

# Body Armor Application – Terms and Conditions

These Terms and Conditions are being provided to you as an addendum to the Body Armor Replacement Program online application process. Prior to the award to your agency of a Body Armor Replacement Fund (BARF) grant, we ask that the Chief Law Enforcement Officer review the following Terms and Conditions. Once you have carefully read these Terms and Conditions, complete your application and then sign the application using your designated pin number. Please note that when using your pin number to sign the application you are accepting these Terms and Conditions in addition to the certification required in Part five of five of the CLEO online application screen. In submitting the application, both the Chief Law Enforcement Officer and the Chief Financial Officer certify that all the information presented is correct; and that the applicant will comply with the provisions of this grant program and all other applicable Federal and State laws, regulations, and guidelines.

## STATE OF NEW JERSEY

### DEPARTMENT OF LAW AND PUBLIC SAFETY

#### OFFICE OF THE ATTORNEY GENERAL

#### BODY ARMOR REPLACEMENT FUND

#### TERMS AND CONDITIONS

- 1. Compliance with State Laws and Regulations:** The Subrecipient agrees to comply with all requirements imposed by the New Jersey Department of Law and Public Safety (L&PS) and the New Jersey Division of Criminal Justice concerning all federal, state, municipal laws, rules, regulations, policies, guidelines, directives, and requirements (including licenses, permits and background checks) that are generally applicable to the activities in which the Subrecipient is engaged in the performance of this grant. Failure to comply with these laws, rules, regulations, and State Department of Treasury State Circular Letters will be grounds for termination of this subaward.
- 2. Compliance with Program Guidelines:** N.J.S.A. 52:17B-4.4 established a “Body Armor Replacement” grant fund in L&PS. The Subrecipient agrees that all allocations and use of funds under this grant will be in accordance with the Standard Grant Agreement Form, State Circular Letters 07-05-OMB and 15-08-OMB, and N.J.A.C. 13:80A-1.1 et seq.
- 3. Legal Authority for Application:** The Subrecipient assures that it possesses legal authority to apply for this subaward; that, if applicable, a resolution or similar action has been duly adopted or passed as an official act of the applicant’s governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required. The Subrecipient assures that it has the

institutional, managerial, and financial capability to ensure proper planning, management, and completion of the project described in this application.

4. **Availability of Grant Funds:** The Subrecipient shall recognize and agree that both the initial provision of funding and the continuation of funding under this agreement are expressly dependent upon the availability of funds appropriated to L&PS by the State Legislature from state and/or federal revenue streams and other applicable funding sources. In addition, if L&PS deems another subrecipient's program a priority, it may affect your funding. A failure of L&PS to make any payment under this agreement or to observe and perform any condition on its part to be performed under the agreement as a result of the failure of the Legislature to appropriate funds shall not in any manner constitute a breach of the agreement by L&PS or an event of default under the agreement and L&PS shall not be held liable for any breach of the agreement because of the absence of available funding appropriations. In addition, future funding shall not be anticipated from L&PS beyond the duration of the award period set forth in the grant agreement. Additionally, the Subrecipient understands and agrees that, in the event funds from state sources are not continued beyond the current grant end date by an approved extension at a level sufficient to maintain the costs of the Subaward, or in the event of a change in state law relevant to these costs, the obligations of L&PS shall be terminated immediately upon written notice to the Subrecipient. In no event shall the agreement be construed as a commitment by L&PS to expend funds beyond the termination date set forth in the grant agreement.
5. **Anti-Discrimination/Affirmative Action:** The Subrecipient assures that it will comply, and all of its contractors will comply, with the requirements of the state's anti-discrimination and affirmative action laws and regulations, including N.J.A.C. 17:27 (Equal Employment Opportunity and Affirmative Action Rules), applicable provisions of N.J.S.A. 10:5-1, et seq. (Law Against Discrimination), as amended, and all implementing regulations and state circulars as amended or superseded. Failure to comply with these laws, rules, regulations, and state circulars will be grounds for termination of this subaward.
6. **Performance Period:** The Subrecipient agrees that the work will be performed within the subaward period.
7. **No State Employee Status:** The Subrecipient understands and agrees that non-State employees or other persons performing services in connection with a subaward shall not be considered employees of the State of New Jersey for any purpose, including but not limited to, defense and indemnification for liability claims, workers compensation or unemployment.
8. **Indemnification by Non-State Agencies:** The Subrecipient agrees that it shall be solely responsible for, and shall defend, indemnify, keep, save, and hold L&PS harmless from all claims, loss, liability, expense, or damage resulting from all mental or physical injuries or disabilities, including death, to its employees or recipients of the Subrecipient's services

or to any other persons, or from any damage to any property sustained in connection with the delivery of the Subrecipient's services that results from any acts or omissions, including negligence or malpractice of any of its officers, directors, employees, agents, servants or independent contractors, or from the Subrecipient's failure to provide for the safety and protection of its employees, whether or not due to negligence, fault, or default of the Subrecipient. The Subrecipient's responsibility shall also include all legal fees and costs that may arise from these actions. The Subrecipient's liability under this agreement shall continue after the termination of this agreement with respect to any liability, loss, expense, or damage resulting from acts occurring prior to termination.

