

**NCSU**  
**Terms and Conditions**  
**Cost Reimbursement Subaward 08-10**

1. **General Provisions.**

- A. These terms and conditions apply to all Cost Reimbursement Subawards issued by NCSU. They are binding when incorporated by reference into a fully executed NCSU Subaward, using a Subaward Notice (SN). All references to “Block #” are to the SN. The SN identifies the parties, the key persons, the project proposal, establishes funding and cost share obligations, the period of performance, special terms and conditions, and carries the signatures of authorized representatives of each party.
- B. The Subaward may also include other documents incorporated by the SN. Such other documents may include a proposal from the Subrecipient, or a Statement of Work with a budget as well as a Prime Award from the sponsor.
- C. The Subaward is a binding agreement whereby the Subrecipient shall provide the personnel, materials, required facilities and use its reasonable best efforts to accomplish the work described in the project proposal (incorporated into this Subaward as Appendix A) or required by the associated Statement of Work. NCSU in turn agrees to reimburse Subrecipient for the allowable costs of said project or work effort in accordance with these and other incorporated terms, up to a total funded dollar amount, (Block 7).
- D. The Subaward supersedes any prior or contemporaneous agreements or representations, between the parties regarding the proposed project, whether oral or written. Each party remains an independent entity. The Subaward does not establish any employment or agency relationship between the parties.

2. **Changes and Modifications**

- A. These Terms and Conditions may be altered by the Special Terms and Conditions recorded on a given SN or in subsequent written modifications. Any changes to the Subaward after the initial SN has been executed must be recorded in written modifications, using the SN form annotated with a Modification Number. Both parties must sign modifications, except that NCSU may elect to issue the following types of modifications unilaterally:
  - 1. Changes in key personnel when subrecipient submits a written request for change
  - 2. Revisions to the project budget when subrecipient submits a written request
  - 3. Changes to administrative information
  - 4. Funding actions identified in the approved budget
  - 5. Extension of the project end date (no-cost extension)
- B. Subrecipient may reject such unilateral modifications by providing written notice of exceptions to the NCSU Negotiator /Administrator (Block #11) within 30 days after receipt of said modification. If the Subrecipient objects to a unilateral modification, the parties will negotiate an acceptable one.

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3. **Incorporation of Prime.** The Subaward is also subject to the terms and conditions of the Prime Agreement, identified in Block #4 and incorporated into the Subaward as Appendix B. Prior approval from NCSU is required to extend the period of performance of this Subaward. Any exceptions or additions to the Prime Award will be identified in Special Terms and Conditions, Block #6. In the event of conflicts among the various documents and agreements, the following order of precedence will govern:
1. Subaward Notice including any Special Terms and Conditions and modifications
  2. NCSU Standard Terms and Conditions Cost Reimbursement Subaward -08-10
  3. Proposal or Statement Of Work, and approved budget incorporated into the Subaward
  4. Terms and conditions of the Prime Award
4. **Invoice and Payment.**
- A. Subrecipient must request reimbursement for allowable costs incurred no more frequently than monthly but at least quarterly from the individual named in Block #15. Invoices must include the Subaward number; the period covered by the invoice and must show the same level of cost detail as the approved proposal budget. Invoices must show expenditures and cost share contributions for the current period and the cumulative amount to date. The invoice must include a certification by an authorized official as to truth and accuracy of the invoice.
- B. Subrecipient must submit an invoice marked “FINAL,” not later than forty-five (45) days after Subaward end date. Notwithstanding any terms and conditions or other provisions contained in the final invoice or any accompanying correspondence, the final invoice and/or financial statement constitutes Subrecipient’s final request for reimbursement and upon its payment by NCSU, a release by which the Subrecipient does remise, release and discharge NCSU, its officers, agents and employees of and from all liabilities, obligations, claims and demands whatsoever under or arising from the Subaward. Both NCSU and Subrecipient understand that all payments are provisional and are subject to adjustment as a result of an adverse audit finding concerning the Subaward. In the event that Subrecipient fails to submit either a FINAL invoice or request for no-cost extension within the time frame established above, NCSU shall consider the last regular invoice to be the FINAL invoice. Any unexpended balance from the Total Sponsored Funds to Date (7.d.) will be automatically deobligated and NCSU will not make any further payments to that Subrecipient.
- C. If a cost-sharing amount appears in Block #7e, Subrecipient must report such cost-share expenditures to NCSU with each invoice, either on the invoice or separately on the Subrecipient’s letterhead. The report must show current period expenditures, cumulative expenditures, and a certification as to the truth and accuracy of the report. The Subrecipient may not use Federal funds to meet cost-share obligations under any other Federal awards.

