

AGREEMENT

Between the

NORTH CAROLINA DEPARTMENT OF COMMERCE

and the

NORTH CAROLINA DEPARTMENT OF LABOR

This AGREEMENT is made and entered into by and between the North Carolina Department of Commerce (hereinafter the "Department") and the North Carolina Department of Labor (hereinafter the "Recipient," and together with the Department, the "Parties" and each a "Party") in order to provide confidential historical and current Quarterly Census of Employment and Wages ("QCEW") employment, status and contact information in the possession of the Department, and needed by the Recipient for the purposes described in Section A of this Agreement, on a recurring basis. All information provided by the Department pursuant to this Agreement is "Confidential Information." "Confidential Information" includes originals and copies of the information, in whatever form, whether it be print, electronic, tape, or otherwise, as well as derivative records and reports created from the information, other than the results of the study contemplated herein, in the form of aggregated information, containing no individual or employer identifying data.

NOW, THEREFORE, the Department and the Recipient mutually agree as follows:

A. Purpose and Legal Authority

1. The Department, through its Division of Employment Security, collects information from employers for the administration of the Employment Security Law of North Carolina pursuant to Chapter 96 of the North Carolina General Statutes. The Recipient seeks Confidential Information for statistical and planning purposes only in the administration of Occupational Safety, as more fully described in Attachment A-1 and Attachment A-2, which are attached hereto and fully incorporated by reference.

2. The Research and Policy Bureau ("R&P") and the Occupational Safety and Health Division's Planning, Statistics and Information Management Bureau ("PSIM") are two (2) divisions of the Recipient in need of the Confidential Information. The Department will provide the Recipient with the Confidential Information to be used ONLY for the purposes described in Attachment A-1 and Attachment A-2, and in accordance with the requirements of this Agreement, including receipt of the Certifications described in Section E.2. The authority for this release of information is found in N.C. Gen. Stat. §§ 96-4, 143B-7, and 143B-10, and 20 C.F.R. Part 603. The Department enters into this Agreement because the research and the anticipated results therefrom will be beneficial to the Department in the administration of laws under Chapter 143B, Article 10, and Chapter 96 of the North Carolina General Statutes.

B. Records Description

1. The information provided by the Department will be limited to company and establishment-level industry, employment, status and contact information, and will not include "confidential information" as defined by the Bureau of Labor Statistics (hereinafter "BLS"), which includes all data collected as part of the Labor Market Information programs under sole BLS authority or joint BLS/State authority.

2. Upon full execution of this Agreement and the fulfillment of any conditions precedent, the Department will provide the information to the Recipient in a format acceptable to R&P and PSIM. The Department is working with the North Carolina Department of Information Technology to utilize approved technology for sharing Confidential Information with third parties via a secure process rather than the traditional use of password protected compact diskette(s). In the future, the Department plans to provide the information to the Recipient in two (2) separate files stored on a secure server/portal. R&P and PSIM will be sent an email with login information on where and how to access the Confidential Information needed by their specific division. The format of the file(s) will either be an Excel file or a fixed-width text file depending on the format needed by R&P and PSIM. Each division will have five (5) days after notification that the information is ready to be accessed to download their requested Confidential Information. Confidential Information not accessed within the five (5) day period will be deleted from the secure server. The Department will continue to produce the requested Confidential Information to R&P and PSIM on password-protected compact diskette(s) until the time that the secure server process is operational.

C. Verification of Data

The Department makes no guarantee as to the accuracy or currency of the Confidential Information that will be provided as a result of this Agreement.

D. Disposition of Information

The Recipient will retain the Confidential Information that personally identifies employers or individuals consistent with applicable State and federal law. The Recipient shall dispose of Confidential Information within ten (10) days after the purpose for which the Confidential Information was provided is served, or the termination of this Agreement pursuant to Section I or J of this Agreement, whichever first occurs. Disposal shall mean the return of the information to the Department, destruction of the information as directed or authorized by the Department, or deletion of personal identifiers in lieu of destruction.

E. Protecting the Confidentiality of Information

The Recipient understands that disclosure of the Confidential Information is governed by both federal and State law. For example (and not by way of limitation), federal restrictions on this information are contained in 42 U.S.C. § 503, 26 U.S.C. § 3304, and subpart B of 20 C.F.R. Part 603. North Carolina's State law restrictions are contained in N.C. Gen. Stat. § 96-4(x). Pursuant to these requirements, the Recipient (and each person having access to the data, by executing the

Certification described in Section E.2 of this Agreement), covenant as follows, and agree that upon their receipt of any Confidential Information, they are representing that they have complied with and/or have accomplished, and will continue to comply with and accomplish each of the following:

