

## **Executive Summary**

Contract with Duke University

### **Purpose**

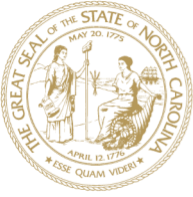
The purpose of this contract is for the ABC Science Collaborative of the Duke School of Medicine to provide data collation, analysis, and interpretation of COVID-19 related metrics of student, teacher, and staff safety for the local school administrative units providing in-person instruction under Plan A for middle and high school students.

### **Contract Information**

This contract is required by Session Law 2021-4. The total contract amount is \$500,000.00 from federal funds, and it must begin no later than March 26, 2021 and end no later than September 15, 2021.

### **Business Owner**

Karl Pond, Enterprise Data and Reporting



# PUBLIC SCHOOLS OF NORTH CAROLINA

DEPARTMENT OF PUBLIC INSTRUCTION | Catherine Truitt, *Superintendent of Public Instruction*

WWW.DPI.NC.GOV

## SERVICES AGREEMENT

This Agreement, effective March 26, 2021, is between the North Carolina Department of Public Instruction (“NCDPI”) and Duke University (“Duke”).

### Background

In March 2021, the North Carolina General Assembly directed NCDPI to contract with Duke for the ABC Science Collaborative of the Duke School of Medicine (“ABC Collaborative”) to “provide data collation, analysis, and interpretation of COVID-19 related metrics of student, teacher, and staff safety for local school administrative units providing in-person instruction under Plan A for middle and high school students.” Section 3.(a) of Session Law 2021-4.

In compliance with that mandate, NCDPI and Duke agree as follows:

1. **Definitions.** For purposes of this Agreement, the following definitions apply:

“**FERPA**” means the Family Educational Rights and Privacy Act of 1974.

“**Partnering local administrative unit(s)**” means a local administrative unit or units engaging with Duke under Session Law 2021-4.

“**Services**” mean the duties and tasks required by the Scope of Work in this Agreement and more specifically set forth in the partnering local administrative units’ agreements with Duke.

“**State**” means the State of North Carolina, the North Carolina Department of Public Instruction as an agency, and partnering local administrative units.

2. **Term.** This Agreement begins on March 26, 2021 and terminates on September 15, 2021 unless it is terminated earlier under this Agreement.

3. **Compliance with State and Federal Laws and Regulations.**

**3.1 In general.** Nothing in this Agreement will be construed to allow Duke to maintain, use, share, or reveal student, teacher, or staff information in a manner prohibited by state and federal laws and regulations.

**3.2 FERPA.** Duke will, in all respects, comply with FERPA, which includes any amendments or other relevant provisions of federal law, as well as all requirements of Chapter 99 of Title 34 of the Code of Federal Regulations and reauthorization when effective.

**3.3 Conflict of Terms.** If there is a contradiction or conflict between this Agreement and Session Law 2021-4, then Session Law 2021-4 controls.

### OFFICE OF THE STATE SUPERINTENDENT

Catherine Truitt, *Superintendent of Public Instruction* | catherine.truitt@dpi.nc.gov  
6301 Mail Service Center, Raleigh, North Carolina 27699-6301 | (984) 236-2200 | Fax (984) 236-2349  
AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

