

University of North Carolina/Research Triangle Institute
Master Agreement

This Master Agreement is entered into, as of the date shown below, between the University of North Carolina comprised of sixteen constituent institutions, affiliated entities and the University of North Carolina Office of the President, organized under existing laws of the State of North Carolina, with, its principal office in the city of Chapel Hill, North Carolina, hereinafter called UNC, and the Research Triangle Institute, located in Research Triangle Park, North Carolina, hereinafter called RTI.

- I. This MASTER AGREEMENT establishes an agreement between the parties with no initial work assignments and no initial monetary commitments, but under which work assignments in the form of numbered and funded TASK ORDERS may be offered and accepted between the parties.

- II. The parties referred to in this MASTER AGREEMENT are as follows: The OFFERING PARTY is the party issuing a TASK ORDER for the provision of service or conduct of a sponsored activity pursuant to this MASTER AGREEMENT and the ACCEPTING PARTY is the party accepting a TASK ORDER. In consideration of compensation to be paid to the ACCEPTING PARTY by the OFFERING PARTY, the ACCEPTING PARTY agrees to conduct the sponsored activity or provide services as specified in a duly approved TASK ORDER. The provision of services or conduct of a sponsored activity shall include only those specified TASK ORDER(s) approved by the OFFERING PARTY. The OFFERING PARTY agrees that the sponsored activity or services described in the TASK ORDER(s) referencing this agreement shall be performed by the ACCEPTING PARTY only and that no other person shall perform the described service(s) or conduct the sponsored activities for the OFFERING PARTY without their advance written approval.
 - a) TASK ORDERS may be either fixed price or cost reimbursable orders with specific work statements. Each TASK ORDER shall indicate a scope of work, pricing, period of performance, method and frequency of payment, and by reference and by means of appendices, other information and terms and conditions as agreed upon by the parties in this MASTER AGREEMENT.
 - b) The execution of a TASK ORDER shall cause the work described in the TASK ORDER to be performed in accordance with the provisions of the TASK ORDER and this MASTER AGREEMENT.

- III. The OFFERING PARTY agrees to provide payment for the ACCEPTING PARTY'S services or sponsored activity. Payment will be made no more frequently than once per month for cost reimbursable TASK ORDERS, or upon satisfactory completion of the services or sponsored activity specified in fixed price TASK ORDERS. Total payments under this Agreement shall not exceed the sum of all TASK ORDERS written against this Agreement. In accepting payments made pursuant to this

Agreement, the ACCEPTING PARTY agrees that it has complied with all pertinent state and federal laws, and that ACCEPTING PARTY'S invoices reflect reasonable and necessary costs related to a specific TASK ORDER.

- IV. For cost reimbursement TASK ORDERS, the ACCEPTING PARTY will provide invoices on a monthly basis which provide details of direct cost expenses incurred per the categories included in the approved budget and Facilities and Administrative Costs at the federally approved rate. The ACCEPTING PARTY will maintain adequate records of all expenditures and make them available for review or auditing. Invoices for fixed price TASK ORDER(S) will be submitted on a lump sum basis.
- V. The ACCEPTING PARTY may subcontract work for the OFFERING PARTY only with the express written consent of the OFFERING PARTY.
- VI. CONFIDENTIALITY:
 - a) In the performance of the TASK ORDER, it may be necessary for one party to disclose information that is proprietary and confidential to the disclosing party. All such information must be disclosed by the disclosing party in writing and designated as confidential or, if disclosed orally, must be identified as confidential at the time of disclosure and confirmed in writing and designated as confidential within thirty (30) days of such disclosure. Except as otherwise provided herein, for a period of five (5) years following the date of such disclosure, the receiving party agrees to use the confidential information only for purposes of this Agreement and further agrees that it will not disclose or publish such information except that the restrictions do not apply to:
 - (i) Information which is or becomes publicly known through no fault of the receiving part;
 - (ii) Information learned from a third party entitled to disclose it;
 - (iii) Information already known to or developed by receiving party before receipt from disclosing party, as shown by receiving party's prior written records;
 - (iv) Information for which receiving party obtains the disclosing party's prior written permission to publish or which is disclosed in the necessary course of the prosecution of patent applications based upon inventions developed pursuant to this Agreement;
 - (v) Information required to be disclosed by operation of law or court order; or,
 - (vi) Information that is independently developed by the receiving party's personnel who are not privy to the disclosing party's confidential information.
 - b) The receiving party must use a reasonable degree of care to prevent the inadvertent, accidental unauthorized or mistaken disclosure or use by its employees of confidential information disclosed hereunder.
 - c) Notwithstanding the above, RTI understands and agrees that protection and disclosure of information is governed by the requirements of the North Carolina

