

State of New Jersey
NJ Department of Treasury

P.O. Date: 12/28/2023

Division of Administration

Release Purchase Order

M4010 Business and IT Consulting and Advisory Services

Blanket Order Number

24-PROS1-52496:2

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INVOICES: Direct invoices in DUPLICATE to the address shown above. TERMS AND CONDITIONS set forth in our Bid or Quotation, on the reverse side hereof or incorporated herein by reference become a part of this

ATTN: [REDACTED]

Solicitation (Bid) No.:	Payment Terms: Shipping Terms: Freight Terms: Delivery Calendar Day(s) A.R.O.: 0																		
Item # 1 Class-Item 918-00 Business and IT Consulting and Advisory Services - Refer to Method of Operation and Participating Addendum for Directions Prior to Use																			
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TAX: \$ 0.00
FREIGHT: \$ 0.00
TOTAL: \$ 3,994,610.00

APPROVED

By: _____

Phone#: _____

BUYER

Letter of Engagement

December 21, 2023

Successful Bidder:

On behalf of the Department of Military and Veteran's Affairs, the State of New Jersey, Department of the Treasury hereby issues this Letter of Engagement to McKinsey & Company pursuant to the Scope of Work issued on November 17, 2023 and McKinsey & Company's proposal dated December 8, 2023.

All terms and conditions of the Request for Proposal, including but not limited to the Scope of Work, milestones, timelines, standards, and deliverables are incorporated into this Letter of Engagement and made a part hereof by reference.

The total cost of this engagement shall not exceed \$3,994,610.00

The vendor is instructed not to proceed until a purchase order is issued.

Sincerely,

Treasury Administration

State of New Jersey Department of the
Treasury, Division of Administration

**Enabling organizational
effectiveness of Military
Affairs and Veterans Services**

Request for Quotes

December 2023

**Submitted to:
State of New Jersey
Department of the Treasury
Division of Administration**

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McKinsey & Company

December 8, 2023

State of New Jersey Department of the Treasury
Division of Administration

McKinsey & Company, Inc. Washington D.C.
1200 19th Street NW, Suite 1000
Washington, DC 20036
Telephone +1 (202) 662-3100
Fax +1 (202) 662-3175

Subject: Business and IT Consulting and Advisory Services

To whom it may concern:

McKinsey & Company is honored to have the opportunity to respond to your recent Request for Quotes to support the creation of separate agencies for Military Affairs and Veterans Services. As a fourth generation US Army veteran and former US Department of Veterans Affairs executive, I admire and appreciate the steps you are taking to focus on meeting the needs of New Jersey's Veterans and the health and readiness of military operations directed by the State.

Please find attached McKinsey & Company, Inc. Washington D.C.'s ("McKinsey") response to the solicitation from the State of New Jersey, Department of the Treasury, Division of Administration on behalf of Department of Military and Veterans Affairs (DMAVA) for Business and IT Consulting and Advisory Services Request for Quotes to support the creation of two separate cabinet level state agencies, Military Affairs and Veterans' Services.

Our proposal is submitted in accordance with the State of New Jersey, Department of the Treasury, Division of Purchase and Property's Participating Addendum (Blanket P.O. #24-PROS1-52496) to McKinsey's National Cooperative Purchasing Alliance (NCPA) Master Agreement for Business and IT Consulting and Advisory Services (Contract #11-61).

We are grateful for the opportunity to respond to this Request for Quotes notice and look forward to the potential to serve the State of New Jersey on this effort.

If you have any questions about our proposal response, please do not hesitate to contact me at (202) [REDACTED] or Scott_Blackburn@mckinsey.com. For contractual questions, please contact Bri Park, Contracts Manager, at (202) [REDACTED] or Bri_Park@mckinsey.com and mckinsey_contracts@mckinsey.com.

Thank you again for the opportunity to bid: we admire New Jersey's focus on this effort and are committed to doing whatever we can to ensure its success.

Sincerely,

[REDACTED]

Scott Blackburn, Senior Partner, Former U.S. Army Captain
(202) [REDACTED]
Scott_Blackburn@mckinsey.com

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Executive Summary

The State of New Jersey is seeking a partner to conduct a comprehensive review of the Department of Military and Veterans Affairs (DMAVA), and provide recommendations for the structure, functions, and personnel of two separate cabinet-level state agencies, Military Affairs and Veterans Services. You have stated that the Veterans Services agency will be established to provide improved, outstanding, and focused services to New Jersey's veteran heroes and Gold Star families; and the Military Affairs agency will be established to encompass all New Jersey Army and Air National Guard units and locations.

The scope of the project includes analyses of DMAVA's current operating structure; federal and state budgetary and regulatory requirements; best practices from states and territories with separate National Guard and Veterans services; design of the structure, functions, and personnel requirements for the new agencies; identification of one-time costs and recurring costs associated with the transition into two new agencies; and the development of a transition plan and implementation plan.

McKinsey is committed to supporting the Governor's Office and DMAVA on this effort, and believe we are uniquely positioned to do so. Across the globe, we bring over 20,000 consultants who provide relevant industry, functional, and geographic research, analytics, tools, and expertise and focus on specific knowledge domains within organizational design (e.g., mergers and separations, organizational effectiveness, organizational change management). In the last 5 years, we have performed over 5,460 engagements for public sector clients across 105+ countries and 375 government agencies, including New Jersey. McKinsey has served 10 distinct departments, divisions, or other operating units of the State of New Jersey over the course of two administrations spanning more than 10 years. We also serve the U.S. Department of Veterans Affairs and [REDACTED] and in the last 5 years have completed more than 150 engagements on topics such as org separation, org design, org transformation and workforce strategy.

McKinsey is especially committed to serving and supporting military service members, veterans, and their families. McKinsey was founded in 1926 by World War I US Army Veteran James O. McKinsey. Ever since then, we have been committed to attracting and retaining Veterans, including offering opportunities through Skillbridge, encouraging and celebrating colleagues in the military Reserves and National Guard, and providing pro bono services to 25+ external non-profits and VSOs that provide critical support to veterans and their families. We are proud to have 600+ Veterans, military spouses, and DoD civilians at McKinsey including many who live and work in New Jersey. We have supported Veterans Services and Military Affairs agencies at the federal, state, and local levels, in and beyond New Jersey (for example, our seven years of support at the [REDACTED]). Our support for Veterans Services and Military Affairs ranges from strategy to operations to organization design to culture. McKinsey is also a leading thinker in how to engage and serve our veterans with published articles including "[From the military to workforce: How to leverage veterans' skills](#)". We will draw upon these experiences, and our years of service to the State of New Jersey in supporting your goals.

Scope of work

Assessing the potential for organizational separation requires a clear understanding of the desired outcomes / objectives, with holistic review to ensure a comprehensive set of facts are taken into account. With this in mind, we will support New Jersey in this work across three successive phases (24 weeks in total), as follows:

Phase 1: Assess current state of DMAVA's structure, processes, and context

First, we will examine DMAVA's current operating structure and budgetary requirements to understand the current state and identify strengths, gaps, and pain points. We will also review best practices from state-run National Guard and Veteran Services agencies to inform the future state operating structures. We also will consider New Jersey's statutory and regulatory context. These elements will enable a strong fact base and foundation.

Key activities

- 1. Conduct "North Star" vision workshops and/or discussions with Governor's Office and DMAVA leadership to set aspirations for each of the two new agencies** (e.g., The vision for Veterans Services is to take care of our heroes and Gold Star families in the best way possible. The vision for Military Affairs is to ensure the readiness of the National Guard and Reserves). These discussions will enable a clear outcomes-based focus for the work:
 - The workshops/conversations with the Governor's Office and DMAVA leadership will include dialogue around the overall strategy for Military Affairs and Veterans Affairs and what type of functions best supports the goals and objectives of the agencies. The goal of this activity is to develop alignment on the future state and aspiration.
 - As part of the workshops, we will also deep dive into future state aspirations for the operating structures and clearly define the mission and what success looks like for each agency. The workshops will also help begin to answer key decision choices (e.g., functions which may remain shared across agencies, if any).
- 2. Map the DMAVA's current operating structure** including descriptions of agencies, divisions and units, locations, functions, and personnel as well as the mapping of relationships between functions. This activity will be conducted using McKinsey's organizational design framework in Exhibit 1, insights from interviews with key staff from the Governor's Office and DMAVA, review of existing information / documentation of operating models, functions, processes, and procedures (e.g., organizational charts, standard operating procedures) and, as applicable, site visits to DMAVA locations. This will enable an understanding of the relationships between functions and assess the critical gaps that may arise from the separation.
- 3. Identify best practices and lessons learned across different states' Veterans Services and Military Affairs models.** We will identify the different operating models and agency structures of analogous agencies across states and territories, including but not limited to state National Guards, Military Affairs agencies and Veterans Services agencies. Based on initial research spanning the U.S., and with input from DMAVA, we will create a prioritized list of select states to gather in-depth insights into their operating model and structures. Through possible interviews with other states and the National Association of State Directors of

Veterans Affairs (NASDVA) we will gather insights on best practices and opportunities that may inform NJ's approach.

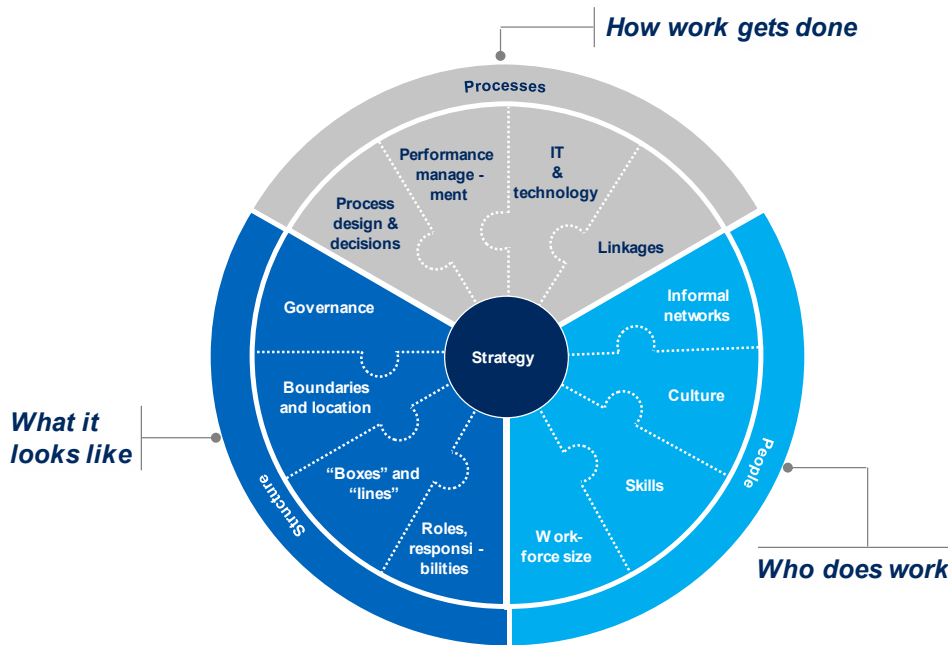
4. **Develop initial perspectives on shared services and resources** based on the review of the current operating structure.
5. **Identify budgetary assumptions for the new agencies based on a review of budgetary requirements** including DMAVA annual State budget, federal budgetary requirements related to the National Guard, and employee salaries. We will conduct research to identify all relevant budgetary requirements that may impact or inform the design of the future operating structures of the two agencies. As part of this review, we will provide a summary of the annual State budget, federal budgetary requirements, and employee salaries based on available federal and state information, identify mandated and flexible spending, and identify spending assumptions based on available data that will be applied to the new agencies (e.g., DMAVA's current salary structure, State of NJ salary bands, spending structure from other states).
6. **Identify considerations for the design of the new agencies based on review of relevant local, state and federal statutory and regulatory requirements that govern New Jersey's Department of Military Affairs and Veterans Affairs.** We will conduct research to provide a landscape of potential federal and state statutes and regulations that may impact the future operating structures of the two agencies. McKinsey will provide fact-based analysis based on the State's objectives and priorities. Where statutes or regulations would shape organizational design or mandates, McKinsey may provide options for the State's consideration. McKinsey will support the State in considering the impact of any legal opinions by the Governor's General Counsel, DMAVA legal, or external counsel on agency design options and operational considerations.

Key deliverables

- Articulation of DMAVA's "North Star" for the new operating structures for Veteran's Affairs and Military Services, including desired outcomes for each agency.
- Summary of findings from review of DMAVA's current operating structure (i.e., from DMAVA's Military Affairs and Veterans Services agencies, divisions and units, locations, functions, and personnel; and assessment for potential of shared services and resources) (*deliverables 1a, 1b, 1c*).
- Summary of state and federal regulatory landscape from review of State and federal statutes and regulations that govern DMAVA's Military Affairs and Veterans Services Divisions (*deliverables 2a and 2b*).
- Summary of facts from review of budgetary requirements including DMAVA's annual State budget, Federal budgetary requirements related to the National Guard, DMAVA's employee salaries (*deliverables 3a, 3ai, and 3b*).
- Summary of findings and best practices from review of state-run Military and Veterans Affairs / Services agencies nation-wide (*deliverable 4a*).

Exhibit 1. McKinsey’s Organizational Design Framework

Organizational design framework



Phase 2: Design future state operating structures for the new agencies (i.e., structure, functions, and roles)

This phase of work focuses on providing options for the future state operating structures of the new agencies. We will work closely with DMAVA to craft options for the future operating structures that the Governor’s Office and DMAVA leadership can evaluate. This phase of work will begin with a set of working sessions with leadership from the Governor’s Office and DMAVA to inform the future operating structures for the new agencies and then move into the design of future structures informed by the findings from Phase I.

Key activities

- 1. Codify overall organizational design principles for Military Affairs and Veterans Affairs and measures of progress / success against the principles.** Based on outputs of Phase 1 we will work with the Governor’s Office and DMAVA leadership to codify high-level organizational design principles and define KPIs that will be used to track progress for Military Affairs and Veterans Affairs in New Jersey. This will be built via working sessions and presented to DMAVA for feedback and review.

2. **Conduct “design sessions” and/or discussions to identify and create the new operating structures for the new agencies** in a way that aligns with the organizational design principles. These design sessions will enable the Governor’s Office and DMAVA leadership address key design consideration / questions and evaluate options for the future operating structures and facilitate alignment around the design of the future state operating structures.
3. **Design future state operating structures for the new agencies.** We will work with key staff from the Governor’s Office and DMAVA to design the future state operating structures for the new agencies including:
 - Defining the functions, sub-functions and responsibilities that are required under the new operating structures, identifying the interactions and overlaps between functions and identifying the roles needed to support the functions.
 - Defining goals, reporting structure, roles, and responsibilities for each function.
 - Defining management and governance system for each function.
 - Defining critical processes in future states function including mapping future state. process and steps, highlight any changes to current processes.

Key deliverables

- Operating structure, functions and roles and responsibilities for the Veterans Services agency (*deliverable 7b*).
- Operating structure, functions and roles and responsibilities for the Military Affairs agency (*deliverable 7c*).

Phase 3: Plan for implementation, transition, and budgeting

This phase of work will focus on supporting the implementation planning for a successful transition of DMAVA into two distinctly separate agencies: Military Affairs and Veterans Services. We will develop actionable transition and implementation plans to support the transition as well as identify one-time and additional new recurring costs.

Key activities

1. **Build transition plan from the current operating structure to the operating structures of the new agencies.** The goal of the transition plan is to support operational continuity throughout the transition to the future state operating structures, including:
 - A mapping of the roll-out of the future operating structures including timeline and milestones to reach full transition.
 - Key processes and resources needed to support transition.
 - High-level internal and external communications plan.
2. **Build implementation plan to support the transition from the current operating structure to the new operating structures,** including:
 - A mapping of the future state and the set of activities needed to reach it. This will provide a view of activities that can be done immediately, activities that may require additional planning and coordination, and activities that may require additional investments.
 - Clear milestones, timeline, roles and responsibilities, and resources needed to drive the various activities.

- A set of KPIs that can help track progress.
- 3. **Identify one-time and additional recurring costs associated with the transition to two separate agencies.** We will conduct analyses on costs (e.g., technology costs, personnel costs) associated with the transition using assumptions from NJ's current experience (e.g., DMAVA costs, costs from other NJ agencies) or from peer states. We will provide facts including cost benchmarks where available, that are appropriate analogies for the two new agencies.
- 4. **Share final readout of plan with Governor's Office, The Adjutant General, and other key leaders** to discuss and refine the transition plan and implementation plan.

Key deliverables

- Final report including
 - Summary of all findings, reviews, and analyses including:
 - Summary of findings from review of DMAVA's current operating structure (i.e., from DMAVA's Military Affairs and Veterans Services agencies, divisions and units, locations, functions, and personnel; and assessment for potential of shared services and resources) (*deliverables 1a, 1b, 1c*).
 - Summary of findings from review of State and federal statutes and regulations that govern DMAVA's Military Affairs and Veterans Services Divisions (*deliverables 2a and 2b*).
 - Summary of findings from review of budgetary requirements including DMAVA's annual State budget, Federal budgetary requirements related to the National Guard, DMAVA's employee salaries (*deliverables 3a, 3ai, and 3b*).
 - Summary of findings and best practices from review of state-run Military and Veterans Affairs / Services agencies nation-wide (*deliverable 4a*).
 - Operating structure, functions and roles and responsibilities for the Veterans Services agency (*deliverable 7b*).
 - Operating structure, functions and roles and responsibilities for the Military Affairs agency (*deliverable 7c*).
 - Summary of one-time costs associated with implementation of DMAVA transition plan (*deliverable 7d*).
 - Summary of additional, recurring new costs created by the transition of DMAVA into two agencies (*deliverable 7e*).
 - Implementation plan with set of actions and their associated timing, milestones to support transition to two new agencies (*deliverables 7f and 7g*).
 - Transition plan with set of actions and their associated timing, milestones to support transition to two new agencies (*deliverables 7f and 7g*).
- Simple communication documents summarizing the State's decisions on the path forward for the new agencies.

Project Timeline and Schedule of Completion of Tasks

We plan to complete key activities across the three phases described in the scope of work section, according to key project dates in Exhibit 2 and the project timeline in Exhibit 3.

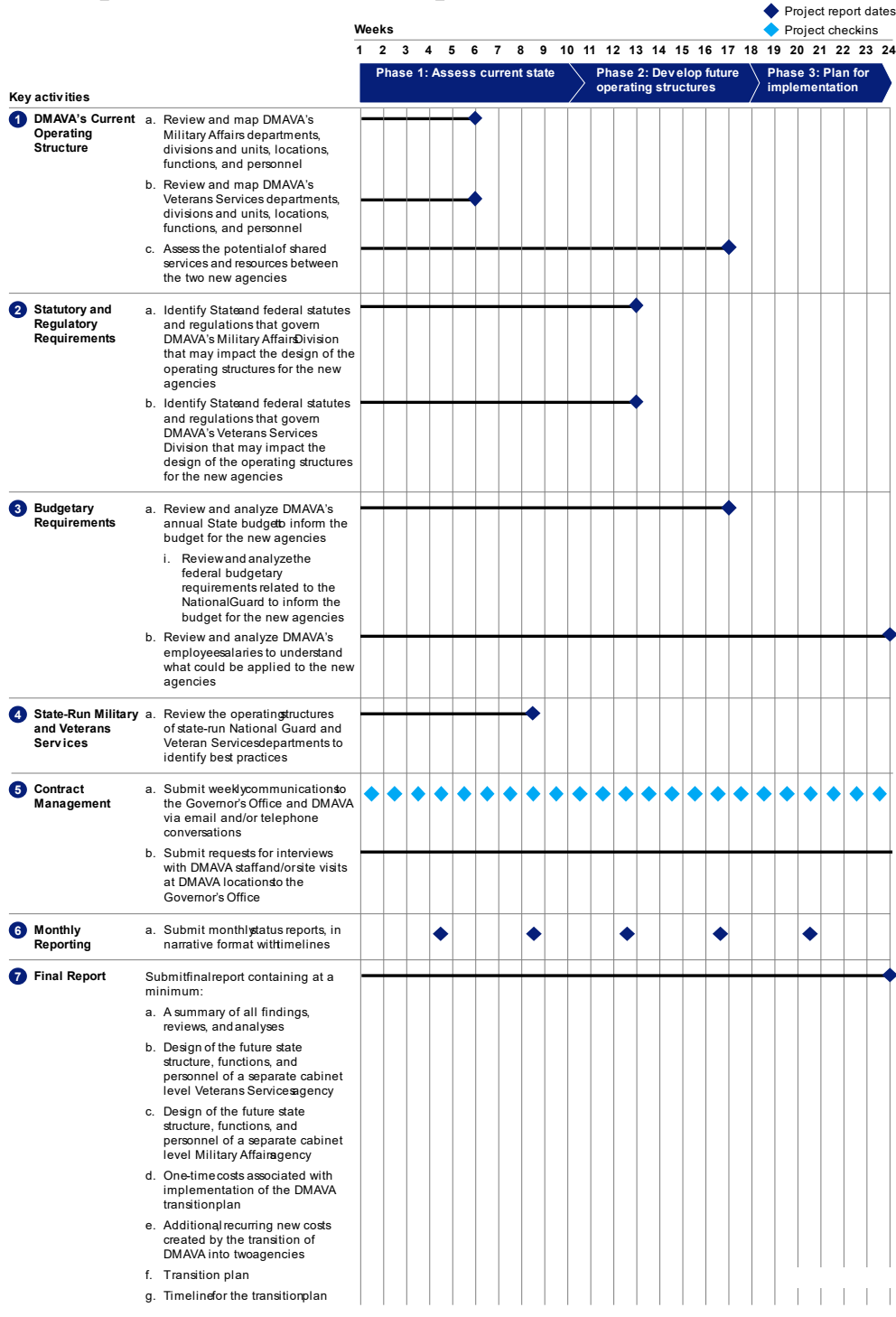
We will furnish reports according to the dates in Exhibit 2 and represented by the dark blue triangles in Exhibit 3. The project check-ins will occur weekly with the Governor’s Office and DMAVA, as indicated by the light blue triangles in Exhibit 3.

Exhibit 2: Key project dates

Deliverable date	Deliverable
Within 45 days after the contract start date	<ul style="list-style-type: none"> ▪ Summary of findings from review of DMAVA’s Military Affairs departments, divisions and units, locations, functions, and personnel (deliverable 1a) ▪ Summary of findings from review of DMAVA’s Veterans Services departments, divisions and units, locations, functions, and personnel (deliverable 1b)
Within 60 days after the contract start date	<ul style="list-style-type: none"> ▪ Summary of findings from review and analysis of state-run National Guard and Veteran Services departments (deliverable 4a)
Within 90 days after the contract start date	<ul style="list-style-type: none"> ▪ Summary of findings from review of State and federal statutes and regulations that govern the Military Affairs Division (deliverable 2a) ▪ Summary of findings from review of State and federal statutes and regulations that govern DMAVA’s Veterans Services Division (deliverable 2b)
Within 120 days after the contract start date	<ul style="list-style-type: none"> ▪ Assessment for the potential of shared services and resources (deliverable 1c) ▪ Summary of findings from review and analysis of the DMAVA annual State budget (deliverable 3a) ▪ Summary of findings from review and analysis of the federal budgetary requirements related to the National Guard (deliverable 3ai) ▪ Summary of findings from review of DMAVA’s employee salaries (deliverable 3b) ▪ A final report containing at a minimum (deliverable 7): <ul style="list-style-type: none"> ○ A summary of all findings, reviews, and analyses ○ Design of the future state structure, functions, and personnel of a separate cabinet level Veterans Services agency ○ Design of the future state structure, functions, and personnel of a separate cabinet level Military Affairs agency ○ One-time costs associated with implementation of the DMAVA transition plan ○ Additional, recurring new costs created by the transition of DMAVA into two agencies ○ Transition plan ○ Timeline for the transition plan
Weekly	<ul style="list-style-type: none"> ▪ Weekly communications with the Governor’s Office and DMAVA in all matters pertaining to the work via email and/or telephone conversations (deliverable 5a) ▪ Requests for interviews, with DMAVA staff and site visits at DMAVA locations, through the Governor’s Office (deliverable 5b)
Monthly	<ul style="list-style-type: none"> ▪ Monthly status reports, in narrative format with timelines (deliverable 6)

Exhibit 3. Overall project timeline

Workplan and timeline for completion of activities



Qualifications

We believe that McKinsey is distinctively well-suited to support the State of New Jersey on this project, based on the qualifications outlined below.

- 1. More than 20-times greater breadth and depth of experience serving State of New Jersey compared with other eligible bidders.** Other eligible bidders may only have supported a small number of New Jersey agencies on one or two projects over less than one year. In sharp contrast, McKinsey has served the State of New Jersey across two administrations, spanning more than 10 years, including more than 50 projects for 10 distinct entities: the Department of Banking and Insurance, Department of Children and Families, Department of Health, Department of Human Services, Department of Treasury, New Jersey Economic Development Authority, New Jersey Transit, the Office of Emergency Management, as well as the Office of DEI and the Office of Information Technology within the Governor's Office. Across these projects, McKinsey has an impeccable track record for helping our clients at the State of New Jersey to achieve extraordinary impact.
- 2. A track record for impact in NJ with planning and implementation of complex projects.** Other eligible bidders may only have supported the State of New Jersey in conducting research assessments or planning projects. Without experience actually implementing change in the State of New Jersey, it is difficult for an external party to fully consider the range of stakeholder and/or operational challenges that could impact a new organizational structure and mandate. In contrast, with other firms, McKinsey has supported the State in the planning and implementation of some of the most complex and significant challenges undertaken by the State: successful launch of the State Health Insurance Exchange (involving collaboration across DOBI, DHS, Governor's Office), unwinding of the Public Health Emergency in Medicaid (DHS, Governor's Office), emergency public health response to the COVID-19 pandemic (DOH, OEM, NJSP, Governor's Office), and economic recovery from the pandemic and previously from Superstorm Sandy (NJEDA, OEM, Governor's Office). We are practiced in working across the New Jersey Governor's Office and agencies and have demonstrated the ability to build and maintain strong communication and collaboration across entities within the State government. We have a track record for supporting communications with complex stakeholder landscapes, including federal and local authorities, the Civil Service Commission, organized labor, and the state employee workforce.
- 3. Unrivaled expertise in organizational redesign including separations.** McKinsey's People, Organization, and Performance (POP) practice has 3,000+ consultants and has completed 8,950+ POP client studies since 2018. We have deep expertise with 300+ capability and leadership development experts, 200+ seasoned leadership coaches, 400+ human centered designers and more. McKinsey is also a leading thinker in organizational performance where we have published insights and perspectives including with the World Economic Forum, the Economist, and the Financial Times. Two examples of our published research include "[The State of Organizations](#)" and "[Organizing for the future: Nine keys to becoming a future-ready company](#)". We have extensive experience with organizational separations, spin offs and IPOs, with McKinsey supporting 600+ of these since 2018 and resulting in organizations experiencing performance that demonstrably exceeds peer organizations. This experience spans federal, state, and local government, as well as best practices drawn from the private sector including life sciences, telecom, advanced industries, and consumer companies. This experience is supplemented by a suite of leading edge tools

and datasets, including OrgLab, [REDACTED]

[REDACTED] McKinsey Separations Playbook, [REDACTED]

[REDACTED] mySMO, [REDACTED]

4. **A community of Veterans with extensive experience serving the military, service members, Veterans and their families at the federal and state level.** McKinsey was founded in 1926 by World War I Veteran James O. McKinsey. Nearly 100 years later, 600+ Veterans, military spouses and former DoD civilians work at McKinsey across all levels of the firm, collaborating with other colleagues with a deep-felt personal obligation to support service members and improve access to services. More than 50 colleagues continue to serve their country in the Reserves or National Guard. We have more than 80 years of experience serving [REDACTED]

[REDACTED] Our deep expertise and knowledge of the Veterans Affairs enterprise spans from federal organizations—including the Veterans Health Administration (VHA), Veterans Benefits Administration (VBA), and the Veterans Experience Office (VEO)—to local Veteran Service Organizations (VSOs) and nonprofits. We have provided strategic, operational, and analytics support to the VA on numerous engagements over the past 5 years on topics such as Veteran experience, workforce strategy, virtual health, implementation of 988 crisis hotline, and improving access of Veterans and their dependents to care and benefits. In the past year alone, we have done pro bono work with 25+ VSOs and Veterans nonprofits.

5. **Thorough understanding of the challenges specific to the oversight and operations of nursing homes, including for Veterans.** McKinsey understands the extraordinary responsibility shouldered by the State of New Jersey in safeguarding access and quality of care for Veterans, including and especially in nursing homes. From late 2020 through 2022, McKinsey supported the New Jersey Department of Health in the implementation of new capabilities and processes to support oversight and management of nursing homes. We have also supported the New Jersey Department of Human Services in identifying opportunities to ensure the financial sustainability of nursing home care for vulnerable populations. In addition, McKinsey has experience directly supporting nursing homes in operational improvement efforts. These experiences afford us a careful understanding of the responsibilities currently shouldered by DMAVA and a potential future Veterans Services agency, with respect to Veterans homes, as well as deep familiarity with the local context in New Jersey for the potential changes in organizational structure and mandate.

Experience on Similar Projects

McKinsey has substantial and relevant experience in serving a diverse set of clients, including public sector and private organizations on organization and workforce related topics including organizational design, restructuring, and separations. Find below examples of McKinsey-led projects that are closely analogous to DMAVA's RFQ

Case examples on Organizational Design in Military Context

Case 1:	
Summary:	
Impact:	
Case 2:	
Summary:	
Impact:	
Case 3:	
Summary:	

Case examples on Organizational Separations

Case 4:

Summary:

Case 5: Large Midwestern State, Department of Children and Youth

Summary: McKinsey supported the State in the development and creation of the new Department of Children and Youth. The children and youth service delivery model had previously seen services dispersed across ~10 cabinet-level departments hampering the administration's ability to drive toward impact for youth. McKinsey led the development of the business case for the creation of the new department as well as organizational design and implementation planning for the new cabinet level department. **Impact:** This effort resulted in the creation of the new cabinet level Department of Children and Youth to provide services to 2.5M children and their families. The creation of this new department will create efficiencies by combining functions and programs from six different state agencies. It will also reduce duplicative program regulations and requirements, streamline applications and eligibility, and increase overall administrative efficiency.

Case 6: Multi-national technology company

Summary: McKinsey supported the client to spin-off of its technology infrastructure and services business. Key challenges the client was facing included overlapping business boundaries, significant competitive pressures, and complex global organization and structures requiring a coordinated response. As part of the CEO's new strategic imperative, McKinsey led preparations to analyze, plan, and setup structures to manage the impact from the announced spin-off of the technology infrastructure business. McKinsey stood up a Separation Management Office (SMO), conducted separation rapid analysis to assess critical revenue entanglements, laid roadmap to address account and revenue risk and supported communications across all key stakeholders. **Impact:** Helped prioritize areas most at-risk from a revenue attrition perspective, while setting foundation for the broader separation program.

Case 7: International Oil and Gas company

Summary: McKinsey supported the divestment of International Oil and Gas assets of a newly acquired business on an expedited timeline to ensure maximum value preservation for ultimate end-owner. McKinsey assessed organizational complexities of assets to be divested to inform separation roadmap and provided seller-led separation support via Separation Management office to drive timeline and execute separation, including detailed entanglement mapping and actions to disentangle, comprehensive service menu, separation action progress tracking, subject matter expertise on critical areas to separate (e.g., employee support services, delegation of authority), stranded cost oversight. **Impact:** McKinsey's rapid execution enabled end-state decision maker to own the assets at critical development and built internal capabilities to execute on similar future sales without the need for extensive McKinsey support.

Key Personnel

We will deploy a team comprised of experience consultants with experience in in organizational design, Military Affairs, Veterans Services, as well as enabling change in the State of New Jersey specifically. This team will include: (1) a leadership team accessible at any time and directly accountable to you for the success of the project; (2) dedicated subject matter experts with deep expertise in organizational design and Military Affairs and Veterans Services; (3) a team of full-time consultants leading research, analysis, and framing of options; and (4) 24/7 research, graphical production, and administrative support. We have included brief summaries of our proposed leadership team, subject matter experts, and representative full team members below. Full resumes of our leadership team and experts are provided in Appendix A.

McKinsey's proposed Leadership Team includes the following:

- **Scott Blackburn** will be the Accountable Senior Partner and overall leader for this project. Scott is a Senior Partner in McKinsey's Washington DC Office. He is a fourth generation US Army veteran and previously served as U.S. Department of Veterans Affairs Interim Deputy Secretary, Chief Information Officer, and Executive Director of the MyVA Transformation. Scott co-leads McKinsey's client service to VA and DoD, and the McKinsey Center on Government. He has served the VA on several topics including PREVENTS roadmap, VHA COVID response, Strategy to Action (OEI), and Veterans Experience strategy sprints (VEO). In 2018 Scott was recognized by the National Association of State Directors of Veterans Affairs (NASDVA) as Veteran Advocate of the Year
- **Matt Watters** is a New Jersey native and a Partner in McKinsey's New Jersey Office with distinctive experience and knowledge in leading Organizational Culture & Change Management engagements as well as launching transformations across [REDACTED] and other federal clients. Matt has led several projects at the VA, including those related to customer experience, benefits optimization, and operational efficiency. In addition to his time spend serving the VA, Matt has served [REDACTED] numerous times on a wide array of projects from [REDACTED]. Matt is a distinctive people leader having taken time off from McKinsey to join U.S. Army Special Forces as a Green Beret (Bronze Star, Afghanistan '20) and has been recognized by Forbes as 30 under 30 in Law and Policy for his leadership on McKinsey's Ebola Recovery work in Sierra Leone.
- **Georgios Athanaskopoulos** is an Expert Associate Partner with over 15 years of experience in organizational design, talent management, and culture. Georgios is a long-standing member of McKinsey's client service team for the State of New Jersey, having previously served the New Jersey Department of Children and Families on organization and workforce-related topics. He also contributed to the firm's support to the Governor's Office on Diversity, Equity, Inclusion, and Belonging in the State of New Jersey workforce. Prior to joining McKinsey, Georgios was a Director in PwC's People & Organization practice and a Principal with Oliver Wyman's Organization practice.
- **David Nuzum** is a Senior Partner and leads McKinsey's work with the State of New Jersey. David will provide oversight to the McKinsey team as he has for prior McKinsey projects with the Governor's Office and numerous New Jersey state agencies over the last 4 years, including: the Department of Banking and Insurance, Department of Children and Families, Department of Health, Department of Human Services, Department of the Treasury, and the Office of Emergency Management. David has more than 25 years of experience in health and human services, including the oversight and management of nursing homes.

McKinsey's dedicated Subject Matter Experts include the following:

- **J.R. Maxwell** is a Partner in McKinsey's Washington, D.C. Office with deep expertise and passion for serving public sector institutions in large-scale organizational transformations. He has 12+ years' experience advising leaders on strategy, human capital, and organizational design and is the leader of McKinsey's Organization Practice offering in North America. J.R. focuses on counseling executives on issues that cut across performance management, governance, organizational design, strategy, process improvement, and change management.
- **Dan Campbell** is an Associate Partner in McKinsey's Miami Office and a leader in McKinsey's Separations and IPO practice. He has over 15 years of experience in separations and operations support including process improvement, operational turnarounds, performance management / enhancement, and related capability building. Prior to joining McKinsey, he was a Director in KPMG's Strategy and M&A practice.
- **Rachel Riley** is a Partner in McKinsey's Atlanta Office specializing in public sector organizational transformation and change management, supporting Federal and State government clients on major change efforts across both performance and health. She specializes in organizational contexts involving complex stakeholder environments, including those requiring coordination of overlapping layers of mission and functional leaders (HR, finance, etc.). She has served the [REDACTED] clients on several culture and change management projects over the last three years and leads McKinsey's Public Sector Organization tribe.
- **Brian Tkach** is a Partner in McKinsey's Chicago office where he focuses on solving organization design and operations challenges for aerospace and defense clients. Brian has 6+ years of experience serving public and private sector clients. Prior to joining McKinsey, Brian was an F/A-18 fighter pilot in the US Navy for 11 years. His service included combat missions in Iraq and Afghanistan, earning multiple Air Medals.
- **Katherine Linzer** is a Partner with McKinsey and co-leads McKinsey's State Health and Human Services practice. She brings over 15 years of experience collaborating with state health agencies and healthcare organizations on supporting high-need populations, with emphasis on long-term care including nursing facilities. Katherine has supported the State of New Jersey on numerous health and human services for the past four years, on topics including long-term care, Medicaid, COVID response, and PHE Unwinding.
- **Ellen Feehan, MD** is a Partner in McKinsey's New Jersey Office and a leader in our State and Local Government practice. She leads the Firm's research and client service line for State and Local Government analytics. From 2020 through 2023, Ellen led McKinsey's support to the New Jersey Department of Health and Office of Emergency Management on the state's public health response to the COVID-19 pandemic. Ellen's leadership also included close collaboration with the Governor's Office. From late 2020 through 2022, Ellen directly supported the Department of Health's efforts to improve capabilities for oversight and management of nursing homes in New Jersey.

Examples of representative full team members are provided below. If McKinsey is selected for this project, we will determine the availability of these colleagues for staffing, and if necessary will identify other alternatives who bring relevant skills in research, analysis, and/or organizational design.

- **Alison Wagner** is an Engagement Manager in McKinsey's Washington DC Office where she focuses on topics related to performance management and organizational design. She is a

former Navy intelligence officer, with 10+ years relevant experience in process improvement and talent across DoD.

- **Quinton Allen** is an Engagement Manager in McKinsey's Washington DC Office where he specializes in serving clients across the [REDACTED]. At McKinsey, he has led client engagements in the [REDACTED] across a wide range of topics, to include organizational design transformations, supply chain vulnerability diagnostics, industrial base simulation modeling, and business process zero-based redesign. Prior to joining McKinsey, he served as an active duty intelligence officer in the United States Marine Corps for more than six years with postings in Japan and Quantico Virginia.
- **Kelsey Price** is an Associate in McKinsey's Washington DC office with experience serving federal, state, and local clients across organizational performance, workforce planning, change management and financial transparency. Prior to joining McKinsey, she served as the Director of strategic communications, marketing, and policy at the Utah Department of Veterans & Military Affairs. She led the department's COVID-19 crisis response, including through multiple COVID-19 outbreaks at the state's veterans homes.
- **Taylor Ourada**, is a Consultant with Seventeenth Addition, a women-owned small business that is proposed as a sub-contractor to McKinsey. McKinsey has worked with Seventeenth Addition for several years, including for three years in support of New Jersey's Department of Banking and Insurance (in collaboration with DHS and the Governor's Office) in the implementation and interim operations of the State's health insurance exchange. Taylor was herself an integral part of that team supporting the State of New Jersey, working side-by-side with McKinsey consultants and State of New Jersey agency leaders and staff.

Pricing

McKinsey Price Quote

McKinsey is proposing a firm-fixed-price in response to the NJ Department of the Treasury Division of Administration’s Mini-Bid Request for Business and IT Consulting and Advisory Services dated November 17, 2023 (the “MBR”), issued pursuant to State Contract M4010 (the “State Contract”). To calculate our FFP, we estimated the size of teams and number of weeks, consistent with our State Contract rate card, required to complete the tasks and deliverables described in our technical response to the MBR. Our leadership and support teams will scale up and down, as necessary, during performance of the engagement to complete the tasks and deliverables described in our technical approach. Our team includes partnership with Seventeenth Addition, a women-owned small business with whom we have collaborated in support of the State of New Jersey on other projects, spanning from 2019 to 2023.

Our pricing, as detailed below, reflects 24 weeks of team support, with an average of three full-time consultants, as well as several part-time or full-time Partners and subject matter experts, in addition to research, graphical production, and administrative support. Our pricing also includes use of our OrgLab proprietary capability, priced at \$91,800 under the Master Agreement but fully invested by McKinsey at no cost to the State of New Jersey.

Exhibit 4: Mapping of McKinsey’s Proposed Price to Rate Card under the Master Agreement

McKinsey Team	Proposed Rate per Unit	Units	Total Price
Management Workshop	\$63,750	1 workshop	\$63, 750
Team E	\$81,600	1 week	\$81, 600
Team A	\$159,110	22 weeks	\$3,500,420
Associate (Seventeenth Addition)	\$14,535	24 weeks	\$348,840
OrgLab tool	\$0 (fully invested)	1 unit	\$ 0
TOTAL FIRM FIXED PRICE			\$3,994,610
AVERAGE PRICE PER WEEK (24 WEEKS)			\$166,442

Invoice schedule

Subject to NJ Department of the Treasury Division of Administration’s review and approval, McKinsey shall invoice the total agreed upon firm-fixed-price in equal monthly installments across the period of performance of the Purchase Order resulting from the MBR.

Assumptions and Disclosure

McKinsey's approach and corresponding price proposal to the MBR are based on the following assumptions.

1. McKinsey will exclusively perform the services issued pursuant to the MBR (the "Services") on a firm-fixed-price (FFP). For purposes of this proposal, Services performed on a "firm-fixed-price" basis shall be reimbursed at the agreed upon fixed price, which is not subject to any adjustment on the basis of McKinsey's cost experience in performing such Services.
2. McKinsey's firm-fixed-price is based on its team bundle rates. McKinsey cannot segregate costs (or hours worked) within its team bundles. Therefore, services within a team bundle cannot be awarded separately.
3. McKinsey is unable to (1) provide timesheets as back-up documentation or in the case of audits; (2) provide certified cost or pricing data; (3) provide a cost accounting system disclosure statement, forward pricing rate agreement or recommendation, or rate breakdown based on cost elements; or (3) be subject to cost principles and procedures such as those in Federal Acquisition Regulations Part 31.
4. McKinsey will invoice and receive payment based on completed Services, and not specific hours worked, or costs incurred.
5. McKinsey's pricing consists of fixed weekly team bundle rates. McKinsey has proposed a total firm fixed price based on its understanding of the level of effort required in order to meet requirements of the Services proposed in its technical quote to the MBR. During performance, McKinsey may make changes to its staffing as far as total number of resources and weeks provided as may be necessary for successful performance of the Purchase Order resulting from the MBR. Accordingly, the team bundles provided in this proposal are an estimation only.
6. Please also note that McKinsey does not provide categorical recommendations on matters of public policy; but rather, provides fact-based analysis and framing of options and tradeoffs; all authority for policy decisions shall continue to reside with the State of New Jersey agency leaders. Our analysis shall not serve as a substitute for policy, regulatory or operational decision-making by the State of New Jersey.
7. McKinsey & Company, Inc. Washington D.C. ("McKinsey") primarily serves public sector clients, with some social sector and commercial client work. Pursuant to the State Contract, we are not aware of any McKinsey work that poses a conflict of interest based on our proposed scope of work to the MBR. For additional transparency, we note that McKinsey & Company, Inc. United States ("McKinsey US"), an affiliate, provides or has provided consulting services in the US to commercial institutions across all industries, including, potentially, clients who provide or may seek to provide, products and/or services to the State of New Jersey. These industries include machinery and industrial automation, construction equipment and technology, electrical equipment (including generation, transmission, distribution, and storage), renewable power generation equipment, automotive (including manufacturers, suppliers and machinery), travel, logistics, sustainability (including electrification and decarbonization transformations), technology (including infrastructure, services and software), private equity firms, private financial institutions (including capital markets and investment banking, corporate and commercial banking, small business banking and digital assets), non-profits, foundations, enterprise software,

telecommunications and network infrastructure, media, and real estate. McKinsey US's consulting services include analysis, advice, and implementation support across many areas of business, including sales, marketing, pricing operations (including digitization, analytics, automation, process improvements and efficiency), strategy, value creation (including assessment of capabilities and impact on customers, employees, finance and operations, and social and environmental), corporate finance, people and organization (including talent, operating model, and organization design, change and culture management, leadership, and capability building), management of risk (e.g., portfolio optimization), building of resilience against non-navigable events (including crisis response), technology, transformation (including helping companies significantly change their performance trajectory by reducing costs (e.g., procurement, labor, fixed costs, digitization/automation) and/or driving growth (e.g., acquisitions, divestitures, new investments, business building)), mergers and acquisitions topics (including merger strategy, due diligence, integration planning, divestiture planning, IPOs, JVs and alliances), and sustainability. McKinsey does not hold ownership interests in its clients, but we note that other affiliates may hold ownership interests in McKinsey US clients across various industries. We understand that by selecting McKinsey for this work, you have determined there are no actual conflicts.

Appendix A: Resumes

Scott Blackburn

Senior Partner

Key expertise and experience

- Former U.S. Department of Veterans Affairs Interim Deputy Secretary, Chief Information Officer, and Executive Director of the MyVA Transformation
- Co-leads McKinsey's client service to VA [REDACTED], and the McKinsey Center on Government. Served VA on several topics including PREVENTS roadmap, VHA COVID response, Strategy to Action (OEI), and Veterans Experience strategy sprints (VEO).
- 20+ years of experience supporting private and public sector organizations on the topics of organizational change and technology
- Partner sponsor of Veterans@McKinsey



Select relevant experience:

- [REDACTED]
- U.S. Department of Veterans Affairs – MyVA Taskforce.** Led the VA transformation from 2014-2017. Specific initiatives included: improving access to healthcare at all VA Medical Centers, transforming the phone and web experience, instituting an enterprise-wide leadership development program that reached 110,000+ employees, improving hiring/HR processes, improving supply chain operations, diffusing best practices among 168 medical centers, and leading enterprise change management
- [REDACTED]

Education

Institution	Degree	Year
Harvard Business School	MBA	2005
Massachusetts Institute of Technology (MIT)	BSc, Mechanical Engineering	1999

Work history

Employer	Role	Years
McKinsey & Company	Senior Partner	2018-present; 2005-2014
US Department of Veterans Affairs (VA)	Chief Information Officer Interim Deputy Secretary Executive Director, MyVA Task Force	2017-2018 2017 2014-2017
US Army	Lieutenant, Captain	1999-2003

Matt Watters

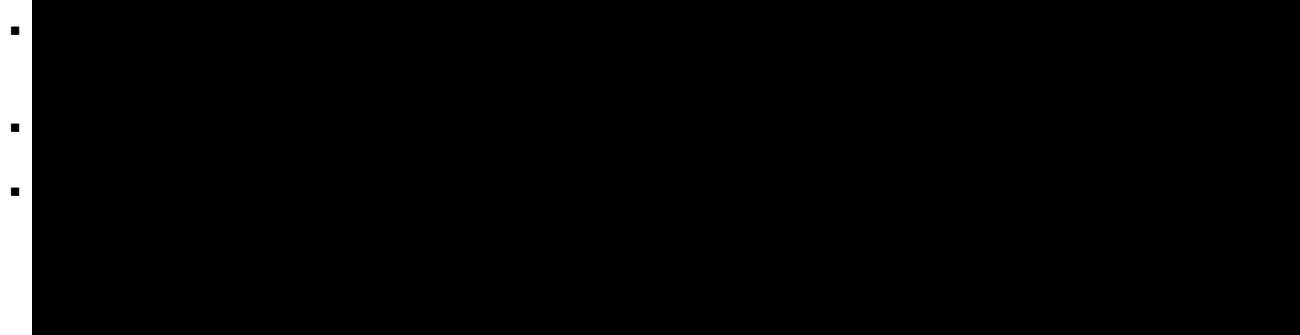
Partner

Key expertise and experience

- Partner in McKinsey’s New Jersey Office with distinctive experience and knowledge in leading Organizational Culture & Change Management engagements as well as launching transformations across DoD agencies and other federal clients
- Experience in Category Management, Behavior Change, Supply Chain Optimization, Negotiations, Financial Management, Acquisition & Logistics
- Distinctive people leader having taken time off from McKinsey to join U.S Army Special Forces as a Green Beret (Bronze Star, Afghanistan '20) and has been recognized by Forbes as 30 under 30 in Law and Policy for his leadership on McKinsey’s Ebola Recovery work in Sierra Leone



Select relevant experience:



- **Federal agency - Operating Model Design.** Led efforts to design a new operating model for a department struggling with low employee satisfaction and mission outcomes. The team diagnosed the deficits of the current operating model and then led workshops to collaboratively design a new operating model. The team then cocreated initiative and an implementation plan to bring the desired end-state into fruition.
- **Federal agency - Organizational Health.** Led efforts to assess the organization’s health with an organizational health assessment. The team then synthesized the findings into a report and held workshops with senior leaders to discuss the findings. Afterwards, the team helped create change management initiatives and an implementation plan to institute initiatives across the organization for better mission outcomes.