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5. **Books and Records.** The Subrecipient will make all financial records, supporting documents, correspondence and any other records applicable to the Subaward available at all reasonable times for inspection, review and audit by the Prime Sponsor, by NCSU or by their authorized representative(s). Subrecipient must retain these records for a period of at least three (3) years from the date of final invoice or from the settlement date of any claims, audits, appeals, or litigation, whichever is later, or as the Prime Agreement prescribes.
6. **Audit.** Throughout the term of the Subaward, Subrecipient agrees to forward upon request, audit information in accordance with OMB Circular A-133. This could include certification of audit results, web links to audit reports, the most recent report, corrective action plans or other pertinent information. In the absence of an A-133 audit, Subrecipient must submit a record of its most recent audit by an independent accountant, including a certification as to the accuracy and reliability of the Subrecipient's financial statements and internal control structure. Upon request, Subrecipient must complete a questionnaire (to be provided) regarding its accounting system and internal controls. Audits and/or related documents must be sent to the address in Block 13, Attn: Compliance Manager.
7. **Key Persons, Technical Direction and Reporting.**
  - A. The individual named in Block #8 (normally Subrecipient's Principal Investigator) is designated as a Key Person. Subrecipient agrees not to replace that individual nor reduce his/her level of commitment to the project without prior written approval of NCSU.
  - B. The NCSU Project Director named in Block #9 is responsible for monitoring Subrecipient's performance, technical reporting and approval of Subrecipient's invoices. All questions about technical and financial matters should be directed to that individual. Technical reporting requirements are stated in Block #6.
8. **Administration.** Matters concerning any changes in the terms, conditions, dates or amounts cited in the SN should be directed to the other party's Negotiator /Administrator identified in Blocks #10 and #11.
9. **Publications.** Subrecipient and its investigators are free to publish papers dealing with the results of the research project sponsored under this Subaward. However, Subrecipient must give NCSU's Project Director (Block #11) the opportunity to review such papers or presentations prior to their being released. NCSU agrees to complete such review within sixty (60) days. Subrecipient must include in every publication or presentation appropriate recognition of the support received from NCSU and the Prime Sponsor.
10. **Certifications and Assurances.** Subrecipient, by signing the SN incorporating these Terms and Conditions, certifies its compliance with any applicable regulatory requirements including but not limited to those listed below. Subrecipient agrees to immediately report to NCSU any change in its compliance status. Subrecipient must flow these requirements down to any lower tier subrecipients. See Appendix B of the Federal Demonstration Partnership Operating Procedures

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([http://www.nsf.gov/awards/managing/fed\\_dem\\_part.jsp](http://www.nsf.gov/awards/managing/fed_dem_part.jsp). ) for a complete description of the following:

