

## ATTACHMENT A: TERMS AND CONDITIONS

### Relationships of the Parties

**Effective Period:** This contract shall be effective on July 1, 2023 and shall end upon the earlier of (1) completion of all required activities, or (2) July 10, 2026.

All notices permitted or required to be given by one Party to the other and all questions about the contract from one Party to the other shall be addressed and delivered to the other Party's Contract Administrator.

**Payment Provisions.** Upon execution of this contract, the subrecipient may request and, upon approval by the ASSOCIATION, receive reimbursement for eligible expenses incurred within the period of performance and subject to the approval of the ASSOCIATION. The parties to this contract agree and understand that payment is subject to the award and distribution of those funds through NCDHHS to the ASSOCIATION.

**Subcontracting:** This Agreement or any interest therein shall not be assigned or transferred by the Subrecipient. Subrecipients agree to abide by the standards contained in 09 NCAC 03M and to provide information in its possession needed by the Recipient to comply with these standards.

### Indemnity and Insurance

**Indemnification:** The NCAFCC Member agrees to indemnify and hold harmless the Division, the State of North Carolina, and any of their officers, agents, and employees, and the ASSOCIATION from any claims of third parties arising out of any act or omission of the NCAFCC Member in connection with the performance of this contract **to the Extent permitted by law.**

### Default and Termination

Parties may terminate by mutual consent with 60 Days written notice to the other party. Reversion of unexpended State Financial assistance to the ASSOCIATION upon termination of the contract.

**Termination for Cause:** The ASSOCIATION may, by written notice, immediately terminate all or any portion of this Agreement or the Services for cause in any of the following circumstances:

- (1) Subrecipient breaches any obligation hereunder.
- (2) Subrecipient is adjudged insolvent or bankrupt; Contractor makes an assignment for the benefit of creditors; or the appointment of a receiver, liquidator, or trustee of any of Contractor's property or assets.
- (3) NCAFCC Member is no longer a Member of the ASSOCIATION. (An NCAFCC Member that intends to

dissolve or cease operations shall report that decision in writing to the NCAFCC as soon as possible, as well as prior to notifying NCDHHS of the action as defined in Member Attachment D Reporting Two Year.)

**Waiver of Default:** Waiver by the ASSOCIATION of any default or breach in compliance with the terms of this contract by the Contractor 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 ASSOCIATION and the Contractor and attached to the contract.

**Availability of Funds:** The parties to this contract agree and understand the funding specified in this agreement is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds.

**Funds Management.** The NCAFCC Member agrees that funds paid through this Agreement shall be accounted for in a separate fund and accounting structure within the NCAFCC Member's central accounting and grant management system. The NCAFCC Member agrees to manage all accounts payable disbursements, check register disbursements and related transactions in a detailed manner that supports fully transparent accounting of all financial transactions associated with any funding to provided pursuant to this Agreement. If eligible, the NCAFCC Member 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 Agreement, pursuant to N.C.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 quarterly project status reports.

**NCAFCC Member 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.**

**NCAFCC Member shall maintain its accounting records relating to the performance of the Services and the incurrence of eligible expenditures and this Agreement in accordance with generally accepted accounting procedures. Upon reasonable prior notice to NCAFCC Member, the ASSOCIATION and the Office of State Budget and Management, and NC DHHS may, during the term of this Agreement and for a period of up to six years following the expiration or termination for any reason of this Agreement, audit and copy such records.**

**NCAFCC Member understands that if the use of funds by the NCAFCC Member is disallowed by the ASSOCIATION, NC DHHS, or any other federal or state agency, the NCAFCC Member shall return the**

amount of funds determined to be disallowed to the ASSOCIATION, upon its written request, in order that the ASSOCIATION may comply with its obligations.

**No Guarantee:** Nothing in this Agreement guarantees NCAFCC Member any funding. Reimbursement of eligible expenditures by ASSOCIATION to NCAFCC Member is conditioned upon NCAFCC Member's compliance with all of the terms and conditions of this Agreement, including reporting. ASSOCIATION may withhold reimbursement to NCAFCC Member, should NCAFCC Member fail to the comply with all of the terms and conditions of this Agreement. The ASSOCIATION further reserves the right to withhold, reduce, or delay disbursement if reimbursement requests or reports are not timely submitted, are incomplete, or do not include adequate documentation to permit the ASSOCIATION to verify the proper uses of the funds.

**Reversion of Unexpended Funds.** Any funds distributed to NCAFCC Member that are unexpended by the deadlines noted in this Agreement shall revert to the ASSOCIATION.

**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.

### Intellectual Property Rights

**Federal Intellectual Property Bankruptcy Protection Act:** The Parties agree that the ASSOCIATION 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.

### Compliance with Applicable Laws

**Compliance with Laws:** The Contractor 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 Contractor shall comply with all federal and State laws relating to equal employment opportunity.