Education

Institution	Degree	Year
University of Oxford	M.B.A.	2013
University of Oxford	Masters, International Development and International Relations	2012
University of Delaware	B.Sc. Neuroscience	2011

Work history

Employer	Role	Years
McKinsey & Company	Partner	2013–present

Georgios Athanasakopoulos

Associate Partner

Key expertise and experience

- Leader in McKinsey’s OrgSolutions group which delivers organizational insights using McKinsey’s proprietary digital solutions
- 15+ years’ experience in organizational consulting advising leaders of both private and public sector organizations
- Area of expertise include organizational design, organizational health (culture), and talent



Select relevant experience:

- **US State, Department of Aging – Organizational Design.** Assessed challenges related to organizational structure and worked with Department leadership to redesign the organizational structure to better align with the Department’s strategic aspirations including aligning on design criteria, evaluating multiple design options, and aligning on a final design at the n-3 level. Work included transition and change management plans, role descriptions for new and redefined roles, and a broader organizational health assessment for the Department as a whole.
- **Federal government department – Organizational Assessment and Design.** Conducted organizational assessment using McKinsey’s Organizational Health Survey which helped identify priorities for change including a new vision for the organization; re-designed central governance & organizational Structure to enable efficient decision-making; work also included robust change management including a “change champions” program.
- **New Jersey Department of Children and Families – Talent.** Led a study to assess talent supply and demand for key roles in the provider network. Work included granular analysis of supply and demand by role as well as sizing the impact potential solutions and prioritizing via impact / feasibility analysis.

Education

Institution	Degree	Year
New York University	M.A., Industrial Organizational Psychology	2007
Brown University	Economics & Psychology	2001

Work history

Employer	Role	Years
McKinsey & Company	Expert, Associate Partner	2017–present
PwC	Manager, Director	2013–2017
Mercer	Senior Associate, Manager	2007–2013
ING Insurance	Human Resources Generalist	2003-2005

David Nuzum

Senior Partner

Key expertise and experience

- Leads McKinsey’s State & Local Health and Human Services Practice and healthcare innovation domain
- 25 years of experience with strategic planning, innovation, program development, program management across 50+ organizations including Medicaid, public health, mental health, MCOs, safety net providers, and community-based organizations
- Strategic planning, innovation, program development, program management with HHS agencies in 13 states



Select relevant experience:

- **New Jersey Department of Human Services.** Supported a comprehensive strategic assessment of the state’s Medicaid managed LTSS program and identification of opportunities for improvement across quality, outcomes, eligibility and access, cost and efficiency, and MCO performance management. Developed a roadmap for syndicating findings and implementing changes across relevant state agencies
- **New Jersey Department of Health.** Supported the State’s COVID response capacity, with a focus on providing the facts and analytics to address the State’s long term care system; testing; vaccination; member outreach; data and analytics; and other topics.
- **New York State Medicaid – Innovation.** Supported program design and development of technical requirements for the State’s Social Care Network program as part of its amended Medicaid 1115 waiver. Supported stakeholder engagement across agency leaders on key program design choices including provider eligibility, service delivery and reimbursement, value-based care incentives, data, analytics and reporting requirements to support delivery of services for Health-Related Social Needs for over 2M New Yorkers upon implementation
- **US states – Strategic Planning, Innovation, Program Management.** Supported multiple states ([REDACTED]) in the development and/or implementation of strategic plans (“State Health Innovation Plans”) for value-based payment programs, as well as implementation of alternative payment models

Education

Institution	Degree	Year
The Wharton School of the University of Pennsylvania	M.B.A., Healthcare Management	2003
Harvard University	B.A., Biological Sciences; graduate coursework in healthcare economics	1996

Work history

Employer	Role	Years
McKinsey & Company	Senior Partner	2003-present
Galen Interactive Inc.	Vice President	1999-2001
William M. Mercer Inc.	Associate	1996-1999

J.R. Maxwell

Partner

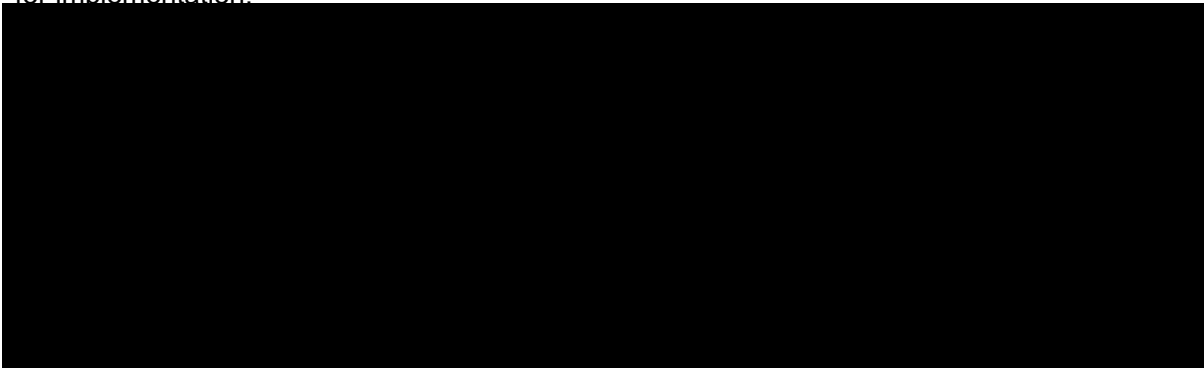
Key expertise and experience

- 12+ years' experience advising leaders on strategy, human capital, and organizational design
- Leader in McKinsey's Organization Practice and Public Sector Entity, specializing in organizational design, large-scale transformations, strategy, operations and process improvement, and performance management
- Experience serving NASA for the past 3 years having led four engagements, including NASA 2040 change engine and strategy, NASA 2040 initial summit, ARMD sustainable leadership journey, and ARMD climate sustainability workshops



Select relevant experience:

- **NASA – 2040 Change Effort.** Led design and launch of historic change effort focused on enabling NASA leadership to make decisions to enable mission priorities across strategy, organizational structure, talent, technology, infrastructure, budget, and key process issues.
- **NASA – ARMD Sustainable Leadership Effort.** Led year-long workshop-based efforts for the ARMD senior leadership team focused on aligning on a common vision, building trust, making decisions, communicating change, and building a portfolio of strategic initiatives and roadmap for implementation.



Education

Institution	Degree	Year
Massachusetts Institute of Technology	M.Sc., Aeronautics	2006
Dartmouth College	M.B.A.	2011
Tufts University	B.A., Economics and International Relations	2003

Work history

Employer	Role	Years
McKinsey & Company	Partner	2011-present
Central Intelligence Agency	Analyst	2003-2009

Dan Campbell

Partner

Key expertise and experience

- Expert Associate Partner in McKinsey’s Chicago Office and expert on M&A including separations and divestitures
- 15 years of relevant experience and expertise in corporate carve-outs and divestitures, Spin-offs and separations, Integration management, Post-transaction optimization, International transactions



Dan has over 15 years of experience advising and collaborating with C-Suite and senior-level executives to develop and execute transformative business strategies, primarily in the M&A space. In this role, he has assisted on over 70 transactions with a combined value of more than \$175B across a broad set of industries.

Select relevant experience:

- **Nuclear utilities service provider – Separation.** Project leader for divestiture from \$1B leading service provider to nuclear utilities as a part of a concurrent integration of another utilities service provider.
- **Industrial engineering and manufacturing company – Separation.** Project leader of separation of global leading engineering and manufacturing company into two separate, publicly-traded companies.
- Led North American region for pharmaceutical split into separate, publicly-traded companies.
- Led split of leading industrials companies into two separate, publicly-traded companies.
- Led separation of assets from two Oil and Gas competitors to be create a newly-formed JV.
- Led separation of leading technical professional services firm’s government-focused. Business.
- Led the separation of two United States government sites with integrated operations and back office processes.

Education

Institution	Degree	Year
Northwestern’s Kellogg School of Management	M.B.A.	2013
Michigan State University	B.A., Accounting & Finance	2004

Work history

Employer	Role	Years
McKinsey & Company	Expert Associate Partner, M&A	2019–present
KPMG	Director, Strategy, M&A Services	2006-2019
Bank of America	Investment Banking Analyst	2005-2006

Rachel Riley

Partner

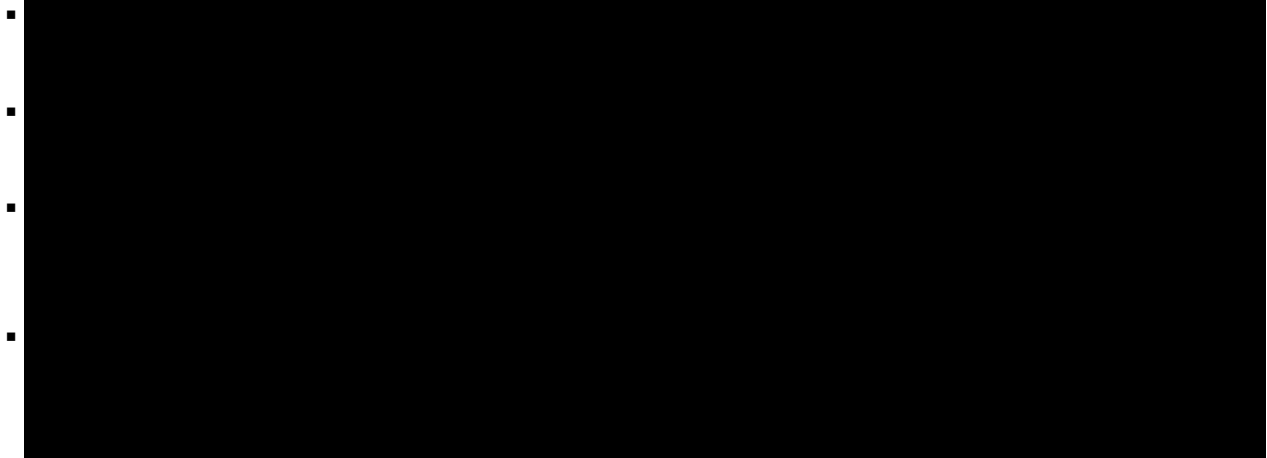
Key expertise and experience

- Partner with 7 years of relevant experience supporting operational and organizational transformations in the public sector (including Federal, State, and Local government transformations)
- Expertise includes organizational design, enterprise transformations, and organizational health



Select relevant experience:

- **State of Tennessee – Efficiency and Effectiveness Transformation.** Led a rapid diligence of the entire State government to identify opportunities to improve efficiency and effectiveness of government delivery, as well as organizational health and capabilities.



Education

Institution	Degree	Year
University of Oxford	Ph.D., Social Policy (Rhodes Scholarship)	2017
University of Oxford	M.Sc., Contemporary Chinese Studies	2014
Wofford College	B.S./B.A., Economics and Mandarin	2013

Work history

Employer	Role	Years
McKinsey & Company	Partner	2017-present

Brian Tkach

Partner

Key expertise and experience

- Experience in Operations in both the public and private sector
- Leads transformation for public and private sector organizations with a focus on companies and Government agencies in Aerospace & Defense and Transportation & Logistics



Brian Tkach is a Partner in McKinsey’s Chicago Office where he focuses on solving procurement, organization design, and operations challenges for aerospace and defense clients. Brian has 6+ years of experience serving public and private sector clients. He is a leader within the Operations Practice and has experience in operational readiness and supply chain resiliency. Prior to joining McKinsey, Brian was an F/A-18 fighter pilot in the US Navy for 11 years. His service included combat missions in Iraq and Afghanistan, earning multiple Air Medals

Select relevant experience:

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

Education

Institution	Degree	Year
University of Chicago	M.B.A.	2014
US Naval Academy	B.S., Mechanical Engineering	2001

Work history

Employer	Role	Years
McKinsey & Company	Partner	2014-present
US Navy	F/A-18 Pilot and Training Officer	2001-2012

Katherine Linzer

Partner

Key expertise and experience

- Co-lead of McKinsey's Medicaid and Long Term Care domain, with a focus on long-term services and supports, behavioral health, and other high-need populations
- 15 years of experience serving healthcare organizations including states, private payors, providers, and investors
- Has served 7 states on improving care for high-needs populations
- Leads McKinsey's Health Institute's Healthy Aging pillar



Select relevant experience:

- **State of New Jersey DHS.** Led work on topics including long term care system sustainability; COVID response; material and child health; and PHE Unwinding
- **Midwestern State Nursing Facility Quality improvement.** Supported the Governor's Task Force on nursing facility quality improvement for a large state, with initiatives including workforce, technical and clinical assistance, survey process improvement, voice of the resident, health equity, and data & analytics; supported 11 resident listening sessions across seven cities
- **US states – Healthcare Transformations.** Led four state health care transformations with a focus on stakeholder engagement across patients, advocates, payers, and providers. Took a data-driven approach (e.g., surveys) to understand engagement opportunities.
- **US health care provider – Talent Strategy.** Led comprehensive talent review for one of the largest US health care providers with a focus on over 4,000 employees in scope. Analyzed data, understanding implications, and developed recommendations.
- **Public sector health care regions – Healthcare Analytics.** Developed analytics for a global network of public sector healthcare regions in Europe, Asia, and Australia to connect employees across regions and learn from best practices in a data-driven way.
- **Multiple clients – Strategy and Operations.** Served providers and payers on topics such as corporate strategy, service operations, payment integrity, and organizational health.
- **US state – Value-based Model Implementation.** Leading team for a State government to implement Patient-Centered Medical Home model with potential to reach over 2M Medicaid recipients.
- **Non-profit payer – Private Payer Strategy.** Led team to support one of the largest nonprofit payers in identifying growth strategy including evaluation of potential partnerships with other payers and providers.

Education

Institution	Degree	Year
Stanford University	M.B.A.	2013
Yale University	B.A., History	2008

Work history

Employer	Role	Years
McKinsey & Company	Partner and other roles	2007-present

Ellen Feehan

Partner

Key expertise and experience

- Partner and leader in McKinsey’s State and Local Government practice
- Leads McKinsey’s State and local data, analytics and capability building service line
- Over 10 years of experiences and deep knowledge of driving data to action impact



Ellen is a New Jersey-based Partner and leads the Firm’s service line for State and Local Government analytics. Ellen serves public and social sectors clients on a range of topics, including payment and delivery system innovation, operational effectiveness, organizational design, and equity. As the project lead managing statewide healthcare transformations, she has helped convene large stakeholder groups and drive decision making in complex, multi-stakeholder environments.

Select relevant experience:

- **New Jersey Department of Health – Long Term Care.** Supported New Jersey’s long term care facilities, including nursing homes, in COVID response
- **New Jersey Department of Health – Digital and analytics transformation.** Supporting a State department of health develop an equity score card to assess how equity was being incorporated in to every aspect of public health programming.
- **New Jersey Office of Technology – Digital and analytics strategy.** Supporting a State Office of Innovation and Technology develop their technology and analytics strategy.
- **New Jersey and Other States– COVID-19 response.** Supported several US States across healthcare capacity, testing, contact tracing, vaccine rollout, economic development across their entire response ecosystem including local public health, federal community health centers, acute care hospitals, psychiatric hospitals, retail and independent pharmacies, schools and community and faith-based organizations. Particular focus on highly impacted and high-risk populations

Education

Institution	Degree	Year
University College Dublin	MBA, health services management	2008
Royal College of Surgeons in Ireland	FRCSI; FRCSPlast	1997; 2002
Trinity College Dublin	BA, MB, BCh, BAO	1994

Work history

Employer	Role	Years
McKinsey & Company	Partner	2008-present
Tropical Medical Bureau	Doctor	2006-2008
Mater Misericordiae Hospital	Doctor, Senior Registrar	2003-2005

Quinton Allen

Example Full-Time Consultant

Key expertise and experience

- Defense and Security Specialist with a focus on [REDACTED] and a rapid procurement development effort for a state government
- [REDACTED]
- Former Intelligence Officer in the US Marine Corps



Quinton Allen is an Engagement Manager at McKinsey where he specializes in serving clients across [REDACTED]

joining McKinsey, he served as an active duty intelligence officer in the United States Marine Corps for more than six years with postings in Japan and Quantico Virginia.

Select relevant experience:

- [REDACTED]
- **State government – Rapid Procurement Development.** Created transparency for procurement process to rapidly close demand-supply gaps through major domestic and international suppliers, as well as mobilizing local industry. Shared best practices and roadmap to reduce demand of goods, to further close demand-supply gaps. Developed playbook to aid local manufacturers with retooling their production lines to “unlock” additional supply.
- [REDACTED]

Education

Institution	Degree	Year
University of London, King’s College	M.A. in Public Policy	2014
US Naval Academy	B.S. in Economics	2013

Work history

Employer	Role	Years
McKinsey & Company	Expert	2019-present
United States Marine Corp	Captain	2013-2019

Alison Wagner

Example Full-Time Consultant

Key expertise and experience

- Experience in the development and delivery of organizational reorganizations [REDACTED] clients, with work spanning topics such as culture change, organizational management, human capital and regulatory requirements
- Led multiple engagements focused on applying best-practice private sector organization design and performance management to public sector organizations
- Deep understanding of unique cultural considerations and values in organizational design for military and veterans organizations



Alison is an engagement manager who manages performance management and organizational design related engagements across multiple clients, to include at a national security organization with 40k employees and a private sector bank with over 20k employees. She is a former Navy intelligence officer, with 10+ years relevant experience in process improvement and talent across [REDACTED]

Select relevant experience:

- **Federal agency headquarters operations assessment.** Managed and built assessment around strategic organizational design of 8k+ federal agency, building future state working model options based on federal regulatory requirements.
- **Federal agency with 20k+ employees.** Built an assessment reference card with clearly-defined criteria for different levels of performance (e.g., (difference between meets and exceeds expectations) to empower consistency and better calibration of employee performance evaluation across the organization.
- **Geographically dispersed federal agency.** Designed and implemented a new performance management process after assessing and tailoring different approaches based on organization's other recognition/incentives (e.g., promotions) goal.

Education

Institution	Degree	Year
Harvard University	M.B.A	2019
New York University	B.A. in Economics	2017

Work history

Employer	Role	Years
McKinsey & Company	Engagement Manager	2018; 2019-present
Goldman Sachs	Associate Intern	2017
U.S. Navy	Lieutenant Commander	2007-2017

Kelsey Price

Example Full-time Consultant

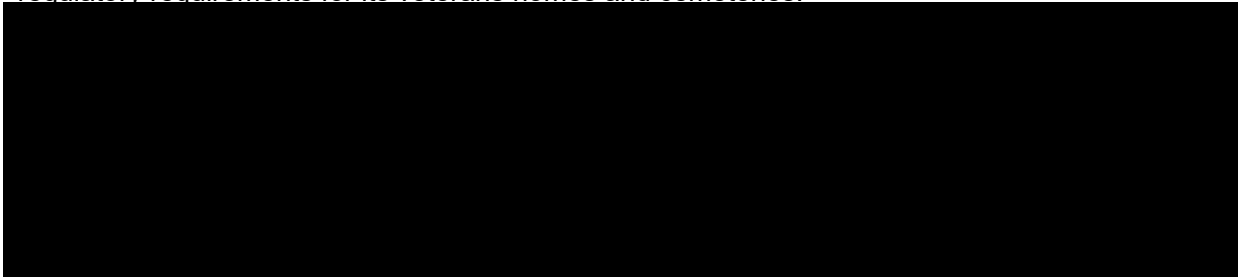
Key expertise and experience

- Serves federal, state and local clients on topics related to organizational design and performance, workforce planning, change management and financial transparency
- Deep understanding and experience with state and federal regulations and statutes related to veterans and military affairs, tracking, analyzing and advising on hundreds of local, state and federal bills and laws
- Expertise in organizational performance, design and culture with experience across ██████████ federal government
- Former Director of Communications and Marketing at the Utah Department of Veterans and Military Affairs



Select relevant experience:

- **Utah Department of Veterans & Military Affairs - Executive leadership team.** Kelsey worked directly with the Governor’s Office and Utah Legislature on key funding, operations and functional decisions for the department and ensured the department was meet all federal regulatory requirements for its veterans homes and cemeteries.



Education

Institution	Degree	Year
Duke University	M.B.A	2022
University of Utah	B.A. in Middle East Studies	2017
University of Utah	B.A. in Political Science and Government	2013

Work history

Employer	Role	Years
McKinsey & Company	Associate	2022-present
Utah Department of Veterans and Military Affairs	Director of Communications and Marketing	2019-2021
State of Utah	Strategic Communications Manager, Utah Science Technology and Research	2018-2019

Taylor Ourada

Example Full-Time Consultant

Key expertise and experience

- Project leader at Seventeenth Addition (17a), focusing on project management for state and local government
- 7+ years of experience providing management consulting services
- 3+ years performing on public sector projects
- Extensive experience in government business model transformation, digital transformation, policy strategy development, and developing novel service delivery methods to improve customer experience
- Managed several large program management office (PMO) projects with heavy digital transformation and stakeholder engagement components, particularly in the public sector



Select relevant experience:

- **State of New Jersey Health Insurance Exchange – Project Management Office.**
 - Following an initial roll-out of their state-based healthcare exchange, the New Jersey Insurance Department sought to enhance healthcare accessibility through technology and operations updates across 2 state agencies, 2 federal regulators, 5+ vendors. Leading the Program Management Office, Taylor served as a central advisor to agency executives on strategic initiatives, tools, processes, and analytics for healthcare enrollment and Medicaid eligibility. Taylor led periodic review of State strategic initiatives and change management methods, focusing on quicker delivery of enrollment tools and Medicaid eligibility determinations. Under Taylor's leadership, the PMO developed a master project plan for the State across the Insurance and Medicaid departments and implemented the plan through coordinated involvement of stakeholders throughout the state. Taylor developed and implemented an updated change management framework for managing, updating, and reviewing technology enhancements, offering consistent recommendations to the State on implementing strategic plans and managing program risk. Taylor also led PMO analytics efforts to consistently review and optimize enrollment trends against state goals.
 - The PMO implemented master project plan for the State, and managed vendors to ensure technical completion of State strategic priorities. Taylor coordinated with the Medicaid department to implement an updated Medicaid eligibility program, reducing wait-times for consumer benefit enrollment. The PMO also developed and implemented updated consumer operations framework and process to manage consumer issues across technology platforms and provided recommendations for broader updates to mitigate consumer issues in the future.
 - **Impact:** Total health enrollment increase of 8%. Successful implementation of federal subsidy program, expanding healthcare subsidies to families up to 600% of the Federal Poverty line; implementation of 10% expansion in Healthcare Navigator program
- **State Substance Control Board – Workforce Optimization Strategy Consulting.**
 - A State Substance Control Board sought to design a robust workforce strategy. The agency specifically wanted strategic guidance on recruiting and retaining the talent needed for the agency to operate effectively for the next decade
 - Taylor supported the team in conducting 20+ stakeholder interviews & 10+ industry expert interviews for qualitative analysis of agency performance. Taylor also collected workforce efficiency and workflow management data in ten distribution centers across the state, mapping out present state processes distribution patterns. The team also designed employee surveys to identify opportunities for employee engagement and retention.

- Taylor supported the creation of a consolidated strategic review, guiding agency executives in their implementation of workforce optimization strategy. Taylor also distilled interviews and quantitative analysis, resulting in concise recommendations for policymakers.
- **Impact:** State implementation of key findings, including updated workforce management plan and use of new tools to achieve strategy

Education

Institution	Degree	Year
Ohio State University	BSc, Chemical Engineering	2015

Work history

Employer	Role	Years
17a	Principal	2020-present
Independent Consultant	Consultant	2019-2020
Avanoo	Senior Customer Success Partner	2018-2019
Accenture	Big Data Consultant	2015-2018



M4010 - REQUEST FOR QUOTES

Business and IT Consulting and Advisory Services

Issued by: State of New Jersey
Department of the Treasury
Division of Administration
On behalf of
Department of Military and Veterans Affairs

Date Issued: Friday, November 17, 2023

Questions Due: Wednesday, November 29, 2023 by 4:00 pm Eastern Time
email to: Administration.Email@treas.nj.gov

Proposals Due: Friday, December 8, 2023 by 4:00 pm Eastern Time
email to: Adminstration.Email@treas.nj.gov

I. BACKGROUND

The State of New Jersey has a long and proud tradition of commitment to the military dating back to the year 1636. New Jersey's Veterans' Affairs Department dates back to the year 1987 with long-standing service to the State's military veterans. These two divisions comprise the New Jersey Department of Military and Veterans' Affairs (DMAVA).

DMAVA, under the direction of the Adjutant General of New Jersey, is responsible for supporting the New Jersey Army and Air National Guard and administering programs and services for the estimated 338,017 veterans living in New Jersey. DMAVA is also responsible for the support and coordination of Army and Air National Guard activities in New Jersey. The National Guard responds to emergencies within the State upon the declaration of a State emergency by the Governor. DMAVA's federal military responsibility is to provide trained and qualified individuals and troop units in the support of the Army and Air Force of the United States.

The National Guard Bureau General Terms and Conditions are entered into by the National Guard Bureau with the States who are the grantees. The General Terms and Conditions are funded through U.S. Department of Defense appropriations provided to the National Guard Bureau for Army and Air National Guard construction, minor construction, maintenance, repair or operation of facilities and mission operational support, and for other programs authorized by Congress or the Department of Defense to be performed by grantees in support of the National Guard.

DMAVA has served the State of New Jersey as both a military (militia) branch of State government as well as a branch that provides exemplary services to citizens and Veterans of New Jersey.

Governor Murphy has directed this study to conduct a comprehensive review of DMAVA and provide recommendations for the funding, structure, and personnel of two separate cabinet level state agencies, the Military Affairs agency and Veterans Services agency. As proposed, the Department of Veterans' Services will be established to provide improved, outstanding, and focused services to our veteran heroes and Gold Star families. The proposed new State agency will encompass all Veterans Services including:

- 1) The three State-run veterans' nursing homes currently operating at Menlo Park, Paramus, and Vineland, NJ.
- 2) The 16 Veterans Services Offices currently operating in 15 counties, and any other Veterans Services Offices opened in the future.
- 3) The Brigadier General Doyle Veterans Memorial Cemetery.
- 4) Veterans Haven North and Veterans Haven South, providing shelter and training opportunities for homeless veterans.
- 5) Three War Memorials located in Holmdel (Vietnam Veterans), Trenton (WWII Veterans), and Atlantic City (Korea Veterans).

- 6) The team of dedicated and talented Veterans Affairs staff who develop and manage all NJ Veterans resource programs, outreach programs, training opportunities, and direct veteran benefits.

As proposed, a new state agency, the Department of Military Affairs will be formed to encompass all New Jersey Army and Air National Guard units and locations, including:

- 1) The Military Headquarters at Lawrenceville.
- 2) The National Guard Training Center at Sea Girt
- 3) The 108th Air Wing at Joint Base McGuire-Dix-Lakehurst (JBMDL)
- 4) The 177th Fighter Wing at the Atlantic City Airport
- 5) The Consolidated Logistics Training facility at JBMDL
- 6) The Warren Grove Bombing Range
- 7) The Army Aviation Support Facility at JBMDL
- 8) The 33 Armories located strategically throughout the State.
- 9) The Youth Challenge Academy

NOTE: These lists represent the major components of the department and are not all-inclusive.

II. PURPOSE AND INTENT

The New Jersey Department of the Treasury (Treasury), on behalf of the New Jersey Department of Military and Veterans' Affairs (DMAVA) seeks to engage a Vendor with the expertise and capacity to provide, at minimum:

- 1) A complete review of the current operating structures, functions, and personnel (staffing) of DMAVA to include the Military/NJ National Guard (NJNG) and all components, as well as the Veterans Affairs/Services.
- 2) A review of all current DMAVA Military departments, divisions, and units.
- 3) A review of all current DMAVA Veterans Affairs/Services departments, divisions, and units.
- 4) A review of Federal Military statutory and regulatory requirements.
- 5) A review of State Veterans Affairs/Services statutory and regulatory requirements.
- 6) A review of the State budgetary requirements.
- 7) A review of the State/Federal General Terms and Conditions, included as ATTACHMENT 1.
- 8) A Review of all 54 states and territories state-run Military and Veterans Affairs/Services department(s) structures and best practices.
- 9) Based on reviews and studies, provide recommendations for the structure, functions, and personnel for a cabinet level Military Affairs Department separate and apart from a Veterans Services Department.
- 10) Based on reviews and studies, provide recommendations for the structure, functions, and personnel for a cabinet level Veterans Affairs Department separate and apart from a Military Affairs Department.

- 11) Develop a comprehensive plan to transition DMAVA into two distinctly separate State agencies: a Military Affairs Department and a Veterans Services Department.
- 12) Identify one-time and recurring costs associated with the transition plan.
- 13) Establish an implementation timeline.

Note: This generalized list is not meant to be all-inclusive. Section III. Scope of Work defines the deliverables required by this engagement. The vendor shall conduct reviews and studies through internal and external research, interviews/meetings with key DMAVA employees, and site visits to the appropriate DMAVA locations.

III. SCOPE OF WORK

The Vendor shall complete the following actions, tasks, obligations, and responsibilities, which should be completed within six (6) months after contract start date.

1. DMAVA's CURRENT OPERATING STRUCTURE

- a. The vendor shall conduct a review and study of DMAVA's Military Affairs. This review will be comprehensive and shall focus on departments, divisions and units, locations, functions of each, and the personnel that comprise each. The vendor shall deliver a written report within 45 days after the contract start date.
- b. The vendor shall conduct a review and study of DMAVA's Veterans Services. This review will be comprehensive and shall focus on departments, divisions and units, locations, functions of each, and the personnel that comprise each. The vendor shall deliver a written report within 45 days after the contract start date.
- c. The vendor shall provide an assessment and recommendations for the potential of shared services and resources, i.e., shared office space, between the two proposed newly created agencies to provide cost savings measures. This assessment shall be provided in the form of a written report delivered within 120 days of the contract start date.

2. STATUTORY AND REGULATORY REQUIREMENTS

Following are Federal and State statutes and regulations that apply to the work required by this engagement:

- a) 38 U.S.C. 1745
- b) 38 U.S.C. 501
- c) 42 CFR Part 483
- d) N.J. Stat. § 38:17-1
- e) N.J. Stat. § 38:18-3
- f) N.J. Stat. § 38:18A-3

- g) N.J. Stat. § 38:20-3
- h) N.J. Stat. § 38a:-1 et seq.
- i) NJ Administrative Code - Title 5A - MILITARY AND VETERANS' AFFAIRS (§§ 5A:1-1.1 — 5A:11-1.3)
- j) A list of other, applicable statutes is included as ATTACHMENT 2 of this RFQ.

NOTE: The above list represents the major state statutes and regulations applicable to the work required by this engagement, it is not all-inclusive and the deliverables below shall include *all* applicable state statutes, as well as state and federal regulations.

- a. The vendor shall conduct a comprehensive review of all State and federal statutes and regulations that govern DMAVA's Military Affairs Division. This review shall identify each statute and regulation and provide analysis, and recommended changes related to this engagement. This vendor shall deliver a written report within 90 days after the contract start date.
- b. The vendor shall conduct a comprehensive review of all State and federal statutes and regulations that govern DMAVA's Veterans Services Division. This review shall identify each statute and regulation, provide analysis, and recommend required changes related to this engagement. This vendor shall deliver a written report that within 90 days after the contract start date.

3. BUDGETARY REQUIREMENTS

- a. The vendor shall provide a comprehensive review and analysis of the DMAVA annual State budget. This analysis shall be submitted in the form of a written report and shall provide recommendations for dividing the budget between the two new agencies, and potential improvements. This vendor shall deliver the written report within 120 days after the contract start date.
 - i. As part of this report, the vendor shall conduct a comprehensive review and analysis of federal budgetary requirements related to the National Guard to include the General Terms and Conditions. The analysis shall be submitted in the form of a written report and shall provide recommendations for changes or improvements.
- b. The vendor shall provide a comprehensive review and analysis of all DMAVA employee salaries. This analysis shall focus on limitations and/or requirements of work functions based on fully or partially federally funded state positions. The review and analysis shall be submitted in the form of a written report, shall include recommendations for the DMAVA transition plan including a strategy for state salary structures at the two departments, and shall be included in the final report.

4. STATE-RUN MILITARY AND VETERANS SERVICES

There are 50 States and four (4) major U.S. territories with National Guard units. The territories are Guam, U.S. Virgin Islands, Puerto Rico, and the District of Columbia.

- a. The vendor shall conduct a comprehensive, comparative review and analysis of state-run National Guard and Veteran Services departments. The review shall focus on only those states that have two separate departments. The intent is to determine best practices as well as practices that should be revised or eliminated. The analysis shall be submitted in the form of a written report and shall provide insight and recommendations for the DMAVA transition plan. This vendor shall deliver a written report within 60 days after the contract start date.

5. CONTRACT MANAGMENT

- a. The vendor shall report to the Governor's Office in all matters pertaining to the work required by this engagement. Treasury Administration will manage the contract aspects for compliance.
- b. The vendor shall maintain weekly communications with the Governor's Office and DMAVA via email and/or telephone conversations. Such weekly communications shall provide updates on progress, identify any challenges or problems the vendor has/had in completing the deliverables, and recommend solutions.
- c. The vendor shall submit requests to interview DMAVA staff and conduct site visits at DMAVA locations through the Governor's Office. Requests shall be in writing submitted through email. All appropriate and reasonable requests shall be approved.

6. MONTHLY REPORTING

- a. The vendor shall provide to the Contract Manager, who will be designated at the start of the engagement, monthly status reports, in narrative format with timelines as appropriate, by the 5th day of each following month for each deliverable.

7. FINAL REPORT

A final report shall be submitted upon completion of the work required by this engagement. The report shall contain, at a minimum:

- a. A summary of all findings, reviews, and analyses of the work that is required by this engagement.

- b. Recommendations for the structure, functions, and personnel of a separate cabinet level Veterans Services agency.
- c. Recommendations for the structure, functions, and personnel of a separate cabinet level Military Affairs agency.
- d. Identify one-time costs associated with implementation of the DMAVA transition plan, i.e., capital improvements needed to support the transition plan, additional equipment to include I.T. equipment, etc.
- e. Identify additional, recurring new costs created by the transition of DMAVA into two agencies, i.e. salaries due to additional employees through the creation of new jobs required to serve the new agency.
- f. A comprehensive transition plan.
- g. A timeline for the transition plan.

IV. **MINI-BID PROPOSAL SUBMISSION**

- 1. Technical Quote
 - a. Bidder shall submit an executive summary of its plans to meet the requirements of this engagement.
 - i. Proposal should demonstrate the Bidder's understanding of the requirements, the timelines, and the level of effort necessary to complete the tasks.
 - b. Bidder shall describe its experience in completing similar projects in size and scope.
 - c. Bidder shall include information relating to the key personnel assigned, relevant experience, and qualifications.
 - d. Bidder shall include a draft timeline and schedule of completion of tasks adhering to specific key dates within the Scope of Work.
- 2. Pricing
 - a. Pricing shall not exceed the rates set forth in the Vendor's response to the Solicitation and awarded under the Master Agreement.
- 3. Key Dates
 - a. Question Due Date – Bidders shall submit questions relating to this engagement. Questions should reference the specific section of the Mini-bid RFQ. Questions shall be submitted in writing via email by the date and time and to the email address listed on the cover page.

- b. Mini-bid Proposal Submission Due Date – Bidder shall submit its proposal in response to this Mini-bid RFQ via email by the date and time and to the email address listed on the cover page. Proposals shall not be password protected and should not be marked as confidential in whole.

V. EVALUATION CRITERIA

The following criteria will be used to evaluate and score Quotes received in response to this Mini-bid RFQ. The successful vendor will be selected based on price and other factors. Each criterion will be scored, and each score multiplied by a predetermined weight to develop the Technical Evaluation Score:

- a. The Bidder’s demonstration in its proposal that the Bidder understands the requirements of the Scope of Work and presents an approach that would permit successful performance of the technical requirements of the engagement.
- b. The Bidder’s documented experience, as an organization and by the key personnel assigned, in successfully completing projects of a similar size and scope in relation to the work required by this Mini-bid RFQ; and
The Bidder’s approach, plans, and anticipated schedule to complete the tasks required by this Mini-bid RFQ.

VI. EXECUTIVE ORDER 166

Pursuant to Executive Order No. 166, signed by Governor Murphy on July 17, 2020, the Office of the State Comptroller (“OSC”) is required to make all approved State contracts for the allocation and expenditure of COVID-19 Recovery Funds available to the public by posting such contracts on an appropriate State website. Such contracts will be posted on the New Jersey transparency website developed by the Governor’s Disaster Recovery Office (GDRO Transparency Website).

The contract resulting from this RFQ is subject to the requirements of Executive Order No. 166. Accordingly, the OSC will post a copy of the contract, including the RFQ, the winning bidder’s proposal and other related contract documents for the above contract on the GDRO Transparency website.

In submitting its proposal, a bidder/proposer may designate specific information as not subject to disclosure. However, such bidder must have a good faith legal or factual basis to assert that such designated portions of its proposal: (i) are proprietary and confidential financial or commercial information or trade secrets; or (ii) must not be disclosed to protect

the personal privacy of an identified individual. The location in the proposal of any such designation should be clearly stated in a cover letter, and a redacted copy of the proposal should be provided. A Bidder's/Proposer's failure to designate such information as confidential in submitting a bid/proposal shall result in waiver of such claim.

The State reserves the right to make the determination regarding what is proprietary or confidential and will advise the winning bidder/proposer accordingly. The State will not honor any attempt by a winning bidder/proposer to designate its entire proposal as proprietary or confidential and will not honor a claim of copyright protection for an entire proposal. In the event of any challenge to the winning bidder's/proposer's assertion of confidentiality with which the State does not concur, the bidder /proposer shall be solely responsible for defending its designation.

VII. ATTACHMENTS

- a. Federal General Terms and Conditions (Attachment 1)
- b. List of Relevant Statutes (Attachment 2)

**DOD COMPONENT (NGB) COOPERATIVE AGREEMENT GENERAL TERMS
AND CONDITIONS
October 2023**

SUBDIVISION A- Preamble

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DOD COMPONENT (NGB) COOPERATIVE AGREEMENT GENERAL TERMS AND
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Part 2: Scope

Section A. Introduction.

NGB CA awards are subject to the following Department of Defense (DoD) General Terms and Conditions These general terms and conditions implement Office of Management and Budget (OMB) guidance, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” published in the Code of Federal Regulations (CFR) at 2 CFR part 200 and implemented by the DoD at 2 CFR part 1104, “Interim Grants and Cooperative Agreements Implementation of Guidance in 2 CFR part 200” (79 FR 76047, December 19, 2014, as amended at 85 FR 49506, August 13, 2020).

Section B. Applicability.

1. These general terms and conditions apply to the National Guard Bureau (NGB), a DoD Component, cooperative agreements with institutions of higher education, nonprofit organizations, states, local governments, Indian tribes, and for-profit entities. They also apply when incorporated into NGB cooperative agreements subcontracts and sub awards with foreign organizations or foreign public entities (as defined in 2 CFR 1108). These general terms and conditions do not apply to NGB grants and cooperative agreements made directly to individuals. Certain provisions within these general terms and conditions may indicate that they apply to certain types of recipients only. An example of this is FMS Article V for non-federal audits.

2. Certain provisions within these general terms and conditions may indicate that they apply to certain types of recipients only. An example of this is FMS Article V for non-federal audits.

Organization Type	Applicable Administrative Requirements
Domestic Non-federal entity (including state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization)	<ul style="list-style-type: none"> • 2 CFR 200: Subparts A through F • 2 CFR 600 & 601
Foreign Non-Profit Organization	<ul style="list-style-type: none"> • 2 CFR 200: Subparts A through E • 2 CFR 600 & 601
Domestic & Foreign For-Profit Organization	<ul style="list-style-type: none"> • 2 CFR 200: Subparts A through D • 2 CFR 600 & 601 • 48 CFR Part 30 & 31
Individuals	<ul style="list-style-type: none"> • None
Foreign Public Entities (Includes Public International Orgs)	<ul style="list-style-type: none"> • None

Section C. Order of Precedence.

Any inconsistencies in the requirements of a NGB CA awards will be resolved in the following order:

- a. Federal statutes.
- b. Federal regulations* not otherwise referenced herein.
- c. Cooperative Agreement Award-specific terms and conditions.
- d. General Terms and Conditions, which includes the DoD Component (NGB)'s Addendum to this document (Subdivision D).

Section D. Award Acceptance.

If you receive an unsigned award from NGB, that means that you are required to sign the award to indicate acceptance of the award, including the terms and conditions, prior to initiating performance. The grants officer will sign the award upon receipt of your signature.

Part 3: English Language

You must translate any of the award content (including attachments to it and any material incorporated into the award by reference) into another language only to the extent that your compliance with the award's terms and conditions depends upon a significant number of your employees who are not fluent in English being able to read and comprehend that content. If you translate any award content into another language, the original award content in the English language will take precedence in the event of an inconsistency between the award requirements in the English and translated versions.

Part 4: Plain Language

These general terms and conditions use plain language, with use of personal pronouns such as "you" to denote the recipient and "we" to mean the Federal Government (Government). Use of personal pronouns is a recognized means to help a reader understand to whom the language is addressed and assist in determining responsibilities.

Part 5: Reserved Provisions

If the words “RESERVED – Not Applicable” are used at the section or section level of an article without additional explanation, it means that this particular section or section does not apply in any manner to NGB CA awards. If the word “RESERVED” is used with additional explanation (in bold red colored font), it will describe whether the particular provisions either will or may be included in a DoD Component (NGB) addendum (Subdivision D) to these terms and conditions.

Part 6: Feedback on the Terms and Conditions

As you gain operating experience with these general terms and conditions, you may find areas requiring clarification or correction. Alerting us to potential issues will help us improve both these general terms and conditions and NGB’s regulatory implementation of the OMB guidance at 2 CFR part 200.

Part 7: Definitions

Section A. Purpose of this Part.

This part provides definitions of terms used in the DoD Component (NGB) General Terms and Conditions.

Section B. Precedence of Definitions of Terms in National Policy Requirements.

Part 7 of these general terms and conditions may use a term in relation to compliance with a national policy requirement in a statute, Executive order, or other source that defines the term differently than it is defined in Section D of this part. For purposes of that particular national policy requirement, the definition of a term provided by the source of the requirement and any regulation specifically implementing it takes precedence over the definition in this part.

Section C. Definitions of Terms Used in The Federal Governmentwide Cost Principles or Single Audit Requirements.

1. Some award provisions state that you must comply with single audit or cost principles requirements in a governmentwide issuance and include the requirements by reference to the issuance without restating them. For any term defined in one of those issuances, this part includes the definition only if the term is used in these general terms and conditions.
2. Otherwise, this part does not include a definition and a user of these terms and conditions should consult definitions in the pertinent Governmentwide source, as follows:

- a. The requirements for audits of recipients and subrecipients that are in Subpart F of OMB guidance in 2 CFR part 200, which implements the Single Audit Act.
- b. The governmentwide cost principles for institutions of higher education, nonprofit organizations, states, local governments, and Indian tribes that are contained in Subpart E of OMB guidance in 2 CFR part 200.
- c. The cost principles for for-profit entities at Subpart 31.2 of the Federal Acquisition Regulation (48 CFR part 31), as supplemented by provisions of the Defense Federal Acquisition Regulation Supplement at Subpart 231.2 of 48 CFR part 231.

Section D. Definitions.

- 1. Acquire. See 2 CFR 1108.10.
- 2. Acquisition. See 2 CFR 1108.15.
- 3. Acquisition Cost. See 2 CFR 1108.20.
- 4. Administrative Offset. See 2 CFR 1108.25.
- 5. Advance Payment. See 2 CFR 1108.30.
- 6. Advanced Research. RESERVED – Not Applicable.
- 7. Applied Research. RESERVED – Not Applicable.
- 8. Approved Budget. See 2 CFR 1108.50.
- 9. Assistance. See 2 CFR 1108.55.
- 10. Award. See 2 CFR 1108.60.
- 11. Award Administration Office. See 2 CFR 1108.65.
- 12. Basic Research. RESERVED – Not Applicable.
- 13. Budget Period. See 2 CFR 200.1.
- 14. Capital Asset.
 - a. Tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with Generally Accepted Accounting Principles (GAAP). Capital assets include. See also 2 CFR 1108.75:
 - (1) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, exchange, or through a lease accounted for as financed purchase under Government

Accounting Standards Board (GASB) standards or a finance lease under Financial Accounting Standards Board (FASB) standards; and

- (2) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).
 - b. For purpose of this Part, capital assets do not include intangible right-to-use assets (per GASB) and right-to-use operating lease assets (per FASB). For example, assets capitalized that recognize a lessee's right to control the use of property and/or equipment for a time under a lease contract. See also §200.465.
15. Claim. See 2 CFR 1108.80.
 16. Cognizant Agency for Indirect Costs. - **RESERVED**
 17. Contract. See 2 CFR 1108.90.
 18. Contractor. See 2 CFR 1108.105.
 19. Cooperative Agreement. See 2 CFR 1108.110.
 20. Co-Principal Investigator. RESERVED – Not Applicable.
 21. Cost Allocation Plan. See 2 CFR 1108.120.
 22. Cost Sharing or Matching. See 2 CFR 1108.125.
 23. Cost-Type Contract. See 2 CFR 1108.130.
 24. Cost-Type Subaward. See 2 CFR 1108.35.
 25. Debarment. See 2 CFR 1108.140.
 26. Debt. See 2 CFR 1108.145.
 27. Delinquent Debt. See 2 CFR 1108.150.
 28. Development. RESERVED – Not Applicable.
 29. Direct Costs. See 2 CFR 1108.160.
 30. DoD Components. See 2 CFR 1108.165.

The Office of the Secretary of Defense; the Military Departments; the National Guard Bureau; and all Defense Agencies, DoD Field Activities, and other organizational entities within the DoD that are authorized to award or administer grants, cooperative agreements, and other non-procurement instruments.