1. Nondiscrimination statues on the basis of race, color, national origin, sex, blindness, handicap or age.
2. Common Federal Policy for the Protection of Human Subjects (45 CFR Parts 46 & 690).
3. USDA Rules that implement the Laboratory Animal Welfare Act of 1966 (9 CFR Parts 1-4).
4. Regulations for the Clean Air Act, 42 USC 7606, 40 CFR 6 & 32.
5. Regulations for the Clean Water Act 33 USC 1368, as implemented by E.O. 11738.
6. National Scenic Rivers Act of 1968, 16 USC1271, 40 CFR 6.
7. For NSF & DHHS awards only, internal conflict of interest policy.
8. E.O. 11246, & E.O. 11375 "Equal Employment Opportunity," per 41 CFR part 60.
9. OMB Circular A-129 and 40 CFR 30.73, the parties are not delinquent on any Federal debt.
10. The parties are in compliance with the Drug-Free Workplace Act of 1988, Public Law 100-690, 41 USC 701, 40 CFR 32 or equivalent.
11. HIPPA Patient Privacy Rule, 45 CFR 160 & 164.
12. Coastal Barriers Resource Act, 40 CFR 6.
13. The Anti-Kickback Act of 1986, Pub. L. 99-634, amending 18 U.S.C. 874, 29 C.F.R. Part 3
14. The Safe Drinking Water Act, 42 U.S.C. 300h-3(e)
15. Davis-Bacon Act, 40 U.S.C. 276a to 276a-7, 29 C.F.R. Part 5
16. Contract Work Hours and Safety Standards Act, 40 U.S.C. 327 – 330, 29 C.F.R. Part 5
17. Environmental Protection Agency Regulations, 40 C.F.R. Parts 1 through 49
18. Mandatory Standards & Policies contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 871
19. "Debarment and Suspension" Regulations under E.O. 12549 & 12689, 7 CFR 3017, 10 CFR 606 & 40 CFR 32, or equivalent.
20. Prohibitions against lobbying as set forth in 7 CFR 3018, 31 USC 1352 and 18 USC 1913.
21. The Hatch Act (5 U.S.C. s 1501-1508 and 7324-7328) which limits the political activities of employees whose principal employment activities in whole or in part supported by Federal Funds.
22. Comply with environmental regulations that may be issued pursuant to:
  - a. Institution of environmental quality control measures under NEPA (PL 91-190 & EO11514.
  - b. Notification of violating facilities EO 11738
  - c. Protection of wetlands EO 11990
  - d. Evaluation of flood hazards in floodplains EO 11988
  - e. Assure project consistency under Costal Zone Management Act of 1972 16 USC 1451
  - f. Endangered Species Act of 1973, as amended PL 93-205
  - g. National Historic Preservation Act of 1966, 16 USC470, EO11593
  - h. Lead-Based Paint Poisoning Prevention Act 42 USC 4801
  - i. Requirements governing the applicable Grant Program

(Abbreviations: CFR = "Code of Federal Regulations," USC = "United States Code," E.O. = "Executive Order," OMB = "Office of Management and Budget")

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11. **Termination.**
  - A. NCSU and Subrecipient have the right to terminate the Subaward in whole or in part, without cause, with 30 days advance written notice to the other party.
  - B. The Subrecipient must stop work to the extent specified in the Notice of Termination on the date such notice is received from or issued to NCSU. Subrecipient may not place any orders or subcontracts for materials, services, or facilities, except as may be necessary for the completion of such portion of the work that is not terminated. NCSU agrees to reimburse the Subrecipient for all allowable costs of the work that has been performed prior to said notice of termination and all obligations relating to such work that cannot be canceled.
12. **Liability.** Each party is responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, or directors, to the extent allowed by applicable law.
13. **Notices.** Unless otherwise provided in the SN, official notices, from either party to the other, shall be deemed to have been fully given when made in writing, addressed/delivered to the individual shown on the SN, Block #10 for Subrecipient and Block #11 for NCSU. The parties agree that the following methods are acceptable for delivering official notices: Certified mail, return receipt requested, electronic mail with confirmation of receipt, Express courier service (e.g. FedEx or UPS) or fax with confirmation of receipt.
14. **Assignment and Subcontracting.** Subrecipient may not assign the Subaward nor any right, remedy, obligation or liability arising there under or by reason thereof nor may Subrecipient further subcontract any of the work to be performed under the Subaward without prior written approval from NCSU.
15. **Inspection.** Designated representatives of NCSU have the right to inspect and review the progress of the work performed at the Subrecipient's place of business pursuant to this Agreement. Subrecipient must make available all reasonable facilities, including access to relevant data, test results, and computations used or generated under this Agreement if requested by NCSU. NCSU must conduct such inspections in such manner so as not to unduly delay the progress of the work. NCSU must give the Subrecipient reasonable notice prior to conducting any such inspection.
16. **Use of Names.** Either party may use the name of the other in a public announcement of the existence of the Subaward. Other than that, neither party to the Agreement may use the names, marks or symbols of the other or of the other party's employees in any manner, including public announcements, advertising, or promotional sales literature without the prior written consent of the other party.