4. **Memorandum of Agreement.** Duke will enter into a Memorandum of Agreement with each partnering local administrative unit that complies with Session Law 2021-4 and protects the data as required by this Agreement.
5. **Scope of Work.**
  - 5.1 **Assessing transmission rates.** ABC Collaborative will assess within-school transmission rates based on contact tracing and confirmatory testing with partnering local school administrative units.
  - 5.2 **Evaluate.** In assessing the transmission rates in § 5.1, ABC Collaborative will evaluate the partnering local school administrative unit's fidelity and adherence to the mitigation strategies provided in the most recent StrongSchoolsNC Public Health Toolkit (K-12).
  - 5.3 **Data Requests.** ABC Collaborative will request only de-identified, aggregate data from partnering local administrative units.
  - 5.4 **Report on Findings.** ABC Collaborative will report on its findings to the Joint Legislative Education Oversight Committee, Senate Education/Higher Education Committee, House Education K-12 Committee, NCDPI, North Carolina State Board of Education, North Carolina Department of Health and Human Services, and Office of the Governor as follows:
    - A. ABC Collaborative will submit an interim analysis of aggregate data for all partnering local administrative units no later than the last calendar day of March, April, and May of 2021.
    - B. ABC Collaborative will submit a final analysis of both aggregate and individual partnering local administrative units no later than June 30, 2021.
  - 5.5 **Small Numbers Policy.** In submitting an interim and fiscal analysis in accordance with § 5.4, ABC Collaborative will delete all data items that include any group of students less than five (5). ABC Collaborative will also require all employees, contractors, and agents to abide by that policy.
6. **Payment.** NCDPI will pay Duke the sum of \$500,000.00 for the work performed in accordance with this Agreement. NCDPI will disburse these funds to Duke within five (5) days of execution of this Agreement. The amount paid and disbursed by NCDPI must not exceed \$500,000.00.
7. **Federal Funds.** If any of the services rendered under this Agreement are paid with federal funds, Duke certifies that the organization and its principals are not suspended or debarred from doing business with the federal government.
8. **Data Use.** Duke will use the data under this Agreement for no purpose other than research and analysis as authorized under Section 99.31(a)(6) of Title 34 of the Code of Federal Regulations, which allows disclosure of personally identifiable information

from students' education records in connection with NCDPI's conducting studies to develop, validate, or administer predictive tests, administer student aid programs, or improve instruction.

**9. Data Sharing.**

**9.1 In general.** Except as permitted by this Agreement, Duke will not share or reveal, directly or indirectly, data obtained under this Agreement with any nonparty without prior written approval from NCDPI.

**9.2 Manner Prohibited.** Except as authorized by FERPA, Duke will not share or reveal, directly or indirectly, data obtained under this Agreement in a manner that could identify an individual student with any nonparty. Except as authorized by this Agreement, Duke will not share or reveal, directly or indirectly, data obtained under this Agreement in a manner that could identify an individual teacher or staff with any nonparty.

**9.3 Confidentiality.** Duke will require all employees, contractors, and agents to comply with all applicable state and federal laws and regulations with respect to data shared under this Agreement. Duke will require and maintain an appropriate confidentiality agreement from all employees, contractors, and agents with access to data under this Agreement.

**10. Data Security and Ownership.**

**10.1 NC DIT Security Standards and Guidelines.** Duke will comply with all North Carolina Department of Information Technology Security Standards and Guidelines.

**10.2 Data inside United States.** Duke understands that the data under this Agreement will not be taken or assessed outside the United States. Remote access to the data from outside the United States is prohibited, including access by employees, contractors, and agents.

**10.3 Data ownership.** Duke understands it has a limited, non-exclusive license to access and use State Data provided to it. Duke further understands that this Agreement does not convey ownership of the data under this Agreement to Duke.

**11. Contract Administrator.** NCDPI and Duke will each designate a Contract Administrator. The Contract Administrators will be responsible for all matters relating to the administration of the scope of work.

NCDPI designates:

Dr. Robert Taylor

(984) 236-2310

Robert.Taylor@dpi.nc.gov

Duke designates:

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

12. **Subcontracting.** Duke will not subcontract work to be performed under this Agreement without the prior written approval of NCDPI.
13. **Contract transfer.** Duke will not transfer any interest in this Agreement without the prior written approval of NCDPI.
14. **General Indemnity.** Duke will indemnify, defend, hold, and save the State, its officers, agents, and employees harmless from liability of any kind, including all claims and losses accruing or resulting to any other person or entity furnishing or supplying work, Services, materials, or supplies in connection with the performance of this Agreement, as well as from any and all claims and losses accruing or resulting to any person or entity that may be injured or damaged by Duke in the performance of this Agreement that are attributable to the negligence or intentionally tortious acts of Duke, provided that Duke is notified within 30 days from the date the State has knowledge of such claims.
15. **Intellectual property warranty and indemnity.** Duke will hold and save the State, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, resulting from the infringement of the rights of any third party in any Services or copyrighted material, patented or patent-pending invention, article, device, or appliance delivered in connection with this Agreement. Duke warrants to the best of its knowledge that:
  - A. Performance under this Agreement does not infringe upon any intellectual property rights of any third party; and
  - B. There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.
16. **Sovereign immunity.** Notwithstanding any other term or provision of this Agreement, nothing in this Agreement is intended or will be interpreted as waiving any claim or defense based on the principle of sovereign immunity or other State or federal constitutional provision or principle that otherwise would be available to the State under applicable law.
17. **Advertising.** Duke agrees not to use the existence of this Agreement or the name of the State of North Carolina as part of any commercial advertising or marketing of products or Services except as provided in 01 NCAC 05B.1516. Duke may inquire whether the State is willing to be included on a listing of its existing customers.
18. **Access to persons and records.** During, and after the term of this Agreement, during the relevant period required for retention of records by State law (N.C. Gen. Stat. §121-5, 132-1 *et seq.*, typically five years), the State Auditor and NCDPI's internal auditors will have access to persons and records related to this Agreement to verify accounts and data affecting fees or performance under this Agreement, as provided in N.C. Gen. Stat. § 143-49(9). However, if any audit, litigation, or other action arising out of, or related in any way to this project, is commenced before the end of the retention of records period, the records will be retained for one (1) year after