31. Equipment. See 2 CFR 1108.170, See also 2 CFR 200.313.
32. Exempt Property. See 2 CFR 1108.175.
33. Expenditures. See 2 CFR 1108.180.
34. Federal Interest.

Federal Interest means, in relation to real property, equipment, or supplies acquired or improved under an award or subaward, the dollar amount that is the product of the:

- (1) Federal share of total project costs.
- (2) The percentage of federal participation in the total costs of the real property, equipment, or supplies.
- (3) Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.

35. Federal Share. See 2 CFR 1108.190.
36. Fixed Amount Subaward. See 2 CFR 1108.200.
37. Foreign Organization. See 2 CFR 1108.205.
38. Foreign Public Entity. See 2 CFR 1108.210.
39. Grant. See 2 CFR 1108.215.
40. Grants Officer. See 2 CFR 1108.220.
41. Indian Tribe. See 2 CFR 1108.225.
42. Indirect Costs (also known as “Facilities and Administrative,” or F&A, costs).
RESERVED – Not currently applicable to NGB - See CPP Guidance in Subdivision D of this document.
43. Institution Of Higher Education. See 2 CFR 1108.235.
44. Intangible Property. See 2 CFR 1108.240.
45. Local Government. See 2 CFR 1108.245.
46. Management Decision. See 2 CFR 1108.250.
47. Nonprocurement Instrument. See 2 CFR 1108.255.

- 48. Nonprofit Organization. See 2 CFR 1108.260.
- 49. Obligation. See 2 CFR 1108.265.
- 50. Office Of Management and Budget. See 2 CFR 1108.270.
- 51. Outlays. See 2 CFR 1108.275.
- 52. Participant Support Costs. See 2 CFR 1108.280.
- 53. Period Of Performance. See 2 CFR 1108.285, See also Subdivision D.
- 54. Personal Property. See 2 CFR 1108.290.

Property other than real property. It may be tangible, having physical existence, or intangible, such as copyrights, patents, and securities.

- 55. Principal Investigator. See 2 CFR 1108.295, Also See Subdivision D.
- 56. Prior Approval. See 2 CFR 1108.298
- 57. Procurement Contract. See 2 CFR 1108.300.

Legal instrument which, consistent with 31 U.S.C. 6303, reflects a relationship between the Federal Government and a state, a local government, or other recipient when the principal purpose of the instrument is to acquire property or services for the direct benefit or use of the Federal Government. A procurement contract is a prime-tier transaction and therefore distinct from a recipient's or subrecipient's "procurement transaction" or "contract" as defined in this part.

- 58. Procurement Transaction. See 2 CFR 1108.2305.

Legal instrument by which a recipient or subrecipient purchases property or services it needs to carry out the project or program under its award or subaward, respectively. A procurement transaction is distinct both from "subaward" and "procurement contract," as those terms are defined in this part.

- 59. Program Income. See 2 CFR 1108.310.
- 60. Project Costs. See 2 CFR 1108.315.
- 61. Property. See 2 CFR 1108.320.
- 62. Real Property. See 2 CFR 1108.325.
- 63. Recipient. See 2 CFR 1108.330.

An entity that receives an award directly from NGB. The term does not include

subrecipients.

64. Research. RESERVED – Not Applicable.

65. Simplified Acquisition Threshold. See 2 CFR 1108.340.

66. State. 2 CFR 1108.350, See also Subdivision D.

State for purposes of applying the administrative requirements in these regulations, means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

67. Subaward. 2 CFR 1108.355.

Legal instrument by which a recipient or subrecipient at any tier, transfers--for performance by an entity at the next lower tier--a portion of the substantive program for which the DoD Component (NGB) made an award.

68. Subrecipient. 2 CFR 1108.360.

An entity that receives a subaward.

69. Supplies. 2 CFR 1108.365.

70. Suspension. 2 CFR 1108.370.

Suspension means either:

- (1) When used in the context of a specific award or subaward, the temporary withdrawal of authority for the recipient or subrecipient to obligate funds under the award or subaward, pending it is taking corrective action or a decision to terminate the award or subaward.
- (2) When used in the context of an entity, an action by a DoD Component (NGB)'s suspending official under 2 CFR part 1125, DoD (NGB)'s regulation implementing OMB guidance on nonprocurement debarment and suspension in 2 CFR part 180, to immediately exclude the entity from participating in covered Federal Government transactions, pending completion of an investigation and any legal or debarment proceedings that ensue.

71. Termination. 2 CFR 1108.380.

The ending of an award or subaward, in whole or in part, at any time prior to the planned end of the period of performance. A lack of available funds is not a termination.

72. Third-Party In-Kind Contribution. 2 CFR 1108.385.

The value of a non-cash contribution (i.e., property or services) that:

- (1) A non-federal third party contributes, without charge, either to a recipient or subrecipient at any tier under NGB's award.
- (2) Is identified and included in the approved budget of NGB's award, as a contribution being used toward meeting the award's cost sharing or matching requirement (which includes voluntary committed, but not voluntary uncommitted, contributions).

73. Total Value. 2 CFR 1108.390.

74. Unique Entity Identifier. 2 CFR 1108.395.

The identifier required for System for Award Management registration to uniquely identify entities with which the Federal Government does business (formerly the Dun and Bradstreet Data Universal Numbering System, or DUNS number).

75. Unobligated Balance. 2 CFR 1108.400.

76. Voluntary (Committed or Uncommitted) Cost Sharing. 2 CFR 1108.405.

77. Working Capital Advance. 2 CFR 1108.410.

A payment method under which funds are advanced to a recipient or subrecipient to cover its estimated disbursement needs for a given initial period, after which payment is made by way of reimbursement.

SUBDIVISION B - General Terms and Conditions for Administrative Requirements

Part 1: Financial and Program Management (Articles from this part are designated with “FMS” in the article title)

FMS Article I. Financial Management System Standards.

Section A. System standard for States.

As a State, you must expend and account for funds under NGB CA awards in accordance with:

- a. Applicable State laws.
- b. To the extent they comply with the requirements of Section B of this article, your procedures for expending and accounting for your own state funds.

Section B. System Standards for all Recipients.

1. Your financial management system must provide for:
 - a. Inclusion, in your accounts, of the following information about each NGB grant or cooperative agreement that you receive:
 - (1) That you received the award from NGB.
 - (2) The number and title listed in the Assistance for NGB program under which the award was made.
 - (3) NGB CA award number.
 - (4) The year (your fiscal year) in which you received the award.
 - b. Accurate, current, and complete disclosure of the financial results of the award needed to comply with financial and programmatic reporting requirements that are specified in REP Articles I and II of these general terms and conditions, as supplemented by any award-specific terms and conditions of an NGB CA award concerning reporting requirements. If you are asked at any time under an award to report financial information on an accrual basis, you:
 - (1) Need not establish an accrual accounting system if you maintain your records on a different basis.

- (2) May develop the accrual data based on an analysis of the data you have on hand.
2. Records that identify adequately the sources of funds for all activities funded by an NGB CA award, including any required cost sharing or matching, and the application of those funds. This includes funding authorizations; your financial obligations and expenditures of the funds; unobligated balances; property and other assets under the award; program income; and interest.
3. Effective control over, and accountability for, all funds, property, and other assets under NGB CA awards. You must adequately safeguard all assets and assure they are used solely for authorized purposes (see Section C of this article for additional requirements concerning internal controls).
4. Comparison of expenditures under NGB CA awards for project or program purposes with amounts in the approved budget for those purposes.
5. RESERVED – Not Applicable.
6. Written procedures:
 - a. To implement requirements specified in FMS Article II, “Payments;”
 - b. For determining the allowability of costs, which for an NGB CA award are determined in accordance with FMS Article III, “Allowable costs, period of availability of funds, and fee or profit,” of these general terms and conditions, as supplemented by any award-specific terms and conditions of an NGB CA award that relate to allowability of costs.

Section C. Internal Controls.

Your system of internal controls must conform to OMB guidance in 2 CFR 200.303. With respect to paragraph (e) of 2 CFR 200.303, your internal control system must include measures to safeguard any information that federal statute, Executive order, or regulation requires to be protected (e.g., personally identifiable or export-controlled information), whether generated under the award or provided to you and identified as being subject to protection.

FMS Article II. Payments.

Section A. Awards to States.

1. If the award-specific terms and conditions of an NGB CA award do not identify it as an award subject to Subpart A of 31 CFR part 205 (Department of the Treasury regulations implementing the Cash Management Improvement Act), then a NGB CA award is subject to Subpart B of that part. Consistent with Subpart B of 31 CFR part 205.
2. **Payment Method, Timing, and Amounts** (see also Subdivision D). You must:

- a. Minimize the time between your receipt of a payment under an NGB CA award and your disbursement of those funds for project or program purposes.
 - b. Limit the amount of each payment request to the minimum amount you need to meet your actual, immediate cash requirements for carrying out the project or program.
 - c. Submit each advance payment request approximately 10 days before you anticipate disbursing the requested amount for project or program purposes, so that your receipt of the funds will be as close in time as is administratively feasible to your actual cash outlay for direct project or program costs and the proportionate share of any allowable indirect costs.
3. **Interest.** Unlike awards subject to Subpart A of 31 CFR part 205, neither you nor we will incur any interest liability due to a difference in timing between your receipt of payments under an NGB CA award and your disbursement of those funds for project or program purposes.

Section B. Awards to Institutions of Higher Education, Nonprofit Organizations, Local Governments, Indian Tribes, and For-profit entities.

1. **Payment method.** **RESERVED – Standard payment for NGB grants and cooperative agreements is by reimbursement. Advance allowable as per policy as described in Subdivision D of this document.**
2. **Amounts Requested.** You must:
 - a. Limit the amount of any advance payment request to the minimum amount needed to meet your actual, immediate cash requirements for carrying out the purpose of the approved project or program, including direct project costs and a proportionate share of any allowable indirect costs.
 - b. Exclude from any payment request amounts you are withholding from payments to contractors to assure satisfactory completion of the work. You may request those amounts when you make the payments to the contractors or to escrow accounts established to assure satisfactory completion of the work.
 - c. Exclude from any payment request amounts from any of the following sources that are available to you for project or program purposes under an NGB CA award: program income, including repayments to a revolving fund; rebates; refunds; contract settlements; audit recoveries; and interest earned on any of those funds. You must disburse those funds for project or program purposes before requesting additional funds from us.
3. **Timing of Requests.** For any advance payment you request, you should submit the request approximately 10 days before you anticipate disbursing the requested amount for project or program purposes. With time for agency processing of the request, that should result in payment as close as is administratively feasible to your actual

disbursements for project or program purposes.

4. **Frequency of Requests.** You may request payments as often as you wish unless you have been granted a waiver from requirements to receive payments by electronic funds transfer (EFT). If you have been granted a waiver from EFT requirements, the award-specific terms and conditions of an NGB CA award specify the frequency with which you may submit payment requests.

5. **Withholding of Payments.** We will withhold payments for allowable costs under the award at any time during the period of performance only if one or more of the following applies:

- a. We suspend either payments or the award, or disallow otherwise allowable costs, as a remedy under OAR Article III due to your failure to comply with federal statutes, regulations, or the terms and conditions of an NGB CA award. If we suspend payments and not the award, we will release withheld payments upon your subsequent compliance. If we suspend the award, then amounts of payments are subject to adjustment in accordance with the terms and conditions of OAR Article B.
- b. You are delinquent in a debt to the United States, in which case we may, after reasonable notice, inform you that we will not make any further payments for costs you incurred after a specified date until you correct the conditions or liquidate the indebtedness to the Federal Government.
- c. The award-specific terms and conditions include additional requirements that provide for withholding of payments based on conditions identified during our pre-award risk evaluation, in which case you should have been notified about the nature of those conditions and the actions needed to remove the additional requirements.

6. **Depository Requirements.**

a. There are no eligibility requirements for depositories you use for funds you receive under NGB CA awards.

b. You are not required to deposit funds you receive under NGB CA awards in a depository account separate from accounts in which you deposit other funds. However, FMS Article I requires that you be able to account for the receipt, obligation, and expenditure of all funds under NGB CA awards.

c. You must deposit any advance payments of funds you receive under NGB CA awards in insured accounts whenever possible and, unless any of the following apply, you must deposit them in interest-bearing accounts:

(1) You receive a total of less than \$250,000 per year under federal grants and cooperative agreements.

(2) You would not expect the best reasonably available interest-bearing account to earn interest in excess of \$500 per year on your cash balances of advance payments under federal grants and cooperative agreements.

- (3) The best reasonably available interest-bearing account would require you to maintain an average or minimum balance higher than it would be feasible for you to do within your expected federal and non-Federal cash balances.
 - (4) A foreign government or banking system precludes your use of interest-bearing accounts.
- d. You may retain for administrative expenses up to \$500 per year of interest that you earn in the aggregate on advance payments you receive under NGB CA awards and other federal grants and cooperative agreements. You must remit annually the rest of the interest to the Department of Health and Human Services, using the procedures set forth in OMB guidance in 2 CFR 200.305(b)(9).

Section C. Electronic Funds Transfer and other Payment Procedural Instructions or Information.

1. **Electronic Funds Transfer.** Unless the award-specific terms and conditions of NGB CA awards provide otherwise, you will receive payments under NGB CA awards by electronic funds transfer.
2. **RESERVED** – Not Applicable.

FMS Article III. Allowable Costs, Period of Availability of Funds, and Fee or Profit.

Section A. Allowable Costs.

1. This section, with the clarification provided in Section B, specifies which federal cost principles must be used in determining the allowability of costs charged to NGB CA awards, a subrecipient's costs charged to any cost-type subaward that you make under NGB CA awards, and a contractor's costs charged to any cost-type procurement transaction into which you enter under NGB CA awards. These cost principles also govern the allowable costs that you or a subrecipient of a subaward at any tier below NGB CA awards may consider when establishing the amount of any fixed-amount subaward or fixed-price procurement transaction at the next lower tier. The set of cost principles to be used in each case depends on the type of entity incurring the cost under the award, subaward, or contract.
2. **General Case.** If you, your subrecipient, or your contractor is:
 - a. **An Institution of Higher Education**, the allowability of costs must be determined in accordance with provisions of Subpart E of OMB guidance in 2 CFR part 200 other than 2 CFR 200.400(g), supplemented by appendix III to that part.
 - b. **A Hospital**, the allowability of costs must be determined in accordance with provisions of appendix IX to 2 CFR part 200, which currently specifies the cost principles in appendix IX to 45 CFR part 75 as the applicable cost principles.

- c. **A Nonprofit Organization other than a Hospital or Institution of Higher Education**, the allowability of costs must be determined in accordance with provisions of Subpart E of OMB guidance in 2 CFR part 200 other than 2 CFR 200.400(g), supplemented by appendices IV and VIII to that part. In accordance with guidance in 2 CFR 200.401(c), a nonprofit organization listed in appendix VIII to 2 CFR part 200 is subject to the cost principles for for-profit entities specified in paragraph 1.e of this section.
- d. **A State, Local Government, or Indian Tribe**, the allowability of costs must be determined in accordance with applicable provisions of Subpart E of OMB guidance in 2 CFR part 200 other than 2 CFR 200.400(g), supplemented by appendices V through VII to that part.
- e. **A for-Profit Entity (Other Than a Hospital) or a Nonprofit Organization Listed in Appendix VIII To 2 CFR Part 200:**
 - (1) The allowability of costs must be determined in accordance with:
 - (a) The cost principles for commercial organizations in the Federal Acquisition Regulation (FAR) at Subpart 31.2 of 48 CFR part 31, as supplemented by provisions of the Defense Federal Acquisition Regulation Supplement (DFARS) at Subpart 231.2 of 48 CFR part 231.
 - (b) For a for-profit entity, the additional provisions on allowability of audit costs, in 32 CFR 34.16(f).
 - (2) The indirect cost rate to use in that determination is:
 - (a) The for-profit entity's federally negotiated indirect cost rate if it has one.
 - (b) Subject to negotiation between you and the for-profit entity if it does not have a federally negotiated indirect cost rate. The rate that you negotiate may provide for reimbursement only of costs that are allowable in accordance with the cost principles specified in paragraph A.1.e.(1) of this article.
- 3. **Exception.** You may use your own cost principles in determining the allowability of a contractor's costs charged to a cost-type procurement transaction under NGB CA awards—or in pricing for a fixed-price contract based on estimated costs if your cost principles comply with the federal cost principles that paragraph A.1 of this section identifies as applicable to the contractor.

**Section B. Clarifications Concerning Charges for Professional Journal Publications.
RESERVED – Not Applicable.**

Section C. Period of Availability of Funds.

- 1. You may charge to NGB CA awards only:

- a. Allowable costs incurred during the period of performance specified in NGB CA awards, including any subsequent modifications to it.
 - b. Any pre-award costs that you are authorized (by either the terms and conditions of FMS Article IV or NGB awarding official) to incur prior to the start of the period of performance, at your own risk, for purposes of the project or program under NGB CA awards.
2. Costs of publishing in professional journals incurred after the period of performance, as permitted under 2 CFR 200.461(b)(3), if:
 - a. We receive the request for payment for such costs no later than the date on which REP Article II requires you to submit the final financial report to us (or, if we grant your request for an extension of the due date, that later date on which the report is due).
 - b. Your reported expenditures on the final financial report include the amount you disbursed for those costs.

Section D. Fee or Profit.

1. You may not receive any fee or profit under NGB CA awards.
2. You may not use funds available to you under NGB CA awards to pay fee or profit for an entity of any type to which you make a subaward.
3. You may pay fee or profit to an entity with which you enter into a procurement transaction to purchase goods or general support services for your use in carrying out the project or program under the award.

FMS Article IV. Revision of Budget and Program Plans.

Section A. Approved Budget.

The approved budget of NGB CA awards:

- a. Is the most recent version of the budget that you submitted, and we approved (either at the time of the initial award or a more recent modification), to summarize planned expenditures for the project or program.
- b. Includes all federal funding that we make available to you under NGB CA awards to use for project or program purposes and any cost sharing or matching that you are required to provide under NGB CA awards for those same purposes.

Section B. Revisions Requiring Prior Approval.

1. **Non-Construction Activities.** You must request prior approval from us for any of the following program or budget revisions in non-construction activities:
 - a. A change in the scope or objective of the project or program under NGB CA awards, even if there is no associated budget revision that requires our prior approval.
 - b. A change in a key person identified in the award cover pages.
 - c. The approved principal investigator's or project director's disengagement from the project for more than three months, or a 25 percent reduction in his or her time devoted to the project.
 - d. The inclusion of direct costs that require prior approval in accordance with the applicable cost principles, as identified in FMS Article III.
 - e. RESERVED – Only applicable if provided in DoD Component addendum to these terms and conditions.
 - f. A subaward to another entity under which it will perform a portion of the substantive project or program under the award if it was not included in the approved budget. This does not apply to your contracts for acquisition of supplies, equipment, or general support services you need to carry out the program.
 - g. Any change in the cost sharing or matching you provide under the award, as included in the approved budget, for which FMS Article VI requires prior approval.
 - h. RESERVED – Not Applicable.
 - i. The need arises for additional federal funds to complete the project or program.
2. **Construction Activities.** You must request prior approval from us for any of the following program or budget revisions in construction activities:
 - a. A change in the scope or objective of the project or program under NGB CA awards, even if there is no associated budget revision that requires our prior approval.
 - b. The need arises for additional federal funds to complete the project.
 - c. The inclusion of direct costs that require prior approval in accordance with the applicable cost principles, as identified in FMS Article III.
3. Funding transfers between construction and non-construction activities. Only applicable if provided in DoD Component addendum to these terms and conditions.

Section C. Pre-Award Costs.

1. You are authorized, without requesting prior approval from us, to:

Charge to NGB CA awards after you receive it, pre-award costs that you incurred, at your own risk, up to 90 calendar days before the start date of the period of performance, if they are costs that would be allowable charges to the project or program under the terms and conditions of FMS Article III if they were incurred during the period of performance. Expenses more than 90 calendar days pre-award require prior approval of the Federal awarding agency.

2. **RESERVED – RESERVED - Only applicable if provided in award-specific terms and conditions.**
3. **RESERVED – RESERVED - Only applicable if provided in award-specific terms and conditions.**

Section D. Procedures.

1. We will review each request you submit for prior approval for a budget or program change and, within 30 calendar days of our receipt of your request, we will respond to you in writing to either:
 - a. Notify you whether your request is approved; or
 - b. Inform you that we still are considering the request, in which case we will let you know when you may expect our decision.
2. RESERVED – Not Applicable.

FMS Article V. Non-Federal Audits.

Section A. Requirements for Entities Subject to the Single Audit Act.

You and each subrecipient under NGB CA awards that is an institution of higher education, nonprofit organization, state, local government, or Indian tribe must comply with the audit requirements specified in Subpart F of 2 CFR part 200, which is the OMB implementation of the Single Audit Act, as amended (31 U.S.C. chapter 75).

Section B. Requirements for For-Profit Entities.

Any for-profit entity that receives an award or subaward from you under NGB CA awards is subject to the audit requirements specified in 32 CFR 34.16. In accordance with the Class Deviation for the Single Audit Act for For-Profit Assistance Awards, dated 29 June 2018, the audit requirement threshold has been increased to \$750,000. Your subaward terms and conditions will require the subrecipient to provide the reports to you if it is willing to do so, so that you can resolve audit findings that pertain specifically to your subaward (e. g., disallowance of costs). If the for-profit entity is

unwilling to agree to provide the auditor's report to you, contact the grants officer for NGB CA award to discuss an alternative approach for carrying out audit oversight of the subaward. If the grants officer does not provide an alternative approach within 30 days of receiving your request, you may determine an approach to ensure the for-profit subrecipient's compliance with the subaward terms and conditions, as described in OMB guidance at 2 CFR 200.501(h).

FMS Article VI. Cost Sharing or Matching.

Section A. Required Cost Sharing or Matching.

1. If any cost sharing or matching is required under NGB CA awards, the total amount or percentage required is shown in the award cover pages and included in the approved budget. That cost sharing or matching includes all:
 - a. Cash and third-party in-kind contributions.
 - b. Contributions to the project or program made either by or through (if made by a third party) you and any subrecipients.
2. You must obtain our prior approval if you wish to:
 - a. Change the amount or percentage of cost sharing or matching required under NGB CA awards.
 - b. **RESERVED –Only applicable if provided in award-specific terms and conditions.**

Section B. Allowability as Cost Sharing or Matching.

1. Each cash or third-party in-kind contribution toward any cost sharing or matching required under NGB CA awards, whether put forward by you or a subrecipient under a subaward that you make, is allowable as cost sharing or matching if:
 - a. You (or the subrecipient, if it is a subrecipient contribution) maintain records from which one may verify that the contribution was made to the project or program and, if it is a third-party in-kind contribution, its value.
 - b. The contribution is not counted as cost sharing or matching for any other federal award.
2. The contribution is:
 - a. Allowable under the cost principles applicable to you (or the subrecipient, if it is a subrecipient contribution) under FMS Article III of these terms and conditions.

- b. Allocable to the project or program and reasonable.
- c. The Federal Government does not pay for the contribution through another federal award, unless that award is under a program that has a federal statute authorizing application of that program's federal funds to other federal programs' cost sharing or matching requirements.
- d. The value of the contribution is not reimbursed by the federal share of NGB CA awards as either a direct or indirect cost.
- e. The contribution conforms to the other terms and conditions of NGB CA awards, including the award specific terms and conditions.

Section C. Allowability of Unrecovered Indirect Costs as Cost Sharing or Matching. Not currently applicable to NGB - See CPP Guidance in Subdivision D of this document.

Section D. Allowability of Program Income as Cost Sharing or Matching.

If FMS Article VII of these general terms and conditions or the award-specific terms and conditions of NGB CA awards specify that you are to use some or all of the program income you earn to meet cost-sharing or matching requirements under the award, then program income is allowable as cost sharing or matching to the extent specified in those award terms and conditions.

Section E. Valuation of Services or Property That You or Subrecipients Contribute or Donate.

1. You must establish values for services or property contributed or donated toward cost sharing or matching by you or subrecipients in accordance with the provisions of this section. These contributions or donations are distinct from third-party contributions or donations to you or subrecipients, which are addressed in Section F of this article.
2. Usual valuation of services or property that you or subrecipients contribute or donate. Values established for contributions of services or property by you or a subrecipient must be the amounts allowable in accordance with the cost principles applicable to the entity making the contribution (i.e., you or the subrecipient), as identified in FMS Article III. For property, that generally is depreciation.
3. Needed approvals for, and valuation of, property that you or subrecipients donate.

a. Types of Property That May Be Donated.

- (1) **Buildings or Land.** If the purposes of NGB CA award includes construction, facilities acquisition, or long-term use of real property, you may donate buildings or land to the project if you obtain our prior approval. Donation of property to the project, as described in PROP Article I, means counting the value of the property toward cost sharing or matching, rather than charging depreciation.

- (2) **Other Capital Assets.** If you obtain our prior approval, you may donate to the project other capital assets identified in 2 CFR 200.439(b)(1) through (3).
- b. **Usual Valuation of Donated Property.** Unless you obtain our approval as described in section E.2.c of this article, the value for the donated property must be the lesser of:
 - (1) The value of the remaining life of the property recorded in your accounting records at the time of donation, or
 - (2) The current fair market value.
- c. **Approval Needed for Alternative Valuation of Property.** If you obtain our approval as reflected in the approved budget, you may count as cost sharing or matching the current fair market value of the donated property even if it exceeds the value of the remaining life of the property recorded in your accounting records at the time of donation.
- d. **Federal Interest in Donated Property.** Donating buildings, land, or other property to the project, rather than charging depreciation, results in a federal interest in the property in accordance with PROP Article I of these terms and conditions.

Section F. Valuation of Third-Party In-Kind Contributions.

- 1. **General.** If a third party furnishes goods or services to you or subrecipients that are to be counted toward cost sharing or matching under NGB CA awards, the entity to which the third party furnishes the goods or services (i.e., you or a subrecipient) must document the fair market value of those in-kind contributions and, to the extent feasible, support those values using the same methods the entity uses internally.
- 2. **Valuation of Third-Party Services.** You must establish values for third-party volunteer services and services of third parties' employees furnished to you or subrecipients as follows:
 - a. **Volunteer Services.** Volunteer services furnished by third-party professional and technical personnel, consultants, and other skilled and unskilled labor must be valued in accordance with 2 CFR 200.306(e).
 - b. **Services of Third Parties' Employees.** When a third-party organization furnishes the services of its employees to you or a subrecipient, values for the contributions must be established in accordance with 2 CFR 200.306(f).
 - c. **Additional Requirement for Donations to Nonprofit Organizations.** For volunteer services or services of third parties' employees furnished to a nonprofit organization:
 - (1) OMB guidance in 2 CFR 200.434(e) also applies and may require the nonprofit

organization to allocate a proportionate share of its applicable indirect costs to the donated services.

- (2) The indirect costs that the nonprofit organization allocates to the donated services in that case must be considered project costs and may be either reimbursed under the award or counted toward required cost sharing or matching, but not both.

3. **Valuation of Third-Party Property.** You must establish values for third-party property furnished to you or subrecipients as follows:

a. **Supplies Donated by Third Parties.** When a third-party organization donates supplies (e.g., office, laboratory, workshop, or classroom supplies), the value that may be counted toward cost sharing or matching may not exceed the fair market value of the supplies at the time of donation.

b. **Equipment, Buildings, or Land Donated by Third Parties.**

- (1) The value of third-party donations of equipment, buildings, or land that may be counted toward cost sharing or matching when the third party transferred title to you or a subrecipient depends on the purpose of the award in accordance with the following:

- (a) If one of the purposes of the award is to assist you or the subrecipient in the acquisition of equipment, buildings, or land, you may count the aggregate fair market value of the donated property toward cost sharing or matching.
- (b) If the award's purposes instead include only the support of activities that require the use of equipment, buildings, or land, you may only charge depreciation unless you obtain our prior approval to count as cost sharing or matching the fair market value of equipment or other capital assets and fair rental charges for land.

- (2) The values of the donated property must be determined in accordance with the usual accounting policies of the entity to which the third party transferred title to the property, with the qualifications specified in 2 CFR 200.306(i)(1) and (2) for donated land and buildings and donated equipment, respectively.

c. **Use of Space Donated by Third Parties.** If a third party makes space available for use by you or a subrecipient, the value that you may count toward cost sharing or matching may not exceed the fair rental value of comparable space as established by an independent appraisal, as described in 2 CFR 200.306(i)(3).

d. **Equipment Loaned by Third Parties.** If a third-party loans equipment for use by you or a subrecipient, the value that you may count toward cost sharing or matching may not exceed its fair rental value.

FMS Article VII. Program Income.

Section A. Definition. The term “program income” as used in NGB CA awards:

1. Is gross income that:
 - a. You earn that is directly generated by a supported activity or earned as a result of NGB CA awards; or
 - b. A subrecipient earns as a result of a subaward you make under NGB CA awards.
2. Includes, but is not limited to, income earned under NGB CA awards from:
 - a. Fees for services performed.
 - b. The use or rental of real or personal property acquired under any federal award and currently administered under NGB CA awards.
 - c. The sale of commodities or items fabricated under NGB CA awards.
 - d. License fees and royalties on patents and copyrights.
 - e. Payments of principal and interest on loans made with federal award funds.
3. Does not include for purposes of NGB CA awards any:
 - a. Interest earned on advance payments, disposition of which is addressed in FMS Article II.
 - b. Proceeds from the sale of real property, equipment, or supplies, which is addressed in PROP Articles III and IV.
 - c. Rebates, credits, discounts, and interest earned on any of them.
 - d. Governmental revenues, including any taxes, special assessments, levies, fines, and similar revenues you raise.

Section B. Encouragement to Earn Program Income.

You are encouraged to earn program income under NGB CA awards when doing so does not interfere with the project or program the award supports.

Section C. Costs of Generating Program Income.

You may deduct costs incidental to the generation of program income from the amount that you use in accordance with Section E of this Article, if those costs are not charged to NGB CA awards (which includes their being counted toward any cost sharing or matching you are required to provide).

Section D. License Fees and Royalties.

You have no obligations to the Federal Government with respect to program income earned under NGB CA awards from license fees and royalties for patents or patent applications, copyrights, trademarks, or inventions developed or produced under the award.

Section E. Use of Program Income.

1. You must use any program income that you earn during the period of performance under NGB CA awards to increase the amount of the award (the sum of the federal share and any cost sharing or matching you are required to provide), thereby increasing the amount budgeted for the project or program. The program income must be used for the purposes and under the terms and conditions of the award.
2. Your use of the additional funding is subject to the terms and conditions of NGB CA awards, including:
 - a. FMS Article II concerning your use of balances of program income before you request additional funds from us.
 - b. FMS Article III concerning allowability of costs for which the funds may be used.
3. You must report on each Federal Financial Report (SF-425) that you submit in accordance with REP Article II the program income that you earn and any that you use during the reporting period covered by that SF-425.

Section F. Duration of Accountability for Program Income.

The requirements concerning disposition of program income in Section E of this Article apply only to program income you or your subrecipients earn during the period of performance. There are no requirements under NGB CA awards applicable to program income you or your subrecipients earn after the end of the period of performance.

Part 2: Property Administration (Articles from this part are designated with “PROP” in the article title)

PROP Article I. Title to Property.

Section A. Title to Property Acquired under NGB CA Awards.

1. **General.** Other than any property identified in section A.2 of this section as exempt property:
 - a. Title to real property, equipment, and supplies that you acquire (whether by

purchase, construction or fabrication, development, or otherwise) and charge as direct project costs under NGB CA awards vests in you, the recipient. Title to intangible property that you acquire (other than by developing or producing it) under NGB CA awards also vests in you.

- b. That title is a conditional title, subject to the terms and conditions in PROP Articles II-IV, Section D of PROP Article VI, and REP Article III of NGB CA awards.
- c. There is a federal interest in the property, other than intangible property that you develop or produce under the award. For real property, equipment, and intangible property, we retain this federal interest until final disposition of the property under PROP Article III (for real property), PROP Article IV (for equipment), or Section D of PROP Article VI (for intangible property that is acquired, other than by developing or producing it), a period that in some cases may extend beyond closeout of NGB CA awards.

2. Exempt property. RESERVED – Not Applicable.

Section B. Property Trust Relationship.

1. **Basic Requirement.** Other than intangible property that you develop or produce under the award, you hold any real property, equipment, or intangible property that you acquire or improve under NGB CA awards in trust for the beneficiaries of the project or program that you are carrying out under the award.
2. **Notices of Record. RESERVED - Only applicable if provided in award-specific terms and conditions.**

Section C. Federally Owned Property.

Title to any federally owned property that we provide to you under NGB CA awards (or such property for which accountability is transferred to NGB CA awards from another federal award) remains with the Federal Government.

Section D. Federal Interest in Donated Real Property or Equipment.

If real property or equipment is acquired under NGB CA awards through your donation of the property to the project or program (i.e., counting the value of the remaining life of the property recorded in your accounting records or the fair market value as permitted under FMS Article VI of these general terms and conditions as part of your share of project costs to meet any cost sharing or matching requirements, rather than charging depreciation):

- a. The Government acquires a federal interest in the real property or equipment that is donated for use in the project or program.
- b. The real property or equipment is subject to Section B of this article and the terms and conditions of PROP Articles II-IV and REP Article III that are applicable to property acquired under the award.

- c. The federal interest in the real property or equipment must be addressed at the time of property disposition.

Section E. Federal Interest in Property Improved under the Award.

1. The Federal Government has an interest in improvements (as distinct from ordinary repairs and maintenance) you make to an item of real property or equipment if you charge the costs of the improvements as direct costs to NGB CA award.
2. We thereby acquire an interest in the property if the Federal Government did not previously have one. If the Federal Government already had an interest in the property, the value of that federal interest in the property increases by the amount of the federal interest in the improvements.
3. The property is subject to Section B of this article and the terms and conditions of PROP Articles II-IV and REP Article III that are applicable to real property or equipment acquired under the award.
4. The federal interest must be addressed at the time of property disposition.

PROP Article II. Property Management System.

Section A. Insurance Coverage for Real Property and Equipment.

You must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved under NGB CA awards as you provide for real property and equipment that you own.

Section B. Other Management System Standards for a State.

1. **Equipment.** Your property management system for equipment acquired or improved in whole or in part under an NGB CA award must be in accordance with your state laws and procedures.
2. **Federally Owned Property.** You may use your own property management system for any federally owned property for which you are accountable, if it meets the following minimum standards:
 - a. **Records.** Your records must include for each item of federally owned property:
 - (1) A description of the item.
 - (2) The location of the item.
 - (3) The serial or other identification number.
 - (4) Which federal agency holds title.

- (5) The date you received the item.
 - (6) Any data on the ultimate disposition of the item, such as the date of disposal.
 - (7) The federal award identification number of the award under which you are accountable for the item.
- b. **Inventory.** You must take a physical inventory of federally owned property at least annually and reconcile the results with your records.
- c. **Control System.** You must:
- (1) Maintain an internal property control system with adequate safeguards to prevent loss, damage, or theft of federally owned property.
 - (2) Investigate any loss, damage, or theft of federally owned property and promptly notify the award administration office.
- d. **Maintenance.** You must maintain the property in good condition.

Section C. Other Management System Standards for an Institution of Higher Education, Nonprofit Organization, Local Government, Indian Tribe, For-profit entity.

1. Your procedures for managing equipment (including replacement equipment) acquired or improved in whole or in part under NGB CA awards and any federally owned property for which you are accountable under NGB CA awards must, as a minimum, meet the requirements in this section.
2. **Records.** You must maintain records that include for each item of equipment or federally owned property:
 - a. A description of the item.
 - b. The serial or other identification number.
 - c. Who holds title (e.g., you or the Federal Government and, if the latter, which federal agency).
 - d. The source of funding for the equipment, including the award number, or the source of the federally owned property, including the award number of the award under which you are accountable for the property.
 - e. The acquisition date and cost of the equipment (or improvement to the equipment) or the date you received the federally owned property.
 - f. The location, use, and condition of the equipment or federally owned property.

- g. Information from which one can calculate the amount of the federal interest in the acquisition or improvement of the item (this amount is zero after you compensate us for the federal interest in the item or improvement).
 - h. Any data on the ultimate disposition of the item including the date of disposal and sale price.
3. **Labelling.** You must ensure that property owned by the Federal Government is labeled to identify it as federally owned property.
 4. **Inventory.** You must take a physical inventory of equipment in which there is a federal interest and reconcile the results with your records at least once every 2 years.
 5. **Control system.** You must:
 - a. Maintain an internal property control system with adequate safeguards to prevent loss, damage, or theft of equipment and federally owned property.
 - b. Investigate any loss, damage, or theft and notify the award administration office if it involved equipment in which there is a federal interest under the award or federally owned property.
 6. **Maintenance.** You must maintain equipment acquired or improved in whole or in part under the award and federally owned property in good condition.

PROP Article III. Use and Disposition of Real Property.

Section A. Use of Real Property.

1. You must use real property acquired or improved under NGB CA awards for the originally authorized purpose if needed for that purpose. During that time, you may not:
 - a. Dispose of the property except, with the prior approval of the award administration office, to acquire replacement property under NGB CA awards, in which case you may use the proceeds from the disposition as an offset to the cost of the replacement property; or
 - b. Encumber the title or other interests in the property without the prior approval of the award administration office.
2. RESERVED – Not Applicable.
3. RESERVED – Not Applicable.

Section B. Disposition of Real Property.

1. When you no longer need real property for the originally authorized purpose, you must

obtain disposition instructions from the award administration office except as provided in any section A.3 of this article. Those instructions will provide for one of the following three alternatives, which are that you:

- a. Retain title after compensating us for the federal interest in the property, which is to be computed as specified in the definition of “federal interest.”
 - b. Sell the property and compensate us for the federal interest in the property, as described in 2 CFR 200.311(c)(2).
2. Transfer title to us or a third party we designate, as described in 2 CFR 200.311(c)(3).

PROP Article IV. Use and Disposition of Equipment and Supplies.

Section A. Property Subject to This Article.

This article specifies requirements for use and disposition of equipment and supplies. If a provision of PROP Article I of these general terms and conditions and NGB CA award identifies any type of equipment or supplies as exempt property, requirements of this Article apply to that exempt property only to the extent specified in that provision of PROP Article I or an award-specific term or condition. The types of non-exempt property to which this article applies are:

- a. Supplies that you acquire either by purchase or by donation as cost sharing or matching under an NGB CA award.
- b. Equipment for which title is vested conditionally in you. That includes equipment with a conditional title resulting from your having, either under an NGB CA award or under a previous award from which you transferred accountability for the equipment to an NGB CA award:
 - (1) Directly charged as project costs, in whole or in part, the acquisition (by purchase, construction or fabrication, or development) of equipment,
 - (2) Donated the equipment to the project or program by counting the value of the remaining life of the property recorded in your accounting records or the fair market value toward any cost sharing or matching requirements under the award, rather than charging depreciation (see PROP Article I, Section D); or
 - (3) Directly charged as project costs improvements to the equipment that meet the criteria given in section E.1 of PROP Article I.

Section B. Requirements for a State’s Use and Disposition of Equipment.

- a. You must use the equipment for the authorized purposes of the project or program during the period of performance, or until the property is no longer needed for those purposes.

- b. You may not encumber the property without the prior approval of the award administration office.
- c. You must use and dispose of the equipment in accordance with your state laws and procedures.

Section C. Use of Equipment by an Institution of Higher Education, Nonprofit Organization, Local Government, Indian Tribe, or For-profit Entity.

1. You must use the equipment for the authorized purposes of the project or program under an NGB CA award until the equipment is no longer needed for those purposes, whether the project or program continues to be supported by NGB CA awards.
2. You may not encumber the equipment without the prior approval of the award administration office.
3. During the time that the equipment is used for the project or program under an NGB CA award:
 - a. You must make the equipment available for use on other projects or programs but only if that use will not interfere with the equipment's use as needed for the project or program supported by NGB CA award.
 - (1) First preference must be given to other projects or programs supported or previously supported by NGB and second preference to those supported or previously supported by other federal agencies.
 - (2) Third preference is for other projects or programs not supported by the Federal Government. You should charge user fees for use of the equipment in those cases if it is at all practicable.
 - b. You may use the equipment, if you need to acquire replacement equipment, as a trade-in or sell it (using sales procedures designed to ensure the highest possible return) and use the proceeds from the sale to offset the cost of the replacement equipment.
4. When the equipment is no longer needed for the project or program under an NGB CA award, you may defer final disposition of the equipment and continue to use it on other federally sponsored projects or programs. You must give priority to other projects or programs supported by NGB.
5. Notwithstanding the encouragement in FMS Article VII to earn program income, you may not use equipment in which there currently is a federal interest--whether you acquired it under an NGB CA award or are otherwise accountable for it under an NGB CA award--to provide services for a fee that is less than private companies charge for equivalent services.

Section D. Disposition of Equipment by an Institution of Higher Education, Nonprofit Organization, Local Government, Indian Tribe, or For-profit Entity.

1. You must request disposition instructions from the award administration office when either original or replacement equipment acquired under an NGB CA award with a current fair market value that exceeds \$5,000 is no longer needed for the original project or program or for other federally sponsored activities as described in Section C.4. of this article. For each item of equipment with a current fair market value of \$5,000 or less, you may retain, sell, or otherwise dispose of the item with no further obligation to the Federal Government.
2. We may issue disposition instructions that:
 - a. Allow you to retain or sell any item of equipment after compensating us for the federal interest in the property, which is to be computed as specified in the definition of "federal interest;" or
 - b. Require you to transfer title to the equipment to a federal agency or a third-party, in which case you are entitled to compensation from us for the non-federal interest in the equipment, plus any reasonable shipping or interim storage costs incurred.
3. If we fail to provide disposition instructions for any item of equipment within 120 calendar days of receiving your request, you may retain or sell the equipment, but you must compensate us for the amount of the federal interest in the equipment.
4. If you sell the equipment:
 - a. You must use sales procedures designed to ensure the highest possible return.
 - b. You may deduct and retain for selling and handling expenses either \$500 or ten percent of the proceeds, whichever is less.

Section E. Use and Disposition of Supplies Acquired under NGB CA Awards.

1. **Use.** If we retain a federal interest in supplies acquired under an NGB CA award either by purchase or by donation as cost sharing or matching, you may not use the supplies to provide services to other organizations for a fee that is less than private companies charge for equivalent services, notwithstanding the encouragement in FMS Article VII to earn program income.
2. **Disposition.** If you have a residual inventory of unused supplies with aggregate value exceeding \$5,000 at the end of the period of performance under an NGB CA award, and the supplies are not needed for any other federal award, you may retain the supplies or sell them but must in either case compensate us for the amount of the federal interest in the supplies. You may deduct and retain for selling and handling expenses either \$500 or ten percent of the proceeds, whichever is less.

PROP Article V. Use and Disposition of Federally Owned Property.

Section A. Use.

During the time that federally owned property for which you are accountable under an NGB CA award is used for the project or program supported by the award, you:

- a. Also, may make the property available for use on other federally supported projects or programs, but only if that use will not interfere with the property's use for the project or program supported by NGB CA award. You must give priority to other projects or programs supported by DoD Components (NGB).
- b. May use the property for purposes other than federally supported projects or programs only with the prior approval of the awarding office or, if you request approval after the award is made, the award administration office.

Section B. Disposition.

You must request disposition instructions from the award administration office for any federally owned property under an NGB CA award, including any property for which a subrecipient is accountable under a subaward you make under an NGB CA award, either:

- a. At any time during the period of performance if the property is no longer needed for the project or program supported by NGB CA awards; or
- b. At the end of the period of performance.

PROP Article VI. Intangible Property.

Section A. Assertion of Copyright.

1. You may assert copyright in any work that is eligible for copyright protection if you acquire ownership of it under an NGB CA award, either by developing it or otherwise.
2. With respect to any work in which you assert copyright, as described in paragraph A.1 of this section, NGB reserves a royalty-free, nonexclusive, and irrevocable license to:
 - a. Reproduce, publish, or otherwise use the work for Federal Government purposes.
 - b. Authorize others to reproduce, publish, or otherwise use the work for Federal Government purposes.

Section B. Inventions Developed under the Award.

1. **Applicability of Governmentwide Clause for Research Awards.** You must comply with the governmentwide patent rights award clause at 37 CFR 401.14, with the

modifications described in section B.2 of this section. NGB adopts that Governmentwide clause for the following entities, thereby broadening the applicability beyond types of entities included in the definition of “contractor” in 37 CFR part 401:

Any institution of higher education, non-profit organization, state, local government, Indian tribe, for-profit entity, foreign organization, or foreign public entity receiving a NGB award for the performance of experimental, research, or developmental work.

2. **Modifications to the Wording of the Federal Governmentwide Clause.** NGB adopts the governmentwide clause at 37 CFR 401.14, as described in paragraph B.1 of this section, with the following modifications:

a. **Terminology.** Throughout the governmentwide award clause:

(1) Insert the terms “recipient” and “subrecipient (or contractor to the recipient or to a subrecipient)” to replace the terms “contractor” and “subcontractor,” respectively.

(2) Insert the terms “award” and “subaward (or contract under either the award or a subaward)” to replace the terms “contract” and “subcontract,” respectively.

b. **Final report.** Add a new subparagraph (f)(5) to read, “The recipient must submit a final report listing all subject inventions made under the award or stating that there were none. The final report is due 120 calendar days after the end date of the period of performance unless you request, and we grant an extension of the due date.”

c. **Broadening Applicability to all Entities.** Delete sections (g)(2) and (3) of the governmentwide clause, redesignate paragraph (g)(1) as paragraph (g), and delete the phrase “to be performed by a small business firm or domestic nonprofit organization” from paragraph (g) as redesignated.

Section C. Data Produced under the Award.

1. **Data in general.** The Federal Government has the right to:

a. Obtain, reproduce, publish, or otherwise use the data produced under NGB CA awards.

b. Authorize others to receive, reproduce, publish, or otherwise use the data produced under NGB CA awards for Federal Government purposes.

2. **Research Data Requested under the Freedom of Information Act (FOIA).**

a. If we receive a request under the FOIA for “research data” that are related to “published research findings” produced under NGB CA awards and that were “used by the Federal Government in developing an agency action that has the force and effect of law,” you must provide the data to us within a reasonable time after we

request it from you, so that the data can be made available to the public through procedures established under the FOIA.

- b. For purposes of the requirement in paragraph C.2.a of this section, 2 CFR 200.315(e) provides definitions of the phrases “published research findings,” “used by the Federal Government in developing an agency action that has the force and effect of law,” and “research data.”

Section D. Use and Disposition of Intangible Property Acquired, but not Developed or Produced, under the Award.

1. **Applicability.** This section applies to a patent, patent application, copyright, or other intangible property acquired, but not developed or produced, under NGB CA awards.
2. **Use.** You:
 - a. Must use the intangible property for the authorized purpose under NGB CA awards until the intangible property is no longer needed for that purpose, whether that purpose is still being supported by NGB CA awards.
 - b. May not encumber the intangible property without the prior approval of the award administration office.
3. **Disposition.** When the intangible property is no longer needed for the originally authorized purpose, you must contact the award administration office to arrange for disposition in accordance with the procedures specified for disposition of equipment in either Section B or D of PROP Article IV, as applicable.

Part 3: Procurement (Articles from this part are designated with “PROC” in the article title)

PROC Article I. Procurement Standards for States.

