

MEMORANDUM OF AGREEMENT  
BETWEEN  
THE NORTH CAROLINA DEPARTMENT OF NATURAL AND CULTURAL  
RESOURCES, DIVISION OF PARKS AND RECREATION  
AND  
THE NORTH CAROLINA BIODIVERSITY PROJECT  
CONCERNING THE BIODIVERSITY PROJECT WEBSITES

This Memorandum of Agreement Concerning the Biodiversity Project Websites (hereinafter, the "Agreement") is made effective on the date of the last signature by and between The **North Carolina Biodiversity Project** (the "NCBP"), and the **North Carolina Department of Natural and Cultural Resources** (the "Department") on behalf of the **North Carolina Division of Parks and Recreation** ("DPR"). NCBP, the Department and DPR may collectively be referred to herein as the "Parties."

**W I T N E S S E T H:**

WHEREAS, the Department is an agency of the State of North Carolina created under N.C.G.S. §143B-49; the DPR was created pursuant to legislative authority and is a division of the Department, pursuant to the provisions of (N.C.G.S. §143B-135.40 through §143B-135.56); and

WHEREAS, important components of the mission of DPR are to protect North Carolina's natural diversity through careful selection and stewardship of State Parks System lands, and to encourage appreciation of North Carolina's natural and cultural heritage through diverse educational opportunities; and

WHEREAS, accurate and comprehensive information on the presence, distribution, habitat and life histories of all species in North Carolina, and the opportunity for the public to participate in the collection of species data, contribute significantly to DPR's ability to fulfill its mission; and

WHEREAS, DPR does not have the staff or expertise to collect and manage large amounts of relevant and valuable species data; and

WHEREAS, NCBP is a private, nonprofit unincorporated association of taxonomic experts, conservation biologists and other knowledgeable scientists whose mission is to promote public interest in the State's native species and ecosystems and in their conservation; and

WHEREAS, a series of interactive websites that collect and manage data on North Carolina's biodiversity, with special emphasis on taxonomic groups that usually do not have much public visibility or appreciation, would mutually benefit DPR and NCBP and would also serve as a public educational and scientific resource of statewide significance; and

WHEREAS, the Parties agree to voluntarily collaborate on the creation and management of a series of websites and databases (the "Websites") to catalog and describe the biodiversity of North Carolina.

NOW THEREFORE, the Parties hereto, in consideration of the mutual agreements and promises contained herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, do hereby agree as follows:

1. The Websites will be considered joint property of the Parties. The Websites will be managed jointly by the Parties, but will be hosted by DPR on State-owned servers. NCBP may maintain up-to-date backup copies of the Websites at NCBP's expense.
2. DPR agrees to be responsible for all costs associated with hosting and maintaining the Websites and compliance with all necessary and required security protocols.
3. NCBP will contribute species records, species accounts, and other information to the databases, and will contribute their expertise to evaluate and verify records submitted by third-party scientists, DPR employees and the general public to ensure the accuracy, integrity and reliability of database records.
4. The Websites' public interfaces will allow third-party scientists, DPR employees and the general public to search for and retrieve species lists, species accounts and other records and information contained within the Websites. Third-party scientists, DPR employees and the general public will also be able to submit species records and information to be evaluated by NCBP and incorporated into the database for the Websites.
5. Both Parties agree to comply with all applicable federal, State, and local statutes, regulations, rules, and policies, including, but not limited to, all information technology security policies and protocols as dictated by the Department's Office of Information Technology or the NC Department of Information Technology, in the fulfillment of their respective obligations under this Agreement.
6. Data contributed to and collected by the Websites will be stored and managed in a format that is compatible with industry-standard database protocols.
7. Data contributed to and collected by the Websites is owned mutually and non-exclusively by the Parties. Either party may distribute or use such data for purposes outside those outlined herein. Data contributed and collected separately from the Websites to NCBP will not be considered property of DPR or the State, nor will it be considered a public record under State law by virtue of this Agreement alone.
8. Data contributed to and collected by the Websites will be made available for use by third parties in accordance with North Carolina Public Records law and U.S. copyright and intellectual property law, in association with any terms of use agreed to by the Parties. Notwithstanding the foregoing, the Parties acknowledge that the Websites and the data associated therewith may be considered public records under State law and may be released to the general public upon request. Notwithstanding the foregoing, U.S. copyright and intellectual property law may apply to the Websites and said data, species accounts, and other records and information provided by NCBP contained within the Websites.

This Agreement shall not be interpreted and is not intended to subject NCBP to the North Carolina Open Meetings Act, or make NCBP's records, other than as noted herein, subject to the State's Public Records Act, or the State's Inspection of Public Records Act.