9. **Release by State Agencies:** At its own expense, the Subrecipient shall be solely responsible for its defense against, and hereby releases L&PS from liability for, any and all suits, claims losses, demands, expenses, or damages of whatsoever kind or nature, arising out of or in connection with any act or omission of the Subrecipient and its employees, representatives, agents, independent contractors or invitees, related to this grant agreement.
10. **Financial Management:** The Subrecipient agrees to give L&PS through any authorized representative, access to and the right to examine all paper and electronic records, books, papers, and documents related to the grant including pertinent accounting records, books, documents, and papers as may be necessary to monitor and audit the Subrecipient's operations. L&PS reserves the right to have access to all work papers produced in connection with audits made by the Subrecipient or independent certified public accountants, registered municipal accountants, or licensed public accountants hired by the Subrecipient to perform such audits. The Subrecipient agrees to maintain an adequate financial management system in accordance with generally accepted principles of accounting. The Subrecipient shall maintain accurate and current financial reports, accounting records, internal controls, budget controls, and cash management procedures for receiving, holding, and expending grant funds. The Subrecipient shall maintain an accurate and complete disclosure of financial results for each subgrant in the Detailed Cost Statements, create procedures to determine allowable costs, and provide source documentation for financial records.

L&PS reserves the right to conduct audits regarding funds granted to the Subrecipient. As a requirement for further involvement in the programs, the Subrecipient shall cooperate with any such audit and make available permanent records.

The Subrecipient agrees to monitor all subawards, if applicable, for performance and fiscal integrity, including any required cash match. Payments will be made to the Subrecipient in the manner determined by the L&PS and after receipt by L&PS of a properly executed copy of this grant.

11. **Accounting Records:** The Subrecipient agrees to enter, maintain, and record all grant funds received by the State for this program in accounting records separate from all other

fund accounts, including funds derived from other grant awards. Subrecipient shall disburse grant funds in accordance with the provisions of the subaward throughout the project period and in accordance with conditions L&PS may require.

12. **Advances of State Grants:** If applicable, the Subrecipient agrees that it will deposit advances of state grants in interest bearing accounts.
13. **Fund Recovery:** L&PS reserves the right to deny reimbursement of, or recover any funds considered unsupported, ineligible, or unallowable as a result of any audit, review, investigation, or monitoring.
14. **Data and Reporting Requirements:** The Subrecipient agrees that it will maintain data and information and submit timely reports, including programmatic progress and financial reports, as L&PS may require. If reports are not submitted as required, then L&PS may, at its discretion, suspend payments on this subaward. L&PS may, at its discretion, take such action to withhold payments to the Subrecipient on this or any grant with other state agencies until the required reports have been submitted.
15. **Records Retention:** Unless otherwise directed by LP&S or state or federal statute, all grant records shall be retained for a period of seven years. This period is extended until otherwise directed if there is any litigation, claim, negotiation, action, or audit in progress and/or audit finding involving grant records started before the end of the seven-year period.
16. **Subrecipient Official File:** Subrecipients are required to maintain a master file for grant documents. If applicable, the following documents must be available for on-site review by L&PS program monitors and auditors:
  1. Copy of approved award package for the grant including: grant contract; Applicant Information Form; Program Narrative; Application Authorization; General and Special Conditions; copy of award letter; the Resolution; copy of deliverables; and related written approvals from L&PS.
  2. Copies of all Requests for Reimbursements.
  3. Banking Information, including cash verification, receipts documentation, check register, canceled checks, and bank statements (if applicable).
17. **Compliance with Performance Goals:** The Subrecipient must assure that performance goals are being achieved. Subrecipient monitoring must cover each program, function, or activity to monitor performance under grant supported activities to assure time schedules and objectives are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved as applicable.