Section A. Use of State Procurement System.

Subject only to the conditions in Sections B through D of this article, you must use the same policies and procedures to procure supplies, equipment, real property, and services under NGB CA awards that you use when you procure those items for state purposes using non- federal funds.

Section B. Procurement of Recovered Materials.

You must comply with the Resource Conservation and Recovery Act requirements described in OMB guidance in 2 CFR 200.323.

Section C. Debarment and Suspension.

You must comply with restrictions on awarding procurement transactions to excluded or disqualified parties and other requirements specified by OMB guidelines on nonprocurement debarment and suspension at 2 CFR part 180, as implemented by NGB at 2 CFR part 1125.

Section D. Contract Provisions.

You must include provisions in your procurement transactions under NGB CA awards to require the contractors' compliance with the requirements specified in PROC Article III, as applicable.

PROC Article II. Procurement Standards for Institutions of Higher Education, Nonprofit Organizations, Local Governments, Indian Tribes, and For-profit Entities.

Section A. General Procurement Standards.

1. For procurement under NGB CA awards, you must comply with the OMB guidance in 2 CFR 200.318.
2. You must do business only with responsible contractors who are able to perform, as described in OMB guidance in 2 CFR 200.318(h). Related to that, you must comply with restrictions on awarding procurement transactions to excluded or disqualified parties and other requirements specified by OMB guidelines on nonprocurement debarment and suspension at 2 CFR part 180, as implemented by DoD (NGB as a Component) at 2 CFR part 1125.

Section B. Competition.

You must award procurement transactions NGB CA awards in accordance with the competition requirements described in OMB guidance in 2 CFR 200.319.

Section C. Procurement Methods.

You must award procurement transactions under NGB CA awards using methods described in OMB guidance in 2 CFR 200.320.

Section D. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

You must take the affirmative steps described in OMB guidance in 2 CFR 200.321 when awarding procurement transactions under NGB CA awards.

Section E. Contract Cost and Price.

When awarding a procurement transaction under NGB CA awards, you must follow the procedures related to cost and price that are described in OMB guidance in 2 CFR 200.324, using the applicable cost principles specified in FMS Article III.

Section F. Contract Provisions.

You must include provisions in your procurement transactions under NGB CA awards to require the contractors' compliance with the requirements of PROC Article III, as applicable.

Section G. Procurement of Recovered Materials.

If you are a political subdivision of a state, you must comply with the Resource Conservation and Recovery Act requirements described in OMB guidance in 2 CFR 200.323.

Section H. Review of Procurement Documents.

Upon our request, you must make available:

- a. Technical specifications on proposed procurement transactions, as described in 2 CFR 200.325(a).
- b. Pre-procurement documents for our review, as described in 2 CFR 200.325(b) unless you are exempt from that requirement under 2 CFR 200.325(c).

Section I. Domestic Preferences for Procurements.

As appropriate and to the extent consistent with law, you should, to the greatest extent practicable under NGB CA awards, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). This must be included in all subawards including all contracts and purchase orders for work or products under NGB CA awards.

Section J. Bonding Requirements. RESERVED - Only applicable if provided in award-specific terms and conditions.

PROC Article III. Contract Provisions for Recipient Procurements.

Section A. Contract Provisions for Administrative Requirements.

1. **Remedies.** In any contract under NGB CA awards for an amount more than the simplified acquisition threshold, you must provide for administrative, contractual, or legal remedies, including any appropriate sanctions and penalties, when the contractor violates or breaches the contract terms.

2. **Termination.** In any contract for an amount more than \$10,000, you must specify: conditions under which you may terminate the contract for cause or convenience; the procedures for termination; and the basis to be used for settlement.
3. **Allowable Costs under Cost-Type Contracts.** In any cost-type contract with an entity, you must include a clause to permit the entity to charge to the contract only costs that are allowable under the cost principles that FMS Article III identifies as applicable to that type of entity, as supplemented by any award-specific terms and conditions related to allowability of costs that are included in NGB CA awards. Your contract clause may permit the contractor to use its own cost principles in determining the allowability of its costs charged to the contract, if its cost principles comply with those federal cost principles supplemented by any award-specific terms and conditions of NGB CA awards.
4. **Rights in Copyright and Data.** You must include in each contract under NGB CA awards a provision requiring that the contractor:
 - a. Grant the Federal Government a royalty-free, nonexclusive, and irrevocable right to:
 - (1) Reproduce, publish, or otherwise use for federal purposes any work that is subject to copyright and that the contractor develops, or acquires ownership of, under NGB CA awards.
 - (2) Authorize others to reproduce, publish, or otherwise use such work for federal purposes.
 - b. Grant the Federal Government the right to:
 - (1) Obtain, reproduce, publish, or otherwise use data produced under NGB CA awards.
 - (2) Authorize others to receive, reproduce, publish, or otherwise use such data for federal purposes.
 - (3) Include the Federal Government rights described in subparagraphs 4.a. and 4.b. of this section in any subcontracts.
5. **Access to Records.**
 - a. In any negotiated, cost-type or time and materials contract for an amount more than the simplified acquisition threshold, you must provide for access to any of the contractor's books, documents, papers, and records that are directly pertinent to that contract, to enable and support audits, examinations, excerpts, and transcriptions. The contract provision must provide access to those records for all of the following and their duly authorized representatives:
 - (1) You.

(2) Us as the federal awarding agency, including our Inspector General.

(3) The Comptroller General of the United States.

b. In any audit services contract for performance of an audit required by the Single Audit Act, as implemented by OMB in Subpart F of 2 CFR part 200, you must provide for the access to audit documentation described in 2 CFR 200.517(b).

6. **Records Retention.**

a. In directly pertinent to that contract for 3 years after you make final payment, and all pending matters are closed.

b. In any audit services contract for performance of an audit required by the Single Audit Act, as implemented by OMB in Subpart F of 2 CFR part 200, you must provide for the retention any negotiated, cost-type or time and materials contract for an amount more than the simplified acquisition threshold, you must provide for retention of all records that are of audit documentation described in 2 CFR 200.517(a).

7. **Reporting.** In any contract awarded under NGB CA awards, you must include any provision for the contractor's reporting to you that may be needed for you to meet your requirements under NGB CA awards to report to us.

Section B. Contract Provisions for National Policy Requirements.

1. **Equal Employment Opportunity.** You must include the clause provided in 41 CFR 60-1.4(b) in any "federally assisted construction contract" (as defined in 41 CFR 60-1.3) under NGB CA Awards unless provisions of 41 CFR part 60-1 exempt the contract from the requirement.

2. **Wage Rate Requirements (Construction).** **RESERVED - Only applicable if provided in award-specific terms and conditions.**

3. **Copeland Act prohibition on Kickbacks.** **RESERVED - Only applicable if provided in award-specific terms and conditions.**

4. **Contract Work Hours and Safety Standards Act for Work Involving Mechanics or Laborers.** In each contract for an amount greater than \$100,000 that involves the employment of mechanics or laborers and is not a type of contract excepted under 40 U.S.C. 3701, you must include the clauses specified in Department of Labor (DoL) regulations at 29 CFR 5.5(b) to require use of wage standards that comply with the Contract Work Hours and Safety Standards Act (40 CFR, Subtitle II, Part A, Chapter 37), as implemented by the DoL at 29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction."

5. **Patents and Inventions.** If you procure the services of a nonprofit organization, small

business firm, or other entity for the performance of experimental, developmental or research work, you must include in the contract the clause prescribed in Section B of PROP Article VI to establish contractual requirements regarding subject inventions resulting from the contract and provide for Government rights in those inventions.

6. **Clean Air and Water Requirements.** You must:

- a. In each contract for an amount greater than \$150,000 under NGB CA awards, include a clause requiring the contractor to comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401-7671q), Federal Water Pollution Control Act (33 U.S.C. 1251-1387), and standards, orders, or regulations issued under those acts.
- b. Report any violations of the Acts, standards, orders, or regulations to both the award administration office and the appropriate regional office of the Environmental Protection Agency.

7. **Nonprocurement Suspension and Debarment.** Unless you have an alternate method for requiring the contractor's compliance, you must include a clause in each contract for an amount equal to or greater than \$25,000 and in each contract for federally required audit services to require the contractor to comply with OMB guidance on nonprocurement suspension and debarment in 2 CFR part 180, as implemented by NGB regulations at 2 CFR part 1125.

8. **Byrd Amendment Anti-Lobbying Requirements.** In each contract for an amount exceeding \$100,000, you must include a clause requiring the contractor to submit to you the certification and any disclosure forms regarding lobbying that are required under 31 U.S.C. 1352, as implemented by the DoD (NGB) at 32 CFR part 28.

9. **Purchase of Recovered Materials by States or Political Subdivisions of States.** In each contract under which the contractor may purchase items designated in Environmental Protection Agency (EPA) regulations in 40 CFR part 247, Subpart B, you must include a clause requiring the contractor to comply with applicable requirements in those EPA regulations, which implement section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962).

10. **Fly America Requirements.** In each contract under which funds provided under NGB CA awards might be used for international air travel for the transportation of people or property, you must include a clause requiring the contractor to:

- a. Comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118, also known as the "Fly America" Act), as implemented at 41 CFR 301-10.131 through 301-10.143. The law and regulations provide that U.S. Government-financed international air travel of passengers and transportation of personal effects or property must use a U.S. Flag air carrier or be performed under a cost-sharing arrangement with a U.S. carrier, if such service is available.

b. Include the requirements of the Fly America Act in all subcontracts that might involve international air transportation.

11. **Cargo preference for United States flag Vessels.** In each contract under which equipment, material, or commodities may be shipped by oceangoing vessels, you must include the clause specified in Department of Transportation regulations at 46 CFR 381.7(b) to require that at least 50 percent of equipment, materials or commodities purchased or otherwise obtained with federal funds under NGB CA awards, and transported by ocean vessel, be transported on privately owned U.S.-flag commercial vessels, if available.
12. **Prohibition on Using Funds under Grants and Cooperative Agreements with Entities that Require Certain Internal Confidentiality Agreements.** You must include the provision provided in Section B.1 of NP Article IV in Part 8 of these general terms and conditions in each contract under NGB CA awards.
13. **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** You must include the provision provided in Section A.18 of NP Article IV in Part 8 of these general terms and conditions in each contract under NGB CA awards.
14. **The Infrastructure Investment and Jobs Act (“IIJA”). Pub. L. No. 117-58, which includes the Build America, Buy America Act (“the Act”). Pub. L. No. 117-58, §§ 70901-52.**

The Act strengthens Made in America Laws and will bolster America’s industrial base, protect national security, and support high-paying jobs. The Act requires that the head of each Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”

Part 4: Reporting (Articles from this part are designated with “REP” in the article title)

REP Article I. Performance Management, Monitoring, And Reporting.

Section A. Required Reporting Form, Format, or Data Elements for Interim and Final Performance Reports. RESERVED - Language in award-specific terms and conditions.

Section B. Frequency, Reporting Periods, and Due Dates for Interim Performance Reports. RESERVED - Language in award-specific terms and conditions.

Section C. Due Date and Reporting Period for Final Performance Report.

1. **Due Date.** You must submit the final performance report NGB CA awards no later than 120 calendar days after the end date of the period of performance unless we approve an extension of that due date as described in Section D of this article.
2. **Reporting Period.** Final reports must be cumulative (i.e., each final report should cover the entire period of performance under the award and not just the period since the previous interim performance report).

Section D. Extensions of Due Dates.

You may request extensions of the due dates that Sections B and C of this Article specify for interim and final reports, respectively. You must provide the reasons for your request, and we will consider approving extensions that are adequately justified.

Section E. Reporting Significant Developments.

You must report the following information to us as soon as you become aware of it:

- a. Problems, delays, or adverse conditions that will materially impair your ability to meet the objectives of NGB CA awards. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
- b. Favorable developments which will enable you to meet schedules and objectives sooner or at less cost than anticipated or produce more or different beneficial results than originally planned.

Section F. Performance Reporting Procedures. RESERVED - Language in award-specific terms and conditions.

Section G. Site Visits.

We reserve the right to make site visits as warranted to monitor program performance under NGB CA awards.

REP Article II. Financial Reporting.

Section A. Required Reporting Form, Format, or Data Elements for Interim and Final Financial Reports. RESERVED - Language in award-specific terms and conditions.

Section B. Interim Financial Reports: Frequency, Reporting Periods, and Due Dates. RESERVED - Language in award-specific terms and conditions.

Section C. Final Financial Report.

You must submit the final financial report under NGB CA awards no later than 120 calendar days after the end date of the period of performance.

Section D. Extensions of Due Dates.

You may request extensions of the due dates that Sections B and C of this Article specify for interim and final reports, respectively. You must provide the reasons for your request, and we will consider approving extensions that are adequately justified.

Section E. Where and How to Submit Financial Reports. RESERVED - Language in award-specific terms and conditions.

REP Article III. Reporting on Property.

Section A. Real Property.

1. Sections A.1 through A.4 apply to real property for which you are accountable under NGB CA awards, for as long as there is a federal interest in the property (whether that interest is due to you or a subrecipient having acquired or improved the property under NGB CA awards, or a transfer of the accountability for the property to NGB CA awards from another award).
2. **Periodic status reports.** You must submit periodic status reports, as follows:
 - a. Frequency and duration of reporting requirement. **RESERVED - Language in award-specific terms and conditions.**
 - b. Due dates. **RESERVED - Language in award-specific terms and conditions.**
 - c. Other submission instructions. **RESERVED - Language in award-specific terms and conditions.**
3. **Notifications of Critical Changes.** You must notify the award administration office of any critical change in the status of real property as soon as feasible after you become aware of it. A critical change is any event with a significant adverse impact on the condition or value of the property, such as damage due to fire; flood, hurricane, or other severe weather; earthquake; or accident.
4. **Requests for Disposition Instructions.** You must comply with applicable requirements in PROP Article III to request disposition instructions, either during the period of performance or at closeout.
5. **Closeout Accounting.** You must account to the award administration office for real property at the time of closeout of the award, as required by Section D of OAR Article VI.

Section B. Equipment and Supplies.

1. Section B.1 through B.4 apply to equipment or supplies for which you are accountable under NGB CA awards and in which there is a federal interest (whether that interest is due to you or a subrecipient having acquired or improved the property under NGB CA awards, or a transfer of the accountability for the property to NGB CA awards from another award).
2. **Periodic Status Report.** There is no requirement for periodic reporting during the period of performance.
3. **Notifications of Loss, Damage, or Theft.** You must comply with applicable requirements in PROP Article II governing your property management system to promptly notify the award administration office of any loss, damage, or theft of equipment.
4. **Requests for Disposition Instructions.** You must comply with applicable requirements in PROP Article IV to request disposition instructions for equipment, either during the period of performance or at closeout.
5. **Closeout Accounting.**
 - a. **Equipment.** You must account to the award administration office for equipment at the time of closeout of NGB CA awards, as required by Section D of OAR Article VI.
 - b. **Supplies.** If you have a residual inventory of unused supplies that meets the criteria specified in Section E.2 of PROP Article IV, you must as part of your closeout accounting arrange with the award administration office for the compensation that paragraph specifies for the federal interest in the supplies.

Section C. Federally Owned Property.

1. Sections C.1 through C.4 apply to federally owned property for which you are accountable under NGB CA awards.
2. **Annual Inventory.** You must submit annually to the award administration office an inventory of federally owned property.
3. **Notifications of loss, Damage, or Theft.** As provided in PROP Article II governing your property management system, you must promptly notify the award administration office of any loss, damage, or theft of federally owned property.
4. **Requests for Disposition Instructions.** You must comply with requirements in Section B of PROP Article V to request disposition instructions, either during the period of performance or at closeout.
5. **Closeout Accounting.** Your requests for disposition instructions for federally owned property, as described in paragraph C.4 of this section, satisfy the need to account for federally owned property at closeout (see Section D of OAR Article VI).

Section D. Intangible Property.

1. Sections D.1 through D.3 apply to intangible property for which you are accountable under NGB CA awards.
2. **Inventions Developed under the Award.** You must submit all reports on subject inventions developed under NGB CA awards that are required by the modified Governmentwide patent rights award provision specified in Section B of PROP Article VI, which include a disclosure of each subject invention and a final report listing all such subject inventions.
3. **Copyrights and Data.** You are not required to submit periodic reports about data produced under the award or about works for which you acquired ownership under NGB CA awards, either by development or otherwise, and in which copyright was asserted. However, because the Federal Government has the rights in the works and data that Sections A and C of PROP Article VI specify, you must provide information about the works and data if we request it.
4. **Intangible Property Acquired, but not Developed or Produced, under the Award.** You must comply with requirements in Section D of PROP Article VI to request disposition instructions for intangible property acquired, but not developed or produced, under the award.

REP Article IV. Reporting on Subawards and Executive Compensation.

You must report information about subawards and executive compensation as specified in the award provision in appendix A to 2 CFR part 170, "Reporting subaward and executive compensation information," modified as follows:

- a. To accommodate any future designation of a different Governmentwide Web site for reporting subaward information, the Web site "<http://www.fsr.gov>" cited in paragraphs a.2.i. and a.3 of the award provision is replaced by the phrase "<http://www.fsr.gov> or successor OMB-designated Web site for reporting subaward information;"
- b. To accommodate any future designation of a different Governmentwide Web site for reporting executive compensation information, the Web site "<http://www.sam.gov>" cited in paragraph b.2.i. of the award provision is replaced by the phrase "<https://www.sam.gov> or successor OMB-designated Web site for reporting information on total compensation."

Part 5: Other Administrative Requirements (Articles from this part are designated with "OAR" in the article title)

OAR Article I. Submitting and Maintaining Recipient Information.

Section A. System for Award Management.

1. Unless you are exempted from this requirement in accordance with OMB guidance in 2 CFR 25.110, you must maintain the currency of information about yourself in the system the Federal Government specifies as the repository for information about its business partners (currently the System for Award Management (SAM)). This includes information on your immediate and highest-level owner and subsidiaries, as well as on all your predecessors that have been awarded a federal contract or federal financial assistance within the last three years, if applicable.
2. You must maintain the information in that system until you submit the final financial report required under NGB CA awards or receive the final payment, whichever is later.
3. You must review and update the information at least annually after your initial registration in the system (unless you are subject to the requirements in Section B) and more frequently if required by changes in your information.

Section B. Reporting of Performance and Integrity Information.

1. **General Reporting Requirement.** If the total value of your currently active grants, cooperative agreements, and procurement contracts from all federal agencies exceeds \$10,000,000 for any time during the period of performance of NGB CA awards, then during that time you must maintain in SAM the currency of information required by Section B.2 of this section. Note that:
 - a. This reporting is required under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313).
 - b. As required by section 3010 of Public Law 111-212, all performance and integrity information posted in the designated information system on or after April 15, 2011, except past performance reviews required for federal procurement contracts, will be publicly available.
 - c. Recipient information is submitted to the OMB-designated integrity and performance system through the SAM, as described in section B.3 of this section. The currently designated integrity and performance information system is the Federal Awardee Performance and Integrity Information System (FAPIIS).
2. **Proceedings About Which You Must Report.** Submit the information that the designated information system requires about each proceeding that:
 - a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government.
 - b. Reached its final disposition during the most recent 5-year period.
 - c. Is one of the following:

- (1) A criminal proceeding that resulted in a conviction, as defined in Section B.5. of this section.
- (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.
- (3) An administrative proceeding, as defined in Section B.5. of this section, that resulted in a finding of fault and liability and your payment of either monetary fine or penalty of \$5,000 or more or a reimbursement, restitution, or damages more than \$100,000; or
- (4) Any other criminal, civil, or administrative proceeding if:
 - (a) It could have led to an outcome described in section B.2.c.i, ii, or iii of this section.
 - (b) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part.
 - (c) The requirement in this section to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. **Reporting Procedures.** Submit the information required in Section B.2 of this section to the Entity Management functional area of SAM.

- a. Current procedures are to submit the information as part of the maintenance of your information in the SAM that Section A of this article requires.
- b. You do not need to submit the information again under NGB CA awards if you already reported current information to the SAM under another federal grant, cooperative agreement, or procurement contract.

4. **Reporting frequency.** During any period when you are subject to the requirement in section B.1 of this section, you must report to SAM at least semiannually following your initial report of any information required in Section B.2 of this section, either to provide new information not reported previously or affirm that there is no new information to report.

5. **Definitions.** For purposes of this section:

- a. *Administrative proceeding* means a non-judicial process that is adjudicatory in nature to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the federal and state level but only in connection with performance of a federal contract, grant, or cooperative agreement. It does not

include audits, site visits, corrective plans, or inspection of deliverables.

- b. *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- c. *Total value of currently active grants, cooperative agreements, and procurement contracts* includes:
 - (1) Only the federal share of the funding under any federal agency award with a recipient cost share or match.
 - (2) The value of all expected funding increments and options, even if not yet exercised, under each federal agency award.

Section C. Disclosure of Evidence of Integrity-Related Issues.

1. **Disclosure requirement.** At any time during the period of performance of NGB CA awards, if you have evidence that a covered person committed a covered action (see Sections C.2 and C.3 of this section) that may NGB CA awards, you must disclose the evidence in writing to the Office of the Inspector General, DoD, with a copy to the grants officer identified in the award cover pages.
2. **Covered Person.** As the term is used in this section, “covered person” means a principal, employee, or agent of either you or a subrecipient under NGB CA awards, where:
 - a. “Principal” means:
 - (1) An officer, director, owner, partner, principal investigator, or other person with management or supervisory responsibilities that relate to NGB CA awards; or
 - (2) A consultant or other person, whether employed by you or a subrecipient or paid with funds under NGB CA awards, who:
 - (a) Is in a position to handle funds under NGB CA awards;
 - (b) Is in a position to influence or control the use of those funds; or
 - (c) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the project or program under NGB CA awards.
 - b. “Agent” means any individual who acts on behalf of, or who is authorized to commit you or the subrecipient, whether or not employed by you or the subrecipient.
3. **Covered Action.** As the term is used in this section, “covered action” means a violation of federal criminal law in Title 18 of the United States Code involving fraud,

bribery, or a gratuity violation.

4. Safeguarding of the Information.

a. To the extent permitted by law and regulation, we will:

(1) Safeguard and treat information you disclose to us as confidential if you mark the information as “confidential” or “proprietary.”

(2) Not release the information to the public in response to a Freedom of Information Act (5 U.S.C. 552) request without notifying you in advance.

b. We may transfer documents you provide to us to any other department or agency within the Executive Branch of the Federal Government if the information relates to matters within that organization’s jurisdiction.

OAR Article II. Records Retention and Access.

Section A. Records Retention Period.

1. Except as provided in Sections B through D of this article:

2. You must keep records related to any real property and equipment acquired, in whole or in part, using federal funds under the award for 3 years after final disposition of the property. For any item of exempt property with a current fair market value greater than \$5,000, and for which final disposition was not a condition of the title vesting, you must keep whatever records you need for as long as necessary to ensure that you can deduct the federal share if you later use the property in contributions for cost sharing or matching purposes under any federal award.

3. You must keep records related to rate proposals for indirect or facilities and administrative costs, cost allocation plans, and supporting records such as indirect cost rate computations and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback or composite fringe benefit rates) as follows:

a. If you are required to submit a proposal, plan, or other computations to your federal cognizant agency for indirect costs, as the basis for negotiation of a rate, you must keep the submissions and all supporting records for 3 years from the date on which you were required to make the submissions.

b. If you are not required to submit a proposal, plan, or other computation as the basis for negotiation, you must keep the proposal, plan, other computation, and supporting records for 3 years from the end of the fiscal year or other accounting period covered by the proposal, plan, or other computation.

4. You must keep other financial records, supporting documents, statistical records, and

other records pertinent to NGB CA awards for a period of 3 years from the date you submit your final financial report under the award.

Section B. Extensions of Retention Period Due to Litigation, Claim, or Audit.

1. If any litigation, claim, or audit begins before the end of the 3-year retention period specified in Section A of this article and the final action related to the litigation, claim, or audit is not taken before the end of that 3-year period, you must retain all records related to NGB CA awards that may be involved in the litigation, claim, or audit until all findings involving the records have been resolved and final action taken.
2. We may disallow costs and recover funds under NGB CA awards based on an audit or other review of records during the record retention period, including any extension to that retention period that we required in a written notification to you.

Section C. Records for Program Income Earned After the End of the Performance Period.

In accordance with Section F of FMS Article VII, there are no requirements under NGB CA awards applicable to program income you earn after the end of the period of performance and therefore no associated records retention requirements.

Section D. Records for Joint or Long-term Use.

1. **Joint Use.** To avoid duplicate recordkeeping for records that you and we both need to use on a continuous basis, we may ask you to make special arrangements with us, by mutual agreement, to make records available for joint and continuous use.
2. **Long-term use.** If we determine that some records will be needed longer than the 3-year period specified in Section A of this article, we may request that you either:
 - a. Retain the records for a longer time; or
 - b. Transfer the records to our custody for long-term retention.
3. **Retention requirements for transferred records.** For any records transferred to our custody, you are not subject to the records retention requirements in Section A of this article.

Section E. Methods for Collecting, Transmitting, and Storing Information.

1. You should, whenever practicable, collect, transmit, and store information related to NGB CA awards in open and machine-readable formats rather than in closed formats or on paper. However, if you request it, we will:
 - a. Provide award related information to you on paper.
 - b. Accept award related information from you on paper. In that case, we will not require more than an original and two copies.

2. When your original records are in an electronic form that cannot be altered, you do not need to create and retain paper copies of those records.
3. When your original records are on paper, you may substitute electronic versions produced through duplication or using other forms of electronic media, provided that:
 - a. You conduct periodic quality control reviews of the records.
 - b. You provide reasonable safeguards against alteration of the records.
 - c. The records remain readable.

Section F. Access to Records.

1. Scope of Government Access Rights.

- a. We as the awarding agency, the Federal Government Inspectors General, the Comptroller General of the United States, and any of our authorized representatives have the right of access to any documents, papers, or other records you have that are pertinent to NGB CA awards, to make audits, examinations, excerpts, and transcripts.
- b. This right also includes timely and reasonable access to your personnel for the purposes of interview and discussion related to the records.
- c. As described in OMB guidance at 2 CFR 200.337(b), the access to records described in this section will include access to the true name of a victim of a crime only under extraordinary and rare circumstances.
 - (1) You are required to provide that access only in response to a court order or subpoena pursuant to a bona fide confidential investigation, or in response to a request duly authorized by the head of NGB or his or her designee.
 - (2) You must take appropriate steps to protect this sensitive information.

2. **Duration of Government Access Rights.** We have the access rights described in paragraph F.1 of this section as long as you retain the records.

3. Public access.

- a. You must comply with requirements to protect information that Federal statute, Executive order, or regulation requires to be protected (e.g., personally identifiable or export-controlled information), to include both information generated under NGB CA awards and information provided to you and identified as being subject to protection. Other than those limitations on dissemination of information, we place no restrictions on you that limit public access to your records pertinent to NGB CA awards.

- b. We do not place any requirements on you to permit public access to your records separate from any federal, state, local, or tribal statute that may require you to do so.
- c. The Freedom of Information Act (FOIA, 5 U.S.C. 552) does not apply to records in your possession but records you provide to us generally will be subject to FOIA, with the applicable exemptions.

OAR Article III. Remedies and Termination.

Section A. Noncompliance with Award Terms and Conditions.

If you fail to comply with a term or condition of NGB CA awards or an applicable federal statute or regulation, we may amend NGB CA awards to impose award-specific conditions, as described in OMB guidance in 2 CFR 200.208. If imposing award specific conditions, we will notify you before modifying the award and, once you have corrected the noncompliance, promptly remove the award-specific conditions. If we determine that the imposition of award-specific conditions is insufficient to correct the noncompliance or the non-compliance remains uncorrected despite the use of award-specific conditions, we may consider taking one or more of the remedies specified in Section B of this article.

Section B. Remedies for Noncompliance.

1. If you fail to comply with a term or condition of NGB CA awards or an applicable Federal statute or regulation, we may take one or more of the following actions that we deem appropriate to the circumstances:
 - a. Temporarily withhold cash payments pending:
 - (1) Your correction of the deficiency.
 - (2) Our taking more severe remedies.
 - b. Disallow (that is, deny both use of funds and any applicable cost-sharing or matching credit for) all or part of the cost of the activity or action not in compliance.
 - c. Suspend or, in accordance with section C.1.a.i. of this article, terminate NGB CA awards, in whole or in part (suspension of an award is a separate and distinct action from suspension of a person under 2 CFR parts 180 and 1125, as noted in Section B.3 of this article).
 - d. Withhold further awards to you for the project or program that is not in compliance.
 - e. Take any other action legally available to us under the circumstances.

2. You may raise an objection to our taking any remedy we take under Section B.1 of this section and will be given an opportunity to provide information and documentation challenging the action. The procedures are those specified in OAR Article IV for claims and disputes.
3. Our use of any remedy under Section B.1 of this section, including suspension or termination of the award, does not preclude our referring the noncompliance to a suspension and debarment official and asking that official to consider initiating a suspension or debarment action under 2 CFR part 1125, the DoD (NGB) implementation of OMB guidance at 2 CFR part 180.

Section C. Termination.

1. NGB CA awards may be terminated in whole or in part as follows:
 - a. **Unilaterally by the Federal Government.** We will provide a notice of termination if we unilaterally terminate NGB CA awards in whole or in part, which we may do for either of the following reasons:
 - (1) Your material failure to comply with the award terms and conditions. If we terminate the award for that reason, we will report the termination to the OMB-designated integrity and performance system (currently FAPIIS). In accordance with 41 U.S.C. §2313, each federal awarding official must review and consider the information in the OMB-designated integrity and performance system regarding any proposal or offer before awarding a grant or contract.
 - (2) The program office does not have funding for an upcoming increment if NGB CA awards is incrementally funded. In that case, the Federal Government's financial obligation does not exceed the amount currently obligated under the award.
 - b. **By Mutual Agreement.** With your consent, we may terminate NGB CA awards, in whole or in part, for any reason. In that case, you and we must agree to:
 - (1) The termination conditions, including the effective date.
 - (2) In the case of a partial termination, the portion to be terminated.
 - c. **Unilaterally by the Recipient.** You may unilaterally terminate NGB CA awards, in whole or in part, by sending us written notification that states:
 - (1) The reasons for the termination.
 - (2) The effective date.
 - (3) In the case of partial termination, the portion to be terminated. In that case, however, we may terminate the award in its entirety if we determine that the remaining portion of the award will not accomplish the purposes for which we

made the award.

2. If an NGB CA award is terminated in its entirety before the end of the performance period, you must complete the closeout actions for which you are responsible under OAR Article VI. The due date for each action is to be measured relative to the date of termination.
3. If an NGB CA award is only partially terminated before the end of the performance period, with a reduced or modified portion of the award continuing through the end of the performance period, then closeout actions will occur at the end of the performance period as specified in OAR Article VI.
4. You will continue to have all the post-closeout responsibilities that OAR Article VII specifies for you if an NGB CA award is wholly or partially terminated before the end of the performance period.

Section D. Effects of Suspension or Termination of the Award on Allowability of Costs.

1. If we suspend or terminate NGB CA awards prior to the end of the period of performance, costs resulting from obligations that you incurred:
 - a. Before the effective date of the suspension or termination are allowable if:
 - (1) You properly incurred those obligations.
 - (2) You did not incur the obligations in anticipation of the suspension or termination.
 - (3) In the case of termination, the costs resulted from obligations that were noncancellable after the termination.
 - (4) The costs would have been allowable if we had not suspended or terminated the award and it had expired normally at the end of the period of performance.
 - b. During the suspension or after the termination are not allowable unless we expressly authorize them, either in the notice of suspension or termination or subsequently.

OAR Article IV. Claims, Disputes, and Appeals.

Section A. Definitions.

1. **Claim.** The definition of the term “claim,” as it is used in this article, is in 2 CFR 1108.80.
2. **Grant Appeal Authority.** **RESERVED – Only applicable if provided in DoD Component addendum to these terms and conditions.**

Section B. Submission of Claims.

1. **Your claims.** To submit a claim arising out of NGB CA awards, you must submit it in writing to the grants officer for decision, specify the nature and basis for the relief you are requesting, and include all data that supports your claim.
2. **Government claims.** You will receive a written grants officer's decision if an NGB claim arises out of NGB CA awards.

Section C. Alternative Dispute Resolution.

1. We encourage resolution of all issues related to NGB CA awards by mutual agreement between you and the grants officer.
2. If you and the grants officer are unable to resolve an issue through unassisted negotiations, we encourage use of Alternative Dispute Resolution (ADR) procedures to try to do so. ADR procedures are any voluntary means, such as mini-trials or mediation, used to resolve issues in controversy. ADR procedures may be used prior to submission of a claim or at any other time prior to the Grant Appeal Authority's decision on any appeal you submit.

Section D. Grants Officer Decisions for Claims you Submit.

1. Within 60 calendar days of receiving your claim, the grants officer will either:
 - a. Transmit a written decision that:
 - (1) Identifies data on which the decision is based.
 - (2) Identifies and provides the mailing address for the Grant Appeal Authority to whom you will submit an appeal of the decision if you elect to do so; or
 - b. If more time is required to render a written decision, notify you of a specific date when he or she will render the decision and inform you of the reason for delaying it.
2. The grants officer's decision will be final unless you decide to appeal, in which case we encourage use of ADR procedures as noted in Section C of this article.

Section E. Formal Administrative Appeals.

1. **Right to Appeal.** You have the right to appeal a grants officer's decision to the Grant Appeal Authority identified in Section A of this article.
2. **Notice of Appeal.** You may appeal a grants officer's decision within 90 calendar days of receiving the decision by submitting a written notice of appeal to the Grant Appeal Authority and grants officer. If you elect to use ADR procedures, you are allowed an additional 60 calendar days to submit the written notice of appeal.

3. **Appeal File.** Within 30 calendar days of the grants officer's receipt of your notice of appeal, you should receive the appeal file with copies of all documents relevant to the appeal. You may supplement the file with other documents you deem relevant and with a memorandum in support of your position for the Grant Appeal Authority's consideration. The Grant Appeal Authority may request additional information from you.
4. **Decision.** Unless the Grant Appeal Authority decides to conduct fact-finding procedures or an oral hearing on the appeal, the appeal will be decided solely based on the written record. Any fact-finding or hearing will be conducted using procedures that the Grant Appeal Authority deems appropriate.

Section F. Representation.

You may be represented by counsel or any other designated representative in any claim, appeal, or ADR proceeding, if the representative is not otherwise prohibited by law or regulation from appearing before NGB.

Section G. Non-exclusivity of Remedies.

Nothing in this article is intended to limit your right to any remedy under the law.

Section H. Effect of Grant Appeal Authority's Decision.

The Grant Appeal Authority's decision is the final administrative decision of NGB and cannot be further appealed within NGB.

OAR Article V. Collection of Amounts Due.

Section A. Establishing a Debt.

1. Any amount paid to you more than the amount to which you are determined to be entitled under the terms and conditions of NGB CA awards constitutes a debt to the Federal Government.
2. The grants officer will attempt to resolve any claim of your indebtedness arising out of NGB CA awards by mutual agreement.
3. If the grants officer fails to resolve the claim in that manner, you will receive a written notice of the grants officer's decision formally determining the debt, as described in Section B.2 of OAR Article IV. The notice will describe the debt, including the amount, name and address of the official who determined the debt, and a copy of that official's determination.

Section B. Debt Delinquency and Appeals.

1. Within 30 calendar days of the grants officer's decision, you must either pay the amount owed to the address provided in the written notice or inform the grants officer

that you intend to appeal the decision. Appeal procedures are described in OAR Article IV.

2. If you elect not to appeal, any amounts not paid within 30 calendar days of the grants officer's decision will be a delinquent debt.
3. If you elect to appeal the grants officer's decision, you will have 90 calendar days after receipt of the grants officer's decision to file your appeal unless Alternative Dispute Resolution (ADR) procedures are used, as described in Section C of OAR Article IV, in which case you will have 150 calendar days.

Section C. Demand Letter, Interest, and Debt Collection.

1. If within 30 calendar days of the grants officer's decision, you neither pay the amount due nor provide notice of your intent to appeal the grants officer's decision, the grants officer will send you a demand letter identifying a payment office that will be responsible for any further debt collection activity.
2. If you do not pay by the due date specified in the written demand letter, the Federal Government may collect part or all the debt by:
 - a. Making an administrative offset against your requests for reimbursements under federal awards.
 - b. Withholding advance payments otherwise due to you.
 - c. Any other action permitted by federal statute.
3. The debt will bear interest, and may include penalties and other administrative costs, in accordance with applicable provisions of NGB Financial Management Regulation (DoD 7000.14-R), which implements the Federal Claims Collection Standards. The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

OAR Article VI. Closeout.

Section A. Liquidation of Financial Obligations.

Unless the award administration office authorizes an extension of the due date, you must liquidate all financial obligations that you incurred under NGB CA awards not later than 120 calendar days after the end date of the period of performance.

Section B. Refunds of Unobligated Balances.

You must promptly refund to the award administration office any balances of unobligated cash that we have advanced or paid to you and not authorized you to use on other projects or programs.

Section C. Final Reports.

You must submit the:

1. Final performance report under NGB CA awards no later than the date specified in Section C of REP Article I, subject to any extensions granted under Section D of that article.
2. Final financial report under NGB CA awards no later than the date specified in Section C of REP Article II, subject to any extensions granted under Section D of that article.
3. Final report listing subject inventions made under the award no later than the date specified in Section B of PROP Article VI.
4. Other final reports that are required under NGB CA awards no later than 120 calendar days after the end date of the period of performance, unless you request an extension of the due date, and the award administration office approves the request.

Section D. Accounting for Property.

You must account for any real property, equipment, supplies, and intangible property that you and any subrecipients acquired or improved under the award, in accordance with PROP Articles I through IV and VI. Your requests for disposition instructions for any federally owned property, as required by PROP Article V, meet the need described in OMB guidance at 2 CFR 200.344(f) to account for that property at closeout.

Section E. Delinquent Final Reports and Timeframe for Closeout.

1. We intend to closeout NGB CA awards no later than one year after the end date of the period of performance.
 - a. If you or your lower-tier entities (e.g., subrecipients) do not have negotiated final indirect costs rates before the due date of the final financial reports, the final reports must be based on the best information at the time (e.g., proposed final indirect rates). You will have post-closeout continuing responsibilities related to the finalization of those rates in accordance with section A.2 of OAR Article VII.
 - b. If you do not provide timely and/or accurate final reports or do not respond timely to our requests to reconcile discrepancies in these reports or other records, we may initiate closeout based on information we have on hand. For example, if you fail to submit a timely final financial report, we may use amounts provided in the latest interim financial report and/or payment request to determine final amounts to be paid for closeout purposes.
2. Failure to submit timely and accurate final reports may result in our taking one or more remedies as specified in Section B of OAR Article III and reporting your material failure to comply with the terms and conditions of NGB CA awards in the OMB-designated

integrity and performance system accessible through SAM (currently FAPIIS).

OAR Article VII. Post-Closeout Adjustments and Continuing Responsibilities.

Section A. Adjustments.

The closeout of NGB CA awards does not affect:

1. Our right to disallow costs and recover funds based on a later audit or other review, if we make the determination that the costs are disallowed and notify you about that determination as specified in section B.2 of OAR Article II of these terms and conditions.
2. Your obligation to return any funds due to the Federal Government because of later refunds, corrections, or other transactions (to include any adjustments in final indirect cost rates).

Section B. Continuing Responsibilities.

After closeout of NGB CA awards, you must continue to comply with terms and conditions of NGB CA awards that have applicability beyond closeout, including requirements concerning:

- a. Audits, as specified in FMS Article V, that cover periods of time during which you expended funds under NGB CA awards.
- b. Management, use, and disposition of any real property or equipment acquired or improved under NGB CA awards in which we continue to have a federal interest after closeout, as specified in PROP Articles I through IV.
- c. Retention of, and access to, records related to NGB CA awards, as specified in OAR Article II.

Part 6: Subawards (Articles from this part are designated with “SUB” in the article title)

SUB Article I. Distinguishing Subawards and Procurements.

Section A. Required Recipient Determination.

For each transaction into which you enter with another entity at the next tier below NGB CA awards, you must determine whether the transaction is a subaward or procurement transaction.

Section B. Considerations in Making the Determination.

1. The primary purpose of the transaction between you and the other entity is the key factor you must use to determine whether the transaction is a subaward or procurement transaction.
 - a. The transaction is a subaward and the other entity, therefore, a subrecipient if the transaction's primary purpose is for you to transfer—for performance by the other entity—a portion of the substantive project or program for which we are providing financial assistance to you through NGB CA awards. You will continue to be accountable to us for performance of the project or program under the award, including portions performed by any subrecipients.
 - b. The transaction is a procurement transaction and the other entity therefore a contractor if the transaction's primary purpose is for you to purchase goods or services that you need to perform the substantive project or program supported by NGB CA awards. The distinction from a subaward is the contractor is not performing a portion of the substantive project or program because of the transaction.
2. What you call the transaction is not a factor in distinguishing a subaward from a procurement transaction. If the transaction meets the criterion in section B.1.a of this article, it is a subaward for purposes of the requirements of NGB CA awards even if you call and consider the transaction a “contract.”

Section C. Effect of the Determination on the Next-Tier Transaction.

1. **Process for Awarding the Transaction.** One important consequence of your determining whether a next-tier transaction is a subaward or procurement is that there are different requirements governing the pre-award and time of award processes that you use to award the transaction.
 - a. SUB Article II of this Part specifies pre-award and time of award responsibilities for subawards.
 - b. PROC Articles I and II of this Part govern pre-award and time of award processes for awarding procurement transactions.
2. **Transaction Terms and Conditions.** A second important consequence of your determining whether a next-tier transaction is a subaward or procurement transaction is that the terms and conditions you include in a subaward differ from those you include in a procurement transaction.
 - a. Section C of SUB Article II of this Part addresses requirements you must include in subaward terms and conditions. Those requirements are generally either identical or directly related to requirements in the general terms and conditions of NGB CA awards. They include national policy requirements, as well as administrative requirements in areas such as financial and programmatic management, property administration, procurement, and reporting.

- b. PROC Article III of these general terms and conditions lists requirements you must include in a procurement transaction when applicable.

SUB Article II. Pre-award and Time of Award Responsibilities.

Section A. Requirements for Unique Entity Identifiers.

1. **Definition of “Entity”.** For purposes of the unique entity identifier requirements in paragraphs A.2 and 3 of this section, “entity” has the meaning given in paragraph C.3 of appendix A to OMB guidance in 2 CFR part 25.
2. **Pre-notification of Potential Subrecipients.** You must notify potential subrecipients that no entity may receive a subaward from you under NGB CA awards unless it has provided its unique entity identifier to you.
3. **Restriction on Making Subawards.**
 - a. **General.** You may not make a subaward to an entity unless the entity has provided its unique entity identifier to you, as required in 2 CFR part 25.300. Subrecipients are not required to obtain an active SAM registration but must obtain a Unique Entity Identifier.
 - b. **Exception.** You may make a subaward to an entity that has not provided its unique entity identifier to you in rare cases in which you requested, and we approved an exemption from the requirement for the entity to provide a unique entity identifier, based on the criteria in OMB guidance in 2 CFR part 25.110(c).

Section B. Pre-award Risk Assessment.

1. Before making a subaward to an entity, you must perform a risk assessment of the prospective subrecipient, as described in 2 CFR 200.332(b). OMB guidance in 2 CFR 200.206(c) provides examples of factors you may consider in evaluating risk.
2. As part of the risk assessment under Section B.1 of this article, you must:
 - a. Verify that neither the prospective subrecipient nor its principals under the proposed subaward are excluded or disqualified from participating in the transaction, in accordance with requirements in Subpart C of OMB guidance in 2 CFR part 180, as implemented by NGB at 2 CFR part 1125; and
 - b. If warranted by risks you identify, determine whether to impose award-specific terms and conditions in the subaward to mitigate the risks.
 - (1) These award-specific terms and conditions may be in addition to, or differ from, the terms and conditions that SUB Articles IV through IX under this Part requires you to include in subawards.

- (2) They may include items such as those listed in OMB guidance in 2 CFR 200.208(c)(1) through (6).
- (3) Your procedures for imposing and removing the additional or different requirements must comply with the procedural guidance in 2 CFR 200.208(d) and (e).

Section C. Subaward Content.

1. Cost-Type Subawards.

- a. SUB Article III of this Part specifies informational content that you must include in each cost type subaward.
- b. SUB Articles IV through VIII specify administrative requirements that you must include:
 - (1) As applicable, in each cost-type subaward to:
 - (a) A domestic entity (i.e., an entity other than a foreign public entity or a foreign organization).
 - (b) An organizational unit of a foreign organization if that unit has a place of business in the United States.
 - (c) To the maximum extent practicable in each cost-type subaward to either a foreign public entity or an organizational unit of a foreign organization that does not have a place of business in the United States (regardless of whether another organizational unit of that foreign organization has one). However, absent our prior approval, you may not allow that foreign entity or organization to acquire real property or equipment under a subaward.
- c. SUB Article IX of this Part specifies national policy requirements that you must include, as applicable, in each cost-type subaward.
- d. SUB Article XI of this award specifies requirements that you must include in any subaward under which you determine that the subrecipient may make lower-tier subawards to other entities.

2. **Fixed-Amount Type Subawards.** SUB Article XII of this Part specifies informational content and administrative and national policy requirements that you must include in any fixed amount subaward.

3. **Additional Subaward Terms and Conditions.** You may include other requirements in your subawards that you need to meet your responsibilities under NGB CA awards for performance of the project or program (including portions performed by subrecipients) and compliance with applicable administrative and national policy requirements.

Section D. Subaward and Executive Compensation Reporting.

You must report subaward obligating actions and information on subrecipients' executive compensation as required by REP Article IV of these general terms and conditions.

SUB Article III. Informational Content of Subawards.

Section A. Informational Content in General.

You must include in each subaward (and each subsequent modification to a subaward that alters the amount of the subaward) the information specified in OMB guidance in 2 CFR 200.332(a)(1), "Federal Award Identification," with the clarifications provided in Sections B through G of this article.

Section B. Federal Award Identification Number and Award Date.

The "Federal Award Identification Number" and "Federal Award Date" described in 2 CFR 200.332(a)(1)(iii) and (iv), respectively, are the award number and award date for NGB CA awards to you. You must provide the information in a way that makes it clear that the subaward is under NGB CA award.

Section C. Amount of Federal Funds Obligated.

1. The "Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient" that is described in 2 CFR 200.332(a)(1)(vi) is either:
 - a. The amount of your obligation to the subrecipient, if the terms and conditions of NGB CA awards do not require you to provide any cost sharing or matching for the project or program the award supports; or
 - b. The amount of the federal share of your subaward obligation if NGB CA awards does require cost sharing or matching, which in that case is the product of:
 - (1) The federal share of total project costs under NGB CA award to you, as a percentage of those total project costs; and
 - (2) The total amount of project costs obligated for the subaward action.
2. Note that the total project costs of the award and subaward, as used in paragraphs C.1.b.i and ii of this section, include any cost sharing or matching that you or the subrecipient provides to meet any cost sharing or matching requirement under NGB CA awards.

Section D. Total Amount Obligated to the Subrecipient.

