

## II. Compliance with Existing Laws and Policies

The Grantee, in order to induce the Department to award this grant and enter into this agreement, agrees and warrants, on behalf of itself and any subcontractors retained pursuant to this agreement, that it shall comply with all applicable Federal, State, and municipal laws, rules, regulations, and written policies in the performance of this agreement. Failure to comply with such laws, rules, regulations, and policies shall constitute a material breach of this agreement and be grounds for its termination. The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625. Such laws, rules, regulations, and policies include, but are not limited to, the following, where applicable:

### A. Prevailing Wage Act

The New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., is hereby made part of this agreement, if within the contemplation of the Act. If applicable, the Grantee represents and warrants that neither it, nor any subcontractors it might employ to perform the work covered under this agreement, have been suspended or debarred by the Commissioner, Department of Labor and Workforce Development, for violation of the provisions of the Prevailing Wage Act. The Grantee further represents and warrants that both it and any subcontractors it might employ to perform the work covered under this agreement shall comply with the provisions of the Prevailing Wage Act, where required.

If applicable:

1. All workers shall be paid not less than the prevailing wage rate as designated by the Commissioner of Labor and Workforce Development or its duly authorized representatives. State wage rates may be obtained from the New Jersey Department of Labor and Workforce Development (Telephone: 609-292-2259) or by accessing the Department of Labor and Workforce Development's website at: [http://lwd.dol.state.nj.us/labor/wagehour/wagerate/wage\\_rates.html](http://lwd.dol.state.nj.us/labor/wagehour/wagerate/wage_rates.html). The State wage rates in effect at the time of this award are part of this agreement, pursuant to N.J.S.A. 34:11-56.25 et seq.
2. If it is found that any worker employed by the Grantee or any subcontractor covered by said agreement, has been paid a rate of wages less than the prevailing wage required to be paid by such agreement, the Department may terminate the Grantee's or its subcontractors' right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages, and may prosecute the work to completion or otherwise. N.J.S.A. 34:11-56.27.

### B. Diane B. Allen Equal Pay Act

Pursuant to N.J.S.A. 34:11-56.14(a), a Grantee providing "qualifying services", as defined therein, to the State or any agency or instrumentality of the State shall provide the Commissioner of Labor and Workforce Development information regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category.

Pursuant to N.J.S.A. 34:11-56.14(b), a Grantee performing "public work", as defined therein, for the State or any agency or instrumentality of the State shall provide the Commissioner, through certified payroll records required pursuant to N.J.S.A. 34:11-56.25 et seq., information regarding the gender, race, job title, occupational category, and rate of total compensation of every employee of the employer employed in the State in connection with the agreement, throughout the duration of the agreement, with an update to the information whenever payroll records are required to be submitted.

For more information and report templates see <https://nj.gov/labor/equalpay/equalpay.html>.

### C. Public Works Contractor Registration Act

Pursuant to N.J.S.A. 34:11-56.48 et seq., all Grantees and subcontractors must first be registered with the New Jersey Department of Labor and Workforce Development. The Grantee represents and warrants that neither it, nor any subcontractors it might employ to perform the work covered under this agreement, have been suspended or debarred by the Commissioner, Department of Labor and Workforce Development, for violation of the provisions of the Public Works Contractor Registration Act. The Grantee further represents and warrants that both it and any subcontractors it

might employ to perform the work covered under this agreement shall comply with the provisions of the Public Works Contractor Registration Act, where required. Any questions regarding the registration process can be directed to the Division of Wage and Hour Compliance at (609) 292-9464.

D. Laws Against Discrimination

The Grantee or subcontractor, where applicable, shall not discriminate, and shall abide by all anti-discrimination laws, including, but not limited to, Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d-2000d-4; the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 et seq.; the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.; and all rules and regulations promulgated pursuant thereto, as amended and supplemented from time to time, including but not limited to, N.J.A.C. 17:27-1.1, et seq. Other laws may impose additional non-discrimination requirements with which the Grantee must comply. These laws include, but are not limited to, Section 504 of the Rehabilitation Act of 1973; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; Title VII of the Civil Rights Act of 1964; and the Fair Housing Act.

The Grantee shall comply with all applicable provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101 et seq.

E. Laws Prohibiting Solicitation

If applicable, the Grantee represents and warrants that: (1) no person or selling agency has been employed or retained to solicit or secure this agreement in violation of N.J.S.A. 52:34-15; and (2) it has neither made nor knows of any payments or gratuities made in violation of N.J.S.A. 52:34-19.

F. The Worker and Community Right to Know Act

The Grantee and any subcontractors it might employ to perform work covered under this Agreement shall comply with the provisions of N.J.S.A. 34:5A-1 et seq., if applicable, which require the labeling of all containers of hazardous substances.

G. Licenses and Certifications

The Grantee warrants that it will obtain and maintain during the term of this agreement all licenses, certifications, authorizations, or any documents required by the Federal, State, county, or municipal governments and international authorities, wherever necessary, to perform this agreement. The Grantee shall promptly notify the Department of any disciplinary action or change in the status of any license, permit, or other authorization required by law or this agreement.

