

Attachment A
GENERAL TERMS AND CONDITIONS
Private

Relationships of the Parties

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

Subcontracting: The Institution shall not subcontract any of the work contemplated under this contract without prior written approval from the Department or Division. Any approved subcontract shall be subject to all conditions of this contract. Only the subcontractors specified in the contract documents are to be considered approved upon award of the contract. The Department or Division shall not be obligated to pay for any work performed by any unapproved subcontractors. The Institution shall be responsible for the performance of all of its subcontractors.

Assignment: No assignment of the Institution's obligations or the Institution's right to receive payment hereunder shall be permitted. However, upon written request approved by the issuing purchasing authority, the State may:

- (a) Forward the Institution's payment check(s) directly to any person or entity designated by the Institution, or
- (b) Include any person or entity designated by Institution as a joint payee on the Institution's payment check(s).

In no event shall such approval and action obligate the State to anyone other than the Institution and the Institution shall remain responsible for fulfillment of all contract obligations.

Beneficiaries: Except as herein specifically provided otherwise, this contract 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 contract, and all rights of action relating to such enforcement, shall be strictly reserved to the Department or Division and the named Institution. 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 Department or Division and Institution that any such person or entity, other than the Department or Division or the Institution, receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

Indemnity and Insurance

Indemnification: The Institution agrees to indemnify and hold harmless the Department, Division, the State of North Carolina, and any of their officers, agents and employees, from any claims of third parties arising out of any act or omission of the Institution in connection with the performance of this contract.

(a) **Insurance:** During the term of the contract, the Institution shall provide, at its sole cost and expense, commercial insurance of such types and with such terms and limits as may be reasonably associated with the contract. At a minimum, the Institution shall provide and maintain the following coverage and limits:

- (1) **Worker's Compensation Insurance:** The Institution shall provide and maintain worker's compensation insurance, as required by the laws of the states in which its employees work, covering all of the Institution's employees who are engaged in any work under the contract.
- (2) **Employer's Liability Insurance:** The Institution shall provide employer's liability insurance, with minimum limits of \$500,000.00, covering all of the Institution's employees who are engaged in any work under the contract.
- (3) **Commercial General Liability Insurance:** The Institution shall provide commercial general liability insurance on a comprehensive broad form on an occurrence basis with a minimum combined single limit of \$1,000,000.00 for each occurrence.
- (4) **Automobile Liability Insurance:** The Institution shall provide automobile liability insurance with a combined single limit of \$500,000.00 for bodily injury and property damage; a limit of \$500,000.00 for uninsured/under insured motorist coverage; and a limit of \$2,000.00 for medical payment coverage. The Institution shall provide this insurance for all automobiles that are:
 - (A) owned by the Institution and used in the performance of this contract;
 - (B) hired by the Institution and used in the performance of this contract; and
 - (C) owned by Institution's employees and used in performance of this contract ("non-owned vehicle insurance"). Non-owned vehicle insurance protects employers when employees use their personal vehicles for work purposes. Non-owned vehicle insurance supplements, but does not replace, the car-owner's liability insurance.

The Institution is not required to provide and maintain automobile liability insurance on any vehicle – owned, hired, or non-owned -- unless the vehicle is used in the performance of this contract.

- (b) The insurance coverage minimums specified in subparagraph (a) are exclusive of defense costs.
- (c) The Institution understands and agrees that the insurance coverage minimums specified in subparagraph (a) are not limits, or caps, on the Institution's liability or obligations under this contract.
- (d) The Institution may obtain a waiver of any one or more of the requirements in subparagraph (a) by demonstrating that it has insurance that provides protection that is equal to or greater than the coverage and limits specified in subparagraph (a). The Department or Division shall be the sole judge of whether such a waiver should be granted.
- (e) The Institution may obtain a waiver of any one or more of the requirements in paragraph (a) by demonstrating that it is self-insured and that its self-insurance provides protection that is equal to or greater than the coverage and limits specified in subparagraph (a). The Department or Division shall be the sole judge of whether such a waiver should be granted.
- (f) Providing and maintaining the types and amounts of insurance or self-insurance specified in this paragraph is a material obligation of the Institution and is of the essence of this contract.
- (g) The Institution shall only obtain insurance from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in the State of North Carolina. All such insurance shall meet all laws of the State of North Carolina.
- (h) The Institution shall comply at all times with all lawful terms and conditions of its insurance policies and all lawful requirements of its insurer.
- (i) The Institution shall require its subcontractors to comply with the requirements of this paragraph.
- (j) The Institution shall demonstrate its compliance with the requirements of this paragraph by submitting certificates of insurance, if requested, to the Department or Division before the Institution begins work under this contract.