1. Confidential Information will be used only for the purposes authorized by law and only for the purposes specified in this Agreement and Attachment A-1 and Attachment A-2;
2. Access to Confidential Information will be provided only to authorized personnel who are required to perform activity required by this Agreement and who need to access it for purposes listed in this Agreement, who have executed a confidentiality certification (a "Certification") in the form of the attached Attachment B ("Authorized Personnel"). A signed copy of the Certification shall be provided by the individual who signs this Agreement;
3. The Recipient will instruct all Authorized Personnel as to the confidential nature of all Confidential Information, the safeguards required to protect the information, the civil and criminal sanctions for non-compliance contained in N.C. Gen. Stat § 96-4(x)(3), as well as other requirements of State and federal laws, regulations, rules and requirements governing treatment of the Confidential Information, including (without limitation) 20 C.F.R. Part 603;
4. The Recipient and Authorized Personnel will strictly adhere to the requirements of this Agreement and its required procedures, and will report any breaches to the Department fully and promptly;
5. The Recipient will implement safeguards and precautions to ensure that only Authorized Personnel have access to the Confidential Information;
6. The Recipient will ensure that Confidential Information will be stored in a place physically secure from access by unauthorized persons;
7. The Recipient shall immediately terminate an individual's authorized access upon changes in the individual's job duties that no longer require access, unauthorized access to or use of Confidential Information by the individual, or termination of employment; and
8. The Recipient will ensure that Confidential Information in electronic format is stored and processed in such a way that unauthorized persons cannot retrieve the information by means of computer or otherwise gain access to it.

F. Monitoring and Auditing

1. The Recipient understands that the Department and other North Carolina State authorities and federal authorities have the right to audit the Recipient's policies, procedures, and implementation of those policies and procedures for safeguarding the Confidential Information and may require the Recipient to make reasonable changes to policies and procedures. In addition, such authorities shall be permitted to audit and monitor the Recipient's and its employees' and agents' access to and use of the Confidential Information on a periodic and "as needed" basis, including on-site inspections. The Recipient agrees to cooperate fully with any on-site inspections

or monitoring activities. All costs for such inspection and monitoring shall be the sole expense of the Recipient.

2. The records as they relate to this Agreement shall be accessible to the North Carolina State Auditor's Office in accordance with N.C. Gen. Stat. § 147-64.7 and to any other State or Federal entity authorized to conduct audits with respect to activity performed pursuant to this Agreement.

3. The Recipient shall create and maintain a system sufficient to allow an audit of compliance with the requirements of this Agreement.

G. Records Usage, Duplication and Re-disclosure Restrictions

The Recipient agrees to the following limitations on the access to, disclosure, and use of information provided by the Department:

1. Any information provided by the Department may not be duplicated or disseminated to any other parties other than Authorized Personnel employed by Recipient without prior written permission by the Department. Such permission shall not be given unless the re-disclosure is permitted by law and essential to performance of this Agreement.

2. The Recipient shall not disclose said information in any manner that would reveal the identity of an individual or employing unit or take other action that may adversely affect identified individuals or employers.

3. N.C. Gen. Stat. § 96-4 provides that records, reports, and information obtained from individuals, employers, employing units, and government units is confidential. The Recipient shall not release any Confidential Information obtained from the Department under this Agreement in response to a request made under Chapter 132 of the North Carolina General Statutes or to a request made under any other law, regulation, or ordinance addressing public access to government records. The Recipient shall inform the Department within two (2) business days of receipt by the Recipient of service of a subpoena, court order or other document in any action seeking access to the information obtained from the Department and will cooperate with legal counsel for the Department in any challenge or appeal from such request, subpoena, court order, or other document.

H. Costs

The Recipient will reimburse the Department for actual costs related to providing information under this Agreement. This includes, but is not limited to, the cost of downloading the information to compact diskette(s), on-site inspections, and auditing. In the event that costs are incurred by the Department prior to production of Confidential Information to the Recipient, the Department will submit an invoice to the Recipient prior to the production of the Confidential Information. The Department will not provide Confidential Information to the Recipient until after the Recipient has reimbursed the Department for its costs. The Department may invoice Recipient,

and Recipient is obligated to reimburse the Department for any additional costs incurred by the Department in connection with this Agreement.

I. Term of the Agreement

This Agreement will be effective on the date that the last Party has executed it (the "Effective Date"), and shall terminate on the date that is three (3) years from the Effective Date, unless otherwise terminated at an earlier date as provided herein. Upon written request of the Recipient, this Agreement may be extended for an additional two (2) years.

