDING INSTITUTION** and **RECIPIENT**. Certain changes to Subagreements may be effected via a unilateral modification process. These Terms and Conditions may be altered by the Special Terms and Conditions recorded on a given Subagreement or in subsequent written modifications. Any changes to a Subagreement after the initial Subagreement has been executed must be recorded in written modifications, using the Subagreement form annotated with the Modification Number. Modifications must be signed by both parties, except for those matters that may be unilaterally modified by the **FUNDING INSTITUTION**. **FUNDING INSTITUTION** may elect to issue the following types of modifications unilaterally:

- A. Changes in key personnel when **RECIPIENT** submits a written request to change.
- B. Revisions to the project budget when **RECIPIENT** submits a written request.
- C. Changes to administrative information.
- D. Planned incremental funding actions.
- E. Extension of the project end date.

RECIPIENT may reject such unilateral modifications by providing written notice of exceptions to the **FUNDING INSTITUTION'S** contract administrator (Block 10) within 30 days after receipt of said modification. If the **RECIPIENT** objects to a unilateral modification, the parties will negotiate an acceptable one.

VIII. GENERAL CHARACTERISTICS OF SUBAGREEMENT

A. Rebudgeting: The **RECIPIENT** must be provided the same rebudgeting authority for the Subagreement as the **FUNDING INSTITUTION** has been granted in the prime agreement. .

B. F&A Recovery: The **FUNDING INSTITUTION** may not restrict facilities and administrative cost (F&A) recovery by the **RECIPIENT** other than to apply restrictions promulgated by **SOURCE**.

C. Fiscal Matters:

RECIPIENT shall be reimbursed by the **FUNDING INSTITUTION** for effort performed under a Subagreement upon presentation of an invoice as described in block 16 of the Subagreement coversheet. Block 16 of the coversheet shall also specify invoice frequency, format for reimbursement requests, and delivery date for final invoice. Special Terms and conditions such as type of contract and reimbursement based upon deliverables shall be addressed in Block 6 and continued in Block 18 of the Subagreement coversheet.

FUNDING INSTITUTION, in its sole judgement, shall determine whether costs are allowable under this Subagreement in accordance with any applicable laws and regulations. Costs for which prior approval is required will be contingent upon **FUNDING INSTITUTION** receiving like approval of those specific costs from the **SOURCE**. In the event **RECIPIENT** is in noncompliance with Article IV, Audit, of the Master Agreement, **FUNDING INSTITUTION** may withhold payment of invoices pending resolution of the noncompliance issue.

The **RECIPIENT** assumes the responsibility for reimbursement to **FUNDING INSTITUTION** a sum of money equivalent to the amount of any expenditures disallowed should the **SOURCE** or other authorized representative rule through audit exception or other formal review that the expenditures from funds allocated to the **RECIPIENT** for direct and/or indirect costs were not made in compliance with stated terms and conditions of this Subagreement.

LIMITATION OF FUNDS:

- (a) The parties acknowledge that this Subagreement may be incrementally funded to essentially reflect the funding actions of the Source agency.
- (b) The parties agree that at any given time during the performance of this Subagreement, the total cost and obligation of the Funding Institution will not exceed the Total Sponsored Funds To Date amount (7 c) on the Subagreement Cover Sheet or most recent modification thereto.