Default and Termination

Termination for Cause: If, through any cause, the Institution shall fail to fulfill its obligations under this contract in a timely and proper manner, the Department or Division shall have the right to terminate this contract by giving written notice to the Institution and specifying the effective date thereof. In that event, all finished or unfinished deliverable items prepared by the Institution under this contract shall, at the option of the Department or Division, become its property and the Institution shall be entitled to receive just and equitable compensation for any

satisfactory work completed on such materials, minus any payment or compensation previously made. Notwithstanding the foregoing provision, the Institution shall not be relieved of liability to the Department or Division for damages sustained by the Department or Division by virtue of the Institution's breach of this agreement, and the Department or Division may withhold any payment due the Institution for the purpose of setoff until such time as the exact amount of damages due the Department or Division from such breach can be determined. In case of default by the Institution, without limiting any other remedies for breach available to it, the Department or Division may procure the contract services from other sources and hold the Institution responsible for any excess cost occasioned thereby. The filing of a petition for bankruptcy by the Institution shall be an act of default under this contract.

Waiver of Default: Waiver by the Department or Division of any default or breach in compliance with the terms of this contract by the Institution shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be modification of the terms of this contract unless stated to be such in writing, signed by an authorized representative of the Department and the Institution and attached to the contract.

Availability of Funds: The parties to this contract agree and understand that the payment of the sums specified in this contract is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the Department or Division.

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.

Survival of Promises: All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

Intellectual Property Rights

Copyrights and Ownership of Deliverables: All deliverable items produced pursuant to this contract are the exclusive property of the Department or Division. The Institution shall not assert a claim of copyright or other property interest in such deliverables.

Federal Intellectual Property Bankruptcy Protection Act: The Institution agree that the Department or Division shall be entitled to all 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.

Confidentiality

Compliance with Applicable Laws

Compliance with Laws: The Institution shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

Equal Employment Opportunity: The Institution shall comply with all federal and State laws relating to equal employment opportunity.

Health Insurance Portability and Accountability Act (HIPAA): The Institution agrees that, if the Department or Division determines that some or all of the activities within the scope of this contract 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 the Department or Division may require to ensure compliance.

Executive Order # 24: By Executive Order 24, issued by Governor Perdue on October 1, 2009, and N.C. G.S. § 133-32, it is unlawful for any vendor or Institution (i.e. architect, bidder, Institution, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and Institutions who:

- (1) have a contract with a governmental agency; or
- (2) have performed under such a contract within the past year; or
- (3) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and Institutions are encouraged to review Governor Perdue's October 1, 2009 Executive Order 24 and G.S. Sec. 133-32.

To find Governor Perdue's October 1, 2009 Executive Order 24:

- Go to <http://www.governor.state.nc.us/>;
- Click on "Newsroom";
- Click on "Executive Orders and Proclamations";
- Scroll down and click on the words "click here" in the sentence that states, "To view previous Executive Orders, please click here;" and
- Scroll down and click on "EO 24: Gift Ban."

Confidentiality: Any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Institution under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the Department or Division. The Institution acknowledges that in receiving, storing, processing or otherwise dealing with any confidential information it will safeguard and not further disclose the information except as otherwise provided in this contract.

Data Security: The Institution shall adopt and apply data security standards and procedures that comply with all applicable federal, state, and local laws, regulations, and rules.