The “Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including the current obligation,” as described in 2 CFR 200.332(a)(1)(vii), is the cumulative amount to date of the amounts described in Section C of this article.

Section E. Total Amount of the Federal Award.

The “Total Amount of the Federal Award committed to the subrecipient by the pass-through entity,” as described in 2 CFR 200.332(a)(1)(viii), is the total amount through the end of the subaward that you and the subrecipient mutually agreed upon, to include: funding obligated to date, any future anticipated funding increments, and any options you may exercise in the future.

Section F. Federal Awarding Agency, Pass-Through Entity, and Awarding Official.

The “Name of federal awarding agency” and “pass-through entity,” as those terms are used in 2 CFR 200.332(a)(1)(x) are NGB and the business name associated with your registration in the System for Award Management. In that same section of 2 CFR part 200, the “awarding official” is the individual in your organization who made the subaward.

Section G. Indirect Cost Rate. RESERVED – Not currently applicable to NGB - See Subdivision D of this document.

SUB Article IV. Financial and Program Management Requirements for Subawards.

Section A. Purposes of this Article in Relation to other Articles.

1. This article specifies administrative requirements concerning financial and program management that you must include in the terms and conditions of each cost-type subaward that you make under NGB CA awards to a domestic entity.
2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under FMS Articles I through VII of these general terms and conditions.
3. SUB Article XII of these general terms and conditions addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under NGB CA awards.

Section B. Financial Management System Standards.

1. You must include in any subaward you make under NGB CA awards the requirements of:
 - a. Sections A through C of FMS Article I of these general terms and conditions if the subrecipient is a state.
 - b. Sections B and C of FMS Article I if the subrecipient is an institution of higher

education, nonprofit organization, local government, Indian tribe, or for-profit entity.

Section C. Payments.

1. **Subawards to States.** You must include the provisions of Section A of FMS Article II of these general terms and conditions in each subaward you make to a state.
2. **Subawards to Institutions of Higher Education, Nonprofit Organizations, Local Governments, Indian Tribes, and For-profit Entities.** The following paragraphs specify requirements you must include in subawards to institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

a. Payment Method.

- (1) If you are authorized to request advance payments under NGB CA awards, you must authorize a subrecipient to request advance payments unless:
 - (a) The subrecipient does not maintain, or demonstrate the willingness to maintain, written procedures that minimize the time elapsing between its receipt of each payment and its disbursement of the funds for project or program purposes.
 - (b) You impose a requirement for the subrecipient to be paid by reimbursement because of your risk evaluation of the subrecipient under SUB Article II of these general terms and conditions.
 - (c) The subaward is for construction; or
 - (d) The subrecipient requests reimbursement of funds after it disburses them for project or program purposes.
- (2) If you do not authorize advance payments for one of the reasons given in Section C.2.a.(1) of this article, you must specify either reimbursement or working capital advances as the payment method in accordance with OMB guidance in 2 CFR 200.305(b)(3) and (4).

b. Payment Timing and Amount.

- (1) **Advances.** You must limit advance payments to the minimum amounts needed and time the payments to be in accordance with the subrecipient's actual, immediate cash requirements in carrying out the project or program under the subaward. The timing and amount of your advance payments to the subrecipient must be as close as is administratively feasible to the subrecipient's actual disbursements for direct project costs and the proportionate share of any allowable indirect costs. Your subawards also must include the requirements of sections B.2.b and c of FMS Article II to specify costs subrecipients must exclude from amounts of their advance payment requests.

- (2) **Reimbursements or Working Capital Advances.** You must follow OMB guidance in 2 CFR 200.305(b)(3) and (4) concerning timing and amount of reimbursements or working capital advances.
- c. **Frequency of Requests.** You must allow the subrecipient to request advance payments or reimbursements, including those associated with the working capital advance payment method, as often as it wishes if you pay using electronic funds transfers and at least monthly otherwise.
 - d. **Other Requirements.**
 - (1) In any subaward that was subject to our consent, you must include the requirements of Section B.5 of FMS Article II of these general terms and conditions concerning withholding of payments.
 - (2) You must include the provisions of Section B.6 of FMS Article II concerning depositories in each subaward that authorizes the subrecipient to request advance payments.

Section D. Allowable Costs, Period of Availability of Funds, and Fee and Profit.

1. You must include in each subaward a requirement that the allowability of costs under the subaward (and any lower tier subawards or procurement transactions into which the subrecipient enters) must be determined in accordance with the applicable cost principles identified in Section A of FMS Article III of these general terms and conditions.
2. You must specify in each subaward the period of availability of funds for any project or program purpose so that the period neither begins before nor ends after the period during which you may use funds available to you under NGB CA awards for that same project or program purpose.
3. You must include in each subaward the provisions concerning fee or profit that are in Section D of FMS Article III of these general terms and conditions.

Section E. Revision of budget and program plans.

You must include in each subaward provisions requiring the subrecipient to request your approval for any change in the subaward budget or program that would cause a budget or program change under NGB CA awards for which Section B of FMS Article IV requires you to first obtain our prior approval. You may not approve any budget or program revision that is inconsistent with the purpose or terms and conditions of NGB CA awards.

Section F. Non-Federal audits.

You must include a provision in each subaward that you make under NGB CA awards

to require the subrecipient entity to comply with the audit requirements applicable to that entity, as specified in either Section A or Section B of FMS Article V.

Section G. Cost sharing or matching requirements.

1. If you make a subaward under which the subrecipient may provide contributions or donations of cash or third-party in-kind contributions to be counted toward any cost sharing or matching that is required under NGB CA awards, you must include provisions in that subaward to specify:
2. The criteria governing the allowability as cost sharing or matching of the types of cash or third-party in-kind contributions that the subrecipient may contribute or donate. Those criteria are specified in Sections B through D of FMS Article VI of these general terms and conditions if the subaward is to a state, institution of higher education, nonprofit organization, local government, Indian tribe, or a for-profit entity.
3. The methods for determining and documenting the values of those contributions or donations to be counted as cost sharing or matching. Those methods are specified in Sections E and F of FMS Article VI of these general terms and conditions if the subaward is to a state, institution of higher education, nonprofit organization, local government, Indian tribe, or a for-profit entity.

Section H. Program Income.

You must include requirements concerning program income in subawards, as follows:

- a. In each subaward to a state, institution of higher education, nonprofit organization, local government, Indian tribe, or for-profit entity.
- b. You must require the subrecipient to account to you when it earns any program income under the subaward or uses it, so that you can prepare reports you are required to submit to us. If the award-specific terms and conditions of NGB CA awards require you to account for program income earned after the period of performance, you must include a corresponding requirement in your subawards.
- c. You must include the provisions of Sections A through D of FMS Article VII of these general terms and conditions.
- d. You may specify the deduction, addition, or cost sharing or matching alternative or a combination of those alternatives, for the subrecipient's use of any program income it earns. However, you still must comply with the alternative specified in Section E of FMS Article VII and any applicable award-specific terms and conditions for the total amount of program income earned, which includes amounts earned by you and your subrecipients. For example, if we require you to use the deduction alternative, you may authorize a subrecipient to use the addition alternative if you reduce the funding allocated for portions of the project or program that you or other subrecipients perform to make the required reduction in the total award amount.

SUB Article V. Property Requirements for Subawards.

Section A. Purposes of this Article in Relation to other Articles.

1. This article specifies administrative requirements concerning property that you must include in the terms and conditions of each cost-type subaward that you make under NGB CA awards.
2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under PROP Articles I through VI of these general terms and conditions.
3. SUB Article XII of these general terms and conditions addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under NGB CA awards.

Section B. Title to Property.

1. **Subawards to Institutions of Higher Education, Nonprofit Organizations, States, Local Governments, Indian Tribes, or For-profit Entities.**

General. You must include terms and conditions in each subaward to flow down to the subrecipient the provisions of:

- (1) Section A.1 of PROP Article I concerning vesting of title to property acquired under the subaward unless Section B.1.b of this section provides otherwise.
- (2) Sections B through E of PROP Article I that are applicable to types of property that the subrecipient may acquire, improve, donate, or for which it may otherwise be accountable under the subaward.

2. **Exceptions. RESERVED - Only applicable if provided in award-specific terms and conditions.**

Section C. Property Management System.

1. If you make a subaward under which the subrecipient either may acquire or improve equipment or real property, or may be accountable for federally owned property, you must include in the subaward:
2. If the subrecipient is a state, applicable provisions of:
 - a. Section A of PROP Article II concerning insurance for real property and equipment.
 - b. Section B of PROP Article II concerning other property management system standards.
3. If the subrecipient is an institution of higher education, nonprofit organization, local

government, Indian tribe, or for-profit entity, applicable provisions of:

- a. Section A of PROP Article II concerning insurance for real property and equipment.
- b. Section C of PROP Article II concerning other property management system standards.

Section D. Use and Disposition of Real Property.

If you make a subaward under which the subrecipient may acquire or improve real property, then you must include in the subaward:

- a. **Use.** The requirements concerning use of real property:

In Section A of PROP Article III if the subaward is to an institution of higher education, nonprofit organization, state, local government, Indian tribe, or for-profit entity, unless the award-specific terms and conditions of NGB CA awards provide otherwise.

- b. **Disposition.** Provisions to require the subrecipient to request disposition instructions through you when the property is no longer needed for its originally authorized purpose, so that you can meet your responsibilities to us under Section B of PROP Article III to address the federal interest in the property.

Section E. Use and Disposition of Equipment and Supplies.

1. If you make a subaward under which the subrecipient may acquire or improve equipment, or acquire supplies, you must include in the subaward, as applicable:
2. If the subaward is to a state:
 - a. The requirements in Sections B and E of PROP Article IV concerning use and disposition of equipment and supplies.
 - b. Provisions such as those in Section A of PROP Article IV that make clear the applicability of those requirements.
3. If the subaward is to an institution of higher education, nonprofit organization, local government, Indian tribe, or for-profit entity:
 - a. The requirements in Sections C and E of PROP Article IV concerning use of equipment and use and disposition of supplies.
 - b. Provisions such as those in Section A of PROP Article IV that make clear the applicability of those requirements.
 - c. Provisions to require the subrecipient to request disposition instructions from you when equipment is no longer needed for its originally authorized purpose, so that you can meet your responsibilities to us under Section D of PROP Article IV to

address the federal interest in the equipment.

Section F. Use and Disposition of Federally Owned Property.

If you make a subaward under which the subrecipient may be accountable for federally owned property, you must include subaward provisions specifying that the subrecipient:

- a. May use the property as specified in Section A.1 of PROP Article V;
- b. Must submit requests through you for the award administration office's approval to use the property for other purposes, as described in Section A.2 of PROP Article V;
- c. Must request the award administration office's disposition instructions through you when the property is no longer needed for subaward purposes or the subaward ends.

Section G. Intangible Property.

You must include in a subaward provisions specifying the requirements of Sections A through D of PROP Article VI if the subaward is to an institution of higher education, nonprofit organization, state, local government, Indian tribe, or for-profit entity.

SUB Article VI. Procurement Procedures to Include in Subawards.

Section A. Purposes of this Article in Relation to other Articles.

1. This article specifies administrative requirements concerning procurement procedures that you must include in the terms and conditions of each cost-type subaward that you make NGB CA awards.
2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under PROC Articles I through III of these general terms and conditions.
3. SUB Article XII of these general terms and conditions addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under NGB CA awards.

Section B. Subaward to a State.

In any subaward that you make to a state, you must include the requirements of PROC Article I and applicable sections of PROC Article III of these general terms and conditions.

Section C. Subaward to an Institution of Higher Education, Nonprofit Organization, Local Government, Indian Tribe, or For-profit Entity.

1. In any subaward that you make to an institution of higher education, nonprofit organization, local government, Indian tribe, or for-profit entity:
 - a. You must include the requirements of Sections A through G of PROC Article II and applicable sections of PROC Article III of these general terms and conditions.
 - b. You must include the requirement for the subrecipient to make available to you, upon request:
 - (1) Technical specifications of proposed procurement transactions, under the conditions described in OMB guidance at 2 CFR 200.325(a).
 - (2) Other procurement documents for pre-procurement review, under the conditions described in OMB guidance at 2 CFR 200.325(b).
2. If it is possible that, under a subaward you make, the subrecipient may award a construction or facility improvement contract with a value in excess of the simplified acquisition threshold, you must include provisions in the subaward to require the subrecipient to comply with at least the minimum requirements for bidders' bid guarantees and contractors' performance and payment bonds described in 2 CFR 200.326(a) through (c), unless you determine that the subrecipient's bonding policy and requirements are adequate to protect federal interests.

SUB Article VII. Financial, Programmatic, And Property Reporting Requirements for Subawards.

Section A. Purposes of this Article in Relation to other Articles.

1. This article specifies administrative requirements concerning reporting that you must include in the terms and conditions of each cost-type subaward that you make under NGB CA awards.
2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under REP Articles I through III of these general terms and conditions.
3. SUB Article XII of these general terms and conditions addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under NGB CA awards.

Section B. Performance Reporting.

1. You must include terms and conditions in each subaward to require the subrecipient to provide any performance information you need, by the time you need it, to comply with the performance reporting requirements in REP Article I and other terms and conditions of NGB CA awards.
2. You may specify a form, format, or data elements the subrecipient must use to provide

the information to you (you need not require the subrecipient to use the same form, format, or data elements that REP Article I specifies for your reporting to us).

Section C. Financial Reporting.

1. You must include terms and conditions in each subaward to require the subrecipient to provide any financial information you need, by the time you need it, to comply with the financial reporting requirements in REP Article II and other terms and conditions of NGB CA awards.
2. You may specify a form, format, or data elements the subrecipient must use to provide the information to you (you need not require the subrecipient to use the same form, format, or data elements that REP Article II specifies for your reporting to us).

Section D. Reporting on Property.

1. Each subaward you make under NGB CA awards must include provisions concerning property reporting as described in section D.2 of this section if the subrecipient may, under the subaward:
 - a. Acquire or improve real property or equipment;
 - b. Acquire supplies or intangible property; or
 - c. Be accountable for federally owned property.
2. The subaward provisions must require the subrecipient to give you the information you need about the property to meet your responsibilities to us under Sections A through D of REP Article III and PROP Articles II through VI.

SUB Article VIII. Other Administrative Requirements for Subawards.

Section A. Purposes of this Article in Relation to other Articles.

1. This article specifies other administrative requirements that you either must or should include in the terms and conditions of each cost-type subaward that you make under NGB CA awards.
2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under OAR Articles I through VII of these general terms and conditions.
3. SUB Article XII of these general terms and conditions addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under NGB CA awards.

Section B. Submission and Maintenance of Subrecipient Information.

You must include the substance of the provision in Section C of OAR Article I in any subaward you make under NGB CA awards. The provision must require the subrecipient's disclosure of any evidence directly to the Inspector General, DoD.

Section C. Records Retention and Access.

1. In each subaward you make under NGB CA awards:
 - a. If the subaward is to an institution of higher education, nonprofit organization, state, local government, Indian tribe, or for-profit entity:
 - (1) You must include the requirements of Section A of OAR Article II with the additional condition that, for any subrecipient under NGB CA awards that does not have a federally approved rate for indirect or facilities and administrative costs and that does not use the de minimis rate described in 2 CFR 200.414(f), you must:
 - (a) Require the subrecipient to keep records that support its indirect or facilities and administrative costs charged to the subaward for 3 years from the end of the fiscal year (or other accounting period) to which the costs apply.
 - (b) Keep any plan or computation the subrecipient submits to you to serve as a basis for your determining the reasonableness and allowability of indirect or facilities and administrative costs of the subaward, for 3 years from the end of the fiscal year (or other accounting period) to which the proposal, plan, or computation applies.
 - b. You must include the requirements of Sections B, C, and F of OAR Article II.
 - c. You must include provisions that enable you to comply with the requirements of Section D of OAR Article II concerning records for joint or long-term use.
 - d. You must include provisions that establish the same rights and responsibilities for the subrecipient under the subaward that Section E of OAR Article II establishes for you under these general terms and conditions.
 - e. You may not impose any other record retention or access requirements on the subrecipient.

Section D. Remedies and Termination.

1. The terms and conditions of each subaward you make under NGB CA awards should specify your rights and responsibilities and those of the subrecipient if you take a remedial action to address a subrecipient's noncompliance with an applicable federal statute or regulation or the terms and conditions of your subaward. Each subaward's terms and conditions should:
2. Identify remedial actions you may take to address the subrecipient's noncompliance.

Available remedies are described in OMB guidance in 2 CFR 200.339 for a subaward to an institution of higher education, nonprofit organization, state, local government, Indian tribe, or for-profit entity.

3. With respect to termination specifically:

- a. Identify conditions under which you, the subrecipient, or both (by mutual agreement) may terminate the subaward, in whole or in part, as described in:

OMB guidance in 2 CFR 200.340(a) for a subaward to an institution of higher education, nonprofit organization, state, local government, Indian tribe, or for-profit entity.

- b. Inform the subrecipient that you will provide it with a notice of termination if you unilaterally terminate the award.

- c. Specify that you and the subrecipient remain responsible for applicable requirements addressed in Sections G and H of this article concerning closeout, post-closeout adjustments, and continuing responsibilities.

4. With respect to either suspension or termination of the subaward, inform the subrecipient about the criteria that you will use to either allow or disallow subaward costs, which are in Section D of OAR Article III for a subaward to an institution of higher education, nonprofit organization, state, local government, Indian tribe, or for-profit entity.

Section E. Disputes, Hearings, and Appeals.

Each subaward's terms and conditions should specify any rights the subrecipient has to a hearing, appeal, or other administrative proceeding if it disputes a decision you render in administering its subaward. You must comply with any statute or regulation that affords the subrecipient an opportunity for a hearing, appeal, or other administrative proceeding and is applicable to the dispute.

Section F. Collection of Amounts Due.

Although your subaward terms and conditions do not need to include any of the requirements of OAR Article V because those requirements do not flow down to subrecipients, you should consider including provisions to specify what you would need from the subrecipient if you owed a debt to the Federal Government under NGB CA awards that is related to its subaward.

Section G. Closeout.

In each subaward that you make to an institution of higher education, nonprofit organization, state, local government, Indian tribe, or for-profit entity, you must include provisions to require the subrecipient to:

- a. Liquidate all obligations that it incurred under the subaward not later than 90 calendar days after the end date of the period of performance of either the subaward or NGB CA awards, whichever is earlier, unless you grant an extension.
- b. Promptly refund to you any balances of unobligated cash that you advanced or paid to the subrecipient unless you received authorization from the award administration office for the subrecipient's use of those funds on other projects or programs.
- c. Submit to you:
 - (1) Any information you need from the subrecipient to meet your responsibilities to us for an accounting of property, under Section D of OAR Article VI.
 - (2) Not later than 90 calendar days after the end date of the period of performance of NGB CA awards, unless you grant the subrecipient an extension, any information you need to meet your responsibilities to us for final reports, under Section C of OAR Article VI.

Section H. Post-Closeout Adjustments and Continuing Responsibilities.

You must include provisions in each subaward to require the subrecipient to provide what you need to comply with the requirements of OAR Article VII.

SUB Article IX. National Policy Requirements for Subawards.

Section A. General.

1. You must include provisions in the terms and conditions of each subaward you make to require the subrecipient entity's compliance with each of the national policy requirements in Sections B through E of this article that you determine is applicable, given the type of entity receiving the subaward and activities it will be carrying out under the subaward.
2. If an entity to which you are about to make a subaward will not accept an award provision requiring its compliance with a national policy requirement that you determine to be applicable, you must alert the award administration office immediately. You may not omit an applicable national policy requirement to make the subaward.
3. If at any time during the performance of a subaward, you learn that—or receive a credible allegation that—the subrecipient is not complying with an applicable national policy requirement, you must alert the award administration office immediately.

Section B. Nondiscrimination National Policy Requirements.

You must include provisions in each subaward to require the subrecipient's compliance with the nondiscrimination national policy requirements specified in sections A.1 through

A.5 of NP Article I, as applicable.

Section C. Environmental National Policy Requirements.

You must include provisions in each subaward to require that:

- a. The subrecipient complies with all applicable federal environmental laws and regulations, including those specified in Sections A.2, A.3, A.5, and A.6 of NP Article II, as applicable.
- b. Provide any information you need, when you need it, to comply with the requirement to immediately notify us of potential environmental impacts specified in Sections A.4, A.5, and A.6 of NP Article II, as applicable, due to activities under the award (which includes subaward activities).

Section D. National Policy Requirements Concerning Live Organisms. RESERVED –Not applicable.

Section E. Other National Policy Requirements.

- 1. You must include provisions in each subaward to require the subrecipient’s compliance with the national policy requirements in the following portions of NP Article IV of these general terms and conditions, as applicable:
 - a. Section A.1.
 - b. Sections A.3.a and A.3.b.
 - c. Sections A.4 through A.19.
 - d. Section B.1.

SUB Article X. Subrecipient Monitoring and other Post-Award Administration.

Section A. General Requirement for Subrecipient Monitoring.

- 1. You must do the post-award monitoring of the subrecipient’s activities under each subaward that is needed for you to ensure that:
 - a. The subrecipient carries out the portion of the substantive project or program under NGB CA awards for which the subaward was made.
 - b. The subrecipient is using project funds under the subaward (including any cost sharing or matching the subrecipient provides that is counted as project funds in the approved budget of NGB CA awards) for authorized purposes.
 - c. The subrecipient’s performance under the subaward is in compliance with

applicable federal statutes and regulations, and the terms and conditions of your subaward.

Section B. Subrecipient Monitoring Actions.

1. **Required Monitoring Actions.** You must, as part of your post-award monitoring of each subrecipient:
 - a. Review the financial and programmatic information that your subaward terms and conditions require the subrecipient to provide, in accordance with Sections B and C of SUB Article VII of these general terms and conditions.
 - b. Follow up and ensure that the subrecipient takes timely and appropriate action to remedy deficiencies detected through any means, including audits and on-site reviews.
 - c. With respect to audits of subrecipients that are required under FMS Article V of these general terms and conditions:
 - (1) Verify that the subrecipient is audited in accordance with those requirements, as applicable (note that Section F of SUB Article IV requires you to include those audit requirements for the subrecipient in the subaward's terms and conditions).
 - (2) Resolve and issue a management decision for audit findings that pertain to your subaward. Doing so is a requirement under either Section A or B of FMS Article V of these general terms and conditions (Section B requires that explicitly and Section A does so by implementing OMB guidance in 2 CFR 200.521, as well as other portions of Subpart F of that part).
 - (3) Consider whether you need to adjust your own records related to NGB CA awards based on results of audits, on-site reviews, or other monitoring of the subrecipient and, as applicable, notify the award administration office.
2. **Other Monitoring Actions.** OMB guidance in 2 CFR 200.332(e)(1) through (3) describes other actions that may be useful as part of your subrecipient monitoring program, depending on the outcomes of the pre-award risk assessment you conducted in accordance with Section B of SUB Article II.

Section C. Remedies and Subaward Suspension or Termination.

1. With respect to any subaward under NGB CA awards, you must:
 - a. Consider whether you need to take any remedial action if you determine that the subrecipient is noncompliant with an applicable federal statute or regulation or the terms and conditions of your subaward, as described in Section D of SUB Article VIII.

- b. Provide a notice of termination to the subrecipient if you terminate its subaward unilaterally for any reason prior to the end of the period of performance.
- c. In the case of either suspension or termination of a subaward prior to the end of the period of performance, allow or disallow subaward costs in accordance with Section D of OAR Article III.

Section D. Subaward Closeout.

1. You will close out each subaward when you either:
 - a. Determine that the subrecipient has completed its programmatic performance under the subaward and all applicable administrative actions; or
 - b. Terminate the subaward if you do so prior to completion of the subrecipient's programmatic performance.
2. With respect to the closeout of each subaward:
 - a. You must pay the subrecipient promptly for allowable and reimbursable costs.
 - b. Consistent with the terms and conditions of the subaward, you must make a settlement for any upward or downward adjustments to the federal share of project costs after you receive the information you need from the subrecipient to close out the subaward.
 - c. You should complete the closeout of the subaward no later than one year after you receive and accept the final reports and other information from the subrecipient that you need to close out the subaward.

SUB Article XI. Requirements Concerning Subrecipients' Lower-tier Subawards.

Section A. Purpose.

This article specifies requirements you must include in any cost-type subaward under which you determine that the subrecipient may make lower-tier cost-type subawards to other entities.

Section B. Requirements for Lower-tier Subawards.

Your subaward terms and conditions must require your subrecipient, with respect to each lower-tier cost-type subaward that it makes to:

1. Ensure that the lower-tier transaction is a subaward, rather than a procurement transaction, by making the determination that SUB Article I of these general terms and conditions requires you to make.

2. Conduct the pre-award risk assessment of its intended subrecipient that Section B of SUB Article II of these general terms and conditions requires you to make for your subawards.
3. Include in any cost-type subaward it makes at the next tier:
 - a. The informational content that SUB Article III specifies.
 - b. The administrative requirements that SUB Articles IV through VIII of these general terms and conditions specify.
 - c. The national policy requirements that SUB Article IX of these general terms and conditions specifies, as applicable.
 - d. The requirements of this article if the next-tier subrecipient may make even lower-tier cost-type subawards to other entities.
4. Carry out the subrecipient monitoring and other post-award administration responsibilities specified in SUB Article X.

SUB Article XII. Fixed Amount Subawards.

Section A. Limitations on Use.

1. You may not use a fixed amount subaward:
 - a. If the total value over the life of the subaward will exceed the simplified acquisition threshold.
 - b. Unless the project or program scope is specific, with definite outcomes, and you can establish a reasonable estimate of the actual costs of accomplishing those outcomes.
 - c. If you will predetermine a set amount or percentage of cost sharing or matching that the subrecipient must provide under the subaward.
 - d. If the subrecipient will acquire any real property or equipment under the subaward.
2. For fixed amount subawards not prohibited by paragraph 1 of this section and except as provided in Section B of this article, you must obtain our prior approval before making a fixed amount type of subaward.
 - a. If Section B of FMS Article IV requires you to obtain our prior approval before you make any subaward, and you do not identify the subaward as a fixed amount subaward when you obtain that approval, then you must subsequently request separate approval before awarding it as a fixed amount type of subaward.

- b. If a subaward is identified as a fixed amount type of subaward in the budget you submit for our approval, then our approval of the budget is the required prior approval.

Section B. Fixed Amount Subawards that do not Require Prior Approval.

1. You are not required to obtain our prior approval before using a fixed amount type of subaward if:
 - a. The subaward is to either:
 - b. A foreign public entity; or
 - c. An organizational unit of a foreign organization, if that unit does not have a place of business in the United States, regardless of whether another organizational unit of that foreign organization has one.
2. You determine that the portion of the project or program under NGB CA awards which the subrecipient will be carrying out under the subaward has one or more specific outcomes with the following characteristics:
 - a. You can define the outcomes well enough to specify them at the time you make the subaward. Note that:
 - (1) Outcomes are distinct from inputs needed to achieve the outcomes, such as amounts or percentages of time that subrecipient employees or other participants will spend on the project or program.
 - (2) The inherently unpredictable nature of basic or applied research makes it rarely, if ever, possible to define specific research outcomes in advance, which makes fixed amount subawards inappropriate for research. Note that technical performance reports serve to document research outcomes but are not themselves outcomes, notwithstanding the definition of “performance goals” in OMB guidance at 2 CFR 200.1.
 - b. The accomplishment of each outcome will be observable and verifiable by you when it occurs, so that you will not need to rely solely on the subrecipient’s assurance of that accomplishment.
 - c. The subrecipient associates its estimated costs with outcomes in the proposal it submits to you, and you are confident that the costs of accomplishment of the outcomes will equal or exceed the subaward amount. This requires either that you have a high degree of confidence:
 - (1) In your estimate of the costs associated with accomplishing the well-defined and observable outcomes, based on the prospective subrecipient’s proposal (and using the applicable cost principles in FMS Article III as a guide); or

- (2) That those costs will be within a finite range, rather than a specific amount, so that you may provide an amount of funding under the subaward that does not exceed the lower end of the range, with the provision that the subrecipient agrees to provide any balance above that amount that ultimately is needed to accomplish the outcomes. Your subaward then would include a term or condition to reflect the subrecipient's agreement to provide that balance (which would be in an amount to be post-determined when the outcomes are accomplished). Note that this is distinct from a situation in which you predetermine a set amount or percentage of cost sharing or matching that the subrecipient must provide under its subaward, a situation in which section A.1.c of this article prohibits use of a fixed amount subaward.
3. The subaward is based on a fixed rate per unit of outcome (or "unit cost") and you have both the confidence:
 - a. That is described in Section B.2.c of this article in the estimated costs associated with each unit of outcome.
 - b. In the subrecipient's guarantee that it can accomplish at least the number of units of outcome on which your total subaward amount will be based (i.e., the product of the unit cost and the number of units of outcome the subrecipient guarantees to accomplish).
 - c. Note, however, that not every fixed rate subaward is also a fixed amount subaward. If you have confidence in the unit cost but not also in the subrecipient's ability to guarantee the number of units of outcome that it will accomplish, then you should set a not-to-exceed award amount based on the number of units desired and reduce the subaward amount at the end if the subrecipient accomplishes fewer than that number. Examples of activities for which it may be appropriate to award this type of fixed rate subaward that is not a fixed amount subaward include:
 - (1) A clinical trial for which the unit cost is the cost of treating each participant. The not-to exceed amount would be based on the number of participants the subrecipient planned to recruit and the final award on the number who participated, documentation for which would be subject to audit.
 - (2) Labor costs for performance of a portion of the project or program under NGB CA awards by an organization or entity that treats its indirect cost rate as proprietary information. The unit cost in that case may be "loaded" labor rates for the organization's or entity's employees that include indirect costs. The final award amount would depend on the number of labor hours the organization's or entity's employees expended under the subaward, documentation for which may be audited without exposing proprietary details associated with the actual costs.

Section C. Informational Content of Fixed Amount Subawards.

You must include in each fixed amount subaward the informational content, other than

the indirect cost rate, that is described in SUB Article III of these general terms and conditions.

Section D. Terms and Conditions Addressing Administrative Requirements.

1. General. This section:

- a. Specifies the minimum set of terms and conditions (in lieu of the more extensive set specified in SUB Articles IV through X for cost-type subawards) addressing administrative requirements that you must include in each fixed-amount subaward:
 - (1) To an entity other than a foreign organization, as applicable.
 - (2) To the maximum extent practicable, to a foreign organization.
- b. Does not preclude the inclusion of other requirements that you need to meet your responsibilities under NGB CA awards for performance of the project or program and compliance with applicable administrative requirements.

2. Financial and Program Management Requirements.

- a. **Financial Management System Standards.** For a subaward to other than a for-profit entity, your subaward must require the subrecipient to include the information specified in section B.1 of FMS Article I in its financial management system, for the purposes of the non-federal audits required by section 2.d of this section.
- b. **Payments.** Your payments must be based on accomplishment of the outcomes and associated costs that you used to establish the subaward amount, rather than on subrecipient expenditures for project or program purposes. Milestone payments before the end of the subaward's period of performance may be appropriate if there are outcomes that the subrecipient will accomplish at different times during that period.
- c. **Revision of Budget and Program Plans.** If our prior approval was required under section A.2 of this article for use of a fixed-amount type of subaward, then you must:
 - (1) Request our prior approval for any change in principal investigator, project leader, project partner, or scope or objective of the subaward.
 - (2) Therefore, include a requirement in the subaward for the subrecipient to request that approval through you.
- d. **Non-Federal Audits.** You must include the requirement for non-federal audits described in Section F of SUB Article IV. The audits are intended to focus on compliance with the performance requirements in the subaward terms and conditions and not to review actual costs as they would for a cost-type subaward.

- e. **Certification of completion.** You must include the requirement for the subrecipient to provide you with a certification at the end of the project as specified in 2 CFR 200.201(b)(3).

3. **Property Requirements.**

- a. **Federally Owned Property.** If the subrecipient will be accountable for federally owned property, you must include the property management system, use, and disposition requirements described in Sections C and F of SUB Article V that are applicable to federally owned property.
- b. **Intangible Property.** You must include the applicable intangible property requirements described in Section G of SUB Article V.

- 4. **Reporting Requirements.** You must include requirements for reporting that you need to meet your responsibilities under NGB CA awards for reporting to us.

5. **Other Administrative Requirements.**

- a. **Integrity-Related Information.** You must include the substance of the provision in Section C of OAR Article I in any subaward you make under NGB CA awards. The provision must require the subrecipient's disclosure of any evidence directly to the Inspector General, DoD.
- b. **Records Retention and Access.** You must include the requirements for records retention and access in section A.3 and Sections B and F of OAR Article II, as applicable, if the subaward is to an institution of higher education, nonprofit organization, state, local government, Indian tribe, or for-profit entity. You may not impose any other records retention or access requirements on the subrecipient.
- c. **Remedies and Termination.** You must include:
 - (1) The requirements concerning remedies and termination that are described in Sections D.1 and 2 of SUB Article VIII.
 - (2) Provisions addressing any hearing and appeal rights the subrecipient has, as described in Section E of SUB Article VIII.
 - (3) Terms and conditions addressing adjustment of the amount of the subaward if it is terminated before the subrecipient accomplishes all the specified outcomes.
- d. **Continuing Responsibilities.** You must include requirements concerning continuing responsibilities for audits and records retention and access that are described in Sections B.1 and B.3 of OAR Article VII.

- e. **Collection of amounts Due.** You should consider including requirements

concerning collection of amounts due, as described in Section F of SUB Article VIII.

Section E. National Policy Requirements for Fixed Amount Subawards.

You must include in the terms and conditions of each fixed amount subaward the national policy requirements that SUB Article IX of these general terms and conditions specifies, as applicable.

Section F. Subrecipient Monitoring and Other Post-Award Administration.

You must carry out the subrecipient monitoring and post-award administration actions specified in SUB Article X, as applicable.

Section G. Fixed amount subawards at Lower Tiers.

1. Authority.

- a. If Section B of this article authorizes you to use a fixed-amount type of subaward without our prior approval in some situations, a cost-type subaward that you make may authorize the subrecipient to use fixed-amount subawards at the next lower tier in those same situations without our prior approval.
- b. If you wish to allow a subrecipient of a cost-type subaward to use fixed amount subawards at the next tier in other situations (i.e., situations in which this article requires you to obtain our prior approval before using a fixed-amount type of subaward), your subaward terms and conditions must require the subrecipient to submit a request through you to obtain our prior approval for use of that type of subaward.

2. Subaward Requirements. If your subrecipient is authorized to use lower tier, fixed amount subawards, as described in paragraphs 1.a and 1.b of this section, your subaward's terms and conditions must:

- a. Require the subrecipient, before it makes any lower tier, fixed amount subaward, to:
 - (1) Ensure that the lower-tier transaction is a subaward, rather than a procurement transaction, by making the determination that SUB Article I of these general terms and conditions requires you to make.
 - (2) Conduct the pre-award risk assessment of its intended subrecipient that Section B of SUB Article II of these general terms and conditions requires you to make for your subawards.
- b. Include the requirements specified in Sections A through F of this article.

SUBDIVISION C - General Terms and Conditions for National Policy Requirements

Part 1: National Policy Requirements (Articles from this part are designated with “NP” in the article title)

NP Article I. Nondiscrimination National Policy Requirements.

Section A. Cross-Cutting Nondiscrimination Requirements.

By signing NGB CA award or accepting funds under NGB CA awards, you assure that you will comply with applicable provisions of the national policies prohibiting discrimination:

- a. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), as implemented by Department of Defense (DoD) regulations at 32 CFR part 195.
- b. On the basis of gender, blindness, or visual impairment, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), as implemented by DoD regulations at 32 CFR part 196.
- c. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.
- d. On the basis of disability, in the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.
- e. On the basis of disability in the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.) related to physically handicapped persons' ready access to, and use of, buildings and facilities for which federal funds are used in design, construction, or alteration.

Section B. Other Nondiscrimination Requirements. **RESERVED - Only applicable if provided in award-specific terms and conditions.**

NP Article II. Environmental National Policy Requirements.

Section A. Cross-Cutting Environmental Requirements.

1. You must:

- a. Comply with all applicable federal environmental laws and regulations. The laws and regulations identified in this section are not intended to be a complete list.
- b. Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.).
- c. Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), as implemented by the Department of Housing and Urban Development at 24 CFR part 35. The requirements concern lead-based paint in buildings owned by the Federal Government or housing receiving federal assistance.
- d. Immediately identify to us, as the federal awarding agency, any potential impact that you find NGB CA awards may have on:
 - (1) The quality of the “human environment”, as defined in 40 CFR 1508.14, including wetlands; and provide any help we may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321 et seq.), the regulations at 40 CFR 1500-1508, and Executive Order 12114, if applicable; and assist us to prepare Environmental Impact Statements or other environmental documentation. In such cases, you may take no action that will have an environmental impact (e.g., physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives to the proposed action until we provide written notification of federal compliance with NEPA or Executive Order 12114.
 - (2) Flood-prone areas and provide any help we may need to comply with the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.
 - (3) A land or water use or natural resource of a coastal zone that is part of a federally approved state coastal zone management plan and provide any help we may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.) including preparation of a Federal agency Coastal Consistency Determination.
 - (4) Coastal barriers along the Atlantic and Gulf coasts and Great Lakes’ shores and provide help we may need to comply with the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.

- (5) Any existing or proposed component of the National Wild and Scenic Rivers system and provide any help we may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).
 - (6) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source and in wellhead protection areas and provide any help we may need to comply with the Safe Drinking Water Act (42 U.S.C. 300f et seq.).
- e. You must comply fully with the Endangered Species Act of 1973, as amended (ESA, at 16 U.S.C. 1531 et seq.) and implementing regulations of the Departments of the Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227). You also must provide any help we may need in complying with the consultation requirements of ESA section 7 (16 U.S.C. 1536) applicable to federal agencies or any regulatory authorization we may need resulting from performance under NGB CA awards. This is not in lieu of responsibilities you have to comply with provisions of the Act that apply directly to you as a U.S. entity, independent of receiving NGB CA awards.
- f. You must fully comply with the Marine Mammal Protection Act of 1972, as amended (MMPA, at 16 U.S.C. 1361 et seq.) and provide any assistance we may need in obtaining any required MMPA permit resulting from performance under NGB CA awards.

Section B. Other Environmental Requirements. RESERVED - Only applicable if provided in award-specific terms and conditions.

NP Article III. National Policy Requirements Concerning Live Organisms. RESERVED – Not Applicable.

NP Article IV. Other National Policy Requirements.

Section A. Cross-Cutting Requirements.

1. **Debarment and Suspension.** You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR part 180, as adopted by DoD at 2 CFR part 1125. This includes requirements concerning your principals under NGB CA awards, as well as requirements concerning your procurement transactions and subawards that are implemented in PROC Articles I through III and SUB Article II.
2. **Drug-Free Workplace.** You must comply with drug-free workplace requirements in Subpart B of 2 CFR part 182, which is the DoD implementation of 41 U.S.C. chapter 81, “Drug-Free Workplace.”

3. **Lobbying.**

- a. You must comply with the restrictions on lobbying in 31 U.S.C. 1352, as implemented by DoD at 32 CFR part 28, and submit all disclosures required by that statute and regulation.
 - b. You must comply with the prohibition in 18 U.S.C. 1913 on the use of federal funds, absent express Congressional authorization, to pay directly or indirectly for any service, advertisement or other written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official of any government concerning any legislation, law, policy, appropriation, or ratification.
 - c. If you are a nonprofit organization described in section 501(c)(4) of title 26, United States Code (the Internal Revenue Code of 1968), you may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., chapter 26). If we determine that you have engaged in lobbying activities, we will cease all payments to you under this and other awards and terminate the awards unilaterally for material failure to comply with the award terms and conditions.
4. **Officials not to Benefit.** You must comply with the requirement that no member of Congress shall be admitted to any share or part of NGB CA awards, or to any benefit arising from it, in accordance with 41 U.S.C. 6306.
 5. **Hatch Act.** If applicable, you must comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508) concerning political activities of certain state and local government employees, as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of state or local governments whose employment is connected to an activity financed in whole or part with federal funds.
 6. **Native American Graves Protection and Repatriation.** If you control or possess Native American remains and associated funerary objects, you must comply with the requirements of 43 CFR part 10, the Department of the Interior implementation of the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).
 7. **Fly America Act.** You must comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the “Fly America Act,” and implementing regulations at 41 CFR 301-10.131 through 301-10.143. The law and regulations require that U.S. Government financed international air travel of passengers and transportation of personal effects or property must use a U.S. Flag air carrier or be performed under a cost-sharing arrangement with a U.S. carrier, if such service is available.
 8. **Use of United States-flag Vessels.** You must comply with the following requirements of the Department of Transportation at 46 CFR 381.7, in regulations implementing the Cargo Preference Act of 1954:

- a. Pursuant to Public Law 83-664 (46 U.S.C. 55305), at least 50 percent of any equipment, materials or commodities procured, contracted for, or otherwise obtained with funds under NGB CA awards, and which may be transported by ocean vessel, must be transported on privately owned United States flag commercial vessels, if available.
- b. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in section 8.a of this section must be furnished to both our award administrator (through you in the case of your contractor's bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

9. **Research Misconduct.** You must comply with requirements concerning research misconduct in Enclosure 4 to DoD Instruction 3210.7, "Research Integrity and Misconduct." The Instruction implements the Federal Governmentwide research misconduct policy that the Office of Science and Technology Policy published in the Federal Register (65 FR 76260, December 6, 2000, available through the U.S. Government Printing Office web site:
<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>).

10. **Requirements for an Institution of Higher Education Concerning Military Recruiters and Reserve Officers Training Corps (ROTC).**

- a. As a condition for receiving funds available to the DoD (NGB) under NGB CA awards, you agree that you are not an institution of higher education (as defined in 32 CFR part 216) that has a policy or practice that either prohibits, or in effect prevents:
 - (1) The Secretary of a Military Department from maintaining, establishing, or operating a unit of the Senior Reserve Officers Training Corps (ROTC)—in accordance with 10 U.S.C. 654 and other applicable federal laws—at that institution (or any sub element of that institution);
 - (2) Any student at that institution (or any sub element of that institution) from enrolling in a unit of the Senior ROTC at another institution of higher education;
 - (3) The Secretary of a Military Department or Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer; or
 - (4) Access by military recruiters for purposes of military recruiting to the names of students (who are 17 years of age or older and enrolled at that institution or

any sub element of that institution); their addresses, telephone listings, dates and places of birth, levels of education, academic majors, and degrees received; and the most recent educational institutions in which they were enrolled.

- b. If you are determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of NGB CA awards, we:
 - (1) Will cease all payments to you of federal funds under NGB CA awards and all other DoD grants and cooperative agreements.
 - (2) May suspend or terminate those awards unilaterally for material failure to comply with the award terms and conditions.

11. Historic Preservation. You must identify to us any:

- a. Property listed or eligible for listing on the National Register of Historic Places that will be affected by NGB CA awards, and provide any help we may need, with respect to NGB CA awards, to comply with section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 306108), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR part 800 and Executive Order 11593, "Identification and Protection of Historic Properties," [3 CFR, 1971-1975 Comp., p. 559]. Impacts to historical properties are included in the definition of "human environment" that require impact assessment under NEPA (See NP Article II, Section A).
- b. Potential under NGB CA awards for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, and provide any help we may need, with respect to NGB CA awards, to comply with the Archaeological and Historic Preservation Act of 1974 (54 U.S.C. chapter 3125).

12. Relocation and Real Property Acquisition. You must comply with applicable provisions of 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.) and provide for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

13. Confidentiality of Patient Records. You must keep confidential any records that you maintain of the identity, diagnosis, prognosis, or treatment of any patient in connection with any program or activity relating to substance abuse education, prevention, training, treatment, or rehabilitation that is assisted directly or indirectly under NGB CA awards, in accordance with 42 U.S.C. 290dd-2.

14. Pro-Children Act. You must comply with applicable restrictions in the Pro-Children Act of 1994 (Title 20, Chapter 68, subchapter X, Part B of the U.S. Code) on smoking in any indoor facility:

- a. Constructed, operated, or maintained under NGB CA awards and used for routine or regular provision of kindergarten, elementary, or secondary education or library services to children under the age of 18.
 - b. Owned, leased, or contracted for and used under NGB CA awards for the routine provision of federally funded health care, day care, or early childhood development (Head Start) services to children under the age of 18.
15. **Constitution Day.** You must comply with Public Law 108-447, Div. J, Title I, section 111 (36 U.S.C. 106 note), which requires each educational institution receiving federal funds in a federal fiscal year to hold an educational program on the United States Constitution on September 17th during that year for the students served by the educational institution.
16. **Trafficking in Persons.** You must comply with requirements concerning trafficking in persons specified in the award term at 2 CFR 175.15(b), as applicable.
17. **Whistleblower Protections.** You must comply with 10 U.S.C. 2409, including the:
- a. Prohibition on reprisals against employees disclosing certain types of information to specified persons or bodies.
 - b. Requirement to notify your employees in writing, in the predominant native language of the workforce, of their rights and protections under that statute.
18. **Section 889 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Public Law 115-232).**
- a. Prohibits the head of an executive agency from obligating or expending loan or grant funds to procure or obtain, extend, or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain the equipment, services, or systems prohibited systems as identified in section 889 of the NDAA for FY 2019.
 - b. In accordance with 2 CFR 200.216 and 200.471, all awards that are issued on or after August 13, 2020, recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
 - (1) Procure or obtain;
 - (2) Extend or renew a contract to procure or obtain; or
 - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company

or ZTE Corporation (or any subsidiary or affiliate of such entities).

- (a) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (b) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (c) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- c. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), section (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- d. See Public Law 115-232, section 889 for additional information.
- e. Covered Foreign Country means the People's Republic of China.
- f. Telecommunications Cost means the cost of using communication and telephony technologies such as mobile phones, land lines, and internet.
- g. Do Not Contract with the Enemy (2 CFR 183)

Section B. Additional Requirements.

1. Prohibition on Using Funds under Grants and Cooperative Agreements with Entities that Require Certain Internal Confidentiality Agreements.
2. You may not require your employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information.
3. You must notify your employees, contractors, and subrecipients that the prohibitions

and restrictions of any internal confidentiality agreements inconsistent with NGB CA award, inclusive of these general terms and conditions are no longer in effect.

4. The prohibition in paragraph 1.a. of this section does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a federal department or agency governing the nondisclosure of classified information.
5. If the Federal Government determines that you are not in compliance with NGB CA awards provisions, it:
 - a. Will prohibit your use of funds under NGB CA awards, in accordance with section 743 of Division E of the Consolidated and Further Continuing Resolution Appropriations Act, 2015, (Public Law 113-235) or any successor provision of law.
 - b. May pursue other remedies available for your material failure to comply with award terms and conditions.

SUBDIVISION D - General Terms and Conditions for Programmatic Requirements.

Part 1: Authorities

Section A. General Authority.

1. Title 32 United States Code (U.S.C.) §§ 106 and 107 authorize NGB to contribute funds for the support of the operation and training of the Army National Guard and Air National Guard.
2. It is NGB's policy to do so in the form of a Cooperative Agreement.

Section B. Other Specific Authorities.

Other specific authorities to the programs will be in each the individual Cooperative Agreement.

Part 2: NGB Definitions

Section A. Airport Authority.