Public Records Act, and RTI will comply with those requirements to protect its confidential information.

VII. COPYRIGHTS AND INTELLECTUAL PROPERTY:

a) Unless overridden by special provisions as set forth and accepted in any given TASK ORDER, the following shall be the normal terms concerning Copyrights:

For any material produced by the ACCEPTING PARTY'S employees during the course of the TASK ORDERS under this agreement which is in the nature of copyrighted works, the ACCEPTING PARTY owns said copyrights and grants to the OFFERING PARTY a nonexclusive, royalty-free, irrevocable right and license to use reproduce, publish display, translate, distribute, and modify such copyrighted material and to authorize others to do so.

b) Individual TASK ORDERS may invoke the following special provision governing Copyrights for the work product developed under that TASK ORDER by making reference to this paragraph:

The OFFERING PARTY owns the copyright and the ACCEPTING PARTY retains a non-exclusive royalty-free, irrevocable worldwide license to publish, reproduce, distribute, and display the work, to make derivative works from it, and to sublicense its rights to the authors of the copyrighted work. The ACCEPTING PARTY'S rights shall include, but not be limited to 1) publication in scholarly publications and journals, 2) other uses to further its own non-commercial educational and extension missions.

c) Joint copyright ownership shall be specified in the TASK ORDER.

d) Rights to inventions made under this agreement are subject to the following provisions:

- i. Title to any invention made or conceived solely by employees of either party in the performance of a TASK ORDER vests solely in the party whose employee made or conceived the invention.
- ii. Title to any invention made or conceived jointly by employees of both parties in the performance of a TASK ORDER (hereinafter called "Joint Invention" vests jointly in the OFFERING AND ACCEPTING PARTIES, each party may issue non-exclusive licenses and receive royalties therein without an accounting to the other.

e) Each party has the right to file and prosecute patent applications on any invention to which they hold title either solely or jointly.

f) Both parties must discuss and determine the countries in which they file patent applications on each-joint invention. Each party has the right to file at its cost such patent applications in the countries where the other party has indicated no interest in

filing such patent applications. In such case the non-filing party must cooperate with the party filing the patent applications. e.g., in the preparation of necessary documents for the filing, assignment subsequent prosecution of such patent applications, and the non-filing party thereafter forfeits all rights to issues licenses or receive royalties in such patent in that country.

VIII. RESOLUTION OF DISPUTES:

The parties agree to make good-faith efforts to settle any dispute or claim that arises under this MASTER AGREEMENT through discussion and negotiation. If negotiation fails to achieve a resolution, the parties shall, with prior approval, consider the use of alternative disputes resolution (ADR). If ADR fails to achieve a resolution of the dispute then the applicable constitutional provisions or statutes that govern sovereign immunity shall dictate the appropriate forum and law governing substantive issues.

IX. PUBLICATION:

The ACCEPTING PARTY has the right to publish any of the results of work resulting from this MASTER AGREEMENT. The ACCEPTING PARTY must furnish the OFFERING PARTY with a copy of any proposed publication or public disclosure, at least 60 days in advance of the proposed publication date to allow for the protection of the OFFERING PARTY'S proprietary, confidential or patentable information. The OFFERING PARTY must respond to the ACCEPTING PARTY within 30 days of receipt of notification of proposed publication or public disclosure. Neither party shall use the name of the other in any form of advertising or publicity without the express written permission of the other party. The ACCEPTING PARTY shall provide to the OFFERING PARTY all final reports in hardcopy form and electronically.