H. Federal and State Documents Incorporated by Reference

The following documents are, by this reference, requirements incorporated as standards and procedures used by the Department and made part of this agreement, as applicable:

1. United States Office of Management and Budget ("OMB") Guidance for Grants and Agreements (2 CFR Parts 25, 170, 175, 176, 180, 182, 200);
2. Federal Agency Regulations for Grants and Agreements (e.g. 2 CFR Part 1500 for the U.S. E.P.A.);
3. Federal Agency Regulations (e.g. 40 CFR for the U.S. E.P.A.); and
4. Appendix XI to Part 200 – Compliance Supplement (2 CFR Pt. 200, App. XI)
5. Circular Letter 15-08-OMB, Single Audit Policy for Recipients of Federal Grants, State Grants and State Aid; and,
6. State Grant Compliance Supplement, available at:  
<http://www.state.nj.us/treasury/omb/publications/grant/index.shtml>.

I. Miscellaneous

The Grantee represents and warrants that, if applicable:

1. it is and will remain in full compliance with N.J.S.A. 14A:13-1 et seq. and N.J.S.A. 15A:13-1 et seq. (both regarding out- of-state corporations); and,

2. it is and will remain in full compliance with N.J.S.A. 2A:44-143 (regarding bonds on construction and public works contracts).

### **III. Insurance**

The Grantee shall maintain, in force for the term of this agreement, insurance as provided herein. The coverages shall be maintained either through insurance policies from insurance companies licensed to do business in the State of New Jersey with an A-VIII or better rating by A.M. Best & Company, or through formal, fully funded self-insurance programs authorized by law and acceptable to the Department. The certificates of insurance shall indicate the grant number and title of the grant in the "Description of Operations" box. All policies must be endorsed to provide thirty (30) days' written notice of cancellation or material change to the Department at the following address: PO Box 420, 428 East State Street, 4th Floor, Trenton, NJ 08625-0420. If the Grantee's insurer cannot provide thirty (30) days written notice, then it will become the obligation of the Grantee to provide same. Unless current documentation is already on file, the Grantee must, within thirty (30) days after the effective date of this agreement, provide to the Department current certificates of insurance, documentation of self-insurance, or both, for all coverages and renewals required under this agreement. Renewal certificates shall be provided within thirty (30) days of the expiration of the insurance. No payments shall be made under this agreement until acceptable documentation of insurance coverage is received. The minimum required coverages are:

- A. Commercial General Liability: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The policy shall include the State of New Jersey as an "Additional Insured" and include the blanket additional insurance endorsement or its equivalent. The policy shall include coverage for contractual liability and products liability. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic, unamended, and unendorsed occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsements limiting the breadth of the coverage.
- B. Automobile Liability Insurance, which shall be written to cover any vehicle used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1,000,000 per accident as a combined single limit. The State of New Jersey must be named as an "Additional Insured" and include the blanket additional insurance endorsement or its equivalent when the services being procured involve vehicle use on the State's behalf or on State controlled property.
- C. Worker's Compensation Insurance in accordance with the laws of the State of New Jersey and Employer's Liability Insurance with limits not less than: (i) \$1,000,000 Bodily Injury, Each Occurrence; (ii) \$1,000,000 Disease Each Employee; and (iii) \$1,000,000 Disease Aggregate Limit.
- D. These amounts may be raised when deemed necessary by the Department.

### **IV. Indemnification**

The Grantee shall defend, indemnify, protect, and save harmless the State, its officers, its agents, its servants, and its employees from and against any damage, claim, demand, liability, judgment, loss, expense, or cost including, where the agreement is funded, in whole or in part, by the Federal government, any actions brought by the Federal government or any of its agencies (collectively, damages) arising, or claimed to arise, from, in connection with, or as a result of, the Grantee's performance, attempted performance, or failure to perform in connection with this agreement (collectively, "performance"), regardless of whether such performance was undertaken by the Grantee, its officers, its directors, its agents, its servants, its employees, its subcontractors, or any other person at its request, subject to its direction, or on its behalf. As nonrestrictive examples only, this indemnification shall apply, but shall not be limited, to (a) any settlement by the State of any claim or judgment against the State or its agents, provided the Grantee had the opportunity to participate in the settlement negotiation, and (b) all attorneys' fees, litigation costs, and other expenses of any nature, incurred by the State in connection with any damage.

The Grantee (a) shall immediately notify the State of any damage for which it or the State might be liable and (b) shall, at its sole expense, (i) appear, defend, and pay all charges for attorneys, all costs, and all other expenses arising in connection with any damage and (ii) promptly satisfy and discharge any judgment rendered against the State or its agents, or any settlement entered into by the State, for any damage. The Grantee shall not assert any defense which would be available to the State but

not to the Grantee, whether arising pursuant to the New Jersey Tort Claims Act or otherwise, without having first obtained the written approval of the New Jersey Division of Law. As soon as practicable after it receives a claim for damage made against it, the State shall notify the Grantee in writing and shall have a copy of such claim forwarded to the Grantee. The Grantee's indemnification and liability set forth herein is not limited by but is in addition to the insurance obligations contained in Section III above.

In the event of a patent and copyright claim or suit, the Grantee, at its option and sole expense, 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 expended grant amount less a reasonable allowance for use that is agreed to by both parties.

This agreement to indemnify shall continue in full force and effect after the termination, expiration, or suspension of this agreement.