J. Termination of Agreement

1. In the event the Recipient or its official, employee, or agent fails to comply with any of the confidentiality security and safeguard requirements required by this Agreement with respect to Confidential Information, or fails to make timely payment of the Department's costs when billed, the Department shall immediately cease disclosure of the information (including any disclosure being processed) until the Department notifies the Recipient that it is satisfied that corrective action has been taken and there will be no further breach. In the absence of prompt and satisfactory corrective action (in the sole discretion of the Department), this Agreement will be terminated by the Department, and the Recipient will surrender to the Department all Confidential Information which has not previously been returned to the Department. However, notwithstanding anything to the contrary in this Agreement, the Department is not obligated to provide the Recipient with an opportunity to take corrective action and may terminate this Agreement at any time upon any breach of this Agreement by the Recipient or any determination by the Department (in the Department's sole discretion) that safeguards regarding confidentiality have not been or are not being adhered to.

2. Termination of this Agreement shall not limit the Department from pursuing penalties provided under State law for the unauthorized disclosure of confidential information. The Department shall undertake any other action under the Agreement, or under any State or federal law, to enforce this Agreement and secure satisfactory corrective action or surrender of the information, and shall take other remedial actions permitted under State or federal law to effect adherence to the requirements of this Agreement and subpart B of 20 C.F.R. Part 603, including seeking damages, penalties, and restitution as permitted under such law for all costs incurred by the Department in pursuing any breach of this Agreement and enforcement of the terms of this Agreement.

3. In the event that changes in either State or federal law or regulations occur which render performance hereunder illegal, void, impracticable, or impossible, this Agreement shall terminate immediately.

4. Recipient's obligations with respect to the treatment of Confidential Information shall survive any termination of this Agreement.

K. Miscellaneous

1. The headings that appear in this Agreement are inserted for convenience only and do not limit or extend the scope.
2. This Agreement, together with its enumerated Attachments, constitute the entire understanding of the Parties with respect to the subject matter of this Agreement, and all prior agreements, understandings, and representations are canceled in their entirety.
3. An electronic copy of this Agreement, and an electronic copy of any signature appearing on this Agreement, shall be treated as an original.
4. All notices, including invoices, given in connection with this Agreement, shall be in writing and, if routine, may be sent by facsimile or e-mail and, if requested, followed by first class United States mail, postage prepaid, and may be sent by certified mail, return receipt requested, hand delivered, or by overnight courier. Notices shall be delivered to the appropriate Party at the addresses set forth below or at such other address as either Party specified in writing:

For the Department:

Elizabeth A. McGrath
Director of BLS Programs
Labor and Economic Analysis Division
North Carolina Department of Commerce
301 North Wilmington Street
Raleigh, NC 27699-4329
Telephone Number: 919-707-1506
Email address: betty.mcgrath@nccommerce.com

For the Recipient's Research and Policy Bureau (R&P):

Todd P. McNoldy
Safety and Health Survey Manager
Research and Policy Bureau
North Carolina Department of Labor
1101 Mail Service Center
Raleigh, North Carolina 27699-1101
Telephone Number: 919-733-2607
Email address: todd.mcnoldy@labor.nc.gov

For the Recipient's Planning, Statistics and Information Management Bureau (PSIM):

Anne P. Weaver
Bureau Chief - Planning, Statistics and Information Management Bureau
Occupational Safety and Health Division
North Carolina Department of Labor
1101 Mail Service Center
Raleigh, North Carolina 27699-1101
Telephone Number: 919-807-2859
Email address: anne.weaver@labor.nc.gov

IN WITNESS HERETO, the PARTIES have executed this Agreement in duplicate originals, by their duly authorized officials. This Agreement is executed under seal for purposes of any statute of limitations.

North Carolina Department of Commerce

By:  6/11/18
Signature Date

William Miller, Deputy Secretary
North Carolina Department of Commerce (Department)

WITNESS:

By:  6/11/18
Signature Date


By: George Sherrill Chief of Staff
Printed Name Title

North Carolina Department of Labor

By:  6/6/18
Signature Date

Cherie K. Berry, Commissioner of Labor
North Carolina Department of Labor (Recipient)

WITNESS:

By:  6/6/2018
Signature Date

By: Jill F. Cramer General Counsel
Printed Name Title

ATTACHMENT A-1

For Recipient's Research and Policy Bureau:

The Research and Policy Bureau ("R&P") under the North Carolina Department of Labor requests recurring access to the Quarterly Census of Employment and Wages ("QCEW") longitudinal database as well as data collected via the Multiple Worksite Report ("MWR"). Specifically, the division requests access to company and establishment-level industry, employment, status, and contact information. No access to wage data of any sort is required. These data will be used for statistical and planning purposes only in the administration of Occupational Safety and Health Statistics ("OSHS") programs: the annual Survey of Occupational Injuries and Illnesses ("SOII") and the annual Census of Fatal Occupational Injuries ("CFOI").