X. TERMINATION:

a) This agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for cure with the terminating party prior to termination.

b) This agreement may be terminated in whole or in part in writing by the OFFERING PARTY for its convenience, provided that the ACCEPTING PARTY is given (1) not less than *thirty (30)* calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

c) If termination for default is effected by the OFFERING PARTY, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work,

and 2) any payment due to the ACCPETING PARTY at the time of termination may be adjusted to cover any additional costs to the OFFERING PARTY because of the ACCEPTING PARTY'S default. If termination for default is effected by the ACCEPTING PARTY, or if termination for convenience is effected by the OFFERING PARTY, the equitable adjustment shall include a reasonable payment for services or other work performed. The equitable adjustment for any termination shall provide for payment to the ACCEPTING PARTY for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the ACCEPTING PARTY relating to noncancellable commitments incurred prior to the termination.

d) Upon receipt of a termination action under paragraphs a) or b) above, the ACCEPTING PARTY shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the OFFERING PARTY all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the ACCEPTING PARTY in performance under this agreement, whether compiled or in process, provided the ACCEPTING PARTY shall not be obligated to deliver to the OFFERING PARTY any materials which it would not have been obligated to deliver absent such termination.

e) Upon termination under paragraphs (a) or (b) above, the OFFERING PARTY may take over the work and may award another party an agreement to complete the work under this agreement.

f) If, after termination for failure of the ACCEPTING PARTY to fulfill contractual obligations, it is determined that the ACCEPTING PARTY had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the OFFERING PARTY. In such event, adjustment of the agreement price shall be made as provided in paragraph (c) of this clause.

XI. AUDITS AND ACCESS TO RECORDS:

Audits and access to records shall be made available to the OFFERING PARTY subject to state guidelines; provided access to records on fixed price TASK ORDERS shall not be required except as may be necessary to determine amounts due to a Party as a result of a termination under Article X.

XII. RESPONSIBILITY OF ACCEPTING PARTY:

a) The ACCEPTING PARTY is responsible for the professional quality, technical accuracy, timely completion and coordination of all designs, drawings, specifications, reports and other services furnished by the ACCEPTING PARTY under this agreement. The ACCEPTING PARTY shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its designs, drawings, specifications, reports and other services, reasonably required within a field of study under a TASK ORDER.

b) The ACCEPTING PARTY shall be liable in accordance with applicable law, including North Carolina General Statutes applicable to a State entity, for all damages to the OFFERING PARTY caused by the ACCEPTING PARTY'S negligent performance of any of the sponsored activities or services furnished under this agreement, except for errors, omissions or other deficiencies to the extent attributable to the OFFERING PARTY, the OFFERING PARTY'S furnished data or any third party, and the OFFERING PARTY'S use or possession of the results produced hereunder. The ACCEPTING PARTY shall not be responsible for any time delays in the project caused by circumstances beyond its control.

c) The ACCEPTING PARTY makes no warranties, expressed or implied, as to any matter whatsoever, including without limitation, the ownership, merchantability, or fitness for a particular purpose of any goods or services provided. The ACCEPTING PARTY agrees that the work performed hereunder will represent its good faith efforts and will be of the highest professional standards and quality. The ACCEPTING PARTY makes no representation or warranty regarding the actual or potential infringement of patents or copyrights of third parties, and the OFFERING PARTY acknowledges that the avoidance of such infringement in their use of the services related to this Agreement shall remain their responsibility.

XIII. FINAL PAYMENT:

Unless otherwise provided in this agreement by State law or otherwise expressly agreed to by the parties to this agreement, final payment under this agreement or settlement upon termination of this agreement shall not constitute a waiver of the OFFERING PARTY'S claims against the ACCEPTING PARTY or his sureties under this agreement.