all issues arising out of the action are finally resolved or until the end of the record retentions year, whichever is later.

19. **Force majeure.** Neither party will be deemed to be in default of its obligations under this Agreement, if, and so long as, it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, pandemic, or other catastrophic natural event or act of God.
20. **Termination.**
  - 20.1 **By NCDPI.** NCDPI may terminate this Agreement at any time upon 30 days' written notice to Duke.
  - 20.2 **By Duke.** Duke may terminate this Agreement, if, due to circumstances beyond its control, it does not have the capacity to continue to provide the services agreed to in § 3 of this Agreement. Circumstances beyond its control include, but are not limited to, loss of key personnel when a replacement satisfactory to NCDPI and Duke is not available or loss of necessary resources. In this event, Duke will notify NCDPI's Contract Administrator within seven (7) days of Duke knowledge that it does not have the capacity to continue to provide the agreed to services.
21. **Modification of Agreement.** Additions, deletions, amendments, and other changes are collectively called "modifications." This Agreement can only be modified by written agreement signed by both parties.
22. **Entire agreement.** This Agreement represents the entire agreement between the parties. It cannot be changed except by written agreement signed by the parties.
23. **Severability.** In the event any term or condition of this Agreement is negated or vacated for any reason whatsoever, all other provisions of this Agreement will remain enforceable.
24. **Governing law.** The laws of the State of North Carolina govern validity and interpretation of the provisions, terms, and conditions of the Agreement and all Task Orders issued in accordance with this Agreement. The place of this Agreement, its situs and forum, will be Wake County, North Carolina, where all matters, whether in contract or tort, relating to its validity, construction, interpretation, and enforcement will be determined. Duke agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the Federal or State Courts of the State of North Carolina serving Wake County, either of which will be the proper venue for all matters.
25. **Dispute resolution.**
  - A. **Nonbinding alternative dispute resolution.** Both parties must try to settle any claim or controversy arising from this Agreement through consultation and negotiation in good faith and in a spirit of mutual cooperation. If those

attempts at resolution fail, then either party may demand nonbinding mediation to resolve the dispute. Within 30 days after the party's demand for mediation is received by the other party, both parties will choose a mutually acceptable mediator. Neither party may unreasonably withhold consent to the selection of a mediator. Both parties will share the costs of the mediation equally. By agreement, the parties may postpone mediation until the parties have completed some specified but limited discovery about the dispute. The parties may also agree to replace mediation with some other form of nonbinding alternative dispute resolution.

**26. Notices.** All notices and other communications required or permitted under this Agreement must be in writing and must be sent or emailed to the party at that party's address set forth below.

To NCDPI as follows:

NC Department of Public Instruction  
Attn: McKensie Skeens  
Office of the General Counsel  
6301 Mail Service Center  
Raleigh, NC 27699-6301

McKensie.Skeens@dpi.nc.gov

and to Duke as follows:

Address:

Email: \_\_\_\_\_

*[This Space Intentionally Left Blank]  
[Signature Page Follows]*

The parties are signing this Agreement on March 26, 2021.

**NORTH CAROLINA DEPARTMENT OF INSTRUCTION**

By: \_\_\_\_\_

Alexis Schauss  
Interim Chief Financial Officer

By: \_\_\_\_\_

Catherine Truitt  
State Superintendent of Public Instruction

**DUKE UNIVERSITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DRAFT