- (c) The Recipient agrees to use its best efforts to perform the work specified in the Statement of Work and all obligations under this Subagreement within the dollar amount “Total Sponsored Funds To Date” and within the period of performance stated in Block 7 e. and f.
- (d) The parties contemplate that the Funding Institution will award additional Sponsored Funds incrementally to the Subagreement increasing the Total Sponsored Funds To Date amount (7 c) until that amount approximates but does not exceed the total proposed cost stated in the Recipient’s Statement of Work and approved budget. Those and all other costs anticipated are subject to the availability of funds awarded by the Source to the Funding Institution.
- (e) The Funding Institution is not obligated to reimburse the Recipient for costs incurred in excess of the Total Sponsored Funds To Date amount (7 c) on the Subagreement Cover Sheet or latest modification thereto.
- (f) The Recipient is not obligated to continue performance under this Subagreement or otherwise incur costs in excess of Total Sponsored Funds To Date amount (7 c).
- (g) All amounts of Sponsored Funds awarded and those subject to availability are subject to Article XV. Termination.
- (h) The Funding Institution assumes the responsibility for giving the Recipient notice of any circumstances that would call into question the availability of anticipated future funding.
- (i) The Recipient assumes the responsibility for giving the Funding Institution notice when the unexpended portion of the Total Sponsored Funds To Date amount (7 c) shrinks below 15% or when the Recipient anticipates a work stoppage due to insufficiency of Sponsored Funds.

IX. COPYRIGHT

A. The **RECIPIENT** retains copyright when publications or similar materials are developed by **RECIPIENT**’s personnel from work supported in whole or in part by a Subagreement. Any such copyrighted materials are subject to (a) a royalty-free, non-exclusive, and irrevocable license to the **FUNDING INSTITUTION** to reproduce, distribute, display, perform and make derivative work so long as such uses are for its own internal noncommercial educational and research purposes and (b) the rights provided to the source, which flow down from the prime agreement.

B. The **RECIPIENT AND FUNDING INSTITUTION** shall jointly retain copyright when publications or similar materials are developed by **RECEIPIENT** and **FUNDING INSTITUTION** personnel from work supported in whole or in part by a subagreement.

X. PATENTS AND INVENTIONS

Any invention or discovery made or conceived in the performance of a Subagreement (hereinafter called “*INVENTION*”), and any patent granted on such *INVENTION* shall be jointly or individually owned by **RECIPIENT** and/or **FUNDING INSTITUTION** in accordance with the following criteria:

A. Title to any *INVENTION* made or conceived jointly by employees of both **RECIPIENT** and **FUNDING INSTITUTION** in the performance of a Subagreement (hereinafter called “*JOINT INVENTION*”) vests jointly in **FUNDING INSTITUTION** and **RECIPIENT**.

B. Title to any *INVENTION* made or conceived solely by employees or students of either **RECIPIENT** or **FUNDING INSTITUTION** in the performance of a Subagreement

vests in the party whose employees or students made or conceived the *INVENTION* or discovery.

XI. PUBLICATION

RECIPIENT and its investigators are free to publish papers dealing with the results of the research project sponsored under a Subagreement. However **FUNDING INSTITUTION** must be given thirty (30 days) to review such papers prior to any publication thereof.

XII. SIMILAR RESEARCH

Nothing in a Subagreement may be construed to limit the freedom of the **RECIPIENT** or of its researchers who are participants under the Subagreement from engaging in similar research made under grants, contracts, or agreements with parties other than the **FUNDING INSTITUTION**.

XIII. LIABILITY

The relationship between Duke University and UNC and its sixteen constituent institutions under this Master Agreement will be that of an Independent Contractor and not an agent, joint venture or partner. Each institution assumes risk and all responsibility for work conducted under a Subagreement and will, during the course of the subagreement, maintain in force adequate insurance to cover risk of liability resulting from this work. It is understood that the liability and insurance coverage hereunder for UNC and its 16 constituent institutions is limited in accordance with the North Carolina General Statutes.

XIV. FORCE MAJEURE

Neither party shall be liable for any failure to perform as required by a Subagreement, to the extent such failure to perform is caused by any reason beyond the control of the parties hereto, or by reason of any of the following: labor disturbances or disputes of any kind, accidents, failure of any required governmental approval, civil disorders, acts of aggression, acts of God, energy or other conservation measures, failure of utilities, mechanical breakdowns, material shortage, disease, or similar occurrences.

XV. TERMINATION

A. A Subagreement may be terminated by either party, with or without cause, by giving thirty (30) days written notice prior to the effective date of such termination delivered by fax, express, priority or first class mail. The **RECIPIENT** must immediately stop all work under the Subagreement on the date and to the extent specified in the notice of termination.