### Oversight

**Reporting Requirements:** Financial assistance awards are subject to N.C.G.S. § 143C-6-23(d) and 09 NCAC 03M.205. Financial assistance contracts funded by federal pass-through funds are also subject to all reporting requirements in the Code of Federal Regulations, 2CFR Part 200, Subpart D and F, including

§ 200.303 Internal controls and §§ 200.331-333 Subrecipient Monitoring and Management.

A non-governmental grantee who receives a combined \$500,000 or more in State or federal pass-through funds from all state agencies must submit a single or program-specific audit prepared and completed in accordance with the Generally Accepted Government Auditing Standards (GAGAS), also known as a Yellow Book audit. The audit should be emailed to Risk Management, Compliance and Consulting ([NCGrantsReporting@dhhs.nc.gov](mailto:NCGrantsReporting@dhhs.nc.gov)) and NCAFCC at [allison@ncafcc.org](mailto:allison@ncafcc.org) within 9 months of the grantee's fiscal year end.

A non-governmental grantee who receives a combined \$750,000 in federal funds, either direct or pass-through funds must submit a single or program-specific audit prepared and completed in accordance with Generally Accepted Government Auditing Standards (GAGAS), also known as a Yellow Book audit. The audit should be submitted to the Federal Audit Clearinghouse within 9 months of the grantee's fiscal year end.

Per [09 NCAC 03M. 205](#): "Unless prohibited by law, the costs of audits made in accordance with the provisions of this Rule shall be allowable charges to State and Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with cost principles outlined in the [Code of Federal Regulations, 2CFR Part 200](#). The cost of any audit not conducted in accordance with this Subchapter shall not be charged to State awards."

NCAFCC Member, a non-governmental subgrantee, is subject to the reporting requirements described in the Uniform Administration of State Grants at 09 NCAC 03M.0205.

DHHS and the ASSOCIATION encourage all its non-governmental Contractors that receive funds from other state agencies or DHHS divisions to contact their assigned contract monitor(s) to determine if year-end reports must be submitted for those particular grants/awards.

North Carolina State agencies are exempt from the reporting requirements of this section. Local governments that have reporting requirements for the Local Government Commission are exempt. All others are not exempt and must adhere to the reporting requirements of this section.

- (1) Quarterly Reports: Report Template A - Quarterly Status Report
- (2) Quarterly Report Timeframes and Due Dates:

Reporting Period	Due Date
July 1, 2023 – December 31, 2023	January 10, 2024
January 1, 2024 – March 31, 2024	April 10, 2024
April 1, 2024 – June 30, 2024	July 10, 2024

July 1, 2024 - September 30, 2024	October 10, 2024
October 1, 2024 – December 31, 2024	January 10, 2025
January 1, 2025 – March 31, 2025	April 10, 2025
April 1, 2025 – June 30, 2025	July 10, 2025
July 1, 2025 – September 30, 2025	October 10, 2025
October 1, 2025 – December 31, 2025	January 10, 2026
January 1, 2026 – March 31, 2026	April 10, 2026
April 1, 2026 – June 30, 2026	July 10, 2026

**ASSOCIATION Reporting Requirements. Measures assessed within the NCAFCC Annual Survey inform the overall performance measures required for this program. NCAFCC Member is required to complete all applicable Sections of the NCAFCC Annual Outcomes Survey for the years 2023, 2024, 2025 and 2026 (each completed in 2024, 2025, 2026 and 2027, respectively).**

**The ASSOCIATION shall provide guidance and direction to the NCAFCC Member in the conduct of the Scope of Work performed under this Agreement. The NCAFCC Member has the responsibility to determine whether it has spent funds in accordance with applicable laws, regulations, including the federal audit requirements and agreements. The ASSOCIATION may require the NCAFCC Member to take corrective action if deficiencies are found, and the NCAFCC Member agrees to take all correction action requested of it by the ASSOCIATION.**

**Failure of NCAFCC Member to report by deadlines noted above or use for expenses deemed ineligible will result in lack of reimbursement. Additionally, reimbursement may be withheld if reporting is deemed insufficient or late. Delay or lack of response to questions from the ASSOCIATION may also result in withholding of reimbursement until reporting is deemed accurate, complete and sufficient. NCAFCC Member is obligated to report to the ASSOCIATION on the specific use of all grant funds. Funds not expended by NCAFCC Member by deadlines noted will result in forfeiture of any remaining, unused allocation to the ASSOCIATION.**

**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:** [The NC DHHS Records Retention Background](#) and [NC DHHS Records Retention and Disposition Schedule for Grants](#) serves as the written authorization that allows purging of such records. 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, 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.