**V. Assignments and Subcontracts**

The Grantee shall not subcontract any of the work or services covered by this agreement nor shall any interest be assigned or transferred, in whole or in part, except as may be provided for in this agreement or with the express written approval of the Department. Such approval, if granted, shall not relieve the Grantee of any of its responsibilities under this agreement.

- A. As a precondition of the Department's approval of a subcontractor and prior to any payments by the Department for subcontracted work, the Grantee shall submit to the Department a completed copy of Attachment F - Subcontractor Approval.
- B. The Grantee shall secure from the subcontractor and shall submit to the Department a copy of the subcontractor's New Jersey Business Registration Certificate as designated in Section IX of Attachment A - Authorizations and Disclosures.
- C. The Grantee shall be responsible for the subcontractor's performance, compliance with all applicable terms, conditions and requirements of this agreement, and compliance with all applicable laws.
- D. The Grantee shall ensure that all subcontracts entered into under this Agreement, if Federally funded, meet all applicable requirements of 2 CFR 200, including but not limited to those delineated in 2 CFR 200, Appendix II.
- E. The Grantee shall be responsible for any claims arising out of any subcontract hereunder, and, as a condition of any subcontract hereunder, the subcontractor shall hold the State harmless from any claims by the subcontractor or third-parties, which may arise under or as a result of the subcontract.
- F. If applicable, the Grantee shall provide, on a monthly and cumulative basis, a breakdown in accordance with the Approved Project Budget, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Chief of Operations, Division of Revenue, PO Box 628, Trenton, NJ 08646.
- G. Nothing contained in the Grantee's application or this agreement shall be construed to create a contract or privity of contract between the Department and any of the Grantee's contractors or subcontractors.

**VI. Availability of Funds**

- A. The State of New Jersey appropriates funds on a fiscal year basis, which is a period running from July 1 through June 30. The Grantee recognizes and agrees that both the initial provision of funding and any continuation of such funding under this agreement are expressly dependent upon the availability to the Department of funds appropriated by the State Legislature, Federal revenue, or such other funding sources as may be available. The Department shall not be liable for any breach of this agreement which results from the unavailability of funds or the State Legislature's failure to appropriate the necessary funds.
- B. The parties understand that, at this time, this agreement is either fully or partly funded, as designated in Section II of Attachment A – Availability of Funds.

**VII. Procurement Standards**

Procurement of supplies, equipment, and other services with funds provided by this agreement shall be accomplished in a manner consistent with all applicable Federal and State requirements. All applicable Federal and State requirements shall be incorporated into any subcontracts under this agreement. Adherence to the standards contained in those applicable Federal and State laws and regulations does not relieve the Grantee of the contractual responsibilities arising under its procurements. The Grantee is the responsible authority, without recourse to the Department, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of this agreement.

**VIII. Property Management Standards**

Property furnished by the Department or acquired in whole or in part with Federal or Department funds, or whose cost was charged to a project supported by Federal or Department funds, shall be utilized and disposed of in a manner consistent with State and/or Federal requirements, as applicable.

**IX. Method of Payment**

A. Payment under this agreement will be made upon submission by the Grantee of a properly executed Expenditure Report (Attachment C) and all invoices, bills, and other documents necessary to justify the payment.

1. If authorized, advance payment will be made to the Grantee upon the execution of this agreement by the Department if the Grantee has (i) submitted an Advance Payment Form (Attachment B-2) with an appropriate justification for the requested advance payment(s); and (ii) submitted a properly executed Expenditure Report (Attachment C).
2. Progress payments shall be made by the Department on a periodic basis as set forth in Section III(B) of Attachment A, Additional Provisions and Special Modifications - Method of Payment, only upon receipt of a properly executed Expenditure Report (Attachment C) and receipt of the required financial and narrative reports described in Section XVI of the General Terms and Conditions - Financial and Performance Reporting. Payment shall be made either in fixed amounts as determined by the Department to maintain an appropriate level of services or in the form of reimbursement of actually reported expenditures, as indicated in Section III(B) of Attachment A, Additional Provisions and Special Modifications - Method of Payment.

3. All or a portion of the grant may be withheld by the Department pending receipt of any required final report(s).

B. Unless otherwise specified in this agreement, all Expenditure Reports must be submitted by the Grantee no later than thirty (30) days after the end of the Work Period.

C. The Department shall withhold payment of any costs improperly incurred for failure to comply with the Scope of Services, State or Federal law, as applicable, or the terms and conditions of this agreement.

D. Grantee may not use any grant funds to satisfy any obligation arising outside the Work Period of this agreement.

**X. Interest**

A. The Grantee is required to deposit any advance payments received hereunder in insured accounts, whenever possible. The Grantee must maintain advance payments in interest-bearing accounts, unless this agreement is Federally-funded and one of the following applies:

1. The Grantee receives less than \$120,000 in Federal awards per year.
2. The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.
3. The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.
4. A foreign government or banking system prohibits or precludes interest bearing accounts.

- B. If this agreement is Federally-funded, interest up to \$500 per year may be retained by the Grantee for administrative expense; any interest above \$500 per year must be remitted on a quarterly basis to the Department for return to the Federal government. If this agreement is funded by the State, interest above \$250 per year shall be reported to the Department but may be retained by the Grantee unless otherwise provided pursuant to this agreement.

