

**University of North Carolina/Collaborating Entities
SEA-COOS
Group Master Agreement Version 08-02**

This Master Agreement is between the University of North Carolina (UNC) and the University of North Carolina-Chapel Hill, North Carolina State University, MCNC, the University of South Carolina Research Foundation, the South Carolina Department of Natural Resources, the South Carolina Seagrant Consortium, the University of Georgia Research Foundation, Skidaway Institute of Oceanography, the University of Florida, the University of South Florida and the University of Miami (**The Collaborating Entities**) (hereinafter “**the parties**”).

WHEREAS, the parties desire to facilitate and simplify the process of contracting with each other, 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 Task Orders between one another under this Master Agreement, 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. Definitions:

1. Task Order: A Task Order consists of a “**UNC/THE COLLABORATING ENTITIES**” Task Order Form” and the appendices attached thereto which set out the elements deemed generally appropriate to establish meaningful and prudent contractual relationships which collectively constitute an obligation for UNC to pay the amounts described and for the Recipient to perform the work defined. A copy of the “**UNC/THE COLLABORATING ENTITIES**” Task Order Form” is attached hereto as Appendix 1.
2. Prime Agreement: An agreement between UNC and a Funding Source which provides funding for a Task Order.
3. Recipient: A collaborating institution: University of North Carolina-Chapel Hill, North Carolina State University, MCNC, University of South Carolina Research Foundation, the South Carolina Department of Natural Resources, the South Carolina Seagrant Consortium, the University of Georgia Research Foundation, Skidaway Institute of Oceanography, the University of Florida, the University of South Florida, and the University of Miami.
4. Funding Source: A Funding Source is a third party, which provides the funding to UNC which UNC uses to pay for the services specified in a Task Order.

II. Master Agreement

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

III. Representations, Certification and Assurances

1. If any of the services rendered under a Task Order are to be paid with federal funds, the **Recipient** hereby certifies that the organization and its principals are not suspended or debarred from doing business with the federal government.
2. The **Recipient** hereby certifies no federally appropriated funds have been or will be paid to any person influencing an officer or employee of any agency, Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with a contract. 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, 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 to the required entity the Standard Form – LLL, “Disclosure Form to Report Lobbying.”
3. The **Recipient** 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 subsequent amendment to the policy.
4. The **Recipient** 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.
5. **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).
6. Any activity under a Task Order that involves the use of human subjects is governed by applicable policies and federal regulations. The **Recipient** agrees that any human subject 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.

7. 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 Task Order must be reviewed and approved by the **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.

IV. Examination of Records

The **Recipient** must retain financial records, supporting documents and other records pertinent to a Task Order in accordance with applicable laws and policies, but at least 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 Task Order must be retained in accordance with applicable laws and policies, but at least until such audits, appeals, litigation or claims have been settled. The **Recipient** agrees that **UNC** has the right to inspect, review and audit all financial records, supporting documents and other documents applicable to a Task Order at all reasonable times, unless such disclosure is prohibited by law.

V. Audits

Audits will be conducted in compliance with standards established by the North Carolina Office of the State Auditor where applicable and, where applicable, OMB Circular A-133.

VI. Modification of Task Orders

Task Orders may be modified only by written amendments by and between **UNC** and the **Recipient**, which have been duly executed by the authorized representative of each of the parties. The **UNC** Project Coordinator and **Recipient** Principal Investigator may make minor modifications that do not: (a) change the intent of the Task Order including the **Recipient** Scope of Work; (b) increase or decrease the **Recipient's** total compensation; (c) change the method of payment; (d) increase or decrease the total cost of the project; or (e) change the starting or ending dates of the Task Order. Any minor modifications must be recorded in writing and signed by the Project Coordinator and the Principal Investigator and placed on file with the Contract Administrator for the **UNC** and the **Recipient**.

VII. General Characteristics of Task Orders

1. Rebudgeting: **UNC** shall provide **Recipient** the same rebudgeting authority for the Task Order as **UNC** has been granted in the prime agreement.