R&P administers the OSHS programs in North Carolina on behalf of the State and the Nation in cooperation with the federal Bureau of Labor Statistics ("BLS"). The SOII collects injury and illness information from thousands of North Carolina establishments every year. The CFOI collects information on work-related fatalities. This information, in turn, produces aggregated incident rates and counts across hundreds of industries. Pursuant to the Confidential Information Protection and Statistical Efficiency Act of 2002 (Title 5 of Public Law 107-347), other federal laws, and the BLS Cooperative Agreement, R&P will not disclose any information in identifiable form without the respondent's informed consent. All QCEW data are intended to assist in the collection and processing of OSHS data and are *never* intended for release in any form.

Both OSHS programs are funded through a Cooperative Agreement, with BLS and the State of North Carolina sharing the program costs. No funds from non-governmental entities are used in administering the OSHS programs.

R&P intends to employ QCEW data for three purposes:

- 1) To improve accuracy and efficiency when refining the addresses of the sampled units in the survey, using timely establishment-level data to improve the quality of address refinement and, consequently, respondent confidentiality.
- 2) To improve the accuracy of survey final estimates. Current establishment data allow R&P to ensure that it has sampled the correct locations and that expected employment numbers match those reported by respondents.
- 3) To assist in coding industries more accurately for CFOI cases.

ATTACHMENT A-2

For Recipient's Occupational Safety and Health Division's Planning, Statistics and Information Management Bureau:

The Confidential Information currently received on a quarterly basis by the North Carolina Department of Labor from the Department of Commerce is utilized for inspection assignment targeting by the Recipient's Occupational Safety and Health Division's Planning, Statistics and Information Management ("PSIM") Bureau to provide a random selection of programmed safety and health inspection assignments for the Compliance and Agricultural Safety and Health ("ASH") Bureaus. This Confidential Information is merged with NCDOL's internal employer site database to include company site information that is added, deleted, or revised by Compliance, Consultative Services, and ASH staff as information is confirmed by personnel on site. Company name, unemployment insurance number, physical and unemployment insurance addresses, Federal tax ID number, predecessor and successor unemployment insurance numbers, number of employees, ownership status, the assigned NAICS and SIC codes, county, phone number, organization type, and longitude/latitude are used during the inspection selection and assignment process. Consultative Services uses this Confidential Information to designate occupational safety and/or health inspection deferrals. Compliance Safety and Health Officers (CSHO's) and ASH supervisors utilize the DES Confidential Information to verify inspection assignments and to determine whether an establishment is under an inspection deferral. The Confidential Information is also utilized by the North Carolina Department of Labor to develop mailing lists for the distribution of various safety and health publications and notices regarding safety and health issues, which supports the Occupational Safety and Health Division's goal and mission of providing a safe and healthful work environment for employees and employers in North Carolina. The Parties acknowledge that the mailing lists and other information derived from the Confidential Information also itself constitutes Confidential Information governed by the terms of this Agreement and those with access to the mailing lists must be Authorized Personnel as set forth in Paragraph E.

ATTACHMENT B

THE NORTH CAROLINA DEPARTMENT OF COMMERCE
and
THE NORTH CAROLINA DEPARTMENT OF LABOR

Confidentiality Certification

The North Carolina Department of Commerce (the "Department") and the North Carolina Department of Labor (the "Recipient") entered into an agreement (the "Agreement") for the Department to provide the Recipient certain confidential wage or employer information under the Department's control, as specified in the Agreement (the "Confidential Information").

Pursuant to the Agreement, the Recipient has expressly agreed to protect the confidentiality of the Confidential Information and to restrict its use to only those purposes identified in the Agreement. The undersigned employee/agent acknowledges that he or she (i) is part of the Recipient personnel having access to the disclosed Confidential Information; (ii) is subject to the provisions of the Agreement governing protection of confidential information, including any sanctions specified in the State law for unauthorized disclosure of Confidential Information; (iii) has received, read, and understands the provisions of the Agreement governing protection of confidential information; and (iv) has been instructed about confidentiality requirements, the requirements of subpart B of 20 C.F.R. Part 603, and the sanctions specified in the State law for unauthorized disclosure of information. The undersigned employee/agent agrees to adhere to the requirements and procedures of the Agreement with respect to his or her activity and will report any breach to his or her Employer/Supervisor fully and promptly.

By signing this Acknowledgment, the undersigned Employer/Supervisor acknowledges that the employee/agent has been instructed as stated above, and will adhere to the Department's confidentiality requirements and procedures which are consistent with subpart B of 20 C.F.R. Part 603 and the Agreement, and agrees to report any infraction to the Department fully and promptly.

EMPLOYEE/AGENT NAME

Anne P. Weaver 6-11-18
Signature Date
Anne P. Weaver Bureau Chief
Printed Name Title

EMPLOYER/SUPERVISOR

Kevin Bearegard 6/11/18
Signature Date
KEVIN BEAREGARD Deputy Commissioner of Labor
Printed Name Title