**XI. Allowable Costs**

- A. Use of Funds - Grant funds are to be used solely for the purpose(s) described in the approved project Scope of Services appended to this agreement (Attachment D) and may not be used to satisfy any obligation arising outside the Work Period of this agreement. Reimbursement may be obtained only for costs described in the Approved Project Budget appended to this agreement (Attachment B). The Grantee shall follow and comply with all applicable State and Federal laws governing the use of grant funds and shall not utilize grant funds to undertake any activity for any purpose other than as set forth in this agreement.
- B. Disallowed Costs - Where the Grantee has been reimbursed by the Department for costs which are subsequently disallowed by the Department, the Grantee shall return the funds to the Department no later than thirty (30) days after the request. Where the Grantee fails to timely return the funds or appeals the disallowed costs, an interest charge shall be charged on the funds beginning thirty (30) days from the date the Grantee was notified of the debt. The interest shall continue to accrue while any appeal is underway. If the Grantee is successful in its appeal, the accrued interest will be canceled.

**XII. Matching and Cost Sharing Requirements**

If there are any matching and/or cost sharing requirements associated with this agreement or the source of funding, then, regardless of whether Federal funds are involved, the Grantee shall account to the satisfaction of the Department for these requirements in accordance with Federal and State requirements.

**XIII. Program Income**

"Program income" means gross income earned by the Grantee that is directly generated from agreement-supported activities or earned as a result of the grant award during the Work Period. Such earnings include, but are not limited to, income from fees for services performed, the use or rental of real or personal property acquired under the grant award, the sale of commodities or items fabricated under the grant award, license fees and royalties on patents and copyrights, and principal and interest on loans made with grant award funds.

Unless otherwise specified in this agreement, program income shall be anticipated to the extent possible and included in the Approved Project Budget (Attachment B) to offset the Total Project Amount. Program income that the Grantee did not anticipate at the time of the grant award must be used to reduce the grant award rather than increase the funds committed. The Department may negotiate agreement(s) with the Grantee regarding appropriate use of program income earned after the Work Period, as part of the Grant Closeout Procedures in Section XX of this Part.

However, all program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under this agreement shall inure to the State pursuant to Subsection XXV(E) of this Part.

**XIV. Special Grant Conditions for "High Risk" Grantees**

- A. A Grantee may be considered "high risk" if the Department determines that a Grantee:
1. Is not financially stable;
  2. Has a history of unsatisfactory performance;
  3. Has failed to comply with the terms and conditions of previous grant awards;
  4. Has a financial management system that fails to meet the standards set forth in Section XV of this Part, below; or
  5. Is not otherwise responsible.

The Department may also consider prior audit findings, the Grantee's management of prior grant awards, the extent to which any previously awarded grant funds will be expended prior to future awards, and the Grantee's ability to effectively implement statutory, regulatory, or other requirements applicable to performance under this agreement.

- B. The Department may impose additional, specific, conditions upon Grantees that it considers to be “high risk.” Such conditions or restrictions shall correspond to the high risk condition, and may include:
  - 1. Requiring payments as reimbursements rather than advance payments;
  - 2. Withholding authority to proceed to the next phase of a project until receipt of evidence of acceptable performance within a given period;
  - 3. Requiring additional, more detailed financial reports;
  - 4. Requiring additional project monitoring;
  - 5. Requiring the Grantee to obtain technical or management assistance; or
  - 6. Establishing additional prior approvals.
  
- C. Should the Department decide to impose such conditions, the Department shall notify the Grantee as soon as possible, in writing, as to:
  - 1. The nature of the special condition(s)/additional requirement(s);
  - 2. The reason(s) why the special condition(s)/additional requirement(s) are being imposed;
  - 3. If applicable, the corrective actions necessary to remove the special condition(s)/additional requirement(s), and the time allowed for completing such actions; and,
  - 4. The method by which the Grantee may request reconsideration of the additional requirements imposed.
  
- D. The Department shall promptly remove any special condition(s)/additional requirement(s) once the conditions that prompted them have been corrected.

**XV. Financial Management System**

- A. The Grantee shall be responsible for maintaining an adequate financial management system, which shall provide for:
  - 1. Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the CFDA title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.
  - 2. Accurate, current, and complete disclosure of the financial results of each project, agreement, or contract. For Federally-funded agreements, such disclosures shall be made in accordance with the reporting requirements set forth in 2 CFR 200.327 and 2 CFR 200.328.
  - 3. Records that adequately identify the source and application of funds for Department-supported activities, and that contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, expenditures, income and interest, and are supported by source documentation.
  - 4. Effective internal and accounting controls over, and accountability for, all funds, property, and other assets. The Grantee must adequately safeguard all such assets and assure that they are used solely for authorized purposes.
  - 5. Comparison of actual outlays with budgeted amounts for all major cost categories on Attachment B - Approved Project Budget, and correlation of financial information with performance or productivity data, including the production of unit cost information.
  - 6. Accounting records that are supported by source documentation.
  - 7. Written procedures that minimize the time elapsing between the transfer of funds from the Department and the disbursement by the Grantee and, for Federally-funded agreements, implement the requirements of 2 CFR 200.305.
  - 8. Written procedures for determining reasonableness, allowability, and allocability of costs, consistent with the provisions of State and Federal requirements, as applicable, including Subpart E of 2 CFR 200 – Cost Principles, the appropriate Federal Agency Regulations for Grants and Agreements and Federal Agency Regulations, whichever would be applicable under Federal law, and the terms and conditions of this agreement.
  