2. Facilities and Administrative Costs Recovery: Task Order shall include total project costs including any facilities and administrative costs allowance to the **Recipient**. **UNC** will include those facilities and administrative costs to the **Recipient** unless there are restrictions promulgated by the Funding Source.
3. Fiscal Matters: The Task Order shall specify the method for presentation of invoices. **UNC** shall accept or reject **Recipient's** invoices within ten (10) business days after presentation. **UNC** shall reimburse **Recipient** for effort performed under a Task Order within thirty (30) days of acceptance of an invoice as described on the **UNC/THE COLLABORATING ENTITIES** Task Order Cover Sheet. **UNC** shall be deemed to have accepted an invoice unless it notifies the Principal Investigator or the Recipient Contract Administrator within ten (10) business days of presentation that the invoice has been rejected.
 - a. **UNC**, in its sole judgment, shall determine whether costs are allowable under a Task Order in accordance with any applicable laws and regulations. Costs for which prior approval is required will be contingent upon **UNC** receiving like approval of those specific costs from the **Funding Source**. In the event **Recipient** is in noncompliance with OMB Circular A-133, **UNC** may withhold payment of invoices pending favorable resolution of the noncompliance issue.
 - b. The **Recipient** shall reimburse **UNC** a sum of money equivalent to the amount of any expenditures disallowed should the **Funding Source** or its 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 a Task Order.
 - c. A Task Order is not binding on the parties until **UNC** has assigned a Contract Number to it. **UNC's** assignment of a contract number shall signify it has allocated and encumbered sufficient funds to cover the compensation due **Recipient** under the Task Order. It is understood and agreed between the **Recipient** and **UNC** that the payment of compensation specified in a Task Order is dependent upon and subject to the availability of funds to **UNC** for the purpose set forth in a Task Order. Should such funds not be available, **UNC** shall immediately notify the **Recipient's** Contract Administrator and the parties shall modify or terminate the Task Order to account for the unavailability of funds. If the parties cannot agree on the terms of the modification or termination, then **UNC** shall terminate the Task Order under paragraph XIII of the Master Agreement. In the event of termination under this paragraph, Recipient's recovery shall be limited to the relief specified in paragraph XIII of the Master Agreement. **UNC** shall not be liable to **Recipient** for damages of any kind (general, special or consequential) as a result of such termination.

VIII. Ownership of Contract Products, Results, and Intellectual Property

1. Intellectual Property: The **Recipient** retains ownership of intellectual property when publications or similar materials are developed by **Recipient's** personnel from work supported in whole or in part by a Task Order. Any such materials are subject to (a) a royalty-free, non-exclusive, and irrevocable license to **UNC** to reproduce, distribute, display, perform and make derivative works so long as such uses are for its own internal or noncommercial education and research purposes; and (b) if required by the prime agreement, a royalty-free, non-exclusive, and irrevocable license to the **Funding Source** to reproduce, translate, publish, use and dispose of such materials.
2. Publication: **Recipient** or its investigators are free to publish papers concerning the results of the work performed under a Task Order after **UNC** has been given thirty (30) days to review such papers prior to any publication thereof. All publications will include appropriate recognition of support from **UNC** and the **Funding Source** and shall indicate the findings, opinions and recommendations expressed therein are those of the author and not necessarily those of **UNC** or the **Funding Source**. An advance copy of all proposed publications shall be furnished to the **UNC** Project Director.
3. Publicity: None of the parties shall use the name of any of the other parties in news releases or advertising or in other publications directed to the general public without the written approval of and authorized signatory of the other party.

IX. Key Personnel

1. **UNC** shall designate a Project Coordinator. The Project Coordinator shall review **Recipient's** performance of the Task Order, have authority to make modifications in accordance with paragraph VI of the Master Agreement, and accept or reject invoices.
2. The **Recipient** shall designate a Principal Investigator. The Principal Investigator shall be responsible for the overall technical matters of a Task Order and shall have the authority to make modifications in accordance with paragraph VI of the Master Agreement.
3. **UNC** and the **Recipient** shall each designate a Contract Administrator. The Contract Administrators shall be responsible for all matters relating to the interpretation and administration of the Task Order.
4. The **Recipient** shall not substitute for any Principal Investigator identified as such by name or title or any other person identified as "Key Personnel" in the Task Order without prior written approved from the **UNC** Project Coordinator.