B. To the extent the Subagreement constitutes a cost-reimbursement relationship, upon termination by either party, **RECIPIENT** will be reimbursed for all costs and noncancellable commitments incurred in performance under a Subagreement prior to the date of termination in an amount not to exceed the total commitment set forth in the Subagreement.

C. To the extent the Subagreement constitutes a fixed-price relationship, upon termination by either party, **RECIPIENT** and **FUNDING INSTITUTION** must negotiate in good faith a settlement for the actual costs incurred based on percentage of completion, as documented and illustrated by the **RECIPIENT** up to the date of termination. In no event may the total amount of negotiated settlement exceed the total commitment set forth in the Subagreement.

XVI. SEVERABILITY

If a court of competent jurisdiction holds any provision of the Master Agreement or of a Subagreement to be invalid, such holding shall have no effect on the remaining provisions of the Master Agreement or Subagreement, and they shall continue in full force and effect.

XVII. GOVERNING LAW

The laws of the State of North Carolina govern validity and interpretation of the provisions, terms, and conditions of this Master Agreement and all Subagreements.

XVIII. INCORPORATION

The parties mutually agree to set forth in attachment or incorporate by reference this Master Agreement in subsequent Subagreements by and between the parties hereto.

XIX. SURVIVABILITY

To the extent the terms of this Master Agreement prevail over the terms of an individual Subagreement and the terms of the prime agreement, those terms that survive the termination of the Master Agreement or any individual Subagreements include at a minimum, and may include others as outlined in individual Subagreements, Articles III, IV, V, IX, X, XI, XII, XIII, XVI, XVII.

IN WITNESS WHEREOF, the parties have caused this Master Agreement 01-01 to be executed as of the date first written by their duly authorized representatives.

DUKE UNIVERSITY

Jan M. Leelan 7/31/03
Name Date

THE UNIVERSITY OF NORTH CAROLINA
OFFICE OF THE PRESIDENT

Butler 12/09/03
Name Date

THE UNIVERSITY OF NORTH CAROLINA
AT ASHEVILLE

John G. Ste... 8/20/03
Name Date

THE UNIVERSITY OF NORTH CAROLINA
At CHAPEL HILL

James Peterson 9/10/03
Name Date

THE UNIVERSITY OF NORTH CAROLINA
AT CHARLOTTE

Michael R. Min... 9/5/03
Name Date

THE UNIVERSITY OF NORTH CAROLINA
AT GREENSBORO

Beverly M. Maddox - Britt 9/16/03
Name Date

THE UNIVERSITY OF NORTH CAROLINA
AT PEMBROKE

Mark G. Sawyer 9/18/03
Name Date

THE UNIVERSITY OF NORTH CAROLINA
AT WILMINGTON

James R. ... 9/24/03
Name Date

NORTH CAROLINA CENTRAL
UNIVERSITY

James ... 9/30/03
Name Date

NORTH CAROLINA A&T STATE
UNIVERSITY

David ... 10/2/03
Name Date

NORTH CAROLINA SCHOOL OF THE ARTS

Margaret M. Metz 12/16/03
Name Date

NORTH CAROLINA STATE UNIVERSITY

Mark ... 10/27/03
Name Date

APPALACHIAN STATE UNIVERSITY

Judith E. Dorner 10/27/03
Name Date

ELIZABETH CITY STATE UNIVERSITY

Patricia J. Gibbs 10/28/03
Name Date

EAST CAROLINA UNIVERSITY

Ernie S. Kane 10/27/03
Name Date

FAYETTEVILLE STATE UNIVERSITY

Ray A. Namy 11/17/03
Name Date

WESTERN CAROLINA UNIVERSITY

Abel M. Pray 12/11/03
Name Date

WINSTON SALEM STATE
UNIVERSITY

Melvin N. Johnson 11-26-03
Name Date