XIV. REPRESENTATIONS AND CERTIFICATIONS:

The parties, by signing this agreement, certifies to the best of his/her knowledge and belief, that:

a) Pursuant to the requirement of OMB Circular A-129, it is not delinquent on any Federal debt. 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 or State department or agency.

b) His/her institution is in compliance with Executive Order 11246 "Equal Employment Opportunity" as amended by Executive Order 11375 "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by 41 CFR Part 60.

c) Any activity under a TASK ORDER that involves the use of human subjects is governed by applicable policies and federal regulations. The ACCEPTING PARTY agrees that any human research protocol conducted under a TASK ORDER 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 ACCEPTING PARTY 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 ACCEPTING PARTY'S investigator and other individuals (or any substitute investigators) have completed any required education and training.

d) Pursuant to the Animal Welfare Act and the Public Health Service Policy on Humane Care and Use of Laboratory Animals, the ACCEPTING PARTY agrees that any animal research protocol conducted under a TASK ORDER must be reviewed and approved by the ACCEPTING PARTY'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.

e) The ACCEPTING PARTY agrees that, if some or all of the activities within the scope of a TASK ORDER 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 applicable provisions of HIPAA.

f) The ACCEPTING PARTY agrees to notify the OFFERING PARTY immediately if there is any change of status in (a) through (e) above.

XV. ENTIRE AGREEMENT:

The parties hereto expressly agree that this MASTER AGREEMENT with its TASK ORDERS and/or Appendices constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes any other written or oral understanding of the parties. This MASTER AGREEMENT or any of its TASK ORDERS cannot be modified except by written instrument executed by both parties and signed by the authorizing authority representing each party.

XVI. INDEPENDENT CONTRACTOR:

The ACCEPTING PARTY acknowledges and agrees that it will be treated with respect to the OFFERING PARTY as an independent contractor and not as an employee, agent or authorized representative of the OFFERING PARTY. The ACCEPTING PARTY shall have no authority to bind the OFFERING PARTY to any contract, agreement or obligation whatsoever.

XVII. GOVERNING LAW:

This MASTER AGREEMENT and its associated TASK ORDERS shall be governed, construed and enforced by the laws of the State of North Carolina (excluding any conflict of laws provisions of the State of North Carolina which would refer to and apply the substantive laws of another jurisdiction). Any suit or proceedings shall be brought in the courts located in North Carolina. The parties consent to exclusive personal jurisdiction and venue of the courts located in North Carolina.

XVIII. SEVERABILITY

Articles VI, VII and IX of the UNC/RTI Master Agreement and others as outlined in an individual Task Order will survive the termination of this Master Agreement.

XVIII. ETHICS AND DATA INTEGRITY:

The ACCEPTING PARTY shall adhere to an ethics and data integrity code. No person shall participate in:

- a) the intentional selective reporting of data;
- b) the intentional reporting of data values that are not the actual values obtained;
- c) the intentional reporting of dates and times of data analyses that are not the actual dates and times of data analyses, or;
- d) the intentional representation of another's work as one's own.

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In witness whereof the parties hereto have caused this contract to be executed by their duly authorized officers, to be effective of the 13th day of April, 2004.

For Research Triangle Institute
3040 Cornwallis Road
Post Office Box 12194
Research Triangle Park
North Carolina, 27709-2194

For University of North Carolina
910 Raligh Road
Post Office Box 2688
Chapel Hill
North Carolina, 27515-2688

By:



(signature)


**G. EDWARD STORY, DIRECTOR
Office Of Research Contracts**

(typed name)

(title)

4-13-04
(date)

By:



(signature)

**Jeffrey R. Davies
Vice President - Finance**

(typed name)

(title)

4-13-04
(date)

REVIEWED AS TO FORM:


UNC Legal Affairs