A Public Agency controlling a Public Airport. A Public Agency is a State or any agency of a State, a municipality or other political subdivision of a State, a tax-supported organization, or an Indian tribe or pueblo. Public Airport means an airport which is used for or to be used for public purposes, under the control of a public agency, and the landing area of which is publicly owned.

Section B. Air National Guard.

The Air National Guard (ANG) means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that:

- a. Is an air force.
- b. Is trained, and has its officers appointed, under the sixteenth clause of section 8, article 1 of the Constitution.
- c. Is organized, armed, and equipped wholly or partly at federal expense.
- d. Is federally recognized (32 USC § 101).

Section C. Army National Guard.

The Army National Guard (ARNG) means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that --

- a. Is a land force.
- b. Is trained, and has its officers appointed, under the sixteenth clause of section 8, article I of the Constitution.
- c. Is organized, armed, and equipped wholly or partly at federal expense.
- d. Is federally recognized (32 U.S.C. § 101).

Section D. Army National Guard and Air National Guard Cooperative Agreement Award.

Any agreements entered by the Department of Defense, National Guard Bureau, with recipients, funded by Department of Defense appropriations for the Army National Guard and Air National Guard, minor construction, maintenance, repair, or operation of facilities, operations of the Army National Guard and Air National Guard, and for other programs authorized and directed by Congress or the Department of Defense to be performed by the recipients and the National Guard Bureau.

Section E. Chief, National Guard Bureau.

The appointed head of the National Guard Bureau

Section F. Centralized Personnel Plan.

The centralized personnel plan is the mechanism which the recipient may charge indirect rates should they choose to centralize cooperative agreement personnel within the recipient military department.

Section G. Federal Fiscal Year.

The federal fiscal year that runs from October 1 to September 30.

Section H. Grant Appeal Authority.

The Chief, National Guard Bureau will establish one or more grant appeal authorities to decide formal, administrative appeals. The individual so designated will be a General Officer or Senior Executive Service Civilian. The appointment order will be issued by the Chief, National Guard Bureau.

Section I. In-Kind Assistance.

The federal procurement of supplies and or services, in lieu of funds, to satisfy National Guard Bureau's obligation of assistance support to the recipient. To be used sparingly

as the exception to the rule with strong justification for each action submitted to the Grants Officer for pre-approval prior to submitting the request to the contracting office.

Section J. In-Kind Contribution.

Property or services (valued at the time of the contribution at fair market value) which benefit a federally assisted program or activity contributed by or on behalf of the recipient to satisfy (in whole or in part) the recipient's match share of assistance to the Cooperative Agreement Award.

Section K. Military Equipment.

Military Equipment is federal equipment, authorized and used by the Army and Air National Guard to carry out tactical military missions (i.e., combat, or homeland defense/security), listed in the ARNG Modified Table of Organization Equipment, or AF Designed Operational Capability. Military equipment cannot be issued/transferred to the State for the purpose of National Guard Bureau cooperative agreement award execution.

Section L. National Guard Bureau.

DoD Component and a Joint Activity of the Department of Defense headed by a Chief who sits on the Joint Staff and is the advisor on National Guard matters. The National Guard Bureau is the channel of communication between the departments concerned and the several States, Territories, Puerto Rico, and the District of Columbia, on all matters pertaining to the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States.

Section M. Principal Investigator.

Also known as Project Director and State Program Manager The individual within that group identified by the organization as the one with whom National Guard Bureau's Federal CA PM generally should communicate as the primary contact for, technical, and related budgetary matters concerning the project.

Section N. Renewal Award

An award made subsequent to an expiring Federal award for which the start date is contiguous with, or closely follows, the end of the expiring Federal award. A renewal award's start date will begin a distinct period of performance.

Section O. State.

Any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam..., and any agency or instrumentality thereof exclusive of local governments. For Military Construction Cooperative Agreements and other Cooperative Agreements awarded to meet the purpose of facilities under 10 USC Chapter 1803, FACILITIES FOR RESERVE COMPONENTS, the term "State" means any of the States of the United States, the District of Columbia, the Commonwealth of

Puerto Rico, and each territory and possession of the United States and includes political subdivisions and military units thereof and tax-supported agencies therein.

Section P. The Adjutant General

The head of the State (Commonwealth, or Territory) Military Department, appointed by the Governor of the State (Commonwealth, or Territory) or elected, according to the respective State's (Commonwealth's, or Territory's) constitution, or statute. The Adjutant General receives funds and property, accounts for expenditures and property acquired through a cooperative agreement award and makes returns and reports concerning those expenditures and property, as required by the cooperative agreement award.

Section Q. United States Property and Fiscal Officer.

The qualified commissioned officer of the Army National Guard or the Air National Guard designated by the Chief, National Guard Bureau, to be the United States Property and Fiscal Officer of a State or Territory. He/she receives and accounts for funds and property of the United States in the possession of the National Guard for which he/she is property and fiscal officer; and make returns and reports concerning those funds and that property, as required by the Secretary concerned.

Part 3: NGB General Provisions

Section A. Successors and Assigns.

NGB CA awards may not be assigned by a party without the express written consent of the other party. All covenants made under NGB CA awards shall bind and take effect to the benefit of any successors and assigns of the parties whether expressly assumed or acknowledged by such successors or assigns.

Section B. Entire Agreement.

NGB CA award and these general terms and conditions, which are incorporated in whole by reference into all NGB CA awards, form the entire agreement between the parties as to scope and subject matter of NGB CA award. All prior discussions and understandings concerning the scope and subject matter are superseded and incorporated by NGB CA awards.

Section C. Severability.

If any provision of NGB CA award is held judicially invalid, the remainder of the CA award shall continue in force and effect to the extent not inconsistent with such holding.

Section D. Waiver of Breach.

If a party waives enforcement of any provision of NGB CA award upon any event of breach by the other party, the waiver shall not automatically extend to any other or future events of breach.

Section E. Notices.

1. Any notice, transmittal, approval, or other official communication made by you the recipient, under an NGB CA award shall be in writing and shall be delivered by hand, email, facsimile transmission, or by mail to the grants officer.
2. Any notice, transmittal, approval, or other official communication made by us, NGB, under an NGB CA award shall be in writing and shall be delivered by hand, email, facsimile transmission, or by mail by the grants officer or as delegated by the grant officer.

Section F. Liabilities and Indemnity.

Except as stated in section G, nothing in NGB CA awards shall be construed as an indemnification by one party or the other for liabilities of a party or third persons for property loss or damage, or for death or personal injury arising out of and during performance of the activities supported by NGB CA awards. Any liabilities or claims for property loss or damage or for death or personal injury by a party or its agents, employees, contractors or (assigns) or by third persons, arising out of and during the performance of supported activities shall be determined according to applicable law.

Section G. Government Furnished Equipment (GFE).

In addition to the Liability and Indemnity provisions in section F, nothing in NGB CA award shall be construed as an indemnification by the United States of the State, its employees, agents, or third persons, for liability with respect to any and all claims, including, but not limited to: (1) claims for damages; and (2) claims for reimbursement arising from property loss, personal injury or accident damage related to the use, care, or operation of GFE. The Recipient's liability for lost or damaged GFE will be in accordance with applicable State laws. In the event that State law does not authorize indemnification, GFE should not be provided.

Part 4: Legal Authorities

Section A. Legal Authority.

The Recipient represents and warrants that it is under no existing or foreseeable legal disability that would prevent or hinder it from fulfilling the terms and conditions of NGB CA award. The Recipient shall promptly notify NGB of any legal impediment that arises during the term of NGB CA award that may prevent or hinder the state's fulfillment of its obligations under NGB CA award.

Section B. Opinion of Counsel.

Concurrent with its execution of NGB CA award, the Recipient shall furnish an opinion of counsel by the highest legal officer of the State, or his or her designee, that:

- a. The Recipient has the requisite authority to enter into NGB CA award.
- b. The Recipient can make the warranty set forth in Section A above.
- c. The Recipient is empowered to assume the responsibilities and obligations it proposes to undertake under NGB CA award.
- d. The provisions of NGB CA award intended to secure the interests of NGB are enforceable according to their terms.
- e. The execution of NGB CA award has been duly authorized by the state.
- f. That the individual signing NGB CA award on behalf of the recipient has the requisite legal authority to bind and obligate the recipient to the terms and conditions of NGB CA award.

Part 5: Responsibilities of Parties

Section A. National Guard Bureau (NGB) Responsibilities.

NGB has overall responsibility for NGB-funded awards, including providing oversight for technical, programmatic, financial, and administrative performance.

a. Grants Officer.

Grants officer authority is authorized by a warrant issued by NGB, Head of Contracting Activity (HCA) or HCA delegate. The grants officer is responsible for all actions on behalf of NGB, including entering, modifying, or terminating awards. In addition, the grants officer is responsible for the administrative coordination and liaison with the recipient. The grants officer is the only person authorized to approve changes to any of the requirements in the award.

b. Grants Officer Representative (GOR).

The GOR is a federal employee delegated in writing by the grants officer who is responsible for completing day-to-day administrative actions and technical monitoring relative to all cooperative agreement awards. The GOR ensures internal controls are in place and effective. The GOR establishes and maintains a separate file for each award.

c. Federal Cooperative Agreement Program Manager (CA PM).

The CA PM is a federal employee, delegated in writing, by the grants officer to administer certain aspects of the award. The CA PM has the technical expertise related to program implementation and monitors assigned cooperative agreement's performance to ensure compliance with the terms and conditions of the award. The CA PM provides technical input, direction, and guidance to assist the recipient in meeting the terms and conditions of the cooperative agreement. A recipient employee cannot be designated as a CA PM.

d. NGB Office of Primary Responsibility Program Manager (NGB-OPR Program Manager).

It is NGB policy that all CA awards shall have an appointed NGB-OPR Program Manager. They should have knowledge of and are responsible for the programmatic and/or technical aspects of the federal assistance award. They provide administrative and financial guidance to the grants officer and CA PMs as stated in the agreement. Lines of communication between the NGB-OPR Program Manager and you the recipient will go through the CA PM or grants officer as appropriate.

Section B. Recipient Responsibilities and Compliance with Federal Requirements.

1. The recipient is responsible for notifying NGB of any significant problems relating to the administrative, programmatic, or financial aspects of the award. The recipient should direct all correspondence related to programmatic and budgetary issues to the grants officer, GOR, and CA PM. Lines of communication between the NGB-OPR Program Manager and you the recipient will go through the CA PM or grants officer as appropriate.
2. The recipient is responsible for the management of the project or activity supported under the award and for adherence to federal regulations, the award provisions, and these general terms and conditions. Although the recipient is encouraged to seek the advice and opinion of the grants officer, GOR, and/or the CA PM on special circumstances that may arise, such advice does not diminish the recipient's responsibility for making prudent and sound administrative judgments under the circumstances prevailing at the time the decision was made and should not imply that the responsibility for operating decisions has shifted to NGB.
3. In addition to the requirements specified in 2 CFR 200.331, these terms and conditions flow down to all sub recipients (subcontracts and sub agreements) and must be included in the recipient's sub award instrument. Depending on the type of entity, all sub recipients and subcontractors are subject to the federal regulations specified in Part 2 of these terms and conditions.
4. Nothing in this provision alters the recipient's responsibility for conduct of the project and compliance with all applicable laws and regulations.

Part 6: Period of Performance of Cooperative Agreement Awards (Articles from this part are designated with “POP” in the article title)

POP Article I. Period of Performance

Section A. Opening of a new NGB Cooperative Agreement Award

1. With the exceptions in Section C, NGB cooperative agreements will be awarded on 1 October of each fiscal year.
2. The period of performance will begin on 1 October of the Federal fiscal year in which funds the first tranche of funds are made available for obligation.
3. The necessary funds must be available for obligation for the fiscal year for the grants officer to award a cooperative agreement. However, if the appropriation has been signed into law but the funds have not been transferred to the specific grants officer’s accounts, a cooperative agreement award may still be awarded with the disclaimer “Subject to the Availability of Funds” included in the initial award.
 - a. In such circumstances, the cooperative agreement award should reflect zero (\$0) federal dollars obligated and an approved or estimated budget that is not to be exceeded. Unless the NGB-OPR Program Manager has approved a budget, the budget should be based on the prior year’s budget less ten percent.
 - b. The cooperative agreement will be modified once funds are received to reflect the actual amount funded and budget amount.

Section B. Duration of the Period of Performance (PoP)

1. With the exceptions in Section C, the length of the period of performance will be negotiated between the recipient and the grants officer with the grants officer making the final decision.
2. The PoP can be from one to five years.
3. You, the recipient may request that the grants officer extend the period of performance for any of the following reasons:
 - a. For projects, contracts and other allowable activities that do not require additional funding and were initiated by you during the period of performance but will not be completed by the end of the period of performance.
 - b. An upward adjustment of funds for in-scope changes has been approved by the grants officer IAW NGB issuances for projects, contracts and other allowable activities that were initiated by you during the period of performance but will not be completed by the end of the period of performance.

- c. For projects, contracts and other allowable activities that will begin after 30 September following the end of the first year of the PoP if:
 - (1) There are unliquidated funds remaining in the cooperative agreement award.
 - (2) Those remaining are not expired.
- d. It is the grants officer's discretion on whether to extend the period of performance. It is within the authority of the grants officer to implement additional controls and safeguards when extending the period of performance.

Section C. Period of Performance Exceptions.

1. National Guard Youth ChalleNge cooperative agreement awards may be opened on a date other than 1 October of the Federal fiscal year in which funds are made available for obligation. The PoP will close twelve months after it is opened. The PoP may be extended IAW with Section B, paragraph 2 of this Article.
2. Army Compatible Use Buffer cooperative agreement awards may be opened on a date other than 1 October of the Federal fiscal year in which funds are made available for obligation. The period of performance will be determined by NGB for each award. The period of performance may be extended IAW with Section B, paragraph 2 of this Article.
3. Military Construction Cooperative Agreement awards may be opened on a date other than 1 October of the Federal fiscal year in which funds are made available for obligation. The period of performance will close upon completion of the project but not to extend beyond the period that the funds are available for liquidation. The period of performance may be extended IAW with Section B, paragraph 2 of this Article.
4. Other agreement awards that are for specific projects that will not be renewed may be opened on a date other than 1 October of the Federal fiscal year in which funds are made available for obligation. The PoP will close upon completion of the project but not to extend beyond the period that the funds are available for liquidation. The PoP may be extended IAW with Section B, paragraph 2 of this Article.

POP Article II. Use of Renewal Awards

1. If the determination is to use one year PoPs for a CA Award, the grants officer has the discretion to execute up to four one-year "renewal awards" to an initial award. If a renewal award is issued, each renewal period will have its own distinct PoP.
2. If the grants officer elects to execute a renewal award, there will not be a requirement for legal review unless there is a change to the terms of the agreement from the initial cooperative agreement award.

3. Cooperative agreement extension requirements under POP Article I applies to renewal awards the same as it does to the initial award.

Part 7: Payments

Payment Method, Timing, and Amounts.

1. Recipients will submit requests for reimbursement/advancement on the Standard Form (SF) 270.
2. To ensure proper fiscal stewardship, the SF 270 will be reviewed by the grants officer, GOR and the CA PM for the CA award.
3. Requested reimbursements will be processed by the grants officer and paid within 30 days after receipt and acceptance.
4. Exclude from any payment request amounts from any of the following sources that are available to you for project or program purposes under an NGB CA award: program income, including repayments to a revolving fund; rebates; refunds; contract settlements; audit recoveries; and interest earned on any of those funds. You must disburse those funds for project or program purposes before requesting additional funds from us.
5. Reimbursement is the preferred method of NGB, however if state law or a non -federal entity's policies indicates it must have funds on hand, the recipient may request advance payment.
6. To request authority for the advance method the Recipient shall annually prepare and sign a memorandum and forward it to the grants officer NLT 1 September of each year. Recipient will work with the GOR and grants officer on required information per NGB Policies.

Part 8: Authorized Charges

Personnel.

1. Payments for salaries, to include approved overtime and allowable benefits IAW recipient personnel policy for the payment of salary and benefits of like recipient government positions within the same geographic area are allowable costs.
2. Personnel actions for recipient employees such as pay raises, bonuses, pay freezes or pay caps, hiring freezes or employee furloughs will be treated consistently as other like positions that do not support work being performed in support of a CA award.

3. When there is no like state government position available, salaries and benefits will be equivalent to a comparable grade and series Federal Civil Service position in the geographic area.
4. Raises for federally reimbursed state employees and state-contracted personnel will not exceed those of comparable state employees.
5. Costs for merit and incentive awards based on performance, providing the awards are part of a program available and consistent with those offered to similar state government positions.
6. Overtime required by Fair Labor Standards Act (FLSA), based on the work schedule authorized by the state. When operational requirements or personnel circumstances dictate additional staffing in support of the mission, overtime may be authorized as specified in the CA award to satisfy minimum staffing requirements.
7. Overtime may be approved on an exception basis (filling for sick or annual leave, emergency, or training, etc.).
8. Costs of training for qualification in accordance with established work center requirements, and as authorized in each CA award.
9. Any other charges or activities not otherwise authorized, require prior approval by the OPR-PM and grants officer, or as specified in the CA award.

Part 9: Centralized Personnel Plan (CPP)

Section A. CPP

1. The CPP is the mechanism which the recipient may charge indirect rates should they choose to centralize CA personnel within the recipient military department.
2. It is the decision of the grants officer whether to allow reimbursement for a CPP. The CPP is a negotiated document. The grants officer has final approval over the plan.
3. The recipient's personnel in the human resource office, procurement office, or accounting office are the personnel that are authorized to be a part of CPP.
4. Supervisor's time for positions being allocated to the CPP will not be calculated in the CPP; however, a supervisor, whose time can be validated and allocated to the performance of direct supervision over multiple CA awards over personnel working directly on those CA awards or non-supervisory functions in the CA award program, may be considered in the CPP calculations.
5. A formal DHHS negotiated Central Services Cost Allocation Plan (CSCAP) can be included in the CPP for consideration by the grants officer as part of the CPP

submission by the recipient.

Section B. Responsibilities.

The CPP will be negotiated annually between the recipient and the grants officer. The grants officer will have final approval.

- a. It is the grants officer's responsibility to review and validate costs charged to agreements for reimbursement. The CPP will reflect only actual, direct personnel costs incurred. The CPP will include a methodology that accurately captures the separate cost drivers and metrics for each allowable personnel functional area. The two most used NGB methodologies to formulate CPP costs drivers are the time study of personnel method and the fee per action method.
- b. Requested CPP reimbursements must be for incremental, direct, and personnel costs that are compensation for staff positions that would not exist if CA awards did not exist. Only non-supervisory compensation costs are allocable except as described in (1)(c) above. No other costs (i.e., audit costs, equipment) are authorized. Reimbursements must be allocated to specific CA awards. requested amounts must be based upon the actual level of effort and the personnel must be directly responsible for actions supporting the CA award.

Section C. State Central Services Cost Allocation Plan (CSCAP)

1. CSCAP is a cost that can be classified as either a direct or indirect cost. Recipient treatment of the cost, as reflected in its CSCAP or a recipient's approved indirect cost rate negotiated IAW Appendix E, 2 CFR 200.416, will apply. The CSCAP is prepared by the recipient IAW Appendix E, 2 CFR 200.416, and approved by the Department of Health and Human Services (HHS). The CSCAP is prepared to identify central service costs statewide.
2. When a cost cannot be easily classified as a direct or indirect cost, the recipient's treatment of that cost, as reflected in CSCAP or in its approved indirect cost rate proposal, will apply.
3. The CSCAP is prepared to identify central service costs statewide and must have a specific percentage identified and negotiated by HHS for each Department within the state.
 - a. The percentage allowed to be considered in the CPP calculation is that of the percentage negotiated under the CSCAP by HHS specifically for the state military department.
 - b. The grants officer will work with the recipient to ensure there is no duplication of charges between the CSCAP and proposed CPP.

Part 10: Program Income

You, the recipient must exclude from any payment request amounts from any of the following sources that are available to you for project or program purposes under an NGB CA award: program income, including repayments to a revolving fund; rebates; refunds; contract settlements; audit recoveries; and interest earned on any of those funds. You must disburse those funds for project or program purposes before requesting additional funds from us.

ATTACHMENT 2

DMAVA is governed by N.J.S.A. 38 – Militia--Soldiers, Sailors and Marines and N.J.S.A. 38A – Military and Veterans Law. Other statutes include, but are not limited to, N.J.S.A. 11A (Veterans Preference and Pension), 13:1B-20 (Veterans' Services Council), 18A (Veterans Education Benefits), and 23:3-1e (National Guard Hunting and Fishing Licenses).

With respect to New Jersey Administrative Code, DMAVA is governed by Title 5A:

N.J.A.C. 5A:1 – DEPARTMENT OF MILITARY AND VETERANS AFFAIRS ORGANIZATIONAL RULES. These rules establish the mission, organization, and chain of command within DMAVA, and the procedures for public information requests and rulemaking petitions.

N.J.A.C. 5A:2 – LEAVES OF ABSENCE FOR MILITARY DUTY FOR AND BY MEMBERS OF THE ORGANIZED MILITIA. These rules establish the 90 days of military leave for members of the NJNG employed by State, County and/or Municipal agencies

N.J.A.C. 5A:3 – NEW JERSEY DISTINGUISHED SERVICE MEDAL. These rules establish the criteria for the NJ Distinguished Service Medal. This medal is given to current and former Service Members.

N.J.A.C. 5A:4 – BRIGADIER GENERAL WILLIAM C. DOYLE VETERANS' MEMORIAL CEMETERY. These rules establish the operation of and the criteria for interment at the veterans cemetery

N.J.A.C. 5A:5 – NEW JERSEY VETERANS' MEMORIAL HOMES. These rules establish the operation of, the criteria for residency, and the costs associated with the Veterans Memorial Homes.

N.J.A.C. 5A:6 – DIVISION OF VETERANS SERVICES. These rules establish the DVS operation and the following programs mandated by statute: Post-Traumatic Stress Disorder/Readjustment Counseling Program, Veterans' Tuition Credit Program (N.J.S.A. 18a:71-64 et seq.), Vietnam Veterans Tuition Aid Program (N.J.S.A. 18a:71-76.1 et seq.), Tuition Assistance for Children Of POW/MIAS (N.J.S.A. 18a:71- 61 et seq.), Tuition Assistance for War Orphans (N.J.S.A. 38:20-1 et seq.), Veterans' Catastrophic Entitlement (N.J.S.A. 38:18-1 et seq.; 38:18a-1 Et Seq.).

N.J.A.C. 5A:7 – DISABILITY DISCRIMINATION GRIEVANCE PROCEDURE. These rules establish the procedure to file an ADA grievance against DMAVA.

N.J.A.C. 5A:8 – NEW JERSEY VETERANS' TRANSITIONAL HOUSING PROGRAM (VETERANS' HAVENS). These rules establish the operation of, the criteria for residency, and the costs associated with the Veterans Havens.

N.J.A.C. 5A:9 – VETERANS' AND DISABLED VETERANS' PREFERENCE AND DESIGNATION OF VETERANS' STATUS FOR PENSION PURPOSES. These rules establish

the criteria for establishing Veterans and Disabled Veterans Preference and the designation for establishing a Veterans Pension for State, County and Municipal agencies.

N.J.A.C. 5A:10 – NEW JERSEY VIETNAM 25TH ANNIVERSARY COMMEMORATIVE MEDAL. These rules establish the criteria for the NJ Vietnam Medal.

N.J.A.C. 5A:11 – VETERANS' ACCESS TO STATE BEACHES. These rules establish the criteria for municipalities to use to establish proof of Veteran status.

NOTE: The above list represents some state statutes and regulations applicable to the work required by this engagement, it is not all-inclusive, and the deliverables shall include *all* applicable state statutes, as well as state and federal regulations.

**STATE OF NEW JERSEY
PARTICIPATING ADDENDUM**

**Pursuant to
NCPA Contract for
Business and IT Consulting and Advisory Services (2020 – 2023)
[Region 14 ESC Contract Ref. No 11-61 Solicitation #41-20]**

This New Jersey Participating Addendum is made by and between, McKinsey & Company, Inc. Washington D.C. whose address is 1200 19th Street, NW, Suite 1000, Washington, DC 20036 (“Contractor”), and the State of New Jersey, Department of the Treasury, Division of Purchase and Property (“State”) whose address is 33 West State Street, 8th Floor, P.O. Box 039, Trenton, New Jersey 08625, on behalf of the State of New Jersey, and all “Authorized Purchasers”, as defined in Section 5.0 of this New Jersey Participating Addendum. For clarification of references throughout this document, the term “State,” in any form, refers to the State and any Authorized Purchaser, unless otherwise indicated. Capitalized terms used but not defined shall have the meaning ascribed to them in the Master Agreement.

WHEREAS, pursuant to N.J.S.A. 52:34-6.2, the Director of the Division of Purchase and Property (“Director”), within the New Jersey Department of the Treasury (“Division”) “may enter into cooperative purchasing agreements with one or more states for the purchase of goods and services;” and

WHEREAS, the National Cooperative Purchasing Alliance, as administrative agent for Texas Region 14 Educational Service Center (“Lead Entity”) and Contractor have entered into Contract #11-61 (the “Master Agreement”), which may be found at the following URL: <https://www.ncpa.us/Vendors/McKinsey%20and%20Company> awarded in accordance with the Solicitation for Business and IT Consulting and Advisory Services, Solicitation #41-20 (the “Solicitation”); and

WHEREAS, the Director has determined that entering into a Participating Addendum with Contractor is the most cost effective method of procuring these products and services, and that it is in the best interest of the State to enter into a Participating Addendum with Contractor; and

WHEREAS, it is understood by all Parties that the State will be entering into Participating Addendums with Contractors on a staggered basis, and as such, the State reserves the right to begin utilizing the initial contract(s) prior to the formation of a complete pool of contractors; and

WHEREAS, Contractor acknowledges this New Jersey Participating Addendum does not grant Contractor exclusivity in providing these services and agrees that notwithstanding its entrance into this New Jersey Participating Addendum with the State, the State may select other contractors to provide services available under this contract before selecting the Contractor and there is no guarantee that Contractor will be utilized to provide any services under this New Jersey Participating Addendum; and

WHEREAS, the Contractor and State (“Parties”) seek to enter into this New Jersey Participating Addendum to memorialize the terms of their contractual relationship;

NOW THEREFORE, for good and valuable consideration, receipt of which hereby acknowledged, the Parties to this New Jersey Participating Addendum hereby agree as follows:

1.0 Term and Extension Option; Order of Precedence; Entire Agreement:

1. The term of this New Jersey Participating Addendum shall be effective from the Effective Date, which shall be the date of the last signature below, and shall continue for a period ending on the Termination Date of the Master Agreement or when this New Jersey Participating Addendum is terminated in accordance with the Master Agreement or this New Jersey Participating Addendum, whichever shall occur first. Notwithstanding anything to the contrary contained in the Master Agreement, the State reserves the right, in its sole discretion, to extend this New Jersey Participating Addendum upon an extension of the Master Agreement under the same terms and conditions as stated in this New Jersey Participating Addendum. There shall be no automatic renewals of the New Jersey Participating Addendum. For additional clarity, this New Jersey Participating Addendum may not be extended beyond the termination date of the Master Agreement.
2. The entire agreement, and all rights and obligations between the Parties, shall consist of the following documents (which shall be collectively referred to as the “Agreement”):
 - a. This New Jersey Participating Addendum;
 - b. The State of New Jersey Standard Terms and Conditions and its Exhibits (Attachment A) and the Software as a Service (“SaaS”) Supplement (“Supplement”) (Attachment B);
 - c. The Master Agreement, including its attachments and exhibits, as applicable, (Attachment C);
 - d. The Solicitation (Attachment D);
 - e. The Contractor’s response to the Solicitation, as revised (if permitted) and accepted by the Lead Entity (Attachment E); and
 - f. Order-Specific Documents, in the following order:
 1. Agency scope of work for Engagement;
 2. Contractor-supplied scope of work as applicable;
 3. Written approval for the Engagement from the State Contract Manager;
 4. A Purchase Order issued by an Authorized Purchaser against the New Jersey Participating Addendum;

The documents comprising the Agreement shall be read to be consistent and complimentary. In the event of any conflict between the terms of the documents comprising the Agreement, the conflict shall be resolved by giving priority to the documents in the order listed above; notwithstanding the above, items under the same subheading will have an order of precedence ordered as numbered above. The Parties expressly acknowledge and agree that any provisions establishing a different order of precedence within the documents set forth in Paragraph 2 above, or any amendments thereto, shall have no effect. It is understood and agreed that the Software as a Service (“SaaS”) Supplement (“Supplement”), incorporated herein as part of Attachment A, may not apply to a particular Engagement, as that term is defined herein, as determined by the Authorized Purchaser in its sole discretion, during the Mini-Bid, as set forth in the Method of Operation.

3. The Agreement sets forth the entire agreement between the Parties and supersedes all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this New Jersey Participating Addendum and the Master Agreement, shall not be added to or incorporated into this New Jersey Participating Addendum or the Master Agreement by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The State will follow the procedures set forth in the Method of Operation to competitively retain a Contractor for each Engagement. The State reserves the right to disqualify the Contractor from Engagements deemed to be a conflict of interest due to Contractor's work under this contract, or other State contracts.
4. Amendments – This New Jersey Participating Addendum may not be amended except in a writing signed by both Parties. In the event that Contractor presents terms and conditions, by way of software license agreement, service level agreement, Statement of Work, or similar document, in response to an order by an Authorized Purchaser, through any medium whatsoever, that have not been previously accepted by the Division as part of this New Jersey Participating Addendum , or as an amendment to this New Jersey Participating Addendum , are expressly rejected and shall not become part of the New Jersey Participating Addendum.

2.0 Scope of Services:

1. The scope of Products and Services that may be procured by Authorized Purchasers defined in Section 5.0(1) of this New Jersey Participating Addendum (“State Agencies”) shall be those Products and Service offered by the Contractor in its response to the Solicitation and awarded under the Master Agreement, as detailed in Section 2.0(3) below, subject to restrictions set forth below in Section 4.0 of this New Jersey Participating Addendum, so long as those amendments do not conflict with the terms and conditions of this New Jersey Participating Addendum.
2. The scope of Products and Services that may be procured by Authorized Purchasers defined in Section 5.0(2)-(5) of this New Jersey Participating Addendum (Cooperative Purchasing Program Participants) shall be those Products and Service offered by the Contractor in its response to the Solicitation and awarded under the Master Agreement, as detailed in Section 2.0(3) below, subject to and in accordance with the Authorized Purchasers’ applicable rules, regulations, and statutes.
3. The following Products and Services offered by the Contractor under the Master Agreement may be procured under this New Jersey Participating Addendum as the main purpose or principal task (i.e. “Primary Engagement Objectives”):
 - a. LIST OF ALLOWABLE PRIMARY ENGAGEMENT OBJECTIVES
 - i. Strategic Planning
 - ii. Business Project Improvement
 - iii. Organizational Change Management
 - iv. Procurement
 - v. Business Advisory & Support

- vi. Business Process Reengineering
 - vii. Consultation Services
 - viii. Customized Training
 - ix. Organizational Design
 - x. Leadership Development & Coaching Services
 - xi. Succession and Transition Planning
 - xii. Customer/Citizen Experience Design
 - xiii. Service Digitization Assessment and Consulting Services
 - xiv. Data Analytics Consulting Services
 - xv. Data Strategy and Transformation
 - xvi. Technology Strategy and Consulting (to Include Cloud Strategy, IT Organization/Operating Model)
 - xvii. Resource Capacity Modeling and Planning
 - xviii. Risk Analysis Management
 - xix. Research and Analysis
4. Contractor shall demonstrate to the Authorized Purchaser that each Product or Service included in an order is within the scope of the Master Agreement as awarded by the Lead Entity. The Authorized Purchasers shall ensure that the product or service is not prohibited by the restrictions set forth in this New Jersey Participating Addendum or for Authorized Purchasers defined in Section 5.01(2)-(5), such Authorized Purchaser's applicable rules, regulations, and statutes. The parties agree the purpose of this paragraph is solely to ensure the Contractor's compliance with the terms of the Agreement.
 5. In order to be able to complete the services within the agreed timeframe and budget and to fulfill its responsibilities on a timely basis, Contractor will rely on the Authorized Purchaser's timely cooperation, including making available relevant data, information and personnel, performing any tasks or responsibilities assigned to the Authorized Purchaser and notifying Contractor of any issues or concerns the Authorized Purchaser or State may have relating to the services. Contractor shall make all requests for cooperation in writing to the Authorized Purchaser during the course of the services, priorities may shift or unexpected events may occur which may necessitate changes to the services. In this event, the Authorized Purchaser and Contractor will jointly discuss the anticipated impact on the services and agree on any appropriate adjustments, including to the scope of work, timeframe and budget.
 6. As stated in the State of New Jersey Standard Terms and Conditions Section 5.4, any changes or modifications to the terms of the Agreement shall be valid only when they have been reduced to writing and signed by the Contractor and the Director. For purposes of this paragraph only, changes to "Order-Specific Documents" regarding a specific Engagement may be authorized in writing by the Authorized Purchasers defined in Section 5.01(2)-(5), rather than the Director.
 7. Notwithstanding anything to the contrary in any of the documents comprising the Agreement, Engagements shall not automatically renew.

8. The Contractor and the State agree that it the State's intent to enter into a Participating Addendum with multiple contractors awarded contracts under the Master Agreement, creating a pool of available contractors for the subject services.
9. Pricing shall not exceed the rates set forth in the Contractor's response to the Solicitation and awarded under the Master Agreement. If a Contractor submits lower pricing in response to an Engagement Mini-Bid, that pricing will become the Contractor's new pricing for that Engagement only. The Contractor's pricing will automatically revert back to the original pricing for subsequent Engagements.
10. The State reserves the right to separately procure services that may fall under the Master Agreement, at its sole discretion, through a separate solicitation.
11. The State or an Authorized Purchaser shall provide Contractor with written notice of acceptance or defective work product within ninety (90) days of delivery of tasks, work product, deliverables, or similar milestones, as set forth in the Authorized Purchasers' Scope of Work for the Engagement.
12. The State reserves the right to reduce or limit the scope of allowable services above that are authorized by the Master Agreement. Furthermore, the Parties agree that services not within the scope of the Master Agreement shall not be provided under this New Jersey Participating Addendum.

3.0 Reporting and Supplier Convenience Fee

- A. Quarterly Sales Reporting - The Contractor shall submit a Sales Report documenting all sales made under the New Jersey Participating Addendum. The Sales Report shall be submitted directly to Periscope Holdings, Inc. (Periscope) using the **NJSTART** system no later than thirty (30) calendar days after the end of each calendar quarter. The calendar quarters will end March 31, June 30, September 30, and December 31. The Sales Report must contain the following information:
 - Complete and accurate details of all sales, credits, returns, refunds, and the like for the reporting quarter;
 - Purchasing entity;
 - Total of Supplier Convenience Fee amount due for the reporting quarter;
 - Such other information as the State may reasonably request; and
 - If no sales were made to the State during the reporting quarter, then a report shall be submitted showing zero sales and zero Supplier Convenience Fee due.Quarterly Sales Reporting and remittance of the Supplier Convenience Fee shall begin on the first calendar quarter starting after the Effective Date of the New Jersey Participating Addendum.
- B. Supplier Convenience Fee - For all Purchases made under the New Jersey Participating Addendum that have been invoiced, the Contractor shall remit the Supplier Convenience Fee in the amount of one percent (1%) of all Purchases to Periscope.

- C. Remittance of the Supplier Convenience Fee - On a quarterly basis, the Contractor shall remit the Supplier Convenience Fee directly to Periscope no later than thirty (30) days after the end of each calendar quarter. The calendar quarters will end March 31, June 30, September 30, and December 31. Failure to remit the Supplier Convenience Fee timely and accurately may result in Contractor's goods and/or services being made ineligible for purchase through the **NJSTART** Marketplace.
- D. Catalog Enablement - The Contractor shall cooperate with the State and/or Periscope as requested to upload catalog items and pricing consistent with the awarded New Jersey Participating Addendum to the **NJSTART** Marketplace module within thirty days (30) of the New Jersey Participating Addendum award.
- E. Retention and Inspection of Records and Audit - The Contractor shall keep records of all sales made to Using Agencies and Intrastate Cooperative Purchasing Participants in sufficient detail to enable the State to determine the Supplier Convenience Fee payable by the Contractor. The State and/or Periscope may examine and audit, at its own expense, Contractor's sales records and Sales Reports for completeness and accuracy. If such examination reveals underpayment of the Supplier Convenience Fee, the Contractor shall immediately pay to Periscope the amount of deficiency. If the examination reveals an underpayment of 5% or more, then the Contractor shall reimburse the State and/or Periscope for the cost of the audit.

3.1 NCPA Administration Agreement Reporting

The Contractor shall deliver a copy of the detailed sales data reports described in the NCPA Administration Agreement, section titled Fees and Reporting, to the State and any Authorized Purchaser that is or has been a Party to an Engagement under this New Jersey Participating Addendum within ten (10) days of providing the Reports to the Lead Entity. The sales data reports may be redacted to show only those sales provided to the State or any Authorized Purchasers under this New Jersey Participating Addendum.

4.0 Restrictions

- 1. The Contractor is prohibited from providing the following services as Primary Engagement Objectives under this New Jersey Participating Addendum ; provided, however, Contractor may provide such a service if it is ancillary to such a Primary Engagement Objective under Section 2.0(3):
 - a. IT Assessments
 - b. Project Management Oversight
 - c. Implementation Oversight
 - d. Software Portfolio Management
 - e. Program and System Assessments
 - f. Program Management Services
 - g. Value Added Products and Services

Additional restrictions may be included in the State's Method of Operation, as amended from time to time, subject to the discretion of the State Contract Manager.

2. Financing, leasing, and renting is not permitted under this New Jersey Participating Addendum for State agencies. Authorized Purchasers, as defined in Section 5.0(2)-(5) may finance their purchase, if permitted under applicable law. If financing is through a lease agreement, that agreement is separate from this New Jersey Participating Addendum and is between the Contractor and the respective Authorized Purchaser only.

5.0 Authorized Purchasers:

“Authorized Purchasers” under this New Jersey Participating Addendum shall mean the State Agencies (as defined at 5.0(1) and its “Cooperative Purchasing Program Participants” (as defined at 5.0(2) – 5.0(5)):

1. Any government agency, department, office, instrumentality, division, unit or other entity of the Executive Branch of the State (“State Agencies”).
2. Quasi-State Agencies - A “Quasi-State Agency” is any agency, commission, board, authority or other such governmental entity which is established and is allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member, as defined in N.J.S.A. 52:27B-56.1, provided that any sale to any such bi-state governmental entity is for use solely within the State of New Jersey.
3. Political Subdivisions, Volunteer Fire Departments And First Aid Squads, And Independent Institutions Of Higher Education - Counties, municipalities and school districts as defined in N.J.S.A. 52:25-16.1., volunteer fire departments, volunteer first aid squads and rescue squads as defined in N.J.S.A. 52:25-16.2, independent institutions of higher education as defined in N.J.S.A. 52:25-16.5, provided that each purchase by the independent institution of higher education shall have a minimum cost of \$500. The extension to counties, municipalities, school districts, volunteer fire departments, first aid squads and independent institutions of higher education must be under the same terms and conditions, including price, applicable to the State.
4. State Colleges –in accordance with N.J.S.A. 18A:64-60.
5. County Colleges - in accordance with N.J.S.A. 18A:64A- 25.9.

Cooperative Purchasing Program Participants who are Authorized Purchasers as defined in Section 5.0(2)-(5) are responsible for the full cost of their purchases. The State Agencies as defined in Section 5.0(1) are responsible for the full cost of their purchases.

The State is extending use of this Agreement to Cooperative Purchasing Program Participants, as defined in this Section 5.0(2)-(5). The State makes no representation as to the acceptability of any terms and conditions under the Local Public Contracts Law or any other enabling statute or regulation.

6.0 Modified Original Master Agreement Terms

- A. Notwithstanding anything to the contrary in the Agreement, the State will not defend, indemnify, and/or hold harmless the Contractor and any such provision in the Agreement shall be of no force and effect. The State of New Jersey's obligations under the Agreement are subject to the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.) . The State's obligation to make payment under the Agreement is subject to appropriation by the State Legislature and the availability of funds.
- B. Notwithstanding anything to the contrary in the Master Agreement or Contractor's Response, the State shall not be responsible for the Contractor's attorney fees and/or expenses.
- C. To the extent the documents comprising the Agreement include payment terms that are inconsistent with the Prompt Payment Act (N.J.S.A. 52:32-32 et seq.), those terms are hereby revised to conform to Section 6.5, New Jersey Prompt Payment Act, of the State of New Jersey Standard Terms and Conditions. All payments due from the State or other Authorized Purchasers shall be made in accordance with the Prompt Payment Act and State of New Jersey Standard Terms and Conditions Section 6.5, New Jersey Prompt Payment Act, which requires State agencies to pay for goods and services within 60 days of the agency's receipt of a properly executed State Payment Voucher or within 60 days of receipt and acceptance of goods and services, whichever is later.
- D. To the extent any documents comprising the Agreement give the Contractor sole control over defense and/or settlement of claims against the State, those provisions are hereby deleted. In lieu thereof, the State agrees to: (1) promptly notify Contractor in writing of the claim; and (2) provide reasonable assistance to Contractor in defending or settling the claim, including the selection of attorneys. The Contractor agrees that: (1) the State must consent to any settlement of an alleged claim, which consent shall not be unreasonably withheld; (2) the State may observe the proceeding and confer with Contractor at its own expense; and (3) the State retains the right to take over its defense, at its own cost, upon reasonable notice to Contractor.
- E. To the extent the documents comprising the Agreement contain provisions requiring the State keep certain records or documents confidential, those provisions are modified to conform to Section 5.23 of the State of New Jersey Standard Terms and Conditions.
- F. To the extent the documents comprising the Agreement require the State to pay taxes, fines, penalties, assessments, governmental charges and/or related costs and fees, those provisions are deleted.
- G. Tab 1 – Master Agreement General Terms and Conditions, “Miscellaneous” is hereby deleted and replaced by Section 5.7 of the State of New Jersey Standard Terms and Conditions.

H. Tab 1 – Master Agreement General Terms and Conditions, Force Majeure, Seventeenth Bullet Point regarding force majeure is deleted in its entirety and replaced with the following:

(a) General. Subject to subsection (b) below, no Party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused by a Force Majeure Event.

(b) Duration and Notification. If the Party claiming the benefit of the Force Majeure Event (the “Non-Performing Party”) is not at fault for the default or delay in the performance of its obligations under this Agreement in accordance with subsection (a) above due to a Force Majeure Event, then the Non-Performing Party shall be excused from performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use all commercially reasonable efforts to recommence performance or observance whenever and to whatever extent reasonably possible without delay. Any Party so prevented, hindered or delayed in its further performance shall, as quickly as practicable under the circumstances, notify the Party to whom performance is due by telephone (and use commercially reasonable efforts to confirm in writing within one (1) day of the inception of such delay) and describe at a reasonable level of detail the circumstances of the Force Majeure Event, the steps being taken to address such Force Majeure Event and the expected duration of such Force Majeure Event.

(c) “Force Majeure Event” means: (a) fire, flood, earthquake, pandemics, elements of nature or acts of God; (b) wars (declared and undeclared), acts of terrorism, sabotage, riots, civil disorders, rebellions or revolutions; or (c) acts of any Federal, State, County, or Municipal Government with respect to any of the foregoing, except, in each case, to the extent that the non-performing Party is at fault in failing to take reasonable precautions to prevent or causing such default or delay, and provided that such default or delay cannot reasonably be circumvented by the non-performing Party through the use of reasonable alternate sources, work-around plans or other means, including, implementing a continuity plans and/or recovering under its insurance policies. Notwithstanding the foregoing, “Force Majeure Event” expressly excludes: (y) a strike, walkout, lockout, labor shortage or labor dispute involving Contractor or its Subcontractors and (z) any non-performance of a Subcontractor regardless of cause except for a Force Majeure Event affecting such Subcontractor.

6.1 Modifications to Contractor’s Response

A. McKinsey & Company, Inc. Washington D.C. did not propose any Exceptions to the RFP for Business and IT Consulting and Advisory Services

7.0 Modifications to the State of New Jersey Standard Terms and Conditions

1. **INDEMNIFICATION, LIMITATION OF LIABILITY, AND INSURANCE** Section 4 of the State of New Jersey Standard Terms and Conditions is deleted in its entirety and replaced with the following:

4.1 INDEMNIFICATION

- A. **CONTRACTOR RESPONSIBILITIES** - The Contractor's liability to the State and its employees in third party suits shall be as follows:

1. The Contractor shall indemnify, defend, and save harmless the State and its officers, agents, servants and employees, from and against any and all third party claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith:
 - i. For or on account of the loss of life, tangible property (not including lost or damaged data) or injury or damage to the person, body or property (not including lost or damaged data) of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or products supplied under the contract or the order; and
 - ii. For or on account of the use of any patent, copyright, trademark, trade secret or other proprietary right of any copyrighted or uncopied composition, secret process, patented or unpatented invention, article or appliance ("Intellectual Property Rights") furnished or used in the performance of the contract; and
 - iii. For or on account of a Breach of Security resulting from Contractor's breach of its obligation to encrypt Personal Data or otherwise prevent its release or misuse; and
 - iv. The Contractor's indemnification and liability under Section 4.1(A)(1) is not limited by, but is in addition to the insurance obligations contained in Section 4.3 of this New Jersey Participating Addendum.
2. In the event of a claim or suit involving third-party Intellectual Property Rights, the Contractor, at its option, may: (a) procure for the State the legal right to continue the use of the product; (b) replace or modify the product to provide a non-infringing product that is the functional equivalent; or in the event that Contractor cannot do (a) or (b), (c) refund the purchase price less a reasonable allowance for use that is agreed to by both Parties.
3. In the event of a claim or suit involving third-party Intellectual Property Rights, the State will (a) promptly notify Contractor in writing of the claim or suit; and (b) Contractor shall have control of the defense and settlement of any claim that is subject to Section 4.1(A)(1); provided, however, that the State must approve any settlement of the alleged claim, which approval shall not be unreasonably withheld. The State may observe the proceedings relating to the alleged claim and confer with the Contractor at its expense. Furthermore, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of New Jersey or any Authorized Purchaser, nor purport to act as legal representative of the State of New Jersey or any Authorized Purchaser, without having provided notice to the Director of the Division of Law in the Department of Law and Public Safety and to the

Director of DPP. The State of New Jersey may, at its election and expense, assume its own defense and settlement.