X. Subcontracting

The Recipient shall not subcontract work to be performed under a Task Order without the prior written approval of the **UNC** Project Coordinator.

XI. Contract Transfer

The **Recipient** shall not transfer any interest in this agreement without prior written agreement from **UNC**.

XII. Liability

Liability of the parties is subject to the limitations contained in state and federal laws applicable to the contracting entities including, but not limited to, Tort Claims Acts and sovereign immunity.

XIII. Termination

1. Right of Termination: Either party may terminate a Task Order, with or without cause, by giving thirty (30) days written notice to the Contract Administrator of the other party, delivered by fax, express, priority or first class mail. The **Recipient** must stop work under the Task Order no later than the date specified in the notice. In the event of termination under this paragraph, **Recipient** will be reimbursed for all noncancelable commitments incurred prior to notice of termination and any reasonable costs incurred in performance under a Task Order after notice of termination.
2. Termination for Cause: If, through any cause, the **Recipient** fails to fulfill in a timely and proper manner the obligations under a Task Order, **UNC** will thereupon have the right to terminate a Task Order by giving written notice to the **Recipient** of such termination and by specifying the effective date thereof, at least ten (10) days before the effective date of such termination. In such event, the **Recipient** will receive just and equitable compensation for any satisfactorily completed work. Notwithstanding, the **Recipient** shall not be relieved of liability to **UNC** for damages sustained by **UNC** by virtue of any breach of the Task Order or failure to perform, and **UNC** may withhold payment to the Recipient to the extent permitted by specific laws applicable to the parties in this agreement.

XIV. Severability

No condition in a Task Order or the Master Agreement shall be construed to limit the enforceability of any other condition therein. In the event any term or condition contained in, or made a part of a Task Order, by reference, is negated or vacated for any reason whatsoever all other provisions shall remain fully valid and enforceable.

XV. Governing Law

This Master Agreement and subsequent Work Orders are deemed to have been made and entered into in the state of North Carolina. The validity and interpretation of the provisions, terms, and conditions of the **UNC/THE COLLABORATING ENTITES** Master Agreement and all Task Orders issued will be governed by a court of competent jurisdiction.

XVI. Incorporation

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

XVII. Survivability

Articles IV, V, VIII, XI, XII and XV of the **UNC/THE COLLABORATING ENTITES** Master Agreement and others as outlined in an individual Task Order will survive the termination of this Master Agreement.

XVIII. Final Agreement

This agreement states the entire contract between the parties as of the date of execution in respect to the subject matter of the Agreement and supersedes any previous written or oral representations, statements, negotiations, or agreements. If any conflicting terms arise between this Agreement and either the Task Order or the Prime Agreement, ONR Agreement # N00014-02-1-0972 shall supercede.

XIX. Independent Contractors

The relationship of the Parties to this Agreement is that of independent contractors and not as agents of each other or as joint venturers or partners. Each Party shall maintain sole and exclusive control over its personnel and operations.

XX. Waivers

None of the provisions of this Agreement shall be considered waived by any Party unless such waiver is given in writing to the other Party. The failure of a Party to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any Party.

XXI. Counterparts

This Agreement may be executed in counterparts, and each executed counterpart shall be considered an original of this Agreement, but all of which together shall constitute one and the same instrument. Further, signatures by facsimile shall have the same force and effect as an original.

IN WITNESS WHEREOF, the parties have caused this Master Agreement 08-02 to be executed as of the date first written by their duly authorized representative.

Signature

Date

THE UNIVERSITY OF NORTH CAROLINA

Signature

Date

Gretchen Bataille
Senior Vice President for Academic Affairs