- B. By execution of this agreement, the Grantee warrants and certifies that its accounting system meets the standards set forth herein and, for Federally-funded agreements, is consistent with Subpart E of 2 CFR 200 – Cost Principles,

supports the accumulation of costs as required by those principles, and provides for adequate documentation to support costs charged to this agreement. Notwithstanding, the Department may require the submission of a Statement of Adequacy of Accounting System, to be made as an attachment to this agreement. A Statement of Adequacy of Accounting System is not required as part of this agreement.

- C. The Department may review the adequacy of the financial management system of any applicant for financial assistance as part of a pre-award review or at any time subsequent to the award. If the Department determines that the Grantee's system does not meet the standards described in Subsection A of this Section, additional information to monitor the agreement may be required by the Department upon written notice to the Grantee.

**XVI. Financial and Performance Reporting**

- A. Attachment B - Approved Project Budget, is the approved financial plan to carry out the purpose of this agreement. The budget shall be itemized to disclose specifically the agreement tasks and project activities to be funded.
- B. The Grantee shall submit Expenditure Reports (Attachment C) on a periodic basis as prescribed in Section VI of Attachment A – Financial and Performance Reporting, which compare actual expenditures with the Approved Project Budget (Attachment B). Expenditure Reports must be certified by the Grantee's Financial Officer.
- C. The Grantee shall submit performance reports on a periodic basis as prescribed in Section VI of Attachment A – Financial and Performance Reporting. Performance reports shall present the following information for each task under this agreement:
  - 1. a comparison of actual accomplishments to the objectives established in Attachments D - Scope of Services; D-1 - Project Requirements; and D-2 - Grantee's Proposal, for the reporting period;
  - 2. reasons why established goals were not met or tasks were not completed as scheduled, if appropriate; and
  - 3. other pertinent information, including a description of work performed during the reporting period, relevant literature citations, raw data generated, any modifications to the planned scope of work, and an anticipated work schedule for the next reporting period.Performance reports shall include all available and relevant, quantitative data pertaining to production of project work units, completion of agreement tasks, and actual costs for each unit or task. Additionally, performance reports for Federally-funded agreements shall be completed in accordance with 2 CFR 200.328.
- D. The Grantee shall submit final Expenditure and performance reports on its overall performance under this agreement, as prescribed in Section VI of Attachment A – Financial and Performance Reporting.
- E. Extensions of reporting due dates may be granted upon written request to the Department.
- F. If reports are not submitted as required the Department shall, at its discretion, suspend payments on this agreement.
- G. If the Grantee has a history of unsatisfactory performance or the Grantee does not submit satisfactory reports, the Department may require additional and more detailed reports from the Grantee.

**XVII. Monitoring Performance**

- A. The Grantee shall continually monitor its performance under this agreement to assure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved as applicable and as defined in the following Attachments: D - Scope of Services; D-1 - Project Requirements; and D-2 - Grantee's Proposal.
- B. The Grantee shall inform the Department as soon as any of the following types of conditions affect project objectives and performance and shall describe the action taken, or contemplated, and the Department assistance needed, if any, to respond to any such condition:
  - 1. Problems, delays, or adverse conditions which will materially affect the ability to attain project objectives, prevent the meeting of time schedules and goals, or preclude the completion of project work units or agreement tasks within established time periods; and



2. Favorable developments or events which enable meeting time schedules and goals sooner or at less cost than anticipated, or producing more or different beneficial results than originally planned.
- C. The Department may, at its discretion, make site visits to: review project accomplishments and management control systems; audit the financial records pertaining to this agreement; and provide such technical assistance as may be required.
- D. If the Grantee is not performing satisfactorily, the Department may require remedial measures necessary to fulfill the project requirements, including requiring the Grantee to obtain additional Department approvals before proceeding or requiring the Grantee to obtain outside technical or managerial assistance.

**XVIII. Audit Requirements**

- A. All agreements are subject to audit by the State, including by the State Comptroller and the Department. This agreement may be audited at the discretion of the State up to seven (7) years after the date of last payment under this agreement. Any such audit shall be made in accordance with applicable Federal and State requirements, and as to whether the Grantee has complied with Federal and State statutes, regulations, and the terms and conditions of any award. The Grantee shall comply with applicable Federal and State requirements for auditees.
- B. If the Grantee expends a total of \$750,000 or more in Federal financial assistance or State financial assistance within the Grantee's fiscal year, the Grantee must have an annual single audit or program-specific audit performed in accordance with Subpart F of 2 CFR Part 200 – Audit Requirements, and State Policy.

Grantees that expend less than \$750,000 in Federal or State financial assistance within their fiscal year, but expend \$100,000 or more in State and/or Federal financial assistance within their fiscal year must have either a financial statement audit or a program-specific audit performed in accordance with Generally Accepted Government Auditing Standards, Subpart F of 2 CFR Part 200 – Audit Requirements, and State Policy.