4. Notwithstanding the foregoing, Contractor has no obligation or liability for any claim or suit concerning third-party Intellectual Property Rights arising from: (1) the State's unauthorized combination, operation, or use of a product supplied under this contract with any product, device, or software not supplied by Contractor; (2) the State's unauthorized alteration or modification of any product supplied under this contract; (3) the Contractor's compliance with the State's designs, specifications, requests, or instructions, provided that if the State provides Contractor with such designs, specifications, requests, or instructions, Contractor reviews same and advises that such designs, specifications, requests or instructions present potential issues of patent or copyright infringement and the State nonetheless directs the Contractor to proceed with one or more designs, specifications, requests or instructions that present potential issues of patent or copyright infringement; or (4) the State's failure to promptly implement a required update, use a new version of the product, or to make a change or modification to the product if requested in writing by Contractor.
5. Contractor will be relieved of its responsibilities under Subsection 4.1(A)(1)(i), (ii), and (iii) for any claims made by an unaffiliated third party that arise solely from the actions or omissions of the State, its officers, employees or agents.
6. This section states the entire obligation of Contractor and the exclusive remedy of the State, in respect of any infringement or alleged infringement of any Intellectual Property Rights. This indemnity obligation and remedy are given to the State solely for its benefit and in lieu of, and Contractor disclaims, all warranties, conditions and other terms of non-infringement or title with respect to any product.
7. The provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in the contract, nor shall they be construed to relieve the Contractor from any liability, nor preclude the State from taking any other actions available to it under any other provisions of the contract or otherwise at law or equity, except as otherwise provided in Section 4.1 A. 5.
8. The Contractor agrees that any approval by the State or Authorized Purchaser of the work performed and/or reports, plans or specifications provided by the Contractor shall not operate to limit the obligations of the Contractor assumed in the Agreement.
9. The State of New Jersey will not indemnify, defend or hold harmless the Contractor. The State will not pay or reimburse for claims absent compliance with Section 4.1(B)(State Responsibilities) and a determination by the State to pay the claim or a final order of a court of competent jurisdiction.

B. STATE RESPONSIBILITIES - Subject to the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.) and the appropriation and availability of funds, the State will be responsible for any cost or damage arising out of actions or inactions of the State, its employees or agents under Section 4.1(A)(1)(i), (ii), and (iii) which results in an unaffiliated third party claim. This is Contractor's exclusive remedy for these claims.

4.2 LIMITATION OF LIABILITY

A. The Contractor's liability for actual, direct damages resulting from the Contractor's performance or non-performance of, or in any manner related to, the contract for any and

all third party claims, shall be limited in the aggregate to 200% of the fees paid by the Authorized Purchaser(s) during the previous twelve months to Contractor for the particular Engagement giving rise to such damages. Notwithstanding the preceding sentence, in no event shall the limit of liability be less than \$100,000. This limitation of liability shall not apply to the following:

- i. The Contractor's indemnification obligations as described in Section 4.1; and
 - ii. The Contractor's breach of its obligations of confidentiality and data protection as described in Section 9 of the New Jersey Participating Addendum.
- B. Notwithstanding the foregoing exclusions, where a Breach of Security is a direct result of Contractor's breach of its contractual obligation to encrypt Personal Data or otherwise prevent its release as reasonably determined by the State, the Contractor shall bear the costs associated with (1) the investigation and resolution of the Breach of Security; (2) notifications to individuals, regulators, or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state or federal law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws — all not to exceed the average per record, per person cost calculated for data breaches in the United States in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute for the public sector at the time of the Breach of Security; and (5) completing all corrective actions as reasonably determined by Contractor based on root cause of the Breach of Security.
- C. The Contractor shall not be liable for punitive, special, indirect, incidental, or consequential damages.

4.3 INSURANCE

- A. The Contractor shall secure and maintain in force for the term of the Contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A- VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide 30 days' written notice of cancellation or material change to the State of New Jersey at the address shown below. If the Contractor's insurer cannot provide 30 days written notice, then it will become the obligation of the Contractor to provide the same. The Contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within 30 days of the expiration of the insurance. The Contractor shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates and any notice of cancelation shall be emailed to the State at: ccau.certificate@treas.state.nj.us
- B. The insurance to be provided by the Contractor shall be as follows:
- a. Occurrence Form Commercial General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall include the State, its officers, and employees as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. The

coverage to be provided under these policies shall be at least as broad as that provided by the standard basic Commercial General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage.

- b. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1,000,000 per occurrence as a combined single limit. The State must be included as an “Additional Insured” and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State’s behalf or on State controlled property.
- c. Worker’s Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:
 - \$1,000,000 BODILY INJURY, EACH OCCURRENCE;
 - \$1,000,000 DISEASE EACH EMPLOYEE; and
 - \$1,000,000 DISEASE AGGREGATE LIMIT.
- d. Professional Liability Insurance: The Contractor shall provide Errors and Omissions, Professional Liability Insurance and/or Professional Liability Malpractice Insurance to protect the Contractor from insured liability arising out of the professional obligations performed pursuant to the requirements of this Contract. The insurance shall be in the amount of \$2,000,000 per claim and in the aggregate. If the Contractor has claims-made coverage and subsequently changes carriers during the term of the Contract, the new Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice shall provide for retroactive coverage to the inception date of this Contract or earlier.
- e. Cyber Breach Insurance: Where State Data is being given to the Contractor or where Contractor has access to State Data, the Contractor shall carry Cyber Breach Insurance in sufficient amount to protect the Contractor from any liability arising out of its performance pursuant to the requirements of this Blanket P.O. The insurance shall be in an amount of not less than \$2,000,000 and in such policy forms as shall be approved by the State. The insurance shall at a minimum cover the following: Data loss, ransomware and similar breaches to computers, servers and software; Protection against third-party claims; cost of notifying affected parties; cost of providing credit monitoring to affected parties; forensics; cost of public relations consultants; regulatory compliance costs; costs to pursue indemnity rights; costs to Data Breach and Credit Monitoring Services analyze the insured’s legal response obligations; costs of defending lawsuits; judgments and settlements; regulatory response costs; costs of responding to regulatory investigations; and costs of settling regulatory claims.

Notwithstanding anything to the contrary herein, Contractor may meet the above insurance requirements via commercial insurance, self-insurance, or a combination of these options at Contractor’s sole discretion. In addition, any combination of Primary, Umbrella, or Excess Liability policies may be used to meet any coverage or limits requirements listed above.

2. **TERMINATION OF CONTRACT** – In addition to the provisions of Section 5.7 of the State of New Jersey Standard Terms and Conditions,

(E.) The Contractor shall not have the right to terminate this New Jersey Participating Addendum. Any provisions in the Agreement regarding the Contractor's right to terminate or cancel the Agreement or the New Jersey Participating Addendum are superseded by and replaced in their entirety by this Section 5.7 of the State of New Jersey Standard Terms and Conditions. However, this New Jersey Participating Addendum shall terminate on the termination or expiration date of the Master Agreement. In addition, in the event that an Authorized Purchaser violates its obligations under the Agreement, Contractor may refuse to accept or process orders from such Authorized Purchaser immediately upon written notice to the State and such Authorized Purchaser, until such time as Authorized Purchaser submits a plan to correct such violations satisfactory to Contractor, which approval will not be unreasonably withheld. Notwithstanding anything to the contrary, Contractor shall continue to process orders submitted by other Authorized Purchasers.

(F.) Any termination under this provision shall not affect the rights and obligations attending orders outstanding at the time of termination.

(G.) The State may, for valid reason, issue a stop order directing the Contractor to suspend services for a specific time, however a suspension will not last longer than thirty (30) calendar days. The Contractor shall be paid for services ordered, services delivered until the effective date of the stop order. The Contractor shall resume services delivery upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the Contractor's approved schedule of performance. The Director, acting in good faith, may make an equitable adjustment, if any is required, to the Statement of Work price. The Contractor shall provide whatever information that Director may require related to the equitable adjustment.

8.0 Definitions

Terms defined herein shall also have their meanings applied to the Method of Operations.

Cooperative Purchasing Program Participants – Quasi-State entities, counties, municipalities, school districts, volunteer fire departments, first aid squads, independent institutions of higher learning, County colleges, and State colleges.

Engagement – An organized course of action to provide the services requested in an Authorized User developed Mini-Bid request which may include business and IT consulting and advisory services as needed by the Authorized User, and as permitted by this New Jersey Participating Addendum.

Engagement Response – Contractor’s formal response to a Mini-Bid request issued by an Authorized User.

Marketplace – is an integral component of the NJSTART eProcurement system. It allows suppliers to load product/service catalogs related to their contracts with the State. Once catalogs are in place, State users and local governments will use the Marketplace to search for State contracts, shop from them (shopping basket functionality), and generate POs that will be transmitted to the supplier electronically.

Mini-Bid – A process by which a pool of awarded contractors may provide competitive responses in response to an Engagement request issued by an Authorized User.

Periscope – is the developer and implementer of the ePro eProcurement system (branded as NJSTART in New Jersey). Periscope is managing the NJSTART cooperative and Marketplace Program on behalf of the State.

Purchases – means the total gross purchases, less credits, taxes, regulatory fees, and separately stated shipping charges not included in unit prices, made regardless of whether or not NJSTART is used as part of the purchase process.

Task Order – A discreet work order for one (1) or more detailed deliverables and services based on a specific Engagement, or set of related Engagements, as assigned by an Authorized User and issued as a result of a Mini-Bid. One (1) or more Task Orders may be issued to a Contractor for a specific Engagement, or set of related Engagements, pursuant to the Authorized User’s needs.

9.0 State Confidential Information, Data Confidentiality and Security

9.1 Definitions

- a. As defined by N.J.S.A. 56:8-161, the term “Breach of Security” means unauthorized access to electronic files, media, or data containing Personal Data that compromises the security, confidentiality, or integrity of Personal Data when access to the Personal Data has not been secured by encryption or by any other method or technology that renders the Personal Data unreadable or unusable. Good faith acquisition of Personal Data by an employee or agent of the Contractor for a legitimate business purpose is not a Breach of Security, provided that the Personal Data is not used for a purposes unrelated to the business or subject to further unauthorized disclosure.
- b. The term “Mobile Device” means any device used by Contractor that can move or transmit data, including but not limited to laptops, hard drives, and flash drives.
- c. The term “Non-Public Data” means data, other than Personal Data, that is not subject to distribution to the public as public information. Non-Public Data is data that is identified by the State as non-public information or otherwise deemed to be sensitive and confidential by the State because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.
- d. The term “Personal Data” means:

- i. “Personal Information” as defined in N.J.S.A. 56:8-161, means an individual’s first name or first initial and last name linked with any one or more of the following data elements: (1) Social Security number, (2) driver’s license number or State identification card number or (3) account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual’s financial account. Dissociated data that, if linked would constitute Personal Information is Personal Information if the means to link the dissociated were accessed in connection with access to the dissociated data. Personal Information shall not include publicly available information that is lawfully made available to the general public from federal, state or local government records, or widely distributed media.
 - ii. data, either alone or in combination with other data, that includes information relating to an individual that identifies the person or entity by name, identifying number, mark or description that can be readily associated with a particular individual and which is not a public record, including but not limited to, Personally Identifiable Information (PII); government-issued identification numbers (e.g., Social Security, driver’s license, passport); Protected Health Information (PHI) as that term is defined in the regulations adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191 (1996) and found in 45 CFR Parts 160 to 164 and defined below; and Education Records, as that term is defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.
- e. The term “Personally Identifiable Information” or “PII,” as defined by the U.S. Department of Commerce, National Institute of Standards and Technology, means any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.
- f. The term “Protected Health Information” or “PHI,” has the same meaning as the term is defined in the regulations adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191 (1996) and found in 45 CFR Parts 160 to 164 means Individually Identifiable Health Information (as defined below) transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv), employment records held by a covered entity in its role as employer, and regarding a person who has been deceased for more than 50 years. The term “Individually Identifiable Health Information” has the same meaning as the term is defined in the regulations adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191 (1996) and found in 45 CFR Parts 160 to 164 and means information that is a subset of health information, including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer or health care clearinghouse; and (2) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (a) that

- identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- g. The term “Security Incident” means the potential access by non-authorized person(s) to Personal Data or Non-Public Data that the Contractor believes could reasonably result in the use, disclosure, or access or theft of State’s unencrypted Personal Data or Non-Public Data within the possession or control of the Contractor. A Security Incident may or may not turn into a Breach of Security.
 - h. The term “State Data” means all data and metadata created or in any way originating with the State, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with the State, whether such data or output is stored on the State’s hardware, the Contractor’s hardware or exists in any system owned, maintained or otherwise controlled by the State or by the Contractor. State Data includes Personal Data and Non-Public Data.
 - i. The term “State Confidential Information” means all information or data in any form whatsoever supplied by the State, any information or data gathered by the Contractor in fulfillment of the Contract and any analysis thereof (whether in fulfillment of the Contract or not).
 - j. The term “Contractor Intellectual Property” is the Contractor’s concepts, know-how, tools, questionnaires and assessments, modules, courses, frameworks, software, algorithms, databases, content, models, and industry perspectives developed or enhanced outside of or in connection with the services it furnishes under this Contract, including the Contractor’s solutions described at <https://www.mckinsey.com/solutions>, it being understood that none of the Contractor Intellectual Property will contain the State’s Confidential Information.

9.2 DATA OWNERSHIP AND CONFIDENTIALITY

9.2.1 Data Ownership

- a. Contractor Intellectual Property – Contractor retains ownership of all Contractor Intellectual Property, and any modifications, configurations, and derivatives thereto. Contractor grants the State a license to use Contractor Intellectual Property as necessary in connection with this Agreement.
- b. State Intellectual Property – For purposes of this provision, State Intellectual Property includes any intellectual property owned by the State. The State retains ownership of all State Intellectual Property provided to Contractor pursuant to the Contract. The State grants Contractor a non-exclusive, royalty-free, license to use, copy, display, distribute, transit and prepare derivative works of State Intellectual Property and State data and background information only to fulfill the purposes of the Contract. The State’s license to Contractor is limited by the term of the Agreement and the confidentiality obligations set forth in Section 9.2.2 of this New Jersey Participating Addendum. Furthermore, all of Contractor’s publicity and/or public announcements pertaining to this Contract shall be approved in writing by the State prior to release.

9.2.2 Confidentiality

The Contractor shall keep all State Confidential Information confidential. Contractor will disclose State Confidential Information only to its employees, agents and contractors who have a need to know and are bound to keep it confidential, will use State Confidential Information only for purposes of performing the Services, including preparing proposals and evaluating

potential Services, or as otherwise requested or authorized by the State. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party, except that if the information or data is personally identifying to a person or entity regardless of whether it has become part of the public domain through other means, the other party must maintain full efforts under the Contract to keep it confidential, consistent with Section 9.1(d)(i) above; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized good industry practice and not less stringent than the measures the Contractor applies to its own Personal Data and Non-Public Data of similar kind. The Contractor must secure all State Data from unlawful manipulation, sabotage, theft or breach of confidentiality. The Contractor is prohibited from releasing any financial, statistical, personnel, customer and/or technical data supplied by the State to any third party without prior written consent of the State. Any use, sale, or offering of this data in any form by the Contractor, or any individual or entity in the Contractor's charge or employ, which is unauthorized or in conflict with the Contractor's obligations herein, will be considered a violation of this Agreement and may result in Agreement termination and the Contractor's suspension or debarment from State contracting. In addition, such conduct may be reported to the State Attorney General for possible criminal prosecution.

The Contractor will protect the State's Confidential Information in accordance with the Contractor's Data Protection Protocols available at <https://mckinsey.com/msd/data-protocols.pdf> (the "Protocols"). Subject to its confidentiality obligations, where the agreed upon Services include benchmarking services the Contractor may also incorporate the State's Confidential Information into its benchmarking databases for use in reporting on sanitized or aggregate trends and metrics without attribution to the State. To bring the best of the Contractor's global resources to serve the State, the State agrees that the Contractor may transfer the State's Confidential Information to geographies other than those in which it was collected or received (but not outside the United States), including to the Contractor's affiliates and sub-processors that comprise or support the Contractor's infrastructure and maintenance functions as set forth in the Protocols, to facilitate any activities authorized by the State, provided that at all times the State's Confidential Information will be treated as confidential, remain stored/hosted in the United States, and protected in accordance with the terms of this Contract. The Contractor will reasonably cooperate with the State, at its expense, in responding to any legally required disclosure.

In the event that the State receives a request for Contractor Confidential Information related to the Contract pursuant to a court order, subpoena, lawful document request or other operation of law, the State agrees, if permitted by law, to provide Contractor with as much notice, in writing, as is reasonably practicable and the State's intended response to such request. Contractor shall take any action it deems appropriate to protect its documents and/or information.

In addition, in the event Contractor receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law, Contractor shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Contractor's intended response to such request. The State shall take any action it deems appropriate to protect its documents and/or information. Notice to the State shall not relieve the Contractor of its obligation to take action to protect such information if the Contractor is aware of a legal reason to do so.

Notwithstanding the requirements of nondisclosure described in this Section 9.2, either party may release the other party's Confidential Information (i) if directed to do so by a court or arbitrator of competent jurisdiction, (ii) pursuant to a lawfully issued subpoena or other lawful document request, (iii) in the case of the State, if the State determines the documents or information are subject to disclosure and Contractor does not exercise its rights as described above, or if Contractor is unsuccessful in defending its rights as described above, or (iv) in the case of Contractor, if Contractor determines the documents or information are subject to disclosure and the State does not exercise its rights as described above, or if the State is unsuccessful in defending its rights as described above.

The Contractor shall assume financial liability incurred by the Contractor associated with any breach of confidentiality that directly results from Contractor's failure to comply with this Agreement notwithstanding any limitation of liability provisions in the Contractor's Response to the Solicitation.

When requested, the Contractor and all project staff including its Subcontractor(s) must complete and sign confidentiality and non-disclosure agreements provided by the State. The Contractor may be required to view yearly security awareness and confidentiality training modules provided by the State. Where required, it shall be the Contractor's responsibility to require that any new staff sign the confidentiality agreement and complete the security awareness and confidentiality training modules within one (1) month of the employees' start date.

The State reserves the right to obtain, or require the Contractor to obtain, criminal history background checks from the New Jersey State Police for all Contractor and project staff (to protect the State of New Jersey from losses resulting from Contractor employee theft, fraud or dishonesty). If the State exercises this right, the results of the background check(s) must be made available to the State for consideration before the employee is assigned to work on the State's project. Prospective employees with positive criminal backgrounds for cyber-crimes will not be approved to work on State Projects. Refer to the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-12, An Introduction to Computer Security: The NIST Handbook, Section 10.1.3, Filling the Position – Screening and Selecting.

9.3 Data Security Standards

9.3.1 - Data Security: The Contractor at a minimum must protect and maintain the security of data traveling its network in accordance with generally accepted industry practices.

A. Any Personally Identifiable Information must be protected. All data must be classified in accordance with the State's Asset Classification and Control policy, 08-04-NJOIT (<http://www.nj.gov/it/ps>). Additionally, data must be disposed of in accordance with the State's

Information Disposal and Media Sanitation policy, 09-10-NJOIT (<http://www.nj.gov/it/ps>); and

B. To the extent applicable, data usage, storage, and protection is subject to all applicable federal and state statutory and regulatory requirements, as amended from time to time, including, without limitation, those for Health Insurance Portability and Accountability Act of 1996 (HIPAA), Personally Identifiable Information (PII), Tax Information Security Guidelines for Federal, State, and Local Agencies (IRS Publication 1075), New Jersey State tax confidentiality statute, N.J.S.A. 54:50-8, New Jersey Identity Theft Prevention Act, N.J.S.A. 56:11-44 et seq., the federal Drivers' Privacy Protection Act of 1994, Pub.L.103-322, and the confidentiality requirements of N.J.S.A. 39:2-3.4. Contractor must also conform to Payment Card Industry (PCI) Data Security Standard, if applicable.

9.3.2 - Data Location: Contractor shall provide its services to State and its End Users solely from data centers in the U.S. Storage of State Data at rest shall be located solely in data centers in the U.S. Contractor shall not allow its personnel or contractors to store State Data on Mobile Devices, including personal computers, except for devices that are used and kept within the physical structure of its U.S. data centers, and only if use of such Mobile Device has been approved in writing by the State Contract Manager. Contractor shall permit its personnel to access State Data remotely only as required to provide technical support or upon prior notice and approval.

9.3.3 - Data Transmission: The Contractor must only transmit or exchange State Data with other parties when expressly requested in writing and permitted by and in accordance with requirements of the State of New Jersey. The Contractor must only transmit or exchange State Data with the State of New Jersey or other parties through secure means supported by current technologies. The Contractor must encrypt all data defined as personally identifiable or confidential by the State of New Jersey or applicable law, regulation or standard during any transmission or exchange of that data.

9.3.4 - Data Storage: All data provided by the State of New Jersey or State Data obtained by the Contractor in the performance of the Agreement must be stored, processed, and maintained solely in accordance with a project plan and system topology approved by the State Contract Manager. No State Confidential Information shall be processed on or transferred to any Mobile Device unless such Mobile Device has been approved in advance in writing by the State Contract Manager. Personal Data shall not be stored on Mobile Devices. Where Mobile Devices are required for Contractor to accomplish the work, the Contractor shall ensure the Mobile Device is hard drive encrypted consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all Personal Data. The Contractor must encrypt all data at rest defined as personally identifiable information by the State of New Jersey or applicable law, regulation or standard. Except where expressly authorized by the State, the Contractor must not store or transfer State Data outside of the United States.

9.3.5 Data Scope: All provisions applicable to State Confidential Information include data in any form of transmission or storage, including but not limited to: database files, text files, backup files, log files, XML files, and printed copies of the data.

9.3.6 Data Re-Use: Except where expressly authorized by the State, all State Data must be used expressly and solely for the purposes enumerated in the Contract. State Data must not be distributed, repurposed or shared across other applications, environments, or business units of the Contractor, except for the purpose of providing services under the Agreement. No State Data of any kind must be transmitted, exchanged or otherwise passed to other contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by the State Contract Manager.

9.3.7 Security Incident and Breach of Security Responsibilities:

a. Security Incident Reporting Requirements: The Contractor must comply with all applicable State and Federal laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification. Once Contractor reasonably determines that a Security Incident occurred, or in the event of a breach by Contractor of any of the Contractor's security obligations under this Agreement or other event requiring notification under applicable law ("Notification Event"), the Contractor must assume responsibility for informing the State Contract Manager within 24 hours and all such individuals in accordance with applicable law and to indemnify, hold harmless and defend the State of New Jersey, its officials, and employees from and against any third party claims, damages, or other harm resulting from such Notification Event. All communications must be coordinated with the State of New Jersey. Contractor will provide the State regular updates and all available relevant information including a description of the incident and those measures taken by Contractor in response to the Security Incident.

b. Breach of Security Reporting Requirements: If the Contractor confirms or reasonably believes that there has been a Breach of Security, the Contractor shall (1) immediately notify the appropriate State identified contact by the agreed upon method within 24 hours, unless a shorter time is required by applicable law, (2) take commercially reasonable measures to address and investigate the Breach of Security in a timely manner and (3) cooperate with the State as reasonably requested by the State and/or law enforcement to investigate and resolve the Breach of Security. Contractor will provide the State regular updates and all available information to assist the State with notification to law enforcement and third parties as required by applicable law, including a description of the Breach of Security and those measures taken by Contractor in response to the Breach of Security.

c. Incident Response: When commercially reasonable to do so, Contractor may communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries (subject to preapproval by the State if Contractor specifically identifies the State or State Data), and seeking external expertise as mutually agreed at the time, or defined by law. Discussing Security Incidents with the State should be handled on an urgent as needed basis.

d. Follow up: Following a Security Incident or Breach of Security, Contractor shall promptly implement necessary remedial measures, if necessary, and document responsive actions taken related to the Security Incident or Breach of Security, including any post-

incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

9.3.8 End of Agreement Data Handling: Upon termination/expiration of this Agreement and upon the State's request the Contractor must first return all State Data in Contractor's possession or control when the same is no longer necessary for the provision of the Services to the State, in a usable format as defined in the Agreement, or in an open standards machine-readable format if not, provided that Contractor may retain such State Confidential Information only as required by applicable law, regulation, records retention obligations herein, or documented professional archival policy or as otherwise authorized or instructed by the State. Any State Confidential Information so retained shall at all times remain subject to the terms and conditions of this Agreement, including with respect to confidentiality, security and non-disclosure. Except as provided above, the Contractor must then erase, destroy, and render unreadable all Contractor copies of State Data according to the standards enumerated in accordance with the State's most recent Information Disposal and Media Sanitation policy, currently 09-10-NJOIT (www.nj.gov/it/ps) and certify in writing that these actions have been completed within 30 days after the termination/expiration of the Agreement or within seven (7) days of the request of an agent of the State whichever shall come first.

10.0 Miscellaneous

1. **No Waiver** - No term or provision of this Participating Addendum shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by an individual authorized to so waive or consent. Any consent by either party to, or waiver of, a breach by the other whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for, any other breach or any subsequent breach, except as may be expressly provided in the waiver or consent.
2. **Dispute Resolution** – The State and Contractor will attempt to resolve any dispute through face-to-face negotiation with persons fully authorized to resolve the dispute or through non-binding mediation utilizing a mediator agreed to by the parties, rather than through litigation. No formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief or those required to avoid non-compliance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 *et seq.*, may begin until either such persons conclude, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely.
3. **Arbitration or Mediation** – Any provision regarding arbitration or binding mediation within the Agreement is deleted in its entirety.
4. **Right to Remove Individuals** – The State shall have the right at any time to require that the Contractor remove from interaction with the State any Contractor representative who the State believes is detrimental to its working relationship with the Contractor. The State will provide the Contractor with notice of its determination, and the reasons it requests the removal. If the State signifies that a potential security violation exists with respect to the request, the Contractor shall immediately remove such individual. The Contractor shall not

assign the person to any aspect of the contract or future work orders without the State's consent.

5. **Security** – As part of its response to an Engagement Mini-Bid request, the Contractor shall disclose its non-proprietary security processes and technical limitations. Furthermore, if required by the Engagement Mini-Bid request, the Contractor shall complete the State's Security Due Diligence Third-Party Information Security Questionnaire or equivalent system security document, available upon request from the New Jersey Cybersecurity and Communications Cell (NJCCIC), as updated from time to time, such that adequate protection and flexibility can be attained between the State and the Contractor. Authorized Purchasers shall be responsible for obtaining approval from the Office of Homeland Security for any Engagement that requires the Contractor to access, host, store, or handle State Data or State Confidential Information.
6. **Conflicts** – Where the Contractor has developed a scope of work, RFP, implementation plan or similar deliverable under this Agreement, such Contractor will be excluded from being able to serve on future evaluation committees or bid to be the project implementation contractor for any Bid Solicitations connected thereto.
7. **Price Fluctuation During Contract** – All prices quoted for an Engagement shall be firm through the term of the Engagement. All prices quoted as part of the Master Agreement shall be firm through issuance of contract or purchase order and shall not be subject to increase more than once every twelve months during the period of the contract. Pricing for the State shall not exceed the pricing approved by NCPA in the Master Agreement, at any time. If a Contractor submits lower pricing in response to an Engagement Mini-Bid, that pricing will become the Contractor's new pricing for that Engagement only.
8. **Publicity Prohibited** – The Contractor shall not use, advertise or promote information for commercial benefit concerning this Agreement without the prior written approval of the State or Authorized Purchaser. Neither party shall issue communications to the media, place advertisements, nor publicize through any means the services, goods or construction that it is providing regarding the Contract without the other party's prior written consent. Neither the State or an Authorized Purchaser may use Contractor's name and logo without express prior written approval and only for purposes solely related to the scope of the Contract, and no reference may be made to McKinsey & Company in any materials prepared for public distribution or distribution to a third party without the Contractor's written consent.

11.0 The State of New Jersey Mandatory Certification Requirements:

The following are New Jersey procurement requirements that Contractor agrees to fulfill prior to the Effective Date. Some Authorized Purchasers may have additional requirements when placing an order and Contractor shall comply with same as necessary.

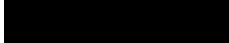
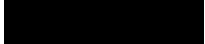
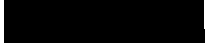

- A. New Jersey Business Registration (N.J.S.A. 52:32-44);
- B. Ownership Disclosure (N.J.S.A. 52:25-24.2);
- C. [Disclosure of Investigations and Actions Involving Bidder Form;](#)

- D. [Disclosure of Prohibited Activities in Russia / Belarus Form](#) (N.J.S.A. 52:32-60.1 et. seq.);
- E. [Disclosure of Investment Activities in Iran](#) (N.J.S.A. 52:32-55 et. seq.);
- F. [MacBride Principles](#) (N.J.S.A. 52:34-12.2);
- G. [Source Disclosure Certification](#) (N.J.S.A. 52:34-13.2);
- H. [Completed Contractor Certification and Disclosure of Political Contributions](#) (N.J.S.A. 19:44A-20:13 et. seq.);
- I. [Vendor Certification](#) (P.L. 2005, c.271);
- J. Proof of insurance as specified herein;
- K. [Proof of compliance with New Jersey Affirmative Action requirements](#) (N.J.A.C. 17:27-1.1 et. seq.):
 - New Jersey Form AA-302 Affirmative Action Employee Information Report; or
 - New Jersey Affirmative Action Certificate; or
 - Federal Affirmative Action Approval Letter.

12.0 Primary Contacts:

Any notice between the Parties provided for in this New Jersey Participating Addendum, or elsewhere in the Master Agreement shall be in writing and shall be sent both via regular certified mail, return receipt requested and via email to the addresses provided. The Parties should give prompt notice to each other if the appropriate person or address changes.

The primary participating entity contacts for this New Jersey Participating Addendum are as follows:

Name: 
Title: Procurement Specialist
Participating Entity Name: Division of Purchase and Property,
Department of the Treasury
State of New Jersey
Address: 33 West State Street, 8th Floor
PO Box 230
Trenton, New Jersey 08625-0230
Telephone: 
Fax: 
E-mail: 

The primary Contractor contact for this New Jersey Participating Addendum is as follows:

Name: David Nuzum
Title: Senior Partner
Contractor: McKinsey & Company, Inc. Washington D.C.
Address: 1200 19th St. NW, Suite 1000
Washington, DC 20036
Telephone: (973) 549-6685
E-mail: David_Nuzum@mckinsey.com

IN WITNESS WHEREOF, authorized representatives of Contractor and the State have executed this New Jersey Participating Addendum to be effective on the Effective Date. The Parties hereto agree that this New Jersey Participating Addendum may be executed in counterparts, each original signed page to become part of the original document.

McKinsey & Company, Inc. Washington D.C.

David Nuzum

Signature

July 26, 2023

Date

David Nuzum, Senior Partner

Print Name and Title

**The State of New Jersey
Department of the Treasury - Division of Purchase and Property**

DocuSigned by:
Amy Davis
7E4334B55620430...

Amy F. Davis, Acting Director

July 28, 2023

Date

**Approved as to Form
Matthew J. Platkin, Attorney General
State of New Jersey – Department of Law and Public Safety**

By: *Brandon Bowers*

Signature

DAG Brandon Bowers

7/27/2023

Date

Attachment A

State of New Jersey Standard Terms and Conditions
(Revised September 1, 2022)



State of New Jersey Standard Terms and Conditions

(Revised September 1, 2022)

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY - DIVISION OF PURCHASE AND PROPERTY
33 WEST STATE STREET, P.O. BOX 230 TRENTON, NEW JERSEY 08625-0230

1.0 STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT

The following terms and conditions shall apply to all contracts or purchase agreements made with the State of New Jersey. The State's terms and conditions shall prevail over any conflicts set forth in a Contractor's Quote or Proposal.

2.0 STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS

The statutes, laws, regulations or codes cited herein are available for review at the [New Jersey State Library](#), 185 West State Street, Trenton, New Jersey 08625.

2.1 BUSINESS REGISTRATION

Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the Contractor and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services. A subcontractor named in a bid or other proposal shall provide a copy of its business registration to the Contractor who shall provide it to the State.

The contractor shall maintain and submit to the State a list of subcontractors and their addresses that may be updated from time to time with the prior written consent of the Director during the course of contract performance. The contractor shall submit to the State a complete and accurate list of all subcontractors used and their addresses before final payment is made under the contract.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration, or that provides false business registration information, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a contracting agency.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the Use Tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 *et seq.*) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at <https://www.state.nj.us/treasury/revenue/busregcert.shtml>.

2.2 OWNERSHIP DISCLOSURE

Pursuant to N.J.S.A. 52:25-24.2, in the event the Contractor is a corporation, partnership or limited liability company, the Contractor must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Quote. A Contractor's failure to submit the completed and signed form prior to or with its Quote will result in the Contractor being ineligible for a Contract award, unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote.

In the alternative, a Contractor with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

2.3 DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

Pursuant to N.J.S.A. 52:32-58, the Contractor must utilize this Disclosure of Investment Activities in Iran form to certify that neither the Contractor, nor one (1) of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the Contractor, nor one (1) of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the Contractor is unable to so certify, the Contractor shall provide a detailed and precise description of such activities as directed on the form. A Contractor's failure to submit the completed and signed form will preclude the award of a Contract to said Contractor.

2.4 ANTI-DISCRIMINATION

All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 *et seq.* and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference. The agreement to abide by the provisions of N.J.S.A. 10:5-31 through 10:5-38 include those provisions indicated for Goods, Professional Service and General Service Contracts (Exhibit A, attached) and Constructions

Contracts (Exhibit B and Exhibit C - Executive Order 151 Requirements) as appropriate.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.

2.5 AFFIRMATIVE ACTION

In accordance with N.J.A.C. 17:27-1.1, prior to award, the Contractor and subcontractor must submit a copy of a New Jersey Certificate of Employee Information Report, or a copy of Federal Letter of Approval verifying it is operating under a federally approved or sanctioned Affirmative Action program. Contractors or subcontractors not in possession of either a New Jersey Certificate of Employee Information Report or a Federal Letter of Approval must complete the Affirmative Action Employee Information Report (AA-302) located on the web at https://www.state.nj.us/treasury/contract_compliance/.

2.6 AMERICANS WITH DISABILITIES ACT

The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101, et seq.

2.7 MACBRIDE PRINCIPLES

The Contractor must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

2.8 PAY TO PLAY PROHIBITIONS

Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L. 2005, c. 51), The State shall not enter into a Contract to procure services or any material, supplies or equipment, or to acquire, sell, or lease any land or building from any Business Entity, where the value of the transaction exceeds \$17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions, to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor or Lieutenant Governor, to any State, county, municipal political party committee, or to any legislative leadership committee during certain specified time periods. It shall be a breach of the terms of the contract for the business entity to:

- A. Make or solicit a contribution in violation of the statute;
- B. Knowingly conceal or misrepresent a contribution given or received;
- C. Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- D. Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor or Lieutenant Governor, or to any State or county party committee;
- E. Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
- F. Fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- G. Engage in any exchange of contributions to circumvent the intent of the Legislation; or
- H. Directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

Prior to awarding any Contract or agreement to any Business Entity, the Business Entity proposed as the intended Contractor of the Contract shall submit the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form, certifying that no contributions prohibited by either Chapter 51 or Executive Order No. 117 have been made by the Business Entity and reporting all qualifying contributions made by the Business Entity or any person or entity whose contributions are attributable to the Business Entity. The required form and instructions, available for review on the Division's website at <https://www.state.nj.us/treasury/purchase/forms.shtml>, shall be provided to the intended Contractor for completion and submission to the Division with the Notice of Intent to Award. Upon receipt of a Notice of Intent to Award a Contract, the intended Contractor shall submit to the Division, in care of the Division Procurement Specialist, the Certification and Disclosure(s) within five (5) business days of the State's request. The Certification and Disclosure(s) may be executed electronically by typing the name of the authorized signatory in the "Signature" block as an alternative to downloading, physically signing the form, scanning the form, and uploading the form. Failure to submit the required forms will preclude award of a Contract under this Bid Solicitation, as well as future Contract opportunities; and

Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the Contract, and any extension(s) thereof, at the time any such contribution is made. The required form and instructions, available for review on the Division's website at <https://www.state.nj.us/treasury/purchase/forms.shtml>, shall be provided to the intended Contractor with the Notice of Intent to Award.

2.9 POLITICAL CONTRIBUTION DISCLOSURE

The contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, §3 as amended) if in a calendar year the contractor receives one (1) or more contracts valued at \$50,000.00 or more. It is the contractor's responsibility to determine if filing is necessary. Failure to file

can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888)313-3532 or on the internet at <http://www.elec.state.nj.us/>.

2.10 STANDARDS PROHIBITING CONFLICTS OF INTEREST

The following prohibitions on contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

- A. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;
- B. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the New Jersey Office of the Attorney General and the Executive Commission on Ethical Standards, now known as the State Ethics Commission;
- C. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he/she is employed or associated or in which he/she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, now known as the State Ethics Commission, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest;
- D. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his/her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;
- E. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his/her official position to secure unwarranted privileges or advantages for the vendor or any other person; and
- F. The provisions cited above in paragraphs 2.8A through 2.8E shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards, now known as the State Ethics Commission may promulgate under paragraph 3c of Executive Order No. 189.

2.11 NEW JERSEY BUSINESS ETHICS GUIDE CERTIFICATION

The Treasurer has established a business ethics guide to be followed by a Contractor in dealings with the State. The guide can be found at: <https://www.nj.gov/treasury/purchase/pdf/BusinessEthicsGuide.pdf>.

2.12 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE

Pursuant to N.J.S.A. 54:49-19, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

2.13 COMPLIANCE - LAWS

The contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.

2.14 COMPLIANCE - STATE LAWS

It is agreed and understood that any contracts and/or orders placed as a result of [this proposal] shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the State of New Jersey.

2.15 WARRANTY OF NO SOLICITATION ON COMMISSION OR CONTINGENT FEE BASIS

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. If a breach or violation of this section occurs, the State shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

2.16 DISCLOSURE OF INVESTIGATIONS AND OTHER ACTIONS

The Contractor should submit the Disclosure of Investigations and Other Actions Form which provides a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five (5) years, including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, disposition. If a Contractor does not submit the form with the Quote, the Contractor must comply within seven (7) business days of the State's request or the State may deem the Quote non-responsive.

2.17 DISCLOSURE OF PROHIBITED ACTIVITIES WITH RUSSIA OR BELARUS

Pursuant to P.L. 2022, c. 3, a person or entity seeking to enter into, renew, amend or extend a contract for the provision of goods or services shall certify that it is not identified on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Activities in Russia or Belarus. If the Contractor is unable to so certify because the person or entity, its parents, subsidiaries, or affiliates has engaged in prohibited activities, the Contractor shall provide a detailed and precise description of such activities. A Contractor's failure to submit a certification will preclude the award, renewal, amendment or extension of a Contract to said Contractor.

3.0 STATE LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT

3.1 COMPLIANCE - CODES

The contractor must comply with New Jersey Uniform Construction Code and the latest National Electrical Code 70®, B.O.C.A. Basic Building code, Occupational Safety and Health Administration and all applicable codes for this requirement. The contractor shall be responsible for securing and paying all necessary permits, where applicable.

3.2 PREVAILING WAGE ACT

The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.25 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The Contractor's signature on [the proposal] is his/her guarantee that neither he/she nor any subcontractors he/she might employ to perform the work covered by [the proposal] has been suspended or debarred by the Commissioner, Department of Labor and Workforce Development for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the Contractor's signature on the proposal is also his/her guarantee that he/she and any subcontractors he/she might employ to perform the work covered by [the proposal] shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

3.3 PUBLIC WORKS CONTRACTOR REGISTRATION ACT

The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.51. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance.

3.4 PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS

N.J.S.A. 10:2-1 requires that during the performance of this contract, the contractor must agree as follows:

- A. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;
- B. No contractor, subcontractor, nor any person on his/her behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;
- C. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and
- D. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the contractor must agree as follows:

- A. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
- B. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
- C. The contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment, N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows:
 1. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2;
 2. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices;
 3. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions; and
 4. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

3.5 BUILDING SERVICE

Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the contractor or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11.56.59. The prevailing wage shall be adjusted annually during the term of the contract.

3.6 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT

The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the statute.

3.7 SERVICE PERFORMANCE WITHIN U.S.

Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If, during the term of the contract, the contractor or subcontractor, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 5.7(b) (1) of the Standard Terms and Conditions, unless previously approved by the Director and the Treasurer.

3.8 BUY AMERICAN

Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States, whenever available, and the contractor shall be required to so certify.

3.9 DOMESTIC MATERIALS

Pursuant to N.J.S.A. 52:33-2 et seq., if the contract is for the construction, alteration or repair of any public work, the contractor and all subcontractors shall use only domestic materials in the performance of the work unless otherwise noted in the specifications.

3.10 DIANE B. ALLEN EQUAL PAY ACT

Pursuant to N.J.S.A. 34:11-56.14 and N.J.A.C. 12:10-1.1 et seq., a contractor performing “qualifying services” or “public work” to the State or any agency or instrumentality of the State shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. For more information and report templates see <https://nj.gov/labor/equalpay/equalpay.html>.

3.11 EMPLOYEE MISCLASSIFICATION

In accordance with [Governor Murphy's Executive Order #25](#) and the [Task Force's July 2019 Report](#), employers are required to properly classify their employees. Workers are presumed to be employees and not independent contractors, unless the employer can demonstrate all three factors of the “ABC Test” below:

- A. Such individual has been and will continue to be free from control or direction of the performance of such service, but under his or her contract of service and in fact; and
- B. Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all places of business of the enterprise for which such service is performed; and
- C. Such individual is customarily engaged in an independently established trade, occupation, profession or business.

This test has been adopted by New Jersey under its Wage & Hour, Wage Payment and Unemployment Insurance Laws to determine whether a worker is properly classified. Under N.J.S.A. 34:1A-1.17-1.19, the Department of Labor and Workforce Development has the authority to investigate potential violations of these laws and issue penalties and stop work order to employers found to be in violation of the laws.

4.0 INDEMNIFICATION AND INSURANCE

4.1 INDEMNIFICATION

The contractor's liability to the State and its employees in third party suits shall be as follows:

- A. Indemnification for Third Party Claims - The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract, including liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract;
- B. The contractor's indemnification and liability under subsection (A) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions; and
- C. In the event of a patent and copyright claim or suit, the contractor, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

4.2 INSURANCE

The contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A-VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide 30 days' written notice of cancellation or material change to the State of New Jersey at the address shown below. If the contractor's insurer cannot provide 30 days written notice, then it will become the obligation of the contractor to provide the same. The contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within 30 days of the expiration of the insurance. The contractor shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancellation shall be emailed to the State at: ccau.certificate@treas.nj.gov

The insurance to be provided by the contractor shall be as follows:

- A. Occurrence Form Commercial General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as “Additional Insureds” and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic Commercial General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage;
- B. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1,000,000 per occurrence as a combined single limit. The State must be named as an “Additional Insured” and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property;
- C. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:

1. \$1,000,000 BODILY INJURY, EACH OCCURRENCE;
2. \$1,000,000 DISEASE EACH EMPLOYEE; and
3. \$1,000,000 DISEASE AGGREGATE LIMIT.

This \$1,000,000 amount may be raised when deemed necessary by the Director;

In the case of a contract entered into pursuant to N.J.S.A. 52:32-17 et seq., (small business set asides) the minimum amount of insurance coverage in subsections A, B, and B. above may be amended for certain commodities when deemed in the best interests of the State by the Director.

5.0 TERMS GOVERNING ALL CONTRACTS

5.1 CONTRACTOR IS INDEPENDENT CONTRACTOR

The contractor's status shall be that of any independent contractor and not as an employee of the State.

5.2 RESERVED

5.3 CONTRACT TERM AND EXTENSION OPTION

If, in the opinion of the Director, it is in the best interest of the State to extend a contract, the contractor shall be so notified of the Director's Intent at least 30 days prior to the expiration date of the existing contract. The contractor shall have 15 calendar days to respond to the Director's request to extend the term and period of performance of the contract. If the contractor agrees to the extension, all terms and conditions of the original contract shall apply unless more favorable terms for the State have been negotiated.

5.4 STATE'S OPTION TO REDUCE SCOPE OF WORK

The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under this contract. In such an event, the Director shall provide to the contractor advance written notice of the change in scope of work and what the Director believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- A. If the contractor does not agree with the Director's proposed adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price; and
- B. If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

Any changes or modifications to the terms of this Contract shall be valid only when they have been reduced to writing and signed by the Contractor and the Director.

5.5 CHANGE IN LAW

If, after award, a change in applicable law or regulation occurs which affects the Contract, the parties may amend the Contract, including pricing, in order to provide equitable relief for the party disadvantaged by the change in law. The parties shall negotiate in good faith, however if agreement is not possible after reasonable efforts, the Director shall make a prompt decision as to an equitable adjustment, taking all relevant information into account, and shall notify the Contractor of the final adjusted contract price.

5.6 SUSPENSION OF WORK

The State may, for valid reason, issue a stop order directing the contractor to suspend work under the contract for a specific time. The contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the contractor's approved schedule of performance. The Director shall make an equitable adjustment, if any is required, to the contract price. The contractor shall provide whatever information that Director may require related to the equitable adjustment.

5.7 TERMINATION OF CONTRACT

- A. For Convenience:
Notwithstanding any provision or language in this contract to the contrary, the Director may terminate this contract at any time, in whole or in part, for the convenience of the State, upon no less than 30 days written notice to the contractor;
- B. For Cause:
 1. Where a contractor fails to perform or comply with a contract or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor

- with an opportunity to respond; and
2. Where in the reasonable opinion of the Director, a contractor continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond.
- C. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond; and
 - D. In the event of termination under this section, the contractor shall be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

5.8 SUBCONTRACTING

The Contractor may not subcontract other than as identified in the contractor's proposal without the prior written consent of the Director. Such consent, if granted in part, shall not relieve the contractor of any of his/her responsibilities under the contract, nor shall it create privity of contract between the State and any subcontractor. If the contractor uses a subcontractor to fulfill any of its obligations, the contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws. Nothing contained in any of the contract documents, shall be construed as creating any contractual relationship between any subcontractor and the State.

5.9 RESERVED

5.10 MERGERS, ACQUISITIONS AND ASSIGNMENTS

If, during the term of this contract, the contractor shall merge with or be acquired by another firm, the contractor shall give notice to the Director as soon as practicable and in no event longer than 30 days after said merger or acquisition. The contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within 30 days of the request. Failure to do so may result in termination of the contract for cause.

If, at any time during the term of the contract, the contractor's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director in writing, the names of the parties proposed to perform the contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the Director.

The contractor may not assign its responsibilities under the contract, in whole or in part, without the prior written consent of the Director.

5.11 PERFORMANCE GUARANTEE OF CONTRACTOR

The contractor hereby certifies that:

- A. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice;
- B. All equipment supplied to the State and operated by electrical current is UL listed where applicable;
- C. All new machines are to be guaranteed as fully operational for the period stated in the contract from time of written acceptance by the State. The contractor shall render prompt service without charge, regardless of geographic location;
- D. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters;
- E. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice;
- F. During the warranty period the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract; and
- G. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the State's using agency is rendered.

5.12 DELIVERY REQUIREMENTS

- A. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the contract;
- B. The contractor shall be responsible for the delivery of material in first class condition to the State's using agency or the purchaser under this contract and in accordance with good commercial practice;
- C. Items delivered must be strictly in accordance with the contract; and
- D. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the contract, the using agency shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor.

5.13 APPLICABLE LAW AND JURISDICTION

This contract and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles and shall be filed in the appropriate Division of the New Jersey Superior Court.

5.14 CONTRACT AMENDMENT

Except as provided herein, the contract may only be amended by written agreement of the State and the contractor.