9. Use of the either party's intellectual property content shall be with the owning party's consent and shall not be construed as a conveyance or surrender of copyright, trademark, or any other right, based in intellectual property or otherwise, that is or may be vested in ownership of the intellectual property. Publications, re-print or any other uses of intellectual property must be in compliance with any applicable usage manuals, if provided.
10. There will be no further exchange of funds for data or work performed on the Websites without further written agreement.
11. The Parties agree to coordinate closely and to meet as needed to discuss matters of mutual concern affecting the Websites.
12. NCBP agrees, to the fullest extent permitted by law, to release, indemnify and hold harmless the State, the Department, DPR, and their employees, agents, and assigns against any and all claims, actions, causes of action, demands, losses, liabilities, damages, expenses, and costs, including, but not limited to, reasonable attorney fees, which result from, are related to, or arise out of damages or injuries, including death, to persons and/or property caused by the acts or omissions of NCBP, its directors, members, employees, contractors, subcontractors, agents, volunteers or assigns in connection with any activities related to NCBP's performance or obligations under this Agreement.
13. This Agreement shall remain in effect from the date set out in the first paragraph herein, until terminated in accordance with Paragraph 14.
14. Either DPR or NCBP shall have the right to terminate this Agreement, with or without cause, upon ninety (90) days written notice to the other party or at any time, by mutual written agreement. If either party fails to observe any of the terms and conditions of this Agreement, the other party may give the defaulting party written notice to cure such default. The defaulting party shall have thirty (30) days after receipt of such written notice to cure any such default or if the cure requires a period longer than thirty (30) days, the defaulting party shall notify the other party of its need for a cure period longer than thirty (30) days, commence the cure within the initial thirty (30) day period, and continue diligently thereafter to complete compliance in a reasonable period of time. The filing of a petition in bankruptcy or insolvency by or against NCBP or the loss of 501(c)(3) tax-exempt status, if applicable, shall immediately terminate this Agreement at the option of DPR. DPR may also terminate this Agreement at any time if it can be shown that NCBP has knowingly engaged in fraud, embezzlement, or corrupt practices in its management or operation of any of the responsibilities outlined in this Agreement. Upon failure of a party to abide by the foregoing requirements, the non-defaulting party may terminate this Agreement for default without any legal process whatsoever by giving thirty (30) days written notice of termination, effective at the end of the thirty (30) day period.

15. In the event of termination of this Agreement by DPR without subsequent agreement between the Parties, copies of all data, databases, and website code will be provided to NCBP within ninety (90) days of discontinuation. NCBP will have the right, but not the obligation, to continue to manage and maintain the overall project facilitated by the Websites and the information contained therein. In the event NCBP decides to continue to manage and maintain the project, NCBP accepts all cost and responsibility of continuing to manage and maintain the Websites, including finding alternate servers to host the Websites.
16. In the event that NCBP disbands or otherwise discontinues support and contributions to the Websites or terminates this Agreement without subsequent agreement between the Parties, copies of all data existing at that time will be provided to NCBP upon request, but all future data will be accessed by NCBP in the same manner as the general public. DPR will have the right, but not the obligation, to continue to manage and maintain the overall project facilitated by the Websites and the information contained therein and will accept all cost and responsibility for doing so.
17. The Parties are not, and nothing in this Agreement may be construed to constitute them as, partners, joint venturers, agents, representatives or employees of the other, nor entitles them to the benefits therefrom, including but not limited to, compensation or associated benefits of employment. Neither party has any responsibility or liability for the actions of the other party except as specifically provided in this Agreement. Neither party has any right or authority to bind or obligate the other party in any manner or make any representation or warranty on behalf of the other party.
18. To the extent required by law, the State Auditor and the Department's Internal Auditors shall have access to persons and records as a result of all agreements, contracts or grants entered into by State Agencies or political subdivisions in accordance with N.C.G.S. § 147-64.7.
19. This Agreement shall not be amended orally or by performance. This Agreement may only be amended by mutual written agreement signed by the Parties.
20. A failure of either party to insist upon or enforce any term or provision or to exercise any right, option or remedy of this Agreement, or to require at any time performance of any provision thereof, shall not be construed as waiver of any such term or provision. No waiver by either party of any term or provision hereof shall be binding unless made in writing and signed by both Parties.
21. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

22. This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The Parties agree that the proper venue of this Agreement, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement of this Agreement shall be determined. The Parties agree and submit, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina.
23. This Agreement, any exhibits and attachments affixed hereto, and any documents, leases or agreements specifically incorporated by reference represent the entire agreement between the Parties and supersede all prior oral or written statements or agreements. There are no promises, terms, conditions, or obligations other than those contained in this Agreement, and this Agreement shall supersede all previous communications, representations, or agreements between the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date of the last signature written below.

  
Date 9/26/2016  
NORTH CAROLINA DEPARTMENT OF NATURAL AND CULTURAL  
RESOURCES

  
Date 9/26/2016  
NORTH CAROLINA DIVISION OF PARKS AND RECREATION

  
Date 9/23/16  
NORTH CAROLINA BIODIVERSITY PROJECT