- C. Where an audit conducted hereunder indicates any noncompliance by the Grantee with the material terms and conditions of this agreement, the Grantee shall forthwith take corrective action. As a result of any audit hereunder, recommendations shall be made whether any costs incurred by the Grantee should be disallowed as beyond the scope or the purpose of this agreement, excessive, or otherwise impermissible. The Department retains the right to recover any disallowed expenditures, and the Grantee shall return to the Department any disallowed expenditures no later than thirty (30) days after the request.
- D. Copies of all audit reports involving this agreement must be sent to the Department's Internal Audit Unit at PO Box 420, 428 East State St, Trenton, NJ 08625-0420 and the Granting Agency identified in Section I of this agreement, Grant Award Data and Signatures.
- E. The provisions of this Section XVIII shall continue in full force and effect after the termination, expiration, or suspension of this agreement.

**XIX. Grant Agreement Amendment**

If the Grantee wants to amend this grant, they must submit a written request to the Grant Officer designated in Section VIII of Attachment A - Agreement Amendment. Any amendment, whether requested by the Grantee or the Department, must be documented by completion of the Department's amendment form (DEP-076). The completed amendment form must be executed by authorized representatives of both parties in the same manner as this agreement, unless the amendment is of the types described in subparagraphs A, B, C, or D below. If the amendment is of the types described in subparagraphs A, B, C, or D below, then the Grant Officer may execute the amendment form by signing same in the designated place, and execution by authorized representatives of the Grantee or Department will not be required. However, any amendment to the Scope of Services, including but not limited to any increase in the amount of the Approved Budget, must be memorialized by a completed amendment form, executed by authorized representatives of both parties.

- A. The Grantee may obtain approval directly from the Grant Officer to transfer amounts of up to \$20,000 or 10% of the total agreement amount, whichever is less, from one direct cost category to another or from the indirect cost category to a direct cost category, as long as this transfer does not result in any change in the project's scope, Work Period, objective, or deliverables, and, for Federally-funded agreements, provided that such costs are allowable and that the

transfer would not require the Department to seek Federal Agency approval pursuant to 2 CFR Part 200 or the appropriate Federal Agency Regulations for Grants and Agreements and Federal Agency Regulations, whichever would be applicable under Federal Law. If the total agreement amount is less than \$25,000, the Grant Officer may disregard the 10% limitation and approve transfers of up to \$2,500.

1. "Indirect costs" are those incurred for a common or joint purpose benefiting more than one cost objective and not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. "Direct costs" are those which can be identified specifically with a particular final cost objective or that can be directly assigned to activities relatively easily with a high degree of accuracy.
  2. The amendment form documenting any budget revision shall clearly show and justify each change in each cost category, either on the form or on an attachment to it.
- B. The Department may reduce the Approved Project Budget and the Scope of Services so that they fairly reflect anticipated project expenditures and progress if:
1. The Department notifies the Grantee that the Grantee is making project expenditures or progress at a rate which, in the judgment of the Department, will result in substantial failure to expend the grant or to fulfill the purposes of this agreement,
  2. The Department notifies the Grantee at least thirty (30) days in advance of any reduction,
  3. After consultation, the Grantee is unable to develop to the satisfaction of the Department a plan to rectify its low level of project expenditures or progress, and
  4. The Department considers the Grantee's fixed costs when making any reduction.
- C. The Grant Officer may approve no-cost time extensions to the Work Period or the due date of the final report in increments of six months or less, but not beyond any applicable time period for expending the source of funding. Written justification and documentation evidencing the need to extend the Work Period or the due date of the final report must be submitted to the Grant Officer at least thirty (30) days in advance of the scheduled end of the Work Period. The amendment form (DEP-076) documenting any no-cost time extension shall clearly show and justify the change, either on the form or on an attachment to it.
- D. The Grant Officer may approve proposed Grantee substitutions to the personnel and/or subcontractors identified and approved for this agreement, provided that, for Federally-funded agreements, the substitution would not require the Department to seek Federal Agency approval pursuant to 2 CFR Part 200 or the appropriate Federal Agency Regulations for Grants and Agreements and Federal Agency Regulations, whichever would be applicable under Federal Law. The Grantee must submit a written request to the Department which includes:
1. An explanation of the reasons why the original personnel/subcontractors cannot be provided;
  2. Vitae/credentials which demonstrate that the qualifications of the substitutions are equal to or better than the originally proposed personnel/subcontractors; and
  3. A declaration that the substitution will be provided at no additional cost to the State.

**XX. Closeout Procedures**

The closeout of this project shall mean the process by which the Department determines that all applicable administrative actions and all required work have been completed by the Grantee. This process shall include the following steps:

- A. The Grantee shall submit all reports as required and within the timeframes prescribed by this agreement. The Department may permit extensions when requested in writing by the Grantee;
- B. Extensions to the due date of the final report shall be made in accordance with Section XIX of the General Terms and Conditions – Grant Amendment.
- C. Unless otherwise specified, the Grantee shall, within thirty (30) days of the end of the Work Period, liquidate all obligations incurred under this agreement.
- D. The Grantee shall, within thirty (30) days of the end of the Work Period, refund to the Department any cash advanced but not committed to payment of eligible project costs in accordance with the Approved Project Budget (Attachment B).
- E. The Grantee shall refund to the Department any funds spent on costs which are disallowed by the Department, within thirty (30) days after the request.