5.15 MAINTENANCE OF RECORDS

Pursuant to N.J.A.C. 17:44-2.2, the contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five (5) years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

5.16 ASSIGNMENT OF ANTITRUST CLAIM(S)

The contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract.

In connection with this assignment, the following are the express obligations of the contractor:

- A. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder;
- B. It shall advise the Attorney General of New Jersey:
 1. In advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action; and
 2. Immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- C. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey; and
- D. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

5.17 NEWS RELEASES

The Contractor is not permitted to issue news releases pertaining to any aspect of the services being provided under this Contract without the prior written consent of the Director.

5.18 ADVERTISING

The Contractor shall not use the State's name, logos, images, or any data or results arising from this Contract as a part of any commercial advertising without first obtaining the prior written consent of the Director.

5.19 ORGAN DONATION

As required by N.J.S.A. 52:32-33.1, the State encourages the contractor to disseminate information relative to organ donation and to notify its employees, through information and materials or through an organ and tissue awareness program, of organ donation options. The information provided to employees should be prepared in collaboration with the organ procurement organizations designated pursuant to 42 U.S.C. 1320b-8 to serve in this State.

5.20 LICENSES AND PERMITS

The Contractor shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform this Contract. Notwithstanding the requirements of the Bid Solicitation, the Contractor shall supply the State Contract Manager with evidence of all such licenses, permits and authorizations. This evidence shall be submitted subsequent to this Contract award. All costs associated with any such licenses, permits, and authorizations must be considered by the Contractor in its Quote.

5.21 CLAIMS AND REMEDIES

- A. All claims asserted against the State by the Contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.
- B. Nothing in this Contract shall be construed to be a waiver by the State of any warranty, expressed or implied, of any remedy at law or equity, except as specifically and expressly stated in a writing executed by the Director.
- C. In the event that the Contractor fails to comply with any material Contract requirements, the Director may take steps to terminate this Contract in accordance with the SSTC, authorize the delivery of Contract items by any available means, with the difference between the price paid and the defaulting Contractor's price either being deducted from any monies due the defaulting Contractor or being an obligation owed the State by the defaulting Contractor, as provided for in the State administrative code, or take any other action or seek any other remedies

available at law or in equity.

5.22 ACCESSIBILITY COMPLIANCE

The Contractor acknowledges that the State may be required to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794. The Contractor agrees that any information that it provides to the State in the form of a Voluntary Product Accessibility Template (VPAT) about the accessibility of the Software is accurate to a commercially reasonable standard and the Contractor agrees to provide the State with technical information available to support such VPAT documentation in the event that the State relied on any of Contractor's VPAT information to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794. In addition, Contractor shall defend any claims against the State that the Software does not meet the accessibility standards set forth in the VPAT provided by Provider in order to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794 and will indemnify the State with regard to any claim made against the State with regard to any judgment or settlement resulting from those claims to the extent the Provider's Software provided under this Contract was not accessible in the same manner as or to the degree set forth in the Contractor's statements or information about accessibility as set forth in the then-current version of an applicable VPAT.

5.23 CONFIDENTIALITY

- A. The obligations of the State under this provision are subject to the New Jersey Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 et seq., the New Jersey common law right to know, and any other lawful document request or subpoena;
- B. By virtue of this Contract, the parties may have access to information that is confidential to one another. The parties agree to disclose to each other only information that is required for the performance of their obligations under this Contract. Contractor's Confidential Information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure Vendor Intellectual Property ("Contractor Confidential Information"). Notwithstanding the previous sentence, the terms and pricing of this Contract are subject to disclosure under OPRA, the common law right to know, and any other lawful document request or subpoena;
- C. The State's Confidential Information shall consist of all information or data contained in documents supplied by the State, any information or data gathered by the Contractor in fulfillment of the Contract and any analysis thereof (whether in fulfillment of the Contract or not);
- D. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party, except that if the information is personally identifying to a person or entity regardless of whether it has become part of the public domain through other means, the other party must maintain full efforts under the Contract to keep it confidential; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party;
- E. The State agrees to hold Contractor's Confidential Information in confidence, using at least the same degree of care used to protect its own Confidential Information;
- F. In the event that the State receives a request for Contractor Confidential Information related to this Contract pursuant to a court order, subpoena, or other operation of law, the State agrees, if permitted by law, to provide Contractor with as much notice, in writing, as is reasonably practicable and the State's intended response to such order of law. Contractor shall take any action it deems appropriate to protect its documents and/or information;
- G. In addition, in the event Contractor receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law, Contractor shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Contractor's intended response to such order of law. The State shall take any action it deems appropriate to protect its documents and/or information; and
- H. Notwithstanding the requirements of nondisclosure described in this Section, either party may release the other party's Confidential Information:
 - (i) if directed to do so by a court or arbitrator of competent jurisdiction; or
 - (ii) pursuant to a lawfully issued subpoena or other lawful document request:
 - (a) in the case of the State, if the State determines the documents or information are subject to disclosure and Contractor does not exercise its rights as described in Section 5.23(F), or if Contractor is unsuccessful in defending its rights as described in Section 5.23(F); or
 - (b) in the case of Contractor, if Contractor determines the documents or information are subject to disclosure and the State does not exercise its rights described in Section 5.23(G), or if the State is unsuccessful in defending its rights as described in Section 5.23(G).

6.0 TERMS RELATING TO PRICE AND PAYMENT

6.1 PRICE FLUCTUATION DURING CONTRACT

Unless otherwise agreed to in writing by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract. In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director must be notified, in writing, of any price reduction within five (5) days of the effective date. Failure to report price reductions may result in cancellation of contract for cause, pursuant to provision 5.7(b)1.

In an exceptional situation the State may consider a price adjustment. Requests for price adjustments must include justification and

documentation.

6.2 TAX CHARGES

The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

6.3 PAYMENT TO VENDORS

- A. The using agency(ies) is (are) authorized to order and the contractor is authorized to ship only those items covered by the contract resulting from the RFP. If a review of orders placed by the using agency(ies) reveals that goods and/or services other than that covered by the contract have been ordered and delivered, such delivery shall be a violation of the terms of the contract and may be considered by the Director as a basis to terminate the contract and/or not award the contractor a subsequent contract. The Director may take such steps as are necessary to have the items returned by the agency, regardless of the time between the date of delivery and discovery of the violation. In such event, the contractor shall reimburse the State the full purchase price;
- B. The contractor must submit invoices to the using agency with supporting documentation evidencing that work or goods for which payment is sought has been satisfactorily completed or delivered. For commodity contracts, the invoice, together with the Bill of Lading, and/or other documentation to confirm shipment and receipt of contracted goods must be received by the using agency prior to payment. For contracts featuring services, invoices must reference the tasks or subtasks detailed in the Scope of Work and must be in strict accordance with the firm, fixed prices submitted for each task or subtask. When applicable, invoices should reference the appropriate task or subtask or price line number from the contractor's proposal. All invoices must be approved by the State Contract Manager or using agency before payment will be authorized;
- C. In all time and materials contracts, the State Contract Manager or designee shall monitor and approve the hours of work and the work accomplished by contractor and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adapted as appropriate for the Scope of Work being performed can be found at www.nj.gov/treasury/purchase/forms/Vendor_Timesheet.xls; and
- D. The contractor shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Office of Diversity and Inclusion.
- E. The Contractor shall have sole responsibility for all payments due any Subcontractor

6.4 OPTIONAL PAYMENT METHOD: P-CARD

The State offers contractors the opportunity to be paid through the MasterCard procurement card (p-card). A contractor's acceptance and a State agency's use of the p-card are optional. P-card transactions do not require the submission of a contractor invoice; purchasing transactions using the p-card will usually result in payment to a contractor in three (3) days. A contractor should take note that there will be a transaction-processing fee for each p-card transaction. To participate, a contractor must be capable of accepting the MasterCard. Additional information can be obtained from banks or merchant service companies.

6.5 NEW JERSEY PROMPT PAYMENT ACT

The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires state agencies to pay for goods and services within 60 days of the agency's receipt of a properly executed State Payment Voucher or within 60 days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the State prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds \$5.00 per properly executed invoice. Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

6.6 AVAILABILITY OF FUNDS

The State's obligation to make payment under this contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenue.

7.0 TERMS RELATING TO ALL CONTRACTS FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS

The provisions set forth in this Section of the Standard Terms and Conditions apply to all contracts funded, in whole or in part, by Federal funds as required by 2 CFR 200.317.

7.1 CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.

Pursuant to 2 CFR 200.321, the State must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Accordingly, if subawards are to be made the Contractor shall:

- (1) Include qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

- (4) Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and,
- (5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

7.2 DOMESTIC PREFERENCE FOR PROCUREMENTS

Pursuant to 2 CFR 200.322, where appropriate, the State has a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). If subawards are to be made the Contractor shall include a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section:

- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

7.3 PROCUREMENT OF RECOVERED MATERIALS

Where applicable, in the performance of contract, pursuant to 2 CFR 200.323, the contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

To the extent that the scope of work or specifications in the contract requires the contractor to provide recovered materials the scope of work or specifications are modified to require that as follows.

- i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 1. Competitively within a timeframe providing for compliance with the contract performance schedule;
 2. Meeting contract performance requirements; or
 3. At a reasonable price.
- ii. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

7.4 EQUAL EMPLOYMENT OPPORTUNITY

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." See, 2 CFR Part 200, Appendix II, para. C.

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
 - Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- (4) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

7.5 DAVIS-BACON ACT, 40 U.S.C. 3141-3148, AS AMENDED

When required by Federal program legislation, all prime construction contracts in excess of \$ 2,000 shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, contractors are required to pay wages not less than once a week.

7.6 COPELAND ANTI-KICK-BACK ACT

Where applicable, the Contractor must comply with Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

- a. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into the OGS centralized contract.
- b. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the clauses above may be grounds for termination of the OGS centralized contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

7.7 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, 40 U.S.C. 3701-3708

Where applicable, all contracts awarded by the non-Federal entity in excess of \$ 100,000 that involve the employment of mechanics or laborers must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The unauthorized user shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

7.8 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

7.9 CLEAN AIR ACT, 42 U.S.C. 7401-7671Q, AND THE FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. 1251-1387, AS AMENDED

Where applicable, Contract and subgrants of amounts in excess of \$150,000, must comply with the following:

Clean Air Act

- 7.9.1.1 The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- 7.9.1.2 The contractor agrees to report each violation to the Division of Purchase and Property and understands and agrees that the Division of Purchase and Property will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- 7.9.1.3 The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the Division of Purchase and Property and understands and agrees that the Division of Purchase and Property will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

7.10 DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

- (3) This certification is a material representation of fact relied upon by the State or authorized user. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State or authorized user, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

7.11 BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. 1352

Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

7.12 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

- (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
 - (1) Procure or obtain;
 - (2) Extend or renew a contract to procure or obtain; or
 - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in *Public Law 115–232*, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

EXHIBIT A - GOODS, GENERAL SERVICE AND PROFESSIONAL SERVICES CONTRACTS

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)

N.J.A.C. 17:27 et seq.

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

- Letter of Federal Affirmative Action Plan Approval;
- Certificate of Employee Information Report; or
- Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at http://www.state.nj.us/treasury/contract_compliance).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase and Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase and Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1 et seq.

EXHIBIT B - CONSTRUCTION CONTRACTS

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)N.J.S.A. 10:5-39 et seq. (P.L. 1983, c. 197)N.J.A.C. 17:27-1.1 et seq.

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, up grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

N.J.S.A. 10:5-39 et seq. requires contractors, subcontractors, and permitted assignees performing construction, alteration, or repair of any building or public work in excess of \$250,000 to guarantee equal employment opportunity to veterans.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Dept. of LWD, Construction EEO Monitoring Program may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Dept. of LWD, Construction EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

- (A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.
- (B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:
 - (1) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

- (2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;
 - (3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;
 - (4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;
 - (5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;
 - (6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:
 - (i) The contractor or subcontractor shall interview the referred minority or women worker.
 - (ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.
 - (iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.
 - (iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Dept. of LWD, Construction EEO Monitoring Program.
 - (7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.
- (C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.
- After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of LWD, Construction EEO Monitoring Program an initial project workforce report (Form AA-201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7.
- The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Dept. of LWD, Construction EEO Monitoring Program and to the public agency compliance officer.
- The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on the job and/or off the job programs for outreach and training of minorities and women.
- (D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

EXHIBIT C - EXECUTIVE ORDER NO. 151 REQUIREMENTS

It is the policy of the Division of Purchase and Property that its contracts should create a workforce that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by the Division of Purchase and Property to perform under a construction contract shall put forth a good faith effort to engage in recruitment and employment practices that further the goal of fostering equal opportunities to minorities and women.

The contractor must demonstrate to the Division of Purchase and Property's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the Division of Purchase and Property's contract with the contractor. Payment may be withheld from a contractor's contract for failure to comply with these provisions.

Evidence of a "good faith effort" includes, but is not limited to:

1. The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development, available online at <https://newjersey.usnlx.com/>;
2. The Contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women;
3. The Contractor shall actively solicit and shall provide the Division of Purchase and Property with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media; and
4. The Contractor shall provide evidence of efforts described at 2 above to the Division of Purchase and Property no less frequently than once every 12 months.
5. The Contractor shall comply with the requirements set forth at N.J.A.C. 17:27.

This language is in addition to and does not replace good faith efforts requirements for construction contracts required by N.J.A.C. 17:27-3.6, 3.7 and 3.8, also known as Exhibit B.

ATTACHMENT B (SAAS SUPPLEMENT)

Software as a Service (“SaaS”) Supplement to the State of New Jersey’s Standard Terms and Conditions

A. SOFTWARE AS A SERVICE (“SaaS”) SUPPLEMENT TO THE STATE OF NEW JERSEY’S STANDARD TERMS AND CONDITIONS

- This Supplement to the State of New Jersey’s Standard Terms and Conditions (“SaaS Supplement”) shall apply to all State purchases of Software as a Service (“SaaS”) products. For the avoidance of doubt, this SaaS Supplement shall not apply to State purchases of Provider’s on premise Software. The combined terms of the State of New Jersey’s Standard Terms and Conditions and this SaaS Supplement shall prevail over any conflicts set forth in or incorporated by reference into a Provider’s Standard Form Agreement, license, service or other agreement (“SFA”). In the event of a conflict between the terms of the SaaS Supplement and the State of New Jersey’s Standard Terms and Conditions, this SaaS Supplement shall prevail.

B. DEFINITIONS

– All capitalized terms used in this SaaS Supplement shall have the same meaning as stated in the State of New Jersey’s Standard Terms and Conditions. In addition, the following definitions shall apply:

- a. As defined by N.J.S.A. 56:8-161, the term “Breach of Security” means unauthorized access to electronic files, media, or data containing Personal Data that compromises the security, confidentiality, or integrity of Personal Data when access to the Personal Data has not been secured by encryption or by any other method or technology that renders the Personal Data unreadable or unusable. Good faith acquisition of Personal Data by an employee or agent of the Provider for a legitimate business purpose is not a Breach of Security, provided that the Personal Data is not used for a purposes unrelated to the business or subject to further unauthorized disclosure.
- b. The term “End User” means the user of the Provider’s solution.
- c. The term “Mobile Device” means any device used by Provider that can move or transmit data, including but not limited to laptops, hard drives, and flash drives.
- d. The term “Non-Public Data” means data, other than Personal Data, that is not subject to distribution to the public as public information. Non-Public Data is data that is identified by the State as non-public information or otherwise deemed to be sensitive and confidential by the State because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.
- e. The term “Personal Data” means:
 - i. “Personal Information” as defined in N.J.S.A. 56:8-161, means an individual’s first name or first initial and last name linked with any one or more of the following data elements: (1) Social Security number, (2) driver’s license number or State identification card number or (3) account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual’s financial account. Dissociated data that, if linked would constitute Personal Information is Personal Information if the means to link the dissociated were accessed in connection with access to the dissociated data. Personal Information shall not include publicly available information that is lawfully made available to the general public from federal, state or local government records, or widely distributed media.
 - ii. data, either alone or in combination with other data, that includes information relating to an individual that identifies the person or entity by name, identifying number, mark or description that can be readily associated with a particular individual and which is not a public record, including but not limited to, Personally Identifiable Information (PII); government-issued identification numbers (e.g., Social Security, driver’s license, passport); Protected Health Information (PHI) as that term is defined in the regulations adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191 (1996) and found in 45 CFR Parts 160 to 164 and defined below; and Education Records, as that term is defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.
- f. The term “Personally Identifiable Information” or “PII,” as defined by the U.S. Department of Commerce, National Institute of Standards and Technology, means any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information,
- g. The term “Protected Health Information” or “PHI,” has the same meaning as the term is defined in the regulations adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191 (1996) and found in 45 CFR Parts 160 to 164 means Individually Identifiable Health Information (as defined below) transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer. The term “Individually Identifiable Health Information” has the same meaning as the term is defined in the regulations adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191 (1996) and found in 45 CFR Parts 160 to 164 and means information that is a subset of Protected Health Information, including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer or health care clearinghouse; and (2) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- h. The term “Recovery Time Objective” or “RTO,” means the maximum tolerable length of time that the Provider’s solution may be unavailable after a failure or disaster occurs.
- i. The term “Security Incident” means the potential access by non-authorized person(s) to Personal Data or Non-Public Data that the Provider believes could reasonably result in the use, disclosure, or access or theft of State’s unencrypted Personal Data or Non-Public Data within the possession or control of the Provider. A Security Incident may or may not turn into a Breach of Security.

Software as a Service (“SaaS”) Supplement to the State of New Jersey’s Standard Terms and Conditions

- j. The term “Service Level Agreement” or “SLA,” means the document that is part of the Provider’s SFA that typically includes (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) security responsibilities and notice requirements, (5) how disputes are discovered and addressed, and (6) any remedies for performance failures.
- k. The term “State Data” means all data and metadata created or in any way originating with the State, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with the State, whether such data or output is stored on the State’s hardware, the Provider’s hardware or exists in any system owned, maintained or otherwise controlled by the State or by the Provider. State Data includes Personal Data and Non-Public Data.

C. REVISIONS TO THE STATE OF NEW JERSEY’S STANDARD AGREEMENT

- 1. **INDEMNIFICATION** – Section 4.1 of the State of New Jersey’s Standard Terms and Conditions is deleted in its entirety and replaced with the following:

4.1 INDEMNIFICATION

- A. **PROVIDER RESPONSIBILITIES** - The Provider’s liability to the State and its employees in third party suits shall be as follows:

- 1. The Provider shall indemnify, defend, and save harmless the State and its officers, agents, servants and employees, from and against any and all third party claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith:
 - i. For or on account of the loss of life, tangible property (not including lost or damaged data) or injury or damage to the person, body or property (not including lost or damaged data) of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or products supplied under the contract or the order; and
 - ii. For or on account of the use of any patent, copyright, trademark, trade secret or other proprietary right of any copyrighted or uncopied composition, secret process, patented or unpatented invention, article or appliance (“Intellectual Property Rights”) furnished or used in the performance of the contract; and
 - iii. For or on account of a Breach of Security resulting from Provider’s breach of its obligation to encrypt Personal Data or otherwise prevent its release or misuse; and
 - iv. The Provider’s indemnification and liability under Section 4.1(A)(1) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of the State of New Jersey’s Standard Terms and Conditions.
- 2. In the event of a claim or suit involving third-party Intellectual Property Rights, the Provider, at its option, may: (a) procure for the State the legal right to continue the use of the product; (b) replace or modify the product to provide a non-infringing product that is the functional equivalent; or in the event that Provider cannot do (a) or (b), (c) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.
- 3. In the event of a claim or suit involving third-party Intellectual Property Rights, the State will (a) promptly notify Provider in writing of the claim or suit; and (b) Provider shall have control of the defense and settlement of any claim that is subject to Section 4.1(A)(1); provided, however, that the State must approve any settlement of the alleged claim, which approval shall not be unreasonably withheld. The State may observe the proceedings relating to the alleged claim and confer with the Provider at its expense. Furthermore, neither Provider nor any attorney engaged by Provider shall defend the claim in the name of the State of New Jersey or any Authorized Purchaser, nor purport to act as legal representative of the State of New Jersey or any Authorized Purchaser, without having provided notice to the Director of the Division of Law in the Department of Law and Public Safety and to the Director of DPP. The State of New Jersey may, at its election and expense, assume its own defense and settlement.
- 4. Notwithstanding the foregoing, Provider has no obligation or liability for any claim or suit concerning third-party Intellectual Property Rights arising from: (1) the State’s unauthorized combination, operation, or use of a product supplied under this contract with any product, device, or software not supplied by Provider; (2) the State’s unauthorized alteration or modification of any product supplied under this contract; (3) the Provider’s compliance with the State’s designs, specifications, requests, or instructions, provided that if the State provides Provider with such designs, specifications, requests, or instructions, Provider reviews same and advises that such designs, specifications, requests or instructions present potential issues of patent or copyright infringement and the State nonetheless directs the Provider to proceed with one or more designs, specifications, requests or instructions that present potential issues of patent or copyright infringement; or (4) the State’s failure to promptly implement a required update, use a new version of the product, or to make a change or modification to the product if requested in writing by Provider.
- 5. Provider will be relieved of its responsibilities under Subsection 4.1(A)(1)(i), (ii), and (iii) for any claims made by an unaffiliated third party that arise solely from the actions or omissions of the State, its officers, employees or agents.
- 6. This section states the entire obligation of Provider and the exclusive remedy of the State, in respect of any infringement or alleged infringement of any Intellectual Property Rights. This indemnity obligation and remedy are given to the State solely for its benefit and in lieu of, and Provider disclaims, all warranties, conditions and other terms of non-infringement or title with respect to any product.
- 7. The provisions of this indemnification clause shall in no way limit the Provider’s obligations assumed in the contract, nor shall they be construed to relieve the Provider from any liability, nor preclude the State from taking any other actions

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available to it under any other provisions of the contract or otherwise at law or equity, except as otherwise provided in Section 4.1 A. 5.

8. The Provider agrees that any approval by the State or Authorized Purchaser of the work performed and/or reports, plans or specifications provided by the Provider shall not operate to limit the obligations of the Provider assumed in the contract.
9. The State of New Jersey will not indemnify, defend or hold harmless the Provider. The State will not pay or reimburse for claims absent compliance with Section 4.1(B) of these State of New Jersey’s Standard Terms and Conditions and a determination by the State to pay the claim or a final order of a court of competent jurisdiction.

B. STATE RESPONSIBILITIES - Subject to the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.) and the appropriation and availability of funds, the State will be responsible for any cost or damage arising out of actions or inactions of the State, its employees or agents under Section 4.1(A)(1)(i), (ii), and (iii) which results in an unaffiliated third party claim. This is Provider’s exclusive remedy for these claims.

2. **LIMITATION OF LIABILITY** –Section 4.1.1 of the State of New Jersey’s Standard Terms and Conditions is deleted in its entirety and replaced with the following:

- a. The Provider’s liability for actual, direct damages resulting from the Provider’s performance or non-performance of, or in any manner related to, the contract for any and all third party claims, shall be limited in the aggregate to 200% of the fees paid by the Authorized Purchaser(s) during the previous twelve months to Provider for the products or services giving rise to such damages. Notwithstanding the preceding sentence, in no event shall the limit of liability be less than \$100,000. This limitation of liability shall not apply to the following:
 - i. The Provider’s indemnification obligations as described in Section 4.1; and
 - ii. The Provider’s breach of its obligations of confidentiality described in Section 7.1; and
 - iii. The Provider’s Data Protection obligations described in Section D of this Supplement.
- b. Notwithstanding the foregoing exclusions, where a Breach of Security is a direct result of Provider’s breach of its contractual obligation to encrypt Personal Data or otherwise prevent its release as reasonably determined by the State, the Provider shall bear the costs associated with (1) the investigation and resolution of the Breach of Security; (2) notifications to individuals, regulators, or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state or federal law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws — all not to exceed the average per record, per person cost calculated for data breaches in the United States in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute for the public sector at the time of the Breach of Security; and (5) completing all corrective actions as reasonably determined by Provider based on root cause of the Breach of Security.
- c. The Provider shall not be liable for punitive, special, indirect, incidental, or consequential damages.

3. **INSURANCE** --Section 4.2 of the State of New Jersey’s Standard Terms and Conditions is deleted and replaced with the following:

The Provider shall secure and maintain in force for the term of the Contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A- VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide 30 days’ written notice of cancellation or material change to the State of New Jersey at the address shown below. If the Provider’s insurer cannot provide 30 days written notice, then it will become the obligation of the Provider to provide the same. The Provider shall provide the State with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within 30 days of the expiration of the insurance. The Provider shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the Contract number or purchase order number and title of the Contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancellation shall be emailed to the State at: ccau.certificate@treas.state.nj.us

The insurance to be provided by the Provider shall be as follows:

- a. Occurrence Form Commercial General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as “Additional Insureds” and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic Commercial General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage.
- b. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1,000,000 per occurrence as a combined single limit. The State must be named as an “Additional Insured” and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State’s behalf or on State controlled property.
- c. Worker’s Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:

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\$1,000,000 BODILY INJURY, EACH OCCURRENCE;
\$1,000,000 DISEASE EACH EMPLOYEE; and
\$1,000,000 DISEASE AGGREGATE LIMIT.

- d. Professional Liability Insurance: The Provider shall provide Errors and Omissions, Professional Liability Insurance and/or Professional Liability Malpractice Insurance to protect the Provider from insured liability arising out of the professional obligations performed pursuant to the requirements of this Contract. The insurance shall be in the amount of \$2,000,000 per claim and in the aggregate. If the Provider has claims-made coverage and subsequently changes carriers during the term of the Contract, the new Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice shall provide for retroactive coverage to the inception date of this Contract or earlier.
- e. Cyber Breach Insurance: Where State Data is being given to the Provider or where Provider has access to State Data, the Provider shall carry Cyber Breach Insurance in sufficient amount to protect the Provider from any liability arising out of its performance pursuant to the requirements of this Blanket P.O. The insurance shall be in an amount of not less than \$2,000,000 and in such policy forms as shall be approved by the State. The insurance shall at a minimum cover the following: Data loss, ransomware and similar breaches to computers, servers and software; Protection against third-party claims; cost of notifying affected parties; cost of providing credit monitoring to affected parties; forensics; cost of public relations consultants; regulatory compliance costs; costs to pursue indemnity rights; costs to Data Breach and Credit Monitoring Services analyze the insured’s legal response obligations; costs of defending lawsuits; judgments and settlements; regulatory response costs; costs of responding to regulatory investigations; and costs of settling regulatory claims.

Notwithstanding anything to the contrary herein, Provider may meet the above insurance requirements via commercial insurance, self-insurance, or a combination of these options at Provider’s sole discretion. In addition, any combination of Primary, Umbrella, or Excess Liability policies may be used to meet any coverage or limits requirements listed above.

D. ADDITIONS TO THE STATE OF NEW JERSEY’S STANDARD TERMS AND CONDITIONS -

1. Data Ownership: The State will own all right, title and interest in its State Data that is related to the services provided by this contract. The Provider shall not use or access State user accounts or State Data, except (i) in the course of data center operations, (ii) in response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at the State’s written request.

Provider shall not collect, access, or use State Data except as strictly necessary to provide its solution to the State. No information regarding the State’s use of the solution may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation shall survive and extend beyond the term of this contract.

2. Data Protection: Protection of personal privacy and data shall be an integral part of the business activities of the Provider to ensure that there is no inappropriate or unauthorized use of State Data at any time. To this end, the Provider shall safeguard the confidentiality, integrity, and availability of State Data and comply with the following conditions:
- a. The Provider shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized good industry practice and not less stringent than the measures the Provider applies to its own Personal Data and Non-Public Data of similar kind.
 - b. All Personal Data shall be encrypted at rest and in transit with controlled access. Provider is responsible for encryption of the Personal Data. The level of protection and encryption for all Personal Data shall be identified and made a part of this contract.
 - c. Provider shall encrypt all Non-Public Data at rest and in transit. The level of protection and encryption for all Non-Public Data shall be identified and made a part of this contract.
 - d. Personal Data shall not be stored on Mobile Devices. Where Mobile Devices are required for Provider to accomplish the work, the Provider shall ensure the Mobile Device is hard drive encrypted consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all Personal Data.
 - e. At no time shall any data or processes, which either belongs to or are intended for the use of State or its officers, agents, or employees, be copied, disclosed, or retained by the Provider or any party related to the Provider for subsequent use in any capacity that does not include the State.
3. Data Location: Provider shall provide its services to State and its End Users solely from data centers in the U.S. Storage of State Data at rest shall be located solely in data centers in the U.S. Provider shall not allow its personnel or contractors to store State Data on Mobile Devices, including personal computers, except for devices that are used and kept within the physical structure of its U.S. data centers. Provider shall permit its personnel and contractors to access State Data remotely

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only as required to provide technical support or upon prior notice and approval. The Provider may provide technical user support on a seven-day by 24-hour basis, unless otherwise prohibited in this contract.

4. Security Incident and Breach of Security Responsibilities.
 - a. Security Incident Reporting Requirements: Once Provider reasonably determines that a Security Incident occurred, the Provider shall report a Security Incident to the appropriate State identified contact within 24 hours by the agreed upon method as defined in the contract. Provider will provide the State regular updates and all available relevant information including a description of the incident and those measures taken by Provider in response to the Security Incident.
 - b. Breach of Security Reporting Requirements: If the Provider confirms or reasonably believes that there has been a Breach of Security, the Provider shall (1) immediately notify the appropriate State identified contact by the agreed upon method within 24 hours, unless a shorter time is required by applicable law, (2) take commercially reasonable measures to address and investigate the Breach of Security in a timely manner and (3) cooperate with the State as reasonably requested by the State and/or law enforcement to investigate and resolve the Breach of Security. Provider will provide the State regular updates and all available information to assist the State with notification to law enforcement and third parties as required by applicable law, including a description of the Breach of Security and those measures taken by Provider in response to the Breach of Security.
 - c. Incident Response: When commercially reasonable to do so, Provider may communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries (subject to preapproval by the State if Provider specifically identifies the State or State Data), and seeking external expertise as mutually agreed at the time, defined by law, or contained in the SLA. Discussing Security Incidents with the State should be handled on an urgent as needed basis, as part of Provider communication and mitigation processes as mutually agreed at the time, defined by law, or contained in the SLA.
 - d. Following a Security Incident or Breach of Security, Provider shall promptly implement necessary remedial measures, if necessary, and document responsive actions taken related to the Security Incident or Breach of Security, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
5. Termination and Suspension of Service:
 - a. In the event of termination of the contract, the Provider shall implement an orderly return of State Data in a mutually agreeable format and the subsequent secure disposal of State Data remaining in Provider’s possession.
 - b. Suspension of services: During any period of suspension, the Provider shall not take any action to intentionally erase any State Data.
 - c. Unless otherwise stipulated, in the event of termination of any services, SLA, or this contract in its entirety, the Provider shall not take any action to intentionally erase any State Data for a period of:
 - 1) 10 business days after the effective date of termination, if the termination is in accordance with the expiration of the defined contract term;
 - 2) 30 business days after the effective date of termination, if the termination is for convenience; or
 - 3) 60 business days after the effective date of termination, if the termination is for cause.After such period, the Provider shall have no obligation to maintain or provide any State Data and shall thereafter, unless legally prohibited, delete all State Data in its systems or otherwise in its possession or under its control in accordance with subsection (e) below.
 - d. Post-Termination Assistance: The State shall be entitled to any post-termination assistance with respect to the services unless a unique data retrieval arrangement has been established as part of the contract.
 - e. Secure Data Disposal: When requested by the State, the provider shall destroy all requested data in all of its forms, including but not limited to: disk, CD/DVD, backup tape, and paper. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST) approved methods and certificates of destruction shall be provided to the State.
6. Background Checks: The Provider shall conduct criminal background checks and not utilize any staff, including sub-contractors, to fulfill the obligations of the contract who has been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or any misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Provider shall promote and maintain an awareness of the importance of securing the State’s Data among the Provider’s employees and agents.

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- 7. Access to security logs and other reports: The Provider shall provide logs and reports to the State in a format as specified in the contract and agreed to by both the Provider and the State. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all State Data related to this contract, including but not limited to data, file management, transactions, or tools used to provide, manage, secure, or analyze the State’s Data. The Provider shall maintain the reports and logs for the contract term and for two (2) years after the conclusion of the term, and shall provide them to the State in the course of a State audit or upon written request from the State.
- 8. Service Level Audit: The Provider shall allow the State to audit conformance to the contract terms. The State may perform this audit or contract with a third party at its discretion, at the State’s expense.
- 9. Data Center Audit: The Provider shall have an independent third party audit of its data center(s) performed at least annually at their own expense, and provide the audit report to the State upon request.
- 10. Change Control and Advance Notice: The Provider shall give advance notice to the State of any upgrades (e.g. major upgrades, minor upgrades, system changes) that may impact service availability and performance. Said notice shall be provided at least thirty days in advance of the upgrade, unless otherwise agreed in the SLA.
- 11. Security: The Provider shall disclose its non-proprietary security processes and technical limitations to the State by completing the State’s Security Controls Checklist or equivalent system security document, available upon request from the Office of Information Technology, as updated from time to time, such that adequate protection and flexibility can be attained between the State and the Provider.
- 12. Non-disclosure and Separation of Duties: The Provider shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of State Data to that which is absolutely needed to perform job duties.
- 13. Import and Export of Data: The State shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Provider. This includes the ability for the State to import or export data to/from other Providers.
- 14. Responsibilities and Uptime Guarantee: The Provider shall be responsible for the acquisition and operation of all hardware, software, and network support related to the services being provided. The technical and professional activities required for establishing, managing, and maintaining the environment are the responsibilities of the Provider. The system shall be available 24 hours per day, 365 days per year (with agreed-upon maintenance downtime), and Provider shall provide service to the State as defined in the Service Level Agreement.
- 15. Right to Remove Individuals: The State shall have the right at any time to require that the Provider remove from interaction with the State any Provider representative who the State believes is detrimental to its working relationship with the Provider. The State will provide the Provider with notice of its determination, and the reasons it requests the removal. If the State signifies that a potential security violation exists with respect to the request, the Provider shall immediately remove such individual. The Provider shall not assign the person to any aspect of the contract or future work orders without the State’s consent.
- 16. Business Continuity and Disaster Recovery: The Provider shall provide a business continuity and disaster recovery plan upon request and ensure that the State’s Recovery Time Objective (RTO) is met. The RTO shall be defined in the SLA.

I HEREBY ACCEPT THESE TERMS AND CONDITIONS OF SUPPLEMENT:



SIGNATURE

David Nuzum, Senior Partner

PRINT NAME AND TITLE

McKinsey & Company, Inc. Washington D.C.

NAME OF SERVICE PROVIDER

July 26, 2023

DATE

ATTACHMENT C (MASTER AGREEMENT)

McKinsey
& Company



Tab 1
Master Agreement
/ Signature Form

Tab 1 – Master Agreement

General Terms and Conditions

- ◆ Customer Support
 - The vendor shall provide timely and accurate technical advice and sales support. The vendor shall respond to such requests within one (1) working day after receipt of the request.

- ◆ Disclosures
 - Respondent affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this contract.
 - The respondent affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this contract.

- ◆ Renewal of Contract
 - Unless otherwise stated, all contracts are for a period of three (3) years with an option to renew for up to two (2) additional one-year terms or any combination of time equally not more than 2 years if agreed to by Region 14 ESC and the vendor.

- ◆ Funding Out Clause
 - Any/all contracts exceeding one (1) year shall include a standard “funding out” clause. A contract for the acquisition, including lease, of real or personal property is a commitment of the entity’s current revenue only, provided the contract contains either or both of the following provisions:
 - Retains to the entity the continuing right to terminate the contract at the expiration of each budget period during the term of the contract and is conditioned on a best efforts attempt by the entity to obtain appropriate funds for payment of the contract.

- ◆ Shipments (if applicable)
 - The awarded vendor shall ship ordered products within seven (7) working days for goods available and within four (4) to six (6) weeks for specialty items after the receipt of the order unless modified. If a product cannot be shipped within that time, the awarded vendor shall notify the entity placing the order as to why the product has not shipped and shall provide an estimated shipping date. At this point the participating entity may cancel the order if estimated shipping time is not acceptable.

- ◆ Tax Exempt Status
 - Since this is a national contract, knowing the tax laws in each state is the sole responsibility of the vendor.

◆ Payments

- The entity using the contract will make payments directly to the awarded vendor or their affiliates (distributors/business partners/resellers) as long as written request and approval by NCPA is provided to the awarded vendor.

◆ Adding authorized distributors/dealers

- Awarded vendors may submit a list of distributors/partners/resellers to sell under their contract throughout the life of the contract. Vendor must receive written approval from NCPA before such distributors/partners/resellers considered authorized.
- Purchase orders and payment can only be made to awarded vendor or distributors/business partners/resellers previously approved by NCPA.
- Pricing provided to members by added distributors or dealers must also be less than or equal to the pricing offered by the awarded contract holder.
- All distributors/partners/resellers are required to abide by the Terms and Conditions of the vendor's agreement with NCPA.

◆ Pricing

- All pricing submitted shall include the administrative fee to be remitted to NCPA by the awarded vendor. It is the awarded vendor's responsibility to keep all pricing up to date and on file with NCPA.
- All deliveries shall be freight prepaid, F.O.B. destination and shall be included in all pricing offered unless otherwise clearly stated in writing

◆ Warranty

- Proposals should address each of the following:
 - Applicable warranty and/or guarantees of equipment and installations including any conditions and response time for repair and/or replacement of any components during the warranty period.
 - Availability of replacement parts
 - Life expectancy of equipment under normal use
 - Detailed information as to proposed return policy on all equipment

◆ Indemnity

- The awarded vendor shall protect, indemnify, and hold harmless Region 14 ESC and its participants, administrators, employees and agents against all claims, damages, losses and expenses arising out of or resulting from the actions of the vendor, vendor employees or vendor subcontractors in the preparation of the solicitation and the later execution of the contract.

◆ Franchise Tax

- The respondent hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes.

◆ Supplemental Agreements

- The entity participating in this contract and awarded vendor may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement developed as a result of this contract is exclusively between the participating entity and awarded vendor.

◆ Certificates of Insurance

- Certificates of insurance shall be delivered to the Public Agency prior to commencement of work. The insurance company shall be licensed in the applicable state in which work is being conducted. The awarded vendor shall give the participating entity a minimum of ten (10) days notice prior to any modifications or cancellation of policies. The awarded vendor shall require all subcontractors performing any work to maintain coverage as specified.

◆ Legal Obligations

- It is the Respondent's responsibility to be aware of and comply with all local, state, and federal laws governing the sale of products/services identified in this RFP and any awarded contract and shall comply with all while fulfilling the RFP. Applicable laws and regulation must be followed even if not specifically identified herein.

◆ Protest

- A protest of an award or proposed award must be filed in writing within ten (10) days from the date of the official award notification and must be received by 5:00 pm CST. Protests shall be filed with Region 14 ESC and shall include the following:
 - Name, address and telephone number of protester
 - Original signature of protester or its representative
 - Identification of the solicitation by RFP number
 - Detailed statement of legal and factual grounds including copies of relevant documents and the form of relief requested
- Any protest review and action shall be considered final with no further formalities being considered.

◆ Force Majeure

- If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.
- The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the

United States or any civil or military authority; insurrections; riots; epidemics; landslides; lighting; earthquake; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty

◆ Prevailing Wage

- It shall be the responsibility of the Vendor to comply, when applicable, with the prevailing wage legislation in effect in the jurisdiction of the purchaser. It shall further be the responsibility of the Vendor to monitor the prevailing wage rates as established by the appropriate department of labor for any increase in rates during the term of this contract and adjust wage rates accordingly.

◆ Miscellaneous

- Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 business days after the other party receives the notice of cancellation. After the 30th business day all work will cease following completion of final purchase order.

◆ Open Records Policy

- Because Region 14 ESC is a governmental entity responses submitted are subject to release as public information after contracts are executed. If a vendor believes that its response, or parts of its response, may be exempted from disclosure, the vendor must specify page-by-page and line-by-line the parts of the response, which it believes, are exempt. In addition, the respondent must specify which exception(s) are applicable and provide detailed reasons to substantiate the exception(s).
- The determination of whether information is confidential and not subject to disclosure is the duty of the Office of Attorney General (OAG). Region 14 ESC must provide the OAG sufficient information to render an opinion and therefore, vague and general claims to confidentiality by the respondent are not acceptable. Region 14 ESC must comply with the opinions of the OAG. Region 14 ESC assumes no responsibility for asserting legal arguments on behalf of any vendor. Respondent are advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.

Process

Region 14 ESC will evaluate proposals in accordance with, and subject to, the relevant statutes, ordinances, rules, and regulations that govern its procurement practices. NCPA will assist Region 14 ESC in evaluating proposals. Award(s) will be made to the prospective vendor whose response is determined to be the most advantageous to Region 14 ESC, NCPA, and its participating agencies. To qualify for evaluation, response must have been submitted on time, and satisfy all mandatory requirements identified in this document.

- ◆ Contract Administration
 - The contract will be administered by Region 14 ESC. The National Program will be administered by NCPA on behalf of Region 14 ESC.
- ◆ Contract Term
 - The contract term will be for three (3) year starting from the date of the award. The contract may be renewed for up to two (2) additional one-year terms or any combination of time equally not more than 2 years.
 - It should be noted that maintenance/service agreements may be issued for up to (5) years under this contract even if the contract only lasts for the initial term of the contract. NCPA will monitor any maintenance agreements for the term of the agreement provided they are signed prior to the termination or expiration of this contract.
- ◆ Contract Waiver
 - Any waiver of any provision of this contract shall be in writing and shall be signed by the duly authorized agent of Region 14 ESC. The waiver by either party of any term or condition of this contract shall not be deemed to constitute waiver thereof nor a waiver of any further or additional right that such party may hold under this contract.
- ◆ Products and Services additions
 - Products and Services may be added to the resulting contract during the term of the contract by written amendment, to the extent that those products and services are within the scope of this RFP.
- ◆ Competitive Range
 - It may be necessary for Region 14 ESC to establish a competitive range. Responses not in the competitive range are unacceptable and do not receive further award consideration.
- ◆ Deviations and Exceptions
 - Deviations or exceptions stipulated in response may result in disqualification. It is the intent of Region 14 ESC to award a vendor's complete line of products and/or services, when possible.
- ◆ Estimated Quantities
 - The estimated dollar volume of Products and Services purchased under the proposed Master Agreement is \$15 - \$20 million dollars annually. This estimate is based on the anticipated volume of Region 14 ESC and current sales within the NCPA program. There is no guarantee or commitment of any kind regarding usage of any contracts resulting from this solicitation

- ◆ Evaluation
 - Region 14 ESC will review and evaluate all responses in accordance with, and subject to, the relevant statutes, ordinances, rules and regulations that govern its procurement practices. NCPA will assist the lead agency in evaluating proposals. Recommendations for contract awards will be based on multiple factors, each factor being assigned a point value based on its importance.
- ◆ Formation of Contract
 - A response to this solicitation is an offer to contract with Region 14 ESC based upon the terms, conditions, scope of work, and specifications contained in this request. A solicitation does not become a contract until it is accepted by Region 14 ESC. The prospective vendor must submit a signed Signature Form with the response thus, eliminating the need for a formal signing process.
- ◆ NCPA Administrative Agreement
 - The vendor will be required to enter and execute the National Cooperative Purchasing Alliance Administration Agreement with NCPA upon award with Region 14 ESC. The agreement establishes the requirements of the vendor with respect to a nationwide contract effort.
- ◆ Clarifications / Discussions
 - Region 14 ESC may request additional information or clarification from any of the respondents after review of the proposals received for the sole purpose of elimination minor irregularities, informalities, or apparent clerical mistakes in the proposal. Clarification does not give respondent an opportunity to revise or modify its proposal, except to the extent that correction of apparent clerical mistakes results in a revision. After the initial receipt of proposals, Region 14 ESC reserves the right to conduct discussions with those respondent's whose proposals are determined to be reasonably susceptible of being selected for award. Discussions occur when oral or written communications between Region 14 ESC and respondent's are conducted for the purpose clarifications involving information essential for determining the acceptability of a proposal or that provides respondent an opportunity to revise or modify its proposal. Region 14 ESC will not assist respondent bring its proposal up to the level of other proposals through discussions. Region 14 ESC will not indicate to respondent a cost or price that it must meet to neither obtain further consideration nor will it provide any information about other respondents' proposals or prices.
- ◆ Multiple Awards
 - Multiple Contracts may be awarded as a result of the solicitation. Multiple Awards will ensure that any ensuing contracts fulfill current and future requirements of the diverse and large number of participating public agencies.
- ◆ Past Performance
 - Past performance is relevant information regarding a vendor's actions under previously awarded contracts; including the administrative aspects of performance; the vendor's history of reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the vendor's businesslike concern for the interests of the customer.

Evaluation Criteria

- ◆ Pricing (40 points)
 - Electronic Price Lists
 - Products, Services, Warranties, etc. price list
 - Prices listed will be used to establish both the extent of a vendor's product lines, services, warranties, etc. available from a particular bidder and the pricing per item.

- ◆ Ability to Provide and Perform the Required Services for the Contract (25 points)
 - Product Delivery within participating entities specified parameters
 - Number of line items delivered complete within the normal delivery time as a percentage of line items ordered.
 - Vendor's ability to perform towards above requirements and desired specifications.
 - Past Cooperative Program Performance
 - Quantity of line items available that are commonly purchased by the entity.
 - Quality of line items available compared to normal participating entity standards.

- ◆ References (15 points)
 - A minimum of ten (10) customer references for product and/or services of similar scope dating within past 3 years

- ◆ Technology for Supporting the Program (10 points)
 - Electronic on-line catalog, order entry use by and suitability for the entity's needs
 - Quality of vendor's on-line resources for NCPA members.
 - Specifications and features offered by respondent's products and/or services

- ◆ Value Added Services Description, Products and/or Services (10 points)
 - Marketing and Training
 - Minority and Women Business Enterprise (MWBE) and (HUB) Participation
 - Customer Service

1.0 TAB 1- MASTER AGREEMENT/SIGNATURE FORM

Signature Form

The undersigned hereby proposes and agrees to furnish goods and/or services in strict compliance with the terms, specifications and conditions at the prices proposed within response unless noted in writing. The undersigned further certifies that he/she is an officer of the company and has authority to negotiate and bind the company named below and has not prepared this bid in collusion with any other Respondent and that the contents of this proposal as to prices, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any person engaged in this type of business prior to the official opening of this proposal.

Prices are guaranteed: **120 days**

Company name	McKinsey & Company, Inc. Washington D.C.
Address	1200 19th Street NW Suite 1100,
City/State/Zip	Washington DC 20036
Telephone No.	202 445 3775
Fax No.	202 662 3175
Email address	Kirk_Rieckhoff@mckinsey.com
Printed name	Kirk Rieckhoff
Position with company	Senior Partner
Authorized signature	

Attachment D incorporated by reference

Attachment D: Region 14 Education Service Center Solicitation #41-20 located at [RFP - Business and IT Consulting and Advisory Services \(windows.net\)](#)

Attachment E incorporated by reference

Attachment E: Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead Entity