- a. The Subrecipient shall inform L&PS of the following types of conditions which affect program objectives and performance as soon as they become known:
  - i. Problems, delays, or adverse conditions which will materially impair the ability to attain program objectives, prevent meeting time schedules and goals, or preclude the attainment of project work units or established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any assistance by L&PS required to resolve the situation.
  - ii. Favorable developments or events which enable meeting time schedules and goals sooner than anticipated, at a lower than anticipated cost, or produces a greater benefit than originally planned.
- b. L&PS may, at its discretion, make site visits to:
  - i. Review program accomplishments and management control systems.
  - ii. Provide such technical assistance as may be required.
  - iii. Perform fiscal reviews to ensure grant funds are being properly expended in a timely manner.
  - iv. Ensure compliance with all pertinent civil rights laws and regulations.

**18. Budget Revisions/Grant Extensions:** The Subrecipient agrees to report any Budget Revisions or Grant Extensions as follows:

- a. Deviations in excess of one (1) percent from the approved budget or extensions in the grant period require prior approval via L&PS Grant Adjustment Request Form (GARF). Subrecipient should be aware that approved budget revisions may result in the imposition of additional special conditions.
- b. L&PS may request changes in the scope of services of the Subrecipient to be performed under this agreement. Such changes, which are mutually agreed upon by and between L&PS and the Subrecipient, must be incorporated in written amendments to this grant.
- c. If the Subrecipient is making program expenditures at a rate which, in the judgment of L&PS, will result in substantial failure to expend the grant amount, L&PS may so notify the Subrecipient. If, after consultation, the Subrecipient is unable to develop to the satisfaction of L&PS a plan to rectify its low level of program expenditures, L&PS may upon thirty (30) days' notice to the

Subrecipient, reduce the grant amount by a sum that more fairly projects program expenditures over the grant period. If such a determination is made by L&PS subsequent to the awarding and receipt of the funds by the Subrecipient, the reduced amount will be remitted to L&PS.

**19. Failure to Comply with Award Conditions:** If the Subrecipient materially fails to comply with the terms of an award, whether stated in a state or federal statute, regulation, assurance, general condition, special condition, state plan/application, notice of award, or elsewhere, the Subrecipient agrees that L&PS may take one or more of the following actions, as appropriate:

- a. Temporarily withhold cash payments pending correction of the deficiency by the Subrecipient or take more severe enforcement action.
- b. Disallow all or part of the cost of the activity or action not in compliance.
- c. Wholly or partly suspend or terminate the current award for the Subrecipient's program.
- d. Withhold further awards for the program.
- e. Request the balance of grant funds to be returned and/or seek reimbursement for funds expended that were not in compliance with the terms and conditions of the grant agreement.
- f. Take other remedies that may be legally available.

In taking an enforcement action, L&PS may provide the Subrecipient an opportunity for such hearing, appeal or other administrative proceeding to which the Subrecipient is entitled under any statute or regulation applicable to the action involved.

The enforcement remedies identified in this Section, including suspension and termination, do not preclude the Subrecipient from being subject to State and Federal debarment and suspension procedures.

**20. Grant Termination:** When the Subrecipient has failed to comply with grant award requirements, stipulations, standards, or conditions, the Subrecipient agrees that L&PS may suspend the grant and withhold further payments; prohibit the Subrecipient from incurring additional obligations of grant funds pending corrective action by the Subrecipient; decide to terminate the grant in accordance with the terms herein. L&PS shall allow all necessary and proper costs, which the Subrecipient could not reasonably avoid during the period of suspension, provided they meet federal and state requirements.

21. **L&PS Termination of the Grant:** The Subrecipient agrees that L&PS may terminate the grant in whole or in part whenever it is determined that the Subrecipient has failed to comply with the conditions of the grant. L&PS shall notify the Subrecipient in writing of the determination and the reasons for the termination together with an effective date. Payments made to the Subrecipient or recoveries by L&PS under the grant terminated for cause shall be in accordance with the legal right and liability of the parties. If the subaward is terminated for the Subrecipient's failure to comply with Federal statutes, regulations, or terms and conditions of the Subaward, L&PS will provide notification to the Subrecipient, including information that the decision may be considered in evaluating future applications received from L&PS.
22. **Grant Termination for Convenience:** L&PS may terminate this grant for convenience, upon 60 days written advance notice to the Subrecipient, for any reason whatsoever, including lack of funding available to L&PS. Upon receipt of a notice of termination for convenience, the Subrecipient shall cease incurring additional obligations of subaward funds. However, L&PS shall allow the Subrecipient to incur all necessary and proper costs which the Subrecipient cannot reasonably avoid during the termination process, as long as these costs comply with all program requirements.
23. **Mutual Termination of the Grant:** L&PS and the Subrecipient may terminate the grant 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 effective date and in case of partial terminations, the portion to be terminated. The Subrecipient shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible.
24. **Subcontractors and Assignments:** The Subrecipient shall not subcontract any of the work or services covered by this grant, nor shall any interest be assigned or transferred except as may be provided for in this grant or with the express written approval of L&PS. No rights or obligations of the Subrecipient under this subaward, in whole or part, may be assigned or subcontracted to another entity for any reason without the prior written approval of L&PS. The Subrecipient may not transfer any rights or obligations under this subgrant pursuant to an acquisition, affiliation, consolidation, merger or other synergy with another entity.
25. **Purchases:** The Subrecipient agrees that all equipment, consumable supplies, and services purchased or leased with grant funds will be acquired by following standard county and local bidding/ procurement procedures, including P.L. 2004, c. 19 (N.J.S.A. 19:44A-20.4 and N.J.S.A. 19:44A-20.5) or state bidding/procurement procedures, including P.L. 2005, c. 51 (N.J.S.A. 19:44A-20.13), when applicable.
26. **Bonding and Insurance:** Bonding and insurance, as applicable, shall be provided by the Subrecipient and proof of bonding and insurance must be retained on file by the Subrecipient.

27. **Property:** The Subrecipient agrees that property furnished by L&PS, acquired in whole or in part with L&PS funds, or whose cost was charged to a project supported by L&PS funds, shall be utilized and disposed of in a manner generally consistent with state and federal requirements.
28. **Insurance Costs:** The Subrecipient agrees to ensure that all insurance requirements are consistent with the business/not-for-profit entity are extended to include the purposes and intent of this subaward.
29. **Corruption of Public Resources Act:** The Subrecipient understands and agrees that, in compliance with N.J.S.A. 2C:27-12, prohibiting corruption of public resources, it cannot knowingly misuse state grant funds for an unauthorized purpose. Violations under this act could result in a prison term of up to 20 years and a fine of up to \$500,000, pursuant to N.J.S.A. 2C:30-8 (Public Corruption Profiteering Penalty Act). Under N.J.S.A. 2A:32C-3, a person shall also be subject to civil penalty and treble damages for making false claims under New Jersey's False Claims Act.
30. **High Risk Subrecipients:** In addition to the federal regulations governing risk status evaluations, located at 2 C.F.R. §§ 200.205 and 200.207, the Subrecipient agrees that under certain instances it may be considered "High Risk":
  - a. If L&PS determines that a Subrecipient:
    - i. Has a history of unsatisfactory performance;
    - ii. Is not financially stable;
    - iii. Has a financial management system which does not appear adequate according to the General Conditions, or meet the standards expressed according to the current State Circular Letter Standard Grant Agreement Form, VIII Financial Management System, State Circular 07-05-OMB;
    - iv. Has not conformed to terms and conditions of previous awards; or
    - v. Is otherwise not responsible; and L&PS determines that an award will be made; special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.
  - b. If a Subrecipient is considered "High Risk," then L&PS may impose additional Specific Conditions or restrictions on the Subrecipient at any time including one or more of the following:
    - i. Payment on a reimbursement basis;
    - ii. Withholding authority to proceed to the next phase until receipt or evidence of acceptable performance within a given funding period;



- iii. Requiring additional, more detailed financial reports;
  - iv. Additional project monitoring;
  - v. Requiring the Subrecipient to obtain technical or management assistance;  
or
  - vi. Establishing additional prior approvals.
- c. If L&PS decides to impose such Specific Conditions, L&PS will notify the Subrecipient as soon as possible, in writing, of:
- i. The nature of the special conditions/restrictions;
  - ii. The reason(s) for imposing the Specific Conditions;
  - iii. The corrective actions that must be taken before the Specific Conditions will be removed by L&PS and the time allowed for completing the corrective actions; and
  - iv. The method of requesting reconsideration of the conditions/restrictions imposed.

41. **Closeout Procedures:** The Subrecipient may be required to submit final expenditure and performance reports as prescribed by L&PS and in the timeframes set forth in the subaward agreement upon completion of the grant period or termination of the grant. L&PS may permit extensions when requested in writing by the Subrecipient. The Subrecipient will, together with the submission of the final report, refund to L&PS any unexpended funds or unobligated (unencumbered) cash advanced, except such sums that have been otherwise authorized in writing by L&PS to be retained. L&PS reserves the right to recover any funds considered unsupported, ineligible, or unallowable as a result of any audit, review, investigation, or monitoring.