- F. The Department retains the right to recover any appropriate amount after fully considering any recommendation on disallowed costs resulting from an audit conducted in accordance with Section XVIII of this Part – Audit Requirements.
- G. The Grantee shall account for any property acquired with agreement funds or received from the Department in accordance with Section VIII of this Part - Property Management Standards.
- H. The Department may negotiate agreement(s) with the Grantee regarding appropriate use of program income earned after the Work Period.
- I. The Grantee shall comply with any additional closeout procedures, Federal or otherwise, applicable to this agreement, and/or identified by the Department as necessary.
- J. The Department retains the right to request any additional information necessary to close out this project and may retain any final payment until closeout procedures are completed on the part of the Grantee.

**XXI. Termination, Expiration, and Suspension**

- A. The following definitions shall apply for the purposes of this Section XXI, Termination, Expiration, and Suspension.
  - 1. Termination - The "termination" of this agreement shall mean the cancellation of assistance, in whole or in part, any time prior to the end of the Work Period.
  - 2. Expiration Date - The "expiration date" of this agreement is the date upon which the parties have fully performed under this agreement, or any applicable timeframe for expending the source of funding has expired.
  - 3. Suspension - The "suspension" of this agreement shall mean a temporary cessation of State support or assistance pending corrective action by the Grantee or pending a decision by the Department to terminate this agreement.
- B. Notwithstanding any provision or language in this agreement to the contrary, the Department may terminate this agreement at any time, in whole or in part, for the convenience of the State, upon no less than thirty (30) days written notice to the Grantee.
- C. If the Grantee fails to comply with any term, condition, requirement, or provision of this agreement, or fails to make sufficient progress so as to reasonably ensure completion of performance within the time frames set forth in this agreement, the Department may (1) suspend this agreement and withhold further payments; (2) prohibit the Grantee from incurring additional obligations of grant funds pending corrective action; or (3) decide to terminate this agreement, in whole or in part, upon ten (10) days written notice, in accordance with Subsection (d), below.
- D. If the Department suspends or terminates this agreement, an equitable adjustment in grant payment shall be made to the Grantee for reasonable, nonrefundable expenditures or contractual obligations incurred by the Grantee which cannot be canceled for commitments made prior to the effective date of such suspension or termination, not in anticipation of it, and which would have been allowable had this agreement not been suspended or terminated. Additionally, the Department may, at its sole discretion, allow Grantee to incur additional costs that could not be reasonably avoided.
- E. The Department and the Grantee may terminate this agreement, in whole or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. Both parties shall agree upon the termination conditions, including the date on which the termination shall take effect and, in case of partial terminations, the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the date on which the termination shall take effect, and shall cancel as many outstanding obligations as possible.
- F. The closeout procedures described in Section XX of this Part - Closeout Procedures, shall apply in all cases of termination of this agreement.

**XXII. Access to Records**

- A. The Grantee agrees to make available to the Department, the Office of the State Comptroller, any other State auditor, and any of their duly authorized representatives, and, for Federally-funded agreements, any Federal agency whose funds are expended in the course of this agreement, Inspectors General, and the Comptroller General of the United States, and any of their duly authorized representatives, such pertinent records, books, documents, and papers as may be necessary to monitor and audit the Grantee's operations under this agreement.
- B. Whenever reasonable and practical, the State shall give reasonable notice to the Grantee prior to any visitation, inspection, or audit, including any visitation or request for documentation in discharge of the State's responsibilities. However, the State retains the right to make unannounced visitations, inspections, and audits as deemed necessary during normal business hours.
- C. The State reserves the right to have access to records of any subcontractor and requires the Grantee to provide the State access to such records in any contract with the subcontractor.
- D. The State reserves the right to have access to all work papers produced in connection with audits made by the Grantee or by independent certified public accountants or municipal accountants hired by the Grantee to perform such audits.
- E. The provisions of this Section XXII shall continue in full force and effect after the termination, expiration, or suspension of this agreement.

**XXIII. Record Retention**

- A. The Grantee shall retain records relevant to this agreement, including but not limited to, financial and programmatic records, supporting documents, and statistical records, for a period of seven (7) years from the date of last payment under this agreement, or such longer period as any applicable State or Federal statute may require, except:
  - 1. If any litigation, claim, or audit is started before the end of the seven-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
  - 2. Records for nonexpendable property acquired with Federal or Department funds shall be retained for seven (7) years after final disposition.
  - 3. When the Grantee is notified in writing by the Department to extend the retention period.
- B. The State may request transfer of certain records to its custody from the Grantee when it determines that the records possess long-term retention value and will make arrangements with the Grantee to retain any records that are continuously needed for joint use.
- C. The provisions of this Section XXIII shall continue in full force and effect after the termination, expiration, or suspension of this agreement.