Duty to Report: The Institution shall report a suspected or confirmed security breach to the Division's Contract Administrator within twenty-four (24) hours after the breach is first discovered, provided that the Institution 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 Institution is to notify the Division contract administrator of any contact by the federal Office for Civil Rights (OCR) received by the Institution.

Cost Borne by Institution: If any applicable federal, state, or local law, regulation, or rule requires the Division or the Institution to give affected persons written notice of a security breach arising out of the Institution's performance under this contract, the Institution shall bear the cost of the notice.

Oversight

Access to Persons and Records: The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7. Additionally, as the State funding authority, the Department of Health and Human Services shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions.

Record Retention: Records shall not be destroyed, purged or disposed of without the express written consent of the Department or Division. State basic records retention policy requires all grant records to be retained for a minimum of five years or until all audit exceptions have been resolved, whichever is longer. If the contract is subject to federal policy and regulations, record retention may be longer than five years. Records must be retained for a period of three years following submission of the final Federal Financial Status Report, if applicable, or three years following the submission of a revised final Federal Financial Status Report. Also, if any litigation, claim, negotiation, audit, disallowance action, or other action

involving this Contract has been started before expiration of the five-year retention period described above, 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 five-year period described above, whichever is later. The record retention period for Temporary Assistance for Needy Families (TANF) and MEDICAID and Medical Assistance grants and programs must be retained for a minimum of ten years.

Warranties and Certifications

Date and Time Warranty: The Institution warrants that the product(s) and service(s) furnished pursuant to this contract ("product" includes, without limitation, any piece of equipment, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interfaces therein) that perform any date and/or time data recognition function, calculation, or sequencing will support a four digit year format and will provide accurate date/time data and leap year calculations. This warranty shall survive the termination or expiration of this contract.

Certification Regarding Collection of Taxes: G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors that meet one of the conditions of G.S. 105-164.8(b) and yet refuse to collect use taxes on sales of tangible personal property to purchasers in North Carolina. The conditions include: (a) maintenance of a retail establishment or office; (b) presence of representatives in the State that solicit sales or transact business on behalf of the vendor; and (c) systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. The Institution certifies that it and all of its affiliates (if any) collect all required taxes.

Miscellaneous

Choice of Law: The validity of this contract and any of its terms or provisions, as well as the rights and duties of the parties to this contract, are governed by the laws of North Carolina. The Institution, by signing this contract, agrees and submits, solely for matters concerning this Contract, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purpose, that the exclusive venue for any legal proceedings shall be Wake County, North Carolina. The place of this contract and all transactions and agreements 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.

Amendment: This contract may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of

the Department or Division and the Institution. The Purchase and Contract Department 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 through those offices.

Severability: In the event that a court of competent jurisdiction holds that a provision or requirement of this contract 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 this contract shall remain in full force and effect.

Headings: The Section and Paragraph headings in these General Terms and Conditions are not material parts of the agreement and should not be used to construe the meaning thereof.

Time of the Essence: Time is of the essence in the performance of this contract.

Key Personnel: The Institution shall not replace any of the key personnel assigned to the performance of this contract without the prior written approval of the Department or Division. The term "key personnel" includes any and all persons identified by as such in the contract documents and any other persons subsequently identified as key personnel by the written agreement of the parties.

Care of Property: The Institution agrees that it shall be responsible for the proper custody and care of any property furnished to it for use in connection with the performance of this contract and will reimburse the Department or Division for loss of, or damage to, such property. At the termination of this contract, the Institution shall contact the Department or Division for instructions as to the disposition of such property and shall comply with these instructions.

Travel Expenses: Reimbursement to the Institution for travel mileage, meals, lodging and other travel expenses incurred in the performance of this contract shall not exceed the rates published in the applicable State rules. International travel shall not be reimbursed under this contract.

Sales/Use Tax Refunds: If eligible, the Institution and all subcontractors 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 this contract, pursuant to G.S. 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their reimbursement reports.