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17. **Disputes.** In the event of a dispute or claim regarding any matter under the Subaward that is not disposed of by mutual agreement, the parties agree to pursue those necessary institutional and/or legal remedies as may be appropriate. Legal remedies may include pursuit of the dispute by either party in a court of competent jurisdiction. In this event, each party shall be responsible for all costs they incur as a result of such action. Subrecipient agrees to continue performance on a disputed matter until any such dispute is resolved.
18. **Inventions.**
- A. The parties agree to abide by the applicable United States regulations governing patents and inventions issued by the US Department of Commerce at 37 CFR 401, wherein the rights of the Federal Government are established. Any invention or discovery made or conceived in the performance of the research or other work (hereinafter called “Invention”), or any patent to be granted on such Invention shall be jointly or individually owned by Subrecipient and/or NCSU in accordance with the following criteria:
    - 1) Title to any Invention made or conceived jointly by employees of both Subrecipient and NCSU in the performance of the Research (hereinafter called “Joint Invention”) shall vest jointly in NCSU and Subrecipient.
    - 2) Title to any Invention made or conceived solely by employees of either Subrecipient or NCSU in the performance of the Research shall vest in the party whose employees or students made or conceived such Invention or discovery.
  - B. The Subrecipient will, within 2 months after their inventor makes a written disclosure, submit a written report to the NCSU Administrator (Block 11), identifying the Subaward number, date of disclosure by Subrecipient’s PI, and a brief (non-disclosing) description, identifying the purpose of the invention. Subrecipient will concurrently make a full disclosure directly to the Prime Sponsor in accordance with the Prime Agreement.
  - C. The Subrecipient will submit a final invention report to NCSU concurrently with the final invoice. Subrecipient will use the forms prescribed by the Prime Sponsor (e.g. DD Form 882 or NASA Form C-3044). The list will identify all subject inventions, including the disclosure date(s) or stating that there were no inventions (negative report is required).
  - D. The Subrecipient will, upon request, submit a written report concerning each patent filing, including: the filing date, serial number and title, a copy of the patent application, patent number, and issue date.
19. **Copyright.** The Subrecipient may copyright any work product, software or data that is subject to copyright and was first developed by or on behalf of Subrecipient under the Subaward. For such copyrights or copyrighted material (including any computer software and its documentation and/or databases), subject to its legal ability to do so, Subrecipient grants to the Federal Government the rights established in the Prime Agreement and grants to NCSU, an irrevocable, royalty-free, non-transferable, non-exclusive right and license to use, reproduce, display, and perform publicly to the extent required to meet NCSU’s obligations under its Prime Agreement and for the purposes of its noncommercial research and educational missions.

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20. **Data Rights** For Data and computer software created in the performance of this Subaward Agreement, Subrecipient grants to the Prime Sponsor the rights established in the Prime Agreement and grants to NCSU the right to use data to the extent required to meet NCSU's obligations under its Prime Agreement and for the purposes of its noncommercial research and educational missions.
21. **Confidentiality**
- A. In the performance of the Project, 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 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 Three (3) 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 these restrictions do not apply to:
- (i) information that is or becomes publicly known through no fault of the receiving party;
  - (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;
  - (v) information required to be disclosed by court order or operation of law, including, but not limited to, the North Carolina Public Records Law; 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.
22. **Law and Severability**. It is agreed that if either party is an agency of its respective state government, the applicable constitutional provisions or statutes that govern sovereign immunity shall dictate the appropriate forum and law governing substantive issues. Subrecipient agrees to comply with all relevant federal, state, county, and municipal executive orders, rules, regulations, laws and ordinances. In the event that any provision(s) of the Agreement are rendered void or illegal the remainder of its provisions shall remain in effect. Failure on the part of either party to exercise a right or remedy shall not preclude exercising them in the future.

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23. **Survivability** In the event of early termination of this Subaward, the parties agree that Articles 18 through 21 and the obligations inherent in them will survive the termination of this agreement for a minimum of 3 years.
  
24. **Export Controls**. The parties acknowledge that each is responsible for compliance with US Export Control regulations. In the event that either party becomes aware that the research work that is being or will be conducted, is or is likely to involve a technology that is subject to Export Controls, each party agrees to notify the other within three working days so that the situation can be evaluated and an appropriate course of action taken.

End of NCSU Terms and Conditions Cost Reimbursement Subaward