**XXIV. Approvals and Authorizations**

- A. Unless specifically stated otherwise, wherever this agreement requires the approval or authorization of the Department, that approval or authorization must be given in writing by the Commissioner of the Department, by the authorized delegate who signed this agreement, or by said delegate's successor or superior, if any.
- B. If the Grantee is a municipal or county government agency, the Grantee must submit with this agreement a copy of an ordinance or resolution, duly enacted by the governing body of that municipal or county government agency, or of the municipality or county, authorizing execution of this agreement. If the Grantee is a corporation or other business entity, the Grantee must submit with this agreement a corporate resolution or other authorization, duly adopted by its board of directors, board of trustees, or equivalent governing body, authorizing execution of this agreement. The Department will not make any payments until such ordinance, resolution, or authorization is received.
- C. If the Grantee is neither a government agency nor a corporation, and if the Grantee has neither a residence nor a place of business in New Jersey, then the Grantee irrevocably appoints the Commissioner of the Department to receive process in any civil action, which may arise out of or as a result of this agreement. Within ten (10) days of receipt of any such process, the Commissioner shall transmit it by certified mail to the Grantee at the address shown in this agreement.

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**XXV. Miscellaneous Provisions**

- A. Governing Law: It is agreed and understood that this agreement 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 including but not limited to the Contractual Liability Act, N.J.S.A 59:13-1 et seq.
- B. Conflict of Terms: In the event of any conflict, the order of precedence shall be: (1) the General Terms and Conditions of this agreement; (2) the Project Requirements (Attachment D-1), (3) any State Agency application form or specific correspondence describing the project and/or soliciting a Grantee proposal; (4) the Scope of Services (Attachment D); and (5) the Grantee's proposal (Attachment D-2). However, consistency with State and Federal law, as applicable, shall always have precedence in any conflict with the terms of this agreement.
- C. Performance: The Grantee warrants that it is aware of the work required to be performed under this agreement, that it has the capabilities and credentials required by this agreement, and that it will faithfully perform the work and abide by the terms, conditions, and other requirements of this agreement.
- D. Disclaimer of Agency Relationship: The Grantee's status shall be that of an independent principal and not as an agent or employee of the State. Nothing contained in this agreement shall be construed to create, either expressly or by implication, the relationship of agency between the State and the Grantee or its subcontractors.
- E. Intellectual Property Rights: If the Grantee, in the course of its duties under this agreement, develops any invention, apparatus, computer program, discovery, or other intellectual property, the State will own the entire right, title and interest throughout the world to each such property right and to patents and copyrights protecting the same, subject to any Federal interest, as applicable. The State's ownership shall be unaffected by any assignment, suspension, termination, or expiration of this agreement.
- F. Captions and Headings: Captions and headings used in this agreement are for convenience of reference only and shall in no way be deemed to define, limit, explain, or amplify any term or provision.
- G. Severability: If any term or provision of this agreement shall be held invalid, illegal, or unenforceable, in whole or in part, neither the validity of any remaining part nor the validity of any other term or provision shall in any way be affected by such holding.
- H. Entire Agreement: The parties understand and agree that all prior understandings and agreements between them regarding performance of the obligations described herein are merged into this written grant agreement, which supersedes all such prior understandings and agreements. Neither party enters into this agreement in reliance on any statement or representation of the other which is not reiterated herein.
- I. Successors and Assigns: This agreement shall be binding upon any successors or assigns of the Grantee. The State may, in its sole discretion, reject any proposed successor or assignee of the Grantee.
- J. Counterparts: This agreement may be executed in multiple counterparts, each of which shall constitute an original instrument and all of which, taken together, shall constitute one and the same instrument.
- K. Notices: All notices, certificates, and other documents ("notice") to be given by one party to the other shall be in writing and shall be delivered to the other party. Any such notice shall be delivered to the address of the Grantee or the Granting Agency shown on Page 1 of this agreement (General Terms and Conditions, Section 1- Grant Award Data and Signatures), by overnight courier service or by regular first class, certified, or registered mail, postage prepaid. If mailed, said notice shall be deemed to have been received five (5) days after its deposit in the United States Mail; and, if given otherwise, said notice shall be deemed to have been received when delivered to the party to whom it is addressed.

- L. Waiver of Breach: A waiver by either party of any breach of this agreement shall not be deemed a waiver of any subsequent breach of the same or any other term or provision.
- M. Gender and Number: Use of the singular or plural includes the other and use of any gender includes all genders, as the context requires or permits.
- N. Waiver of Jury Trial: In the event of litigation, the Grantee waives any right it may have to a trial by jury.
- O. Change in Tax Status: Unless a government agency, the Grantee shall notify the Department immediately should there be any change or expected change in the Grantee's tax status as recognized by the U.S. Internal Revenue Service.
- P. Change in Ownership: If, during the term of this agreement, the Grantee shall merge with or be acquired by another entity, change or dissolve its business or corporate structure, or otherwise change ownership, the Grantee shall provide notice to the Department in the manner provided by this agreement within thirty (30) days of said change, and shall provide such documents as may be requested by the Department including, but not limited to, an updated corporate resolution ratifying this agreement or a revised version of any attachment incorporated in this agreement. At the Department's sole discretion, a change in ownership or a failure to comply with the terms of this Subparagraph shall constitute cause for termination in accordance with Section XXI of the General Terms and Conditions – Termination, Expiration and Suspension.
- Q. Applicability of Provisions Excluded from the Agreement: Failure to expressly reference any applicable Federal or State regulation, statute, public law, Executive Order, agency directive or OMB Circular will not exempt either party from compliance with such applicable law or regulation, and all applicable provisions not included will be deemed as inserted herein.