## 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 Contractor, 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 Mecklenburg County, North Carolina. The place of this contract and all transactions and agreements relating to it, and their situs and forum, shall be Mecklenburg County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.~~

## Definitions

Unless indicated otherwise from the context, the following terms shall have the following meanings in this Contract. All definitions are provided to meet the intent and requirements of [NC Administrative Rules 09 NCAC Admin Code 03M.0102](#), and [the North Carolina General Statutes](#) unless otherwise noted. If the rule or statute that is the source of the definition is changed by the adopting authority, the change shall be incorporated herein:

- (1) "Agency" (as used in the context of the definitions below) every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subagency of government. For other purposes in this Contract, "Agency" shall mean the entity identified as one of the parties hereto.
- (2) "Audit" means an examination of records or financial accounts to verify their accuracy.

- (3) "Contract" means a legal instrument that is used to reflect a relationship between the agency and the contractor, grantee, or subgrantee.
- (4) "Contractor" refers to the entity that has entered into a legal agreement with the agency.
- (5) "Directed Grant" means nonrecurring funds allocated by a State agency to a non-State entity as directed by an act of the General Assembly.
- (6) "Division" refers to the Agency entering into a legal agreement with another entity.
- (7) "Fiscal Year" means the annual operating year of the non-State entity.
- (8) "Financial Assistance" means assistance that non-State entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance. Financial assistance does not include amounts received as reimbursement for services rendered to individuals for Medicare and Medicaid patient services.
- (9) "Financial Statement" means a report providing financial statistics relative to a given part of an organization's operations or status.
- (10) "Grant" means financial assistance provided by an agency, grantee, or subgrantee to carry out activities whereby the grantor anticipates no programmatic involvement with the grantee or subgrantee during the performance of the grant.
- (11) "Grantee" has the meaning as referenced in [G.S. 143C-6-23\(a\)\(2\)](#): a non-State entity that receives a grant of State funds from a State agency, department, or institution but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission. For other purposes in this Contract, "Grantee" shall mean the entity identified as one of the parties hereto.
- (11a) "Non-Profit Grantee" means a "Non-State Entity" Grantee organization organized for a public or mutual benefit other than generating profit for owners or investors. Non-Profit Grantees are legally designated by the Internal Revenue Code as a 501(c)(3) or 501(c)(4) organization and are exempt from taxation. For purposes of meeting the requirement of [S.L. 2022-52](#), all three of the following components are met: (i) is receiving nonrecurring funding for each year of a State fiscal biennium, and/or (ii) is receiving recurring funding, and (iii) multi-year contracts are not prohibited by the funding source.
- (12) "Grantor" means an entity that provides resources, generally financial, to another entity in order to achieve a specified goal or objective.
- (13) "Non-State Entity" has the meaning in G.S. 143C-1-1d(18): [G.S. 143C-1-1d\(18\)](#): Any of the following that is not a State agency: an individual, a firm, a partnership, an association, a county, a corporation, or any other organization or group acting as a unit. The term includes a unit of local government and public authority.
- (14) "Public Authority" has the meaning in [G.S. 143C-1-1d\(22\)](#): A municipal corporation that is not a unit of local government or a local governmental authority, board, commission, council, or agency that (i) is not a municipal corporation and (ii) operates on an area, regional, or multiunit basis, and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government.
- (15) "Recipient" means a non-State entity that receives State financial assistance directly from a State agency to carry out part of a State program but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission. For purposes of this document, "recipient" also includes a non-State entity that would be considered a "subrecipient" pursuant to [2 CFR 200.93](#) for Federal funds subawarded by a recipient State agency but does not include a subrecipient as defined in Item (17).
- (16) "Single Audit" means an audit that includes an examination of an organization's financial statements, internal controls, and compliance with the requirements of Federal or State awards.
- (17) "Subrecipient" means a non-State entity that receives State financial assistance from a Contractor to carry out part of a State program; but does not include an individual that is a beneficiary of such program. This definition of "subrecipient" applies throughout these Rules, except as used in Item (15) of this document.
- (18) "Special Appropriation" means a legislative act authorizing the expenditure of a designated amount of public funds for a specific purpose.
- (19) "State Funds" means any funds appropriated by the North Carolina General Assembly or collected by the State of North Carolina. State funds include federal financial assistance received by the State and transferred or disbursed to non-State entities ([143C-1-1d\(25\)](#)). Both Federal and State funds maintain their identity as they are subgranted to other organizations. Pursuant to [G.S. 143C-6-23 \(a\)\(1\)](#), the terms "State grant funds" and "State grants" do not include any payment made by the Medicaid program, the Teachers' and State Employees' Comprehensive Major Medical Plan, or other similar medical programs.
- (20) "Subgrantee" has the meaning in [G.S. 143C-6-23\(a\)\(4\)](#): a non-State entity that receives a grant of State funds from a grantee or from another subgrantee but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.
- (21) "Unit of Local Government" has the meaning in [G.S. 143C-1-1\(d\)\(29\)](#): A municipal corporation that has the power to levy taxes, including a

consolidated city-county, as defined by [G.S. 160B-2\(1\)](#), and